

## Legislative activities in the labour market policy field in the years 2003 and 2004

### I. Amendments to the Unemployment Insurance Act 1977

#### A. Concomitant Budget Act 2003

##### 1. Exclusion from compulsory unemployment insurance for persons over 60

(§ 1 (2) (e) AIVG) (BGBl. I No. 71/2003, entering into force as of 1 January 2004)

As from 1 January 2004, persons who have reached the minimum qualifying age for an old-age pension (a provision valid since 1 July 2002 on the basis of the Economic Stimulation Act 2002, BGBl. I No. 68/2002) or who have reached the age of 60 (a new provision), are excluded from compulsory unemployment insurance from the beginning of the next calendar month.

##### 2. Consideration of employment periods subject to sickness insurance in the assessment of unemployment benefit

(§ 21 (1) (BGBl. I No. 71/2003, entering into force as of 1 January 2004)

Income from gainful activity exempt from unemployment insurance but subject to health insurance pursuant to § 1 (2) (e) AIVG is to be taken into consideration in calculating the annual contributory bases for the assessment of unemployment benefit.

##### 3. Amended regulations on part-time benefit for older workers

(§§ 27 and 82 (AIVG) (BGBl. I No. 71/2003, entering into force as of 1 January 2004)

- Extension of the regulation on part-time benefit for older workers, originally limited to 31 December 2003, with optimisation of the conditions.
- For all claims made as from 1 January 2004, the part-time benefit for older workers is granted at most for a period of five years, if the minimum age for an old-age pension is reached after not more than five years (as from 2013).
- Before that date the benefit may be drawn for a longer period on the basis of a transitional regulation analogous to the increase of the age for early retirement pensions as from 2004; the age for access to part-time benefit for older workers is raised annually by six months.
- Periods establishing eligibility such as periods of employment subject to sickness insurance after the end of compulsory unemployment insurance as well as extension of the reference period to include

periods of childcare up to the 15th year of life are credited, in order in particular to facilitate fulfilment of the entitlement requirements by women.

- The minimum duration of normal working hours and the reference period must be one year; (in the case of a change of employer, there must be at least three months of employment with the new employer).
  - The amount of reimbursement of costs depends on whether an additional worker is recruited (if a replacement is recruited, compensation amounts to 100% of the additional expenditure, without such recruitment, only 50%).
  - Prohibition of “blocking” (instead of a continuous period of part-time work, a phase of full-time work followed by a phase of release from work), except in the case of additional recruitment of an unemployed worker or an apprentice, at least during the period of release from work (apart from short unavoidable interruptions). In that event, an interim settlement is made at the beginning of employment of the replacement, with payment of 50% of the difference previously not paid, in addition to the current part-time benefit, for the remainder of the period.
  - Recovery of the entire part-time benefit is demanded if the commitment for recruitment of a replacement is not met.
  - The part-time benefit is granted for a longer period as a transitional measure for persons whose part-time work began in the second to fourth quarter of 2003 and is extended to the earliest possible pensionable age (which now occurs at a later date).
4. “Foundation training grants” are not offset against emergency assistance if a “foundation” training course is attended

(§ 36 (4) AIVG) (BGBl. I No. 71/2003, entering into force as of 1 January 2004)

As from 1 January 2004, grants and other allowances intended to meet extra expenditure caused by attendance at basic and further training courses are not to be deducted from emergency assistance. To cover the eventuality regularly occurring in practice that jobseekers attending a labour foundation training course (for example, a placement foundation course) were already drawing emergency assistance, it was previously provided that “Foundation training grants” paid by enterprises in which the training was carried out had to be offset against emergency assistance. It has now been made clear that such “foundation training grants” do not lead to a reduction in emergency assistance.

5. Introduction of new unemployment insurance benefits for the protection of subsistence for older workers

(BGBl. I No. 71/2003, entering into force as of 1 January 2004)

- Transitional benefit after part-time benefit (§ 39 AIVG)

This new benefit has been in effect since 1 January 2004. It was created as a safety net for all jobseekers who cannot take up a pension as planned after the end of the agreed part-time working arrangement because of the increase in the pensionable age, and who are not eligible for an extension of the part-time benefit. The transitional benefit is payable to persons

- who are unemployed after the end of part-time work;
- whose period of part-time work began in the second to fourth quarter of 2003 and who cannot go on pension immediately after the end of their work contracts because of the increase in the earliest possible age for drawing a pension, as well as persons
- for whom the employer received no part-time benefit because the reduced remuneration was higher than the maximum contributory base.

- Transitional benefit (§ 39a AIVG)

This new benefit has been in effect since 1 January 2004 and was created as bridging aid for persons who are no longer employed and cannot go on pension between 2004 and 2006 because of the abolition of the early retirement pension in the event of unemployment, or because of the increase in pensionable age (men, 61.5; women, 56.5). The transitional benefit is paid in the amount of unemployment benefit plus a 25% supplement. Persons who were unemployed for at least 52 weeks in the previous 15 months are entitled to the allowance. Eligibility used up (by drawing unemployment benefit) can again be taken into consideration with regard to the entitlement to the transitional benefit. The allowance is also granted in cases of so-called “reduced eligibility criteria” (28 weeks of employment subject to unemployment insurance in the last 52 weeks). Eligibility criteria are also fulfilled if there were 780 weeks of employment subject to unemployment insurance in the past 25 years. In that case, periods establishing eligibility, such as periods of compulsory sickness insurance after the end of compulsory unemployment insurance as well as periods of childcare up to the 15th year of life, are credited **and** extend the reference period.

For the years 2007 to 2009, the Federal Minister of Economics and Labour can permit access to this benefit by means of an Order, depending on the labour market situation.

6. Extension of the provision on the open-ended reference period for eligibility to unemployment benefit for self-employed persons

(§ 80 (10) AIVG) (BGBl. I No. 71/2003, entering into force as of 21 August 2003)

The provision on the open-ended reference period for periods of self-employed gainful activity (coupled with compulsory sickness insurance under the BSVG or the GSVG) is extended by one year (up to the end of 2004).

B. Federal Act amending the Unemployment Insurance Act 1977, the Public Employment Service Act, the Family Burdens Equalisation Act 1967 and the Insolvency (Guarantee of Remuneration) Act

1. New regulation on the determination of income from agricultural and forestry operations

(§§ 12 (6) (b) and 36a (4) AIVG) (BGBl. I No. 128/2003, entering into force on 1 January 2004)

Instead of the previous 4%, in future 3% of the standard value is the decisive criterion for the determination of unemployment (income may not exceed the marginal earnings threshold pursuant to § 5 (2) (2) ASVG) and for offsetting the income of a spouse or cohabitee against emergency assistance.

C. EU Enlargement Adjustment Act

1. Availability of seasonal workers after the end of the season

(§ 7 (6) AIVG) (BGBl. I No. 28/2004, entering into force on 1 May 2004)

A supplementary provision in the framework of the EU Enlargement Adjustment Act makes it clear that foreign workers who are admitted to the labour market on the basis of seasonal quotas pursuant to § 5 AuslBG, only for the duration of seasonal employment, are no longer available to the labour market after the conclusion of such employment. However, that restriction does not apply to workers who satisfy the preconditions for free access to the labour market on the basis of international agreements (including the EU accession treaty). In accordance with the purpose of the regulation, seasonal workers are not permanently integrated into the labour market and therefore do not satisfy the preconditions for the take-up of benefits under the AIV in Austria. However, after the lapse of restrictions based on seasonal status, insurance periods acquired in Austria can be taken into account within the relevant reference period for the assessment of eligibility. In the framework of international agreements or on the basis of Regulation (EEC) No. 1408/71, they must, moreover, be taken into account in the assessment of benefits in the home state.

## D. Labour Market Reform Act

### 1. Modernisation of the provisions on reasonable requirements

(BGBl. I 77/2004, entering into force on 1 January 2005)

Implementation of the agreement between the social partners:

- Reasonable travelling time to the workplace (§ 9 (2) AIVG)

Reasonable travelling time to the workplace should in principle be not more than one quarter of the average normal daily working hours (2 hours per day is reasonable in full-time work; a substantially longer travelling time – e.g. 3 hours – is considered reasonable only in special circumstances). In the case of part-time work, travelling time of 1 1/2 hours (to and fro) is reasonable, if the weekly working time is at least 20 hours.

- Berufs- und Entgeltschutz (“Vocational/job protection” and “remuneration protection”) during the period of drawing unemployment benefit (§ 9 (3) AIVG)

“Vocational protection”, i.e. the right to be employed in the occupation for which a worker has been trained, lasts for 100 days and is supplemented by individual remuneration protection. In future, the remuneration from employment offered during the first 120 days of drawing unemployment benefit may not be less than 80% of the remuneration on which the assessment basis for unemployment benefit is founded. During the remaining period of drawing unemployment benefit, it may not be less than 75% of that amount. This remuneration protection applies to full-time jobs if a worker is referred to a job in another occupation; if a part-time job is offered, the protection applies irrespective of the occupation in which the job is offered. After a substantial period of part-time employment (at least half of the time with less than 3/4 of the normal working hours), 100% remuneration protection applies.

- New regulations on sanctions in the event of unwillingness to work (§ 10 AIVG)

The increase from six to eight weeks in the minimum period of loss of entitlement in the event of repeated refusal of reasonable employment applies until further eligibility is acquired. In order to prevent abuse of the special remuneration protection after part-time employment, the period is increased by a further two weeks in the event of untruthful statements concerning the extent of part-time employment as the basis for the establishment of special remuneration protection.

### 2. Discontinuation of the (non-contributory) crediting to eligibility in the event of the simultaneous take-up of unemployment insurance benefits

(§ 14 (4) AIVG) (BGBl. I No. 77/2004, entering into force on 1 August 2004)

The crediting to the next eligibility entitlement of a Saturday or Sunday (on which unemployment benefit can be drawn) following the end of a worker's employment contract is discontinued.

3. Inclusion of periods of drawing an advance against pension as a factor in the increase of reference periods

(§ 15 (1) (2) AIVG) (BGBl. I No. 77/2004, entering into force on 1 August 2004)

Periods of drawing an advance against pension were included among the factors for extension of the reference period.

4. Protection of care-providing family members by extension of the reference period in unemployment insurance

(§ 15 (3) (4) AIVG) (BGBl. I No. 77/2004, entering into force on 1 August 2004)

In implementation of the Government programme, the factor for extension of the reference period in unemployment insurance for care-providing family members was **adjusted** as from care stage 3, in line with the existing possibility of further insurance for such persons under the pension insurance scheme.

5. Modernisation of regulations on applications and claims, with the aim of encouraging the early reporting of unemployment

(§§ 17 and 46 (1) and (5 – 7) AIVG) ( BGBl. I No. 7-7/2004, entering into force on 1 January 2005)

The regulations on claiming unemployment benefit were modernised. The necessary action was taken to make possible electronic reporting and submission of claims. However, the requirement of personal application to the PES has been retained, since at least one personal interview is essential for the clarification of entitlements. With regard to the submission of claims and further reporting after a short interruption in payment, the regional office can waive the requirement of application in person.

6. Simplification of regulations on crediting income from temporary employment

(§ 21a AIVG) (BGBl. I No. 77/2004, entering into force on 1 August 2004)

The discontinuation of the sixteen-day limit per calendar month, for clarification of entitlement requirements simplifies the crediting provisions in the case of temporary employment, thus giving an added incentive for employment. As from a four-week period of employment, no further income is credited. Also by the abolition of the bureaucratic maximum amount rule, crediting is substantially simplified.

7. Equal status of Austrian and foreign pensions

(§ 22 (3) AIVG) (BGBl. I No. 77/2004, entering into force on 1 August 2004)

Equal status of Austrian and foreign pensions if the foreign pension corresponds at least to the standard equalisation supplement for single persons. There is no entitlement to unemployment benefit and transitional benefit in the event of drawing a foreign pension. With regard to emergency assistance, Order BGBl. II No. 490/2001 provides that an emergency situation is not assumed to exist if such a benefit is drawn.

8. Remedy for hardship in regulations on advances against pension

(§ 23 (3) AIVG) (BGBl. I No. 77/2004, entering into force on 1 August 2004)

For persons with impaired health who have applied for a pension, the loss of the benefit in the case of hospitalisation after the end of the limited period of drawing sickness benefit as well as the necessity of application in person are abolished. In the case of residence abroad of up to three months, the entitlement to benefit is retained, without the necessity of a cumbersome verification procedure, because the persons in question are not available to the labour market.

9. Increase of the minimum requirements for the further training allowance

(§ 26 (1) (1) AIVG) (BGBl. I No. 77/2004, entering into force on 1 January 2005)

The entitlement to a further training allowance under unemployment insurance exists only in the case of attendance at a further training course lasting for a certain minimum period (16 hours per week or a comparable period, for example, in attendance at a (technical) college or academy), by means of which the chances of employment in the labour market are improved.

10. Entitlement to a transitional benefit only up to the date of reaching normal pensionable age

(§§ 33 (1) and (4) as well as 39a (1) AIVG) (BGBl. I No. 727/2004, entering into force on 1 August 2004)

Clarification that the entitlement to a transitional benefit ends at the latest on attaining normal pensionable age. Social protection by means of emergency assistance is possible if there is not yet an entitlement to pension on reaching pensionable age in individual cases, and if there is an emergency.

11. Closure of a one-week gap in sickness insurance protection

(§§ 40 (3) and 43 a (1) AIVG) (BGBl. I No. 77/2004, entering into force on 1 January 2005)



Unemployed persons who do not immediately apply for unemployment benefit (because of a four-week waiting period) and are therefore not covered by insurance after the end of the three-week protection period, are now granted sickness insurance protection for that period by closure of the one-week gap (in particular for dependent family members).

12. Possible reimbursement of unemployment insurance contributions

(§ 45 AIVG) (BGBl. I No. 77/2004, entering into force as of 1 January 2005)

If the maximum contributory base in unemployment insurance is exceeded because the employee in question had a number of employment contracts subject to compulsory insurance, it will be possible, on application, to receive a reimbursement of unemployment insurance, sickness insurance and pension insurance contributions as from 1 January 2005.

13. Equal treatment of all insurance periods by eliminating the reduced crediting facility in respect of periods subject to insurance in the case of prisoners who satisfy the work requirement

(§ 66a (2) AIVG) (BGBl. I No. 77/2004, entering into force as of 1 August 2004)

Implementation is simplified by the undiminished crediting of periods subject to insurance towards the eligibility entitlements of prisoners who comply with their duty to perform work; at the same time, the constitutional requirement of equal treatment of all insurance periods is thereby satisfied.

E. Concomitant Budget Act 2005

1. Open-ended extension of the reference period for eligibility to unemployment benefit for self-employed persons

(§ 80 (10) AIVG) (BGBl. I. No. 136/2004, entering into force as of 11 December 2004)

The provision on the open-ended extension of the reference period for periods of self-employed activity (subject to compulsory sickness insurance according to the BSVG or the GSVG) is extended by a further year (to the end of 2005).

2. New arrangements for sickness insurance contributions

(§ 42 (1) and (2) AIVG) (BGBl. I No. 136/2004, entering into force as of 1 January 2005)

This new regulation of sickness insurance contributions for persons drawing an unemployment insurance benefit or a subsistence allowance provides that the unemployment insurance authority pays compensation to



the sickness insurance authority not only for the sickness insurance contribution amounting to 7.4% of the benefit (allowance), but also for the authority's expenditure on sickness benefit from the 4th to the 56th day of sickness.

#### F. Pension Harmonisation Act

##### 1. Contributory periods in pension insurance for unemployed persons drawing benefits

(§ 6 (2) (3) AIVG and § 8 (1) (2) (b) ASVG) (BGBl. I No. 142/2004, entering into force as of 1 January 2005)

Persons drawing unemployment benefit (emergency assistance) and further training allowances and covered by pension harmonisation measures acquire contributory periods in pension insurance. Those contributory periods are assessed at 70% of the assessment basis for unemployment benefit (or 92% thereof for persons drawing emergency assistance).

##### 2. Contributory periods in pension insurance for unemployed persons without entitlement to benefit

(§ 6 (2) (4), § 34 AIVG and § 8 (1) (2) (b) ASVG) (BGBl. I No. 142/2004, entering into force as of 1 October 2000)

Unemployed persons covered by pension harmonisation measures who do not receive emergency assistance, in the absence of an emergency, acquire contributory periods in pension insurance in the same way as persons drawing emergency assistance, for the duration of the period in which they meet the other preconditions.

##### 3. Benefits in the event of entitlement to a corridor pension

(§ 22 (1) AIVG) (BGBl. I No. 142/2004, entering into force as of 1 January 2005)

In contrast to the regulations for other pension entitlements, unemployed persons can draw unemployment benefit or emergency assistance for up to a further year, despite an entitlement to a corridor pension, if their last employment contracts were not terminated by their own action or by mutual consent.

#### G. Financial Equalisation Act 2005

##### 1. Increase of sickness insurance contributions for a limited period

(§ 32 (6), § 42 (5) and § 80 (12) AIVG) (BGBl. I No. 156/2004, entering into force as of 1 January 2005)

As part of the financial adjustments for the years 2005 to 2008, sickness insurance contributions have been raised by 0.1% from 7.4% to 7.5% of the benefit (allowance) drawn.

## II. Changes in the Labour Market Policy Financing Act

### A. Concomitant Budget Act 2003

#### 1. Discontinuation of the unemployment insurance contributions of women who have reached the age of 55 and men who have reached the age of 57

(§ 2 (8) AMPFG) (BGBl. I. No. 71/2003, entering into force as of 1 January 2004)

As from 1 January 2004, the unemployment insurance contributions of women who have reached age of 55 and men who have reached the age of 57 must – as from beginning of the next calendar month – be paid out of labour market policy operating funds. That means that neither an employee's nor an employer's contribution to unemployment insurance is payable for such persons (reduction of non-wage labour costs). However, there is no resultant change in their unemployment insurance coverage and the resultant entitlements.

#### 2. Innovations in the bonus-penalty system

(§ 5a to § 5c AMPFG) (BGBl. I. No. 71/2003, entering into force as of 1 January 2004)

- A new gender-neutral version provides for greater consideration of the duration of employment in an enterprise.
- In the case of workers aged 50, given 10 years of employment with one and the same employer, the penalty amounts to 20% of the assessment basis.
- The penalty increases by 15% every full quarter year up to a maximum of 260% of the assessment basis.
- From the age of 56, the penalty is reduced by 15% every full quarter year, from 260% to a minimum of 80% of the assessment basis.
- In the event of more than 10 years of employment with one and the same employer, the penalty is increased by 2% for every further complete year, but by not more than 30%.
- Protection against dismissal for workers recruited after reaching the age of 50 (with the bonus of discontinuation of the employer's contribution to unemployment insurance), effective only as from the

beginning of third year of employment with one and the same employer (alteration of § 5 (3) (2) of the Collective Labour Relations Act).

B. Labour Market Reform Act

1. Clarification of the bonus regulation in the case of (seasonal) interruption of employment

(§ 5a (2) (1) AMPFG) (BGBl. I No. 77/2004, entering into force as of 1 August 2004)

This amendment makes it clear that in the case of the recruitment of older workers (discontinuation of the unemployment insurance contribution), the bonus, whose purpose it is to promote the employment of older workers, is still in effect even after interruptions of employment, particularly seasonal interruptions. However, no bonus is payable if the person recruited was already employed with one and the same employer before reaching the age of 50 and the last contract was terminated less than three years before further recruitment, but only then.

C. Concomitant Budget Act 2005

1. Coverage by the Federal authorities of shortfalls in labour market policy operations

(§ 1 (4) AMPFG) (BGBl. I No. 136/2004, entering into force as of 1 January 2005)

Shortfalls in labour market policy operations must be borne by the Federal authorities (without any limitation of amount).

2. Authorisation of the Public Employment Service to use enterprise-related labour market promotion funds

(§ 6 (3) AMPFG) (BGBl. I No. 136/2004, entering into force as of 1 January 2005)

The Public Employment Service is authorised to use enterprise-related labour market promotion funds to pay benefits under the AMSG and the JASG in the years 2005 and 2006.

D. Federal Act amending the Labour Market Policy Financing Act

1. No discontinuation of the penalty in the case of entitlement to a “corridor” pension

(§ 5b (2) (1) (e) AMPFG) (BGBl. I No. 158/2004, entering into force as of 1 January 2005)

The penalty is now inoperative only if the conditions for the employee's entitlements to an (early) retirement pension other than a corridor pension are met pursuant to § 4 (2) of the General Pension Act (APG), BGBl. I No. 142/2004.

### III. Amendments to the Public Employment Service Act

#### A. Concomitant Budget Act 2003

##### 1. Stimulation of labour market integration – expansion of training and re-employment action

(§§ 35 and 38a AMSG) (BGBl. I. No. 71/2003, entering into force as of 1 January 2004)

- Open-ended extension of the period of drawing unemployment benefit in the event of participation in supplementary training, retraining or re-employment training organised on behalf of the Public Employment Service (see also under Amendments to the Unemployment Insurance Act, “Activating benefits”, Point 23, § 18 (4) AIVG). Compulsory unemployment insurance is discontinued for persons drawing a subsistence allowance from the Public Employment Service (§ 35 AMSG).
- Issue of instructions to the Public Employment Service to ensure that unemployed persons are offered the necessary skills training courses or other employment promotion facilities that can lead to a sustained and permanent employment.
- Issue of instructions to the Public Employment Service to ensure that unemployed persons under 25 and over 50 are enabled to participate in training or re-employment action, if reasonable employment cannot be offered them within three months.

#### B. Labour Market Reform Act

##### 1. Obligation on the part of the regional offices of the Public Employment Service to prepare individual assistance plans

(§ 38c AMSG) (BGBl. I No. 77/2004, entering into force as of 1 January 2005)

A component of the modernisation of provisions regarding reasonable requirements in implementation of the agreement between the social partners:

By this change, the obligation of the regional offices of the Public Employment Service to prepare individual assistance plans was embodied in law. The assistance plans are intended to define the general conditions for the private sector placement and placement support activities of the Public Employment Service. Furthermore, the assistance plans ensure a uniform, meaningful, predictable procedure, corresponding to the

confidentiality principle, in services to and the placement of the unemployed.

#### IV. Amendments to the Youth Training Consolidation Act

##### A. Labour Market Reform Act

###### 1. Prolongation of measures under the Youth Training Consolidation Act

(§§ 1, 3, 6 and 8 JASG) (BGBl. I No. 77/2004, entering into force as of 1 August 2004)

The successful measures under the Youth Training Consolidation Act are prolonged for the next two classes of school leavers. The courses can also be arranged for preparation of the final apprenticeship examination and can last up to 12 months.

#### V. Amendments to the Insolvency (Guarantee of Remuneration) Act

##### A. Labour Market Reform Act

###### 1. Adjustment of the rules for quotation of the new Act on Out-of-Court Proceedings

(§§ 1 (1) (6) and 13 (3) (7) IESG) (BGBl. I No. 77/2004, entering into force as of 1 August 2004)

The amendment provides for the necessary adjustments of references to the Act on Out-of-Court Proceedings in connection with the repromulgation of the Act with effect from 2005. The necessity for amendment is based on the complete redrafting of the Act (especially with regard to procedural provisions), which leads to a shift in the relevant provisions.

###### 2. Placing electronic data at the disposal of the IAF-Service GmbH

(§§ 13 (4a) and 14 (5) IESG) (BGBl. I No. 77/2004, entering into force as of 1 August 2004)

The new § 13 (4a) IESG ensures that IAF-Service GmbH, like other legal entities that have been spun off, can have unrestricted use of the private sector Federal Computing Centre (*Bundesrechenzentrum GmbH*) to carry out IT assignments, for example, development, maintenance and operation of IT applications and IT infrastructure, or for the procurement and provision of IT equipment.

The new § 14 (5) IESG, enables IAF-Service GmbH to gain official access to central registration data.

- B. Federal Act amending the Unemployment Insurance Act 1977, the Public Employment Service Act, the Family Burdens Equalisation Act 1967 and the Insolvency (Guarantee of Remuneration) Act

Assignment of funds to the labour market reserve for the promotion of youth employment

(§ 12 Abs. 8 IESG) (BGBl. I No. 128/2003, entering into force as of 1 January 2004)

In the years 2004 and 2005, the Insolvency (Guarantee of Remuneration) Fund is required to transfer resources to the labour market reserve pursuant to § 50 AMSG for the promotion of youth employment in the framework of the “JOBS FOR YOUTH 04” initiative.

VI. Amendments to the Building Industry Bad Weather Compensation Act

A. Labour Market Reform Act

1. Announcement of increases in the number of bad weather hours for which compensation is payable according to the BSchEG, to be determined without discretionary power

(§ 4 (7) BSchEG) (BGBl. I No. 77/2004, entering into force as of 1 August 2004)

In line with the principles of administrative reform, an important simplification of administration was made by transferring responsibility for the announcement of the number of the additional bad weather hours for which compensation is payable in the event of extraordinary weather conditions in one weather period from the Ministry of Economics and Labour to the Construction Workers' Vacation and Severance Payments Fund (BUAK). There is no discretionary power in determining the number of hours, which is merely calculated from data from the Central Institute for Meteorology and Geodynamics. As a result, the construction enterprises can be informed much more simply and rapidly in future.

VII. Alterations to the Parental Leave Benefit Act (KGG)

A. Federal Act amending legislation on parental leave benefits

Retroactive abolition of the commitment to repay supplementary allowances to the parental leave allowance or to the part-time allowance

(§ 61 KGG) (BGBl. I No. 34/2004, entering into force as of 1 July 1997)

This Federal Act, promulgated on 28 April 2004, abolishes the commitment to repay supplements to the parental leave benefit or to the part-time benefit, with retroactive effect to 1 July 1997 (the date of the entry into force of the Parental Leave Benefit Act).

#### VIII. Amendments to the Aliens' Employment Act (AuslBG)

##### A. Growth and Business Location Act

(BGBl. I No. 133/2003, entering into force as of 1 January 2004)

Under this amendment, top managers, their spouses and children, as well as certain support and domestic staff employed by them, are exempted from the application of the AuslBG, and thus from the quota requirements of the Aliens Act, by virtue of their dependent or employment status.

For family members of the "normal" key personnel who continue to be admitted via the key personnel quotas of the Establishment Order, the possibility of granting employment permits in the stricter authorisation procedure was created

(§ 1 (2) and § 2 (5a) AuslBG)

The intention is on the one hand to exempt the top managers themselves from the scope of the AuslBG and as a result no longer subject them to admission via the annual key personnel quotas of the Establishment Order. On the other hand, the family members of top managers are also covered by these exceptions and, for the duration of their stay in Austria, are enabled to engage in employment without any further labour market authority authorisation. Also, support and domestic staff already employed by the top managers and necessary for their further support will be exempted from the scope of the AuslBG, exclusively with regard to their employment with the management staff, but only for that purpose, and will receive residence documents outside the quota. The support and domestic staff are not available to the regular labour market and are linked to the top managers with respect to their residence and employment.

##### B. EU Enlargement Adjustment Act

(BGBl. I No. 28/2004, entering into force as of 1 May 2004)

The amendments to and transitional provisions of the AuslBG and the AIVG, provided for in the EU Enlargement Act, implemented the transitional arrangement on the freedom of movement of workers and the freedom to provide services stipulated in the Treaty of Accession to the European Union of the Czech Republic, Estonia, Cyprus, Latvia, Lithuania, Hungary, Malta, Poland, Slovenia and Slovakia. The transitional provisions entered into force as of 1 May 2004 and are initially open-



ended. Therefore, if necessary, they can be applied for the maximum duration of the transitional period (seven years).

1. Requirements with regard to the residence rights of new EU citizens

(§ 4 (3) (7) AuslBG)

As from the date of accession of new EU member states, their nationals (new EU citizens) have full freedom from visa and establishment requirements and therefore no longer need residence documents in order to reside in Austria temporarily or permanently for whatever purpose. Also they are no longer subject to the quota system of the Aliens Act (they are not offset against the key personnel, family reunification or other establishment quotas stipulated in the Establishment Order). Furthermore, the residence documents for third-State nationals necessary for employment permits were precisely defined.

2. Community preference

(§ 4b (1) and § 5 (3) AuslBG)

For the labour market verification procedure for the award of employment permits, EEA citizens – and thereby also new EU citizens – are expressly mentioned as most-favoured groups among aliens available for filling vacancies. Nevertheless, for labour market policy reasons, it is meaningful to consider persons drawing unemployment insurance benefits – irrespective of their nationality – to fill vacancies in the first place. Only when placement from that group of persons is unsuccessful will other registered persons be offered the vacancies, but new EU citizens are to be given preference over registered third-State nationals with equal qualifications.

3. Penalty provision

(§ 28 (1) (6) AuslBG)

Employers who recruit new EU citizens, their spouses and children who have the right of freedom of movement, without submitting confirmation, will be fined (up to €500) for a regulatory offence. New EU citizens who do not have the right of freedom of movement may be employed only on the basis of another labour market authority permit or confirmation under the AuslBG (or on the basis of a residence document). Failure to present such a document is punished with a sanction on grounds of illegal employment.

4. Acquisition of the right of freedom of movement of workers

(§ 32a (1) to (5) AuslBG)

New EU citizens and their spouses and children are not excluded from the scope of the AuslBG and can in principle have access to employment only in accordance with the rules of that Act. However, new EU citizens acquire the right of freedom of movement of workers if they were legally employed

in the Federal territory on the day of accession or thereafter and were granted access to the regular labour market without interruption for at least 12 months, or met the preconditions for an exemption certificate (§ 15 AuslBG), or have been established in the Federal territory for five years without interruption and have at their disposal regular income from permitted gainful activity. Also, irrespective of their nationality, spouses and children (within the meaning of § 1 (2) (I) AuslBG) of a new EU citizen with the right of freedom of movement (reference person) acquire the right of freedom of movement of workers if they had a joint household with him/her on 1 May 2004 or – if they do not join the spouse until after 1 May 2004 – have had a joint household with him/her in the Federal territory for at least 18 months. As from 1 May 2006, they acquire that right immediately.

The right of free access to the labour market must be confirmed by the PES in order to avoid unauthorised take-up (in the event of non-fulfilment of the preconditions) and at the same time to create legal certainty for the employer with regard to the permissibility of employment. Take-up of work is permissible only with such confirmation, which must be obtained in advance from the PES. That right is lost again in the event of voluntary non-availability to the Austrian labour market, that is to say, in the event of departure from the Federal territory for other than temporary reasons.

All new EU citizens who were legally employed but are registered as unemployed as well as their spouses and children are counted against the maximum quotas of aliens (Federal and Provincial maxima). Similarly, quota authorisations (§ 5 AuslBG) for new EU citizens are counted against the relevant quotas.

## 5. Freedom to provide services

(§ 32a Abs. 6 and 7 AuslBG)

The posting of workers to those service sectors for which restrictions of the freedom to provide services are permissible is subject to the transitional arrangement, in particular:

- Horticulture, pursuant to European NACE Code 01.41;
- Cutting, shaping and finishing of stone, pursuant to European NACE Code 26.7;
- Manufacture of metal structures and parts of structures, pursuant to European NACE Code 28.11;
- Construction sector and related trades, pursuant to European NACE Codes 45.1 to 4 and the activities mentioned in Directive 96/71/EEC;
- Investigation and security activities, pursuant to European NACE Code 74.60;
- Industrial cleaning, pursuant to European NACE Code 74.70;
- Other human health activities, pursuant to European NACE Code 85.14

- Social work activities without accommodation, pursuant to European NACE Code 85.32.

In these protected sectors, the employment of new EU citizens who are posted to Austria by enterprises with headquarters in a new EU member state (except Malta and Cyprus) for the provision of services continues to be admissible only on the basis of a posted-worker permit, which must be obtained by the Austrian contractual partner. In the liberalised sectors, an EU posting certificate is necessary for posting from new EU member states.

To avoid placing enterprises from new member states at an undesirable disadvantage compared with enterprises from the “old” member states, enterprises with headquarters in the old member states *in all service sectors* still require EU posting certificates for the employment of new EU citizens.

#### 6. Employment permits for key personnel

(§ 32a Abs. 8 AuslBG)

Since workers from the new EU member states in general no longer receive an establishment permit as from the accession date, the procedure pursuant to § 12 AuslBG is no longer applicable. Therefore, key personnel from the new member states obtain an employment permit if all preconditions are met (without the necessity of a previous secured work certificate).

#### 7. Continued validity of existing entitlements

(§ 32a (9) AuslBG)

Pursuant to § 32a (4), new EU citizens with free access to the labour market who have another entitlement to take up work (employment permit, work permit, exemption certificate, residence document) need not obtain an EU freedom of movement clearance pursuant to § 32a if the authorisation issued to them in any case permits the existing or prospective employment.

#### 8. Agreement between the EU and Switzerland on the freedom of movement of persons

(§ 32 Abs. 9 AuslBG)

The transitional period for the freedom of movement of workers in the case of Swiss citizens that was provided for in the agreement between the EU and Switzerland on the freedom of movement of persons ended on 31 May 2004. Swiss nationals and their family members – irrespective of nationality – have therefore no longer been subject to the AuslBG since 1 June 2004.

Enterprises with headquarters in Switzerland are given equal status as from that date with enterprises with headquarters in an old EU member

state and merely need an EU posting certificate for the posting of third-state nationals or new EU citizens in all service sectors.

C. Amendment of the Order on exceeding the Federal maximum quota

(BGBl. II Nr. 352/2004, entering into force as of 11 September 2004)  
health and nursing staff  
(§ 1 Abs. 4 BHZÜV)

This amendment created the possibility of exceeding the Federal 8% maximum for qualified nursing staff from all new EU member states. The possibility of receiving a permit as a qualified nurse, at present restricted to cross-border and other commuters (from neighbouring states), was thus extended to cover all citizens of the new EU member states with appropriate qualifications. This meets the additional needs for nursing staff which cannot be satisfied out of the potential of Austrian or integrated foreign labour.

The minimum remuneration limit (40% of the ASVG maximum contributory basis, at present €1,380) was retained as a precondition for authorisation.

D. Concomitant Budget Act 2005

(BGBl. I Nr. 136/2004, entering into force as of 10 December 2004)

Improvement of the general conditions for the establishment of headquarters of international groups  
(§ 18 (3) AuslBG)

The aim of the new arrangement is to improve still further the general conditions for the establishment of headquarters of international groups. Accordingly, in addition to the existing exceptions and special regulations for permits of top managers, international researchers and qualified key personnel (§ 1 (2) (f); § 12) and to supplement the existing possibility of training workers in the framework of joint ventures, without the need for a permit, it is also the aim to facilitate the posting of qualified staff for basic and further training within international groups. Qualified staff of the individual group enterprises can be posted to headquarters for basic and further training for up to 50 weeks without the need for a permit. The Public Employment Service need merely be notified of the training courses, which will be confirmed by that Service, given evidence of a suitable training programme. International groups within the meaning of this arrangement are independent enterprises joined in a cohesive unit for business purposes, with headquarters (the central office of the group) in Austria and branches in at least two other countries.