



12 November 2007

RAP/Cha/Austria/25(2007)1

## **EUROPEAN SOCIAL CHARTER**

25<sup>th</sup> National Report on the implementation of  
the European Social Charter

submitted by

***THE GOVERNMENT OF AUSTRIA***

for the period 1 January 2003/2005 to 31 December 2006

on articles 1, 9, 10, 15 and 18

---

Report registered by the Secretariat on 9 November 2007



## **TWENTY-FIFTH REPORT**

on the implementation of Articles 1, 9, 10, 15 and 18 of the  
European Social Charter  
(Reporting period 1 January 2003/2005 to 31 December 2006)  
submitted by the Federal Government of the

REPUBLIC OF AUSTRIA

under Article 21 of the European Social Charter,  
the instrument of ratification of which  
was deposited on 29 October 1969.

In accordance with Article 23 of the Charter,  
copies of this report have been communicated to

The Austrian Trade Union Federation  
(Österreichischer Gewerkschaftsbund)

The Federal Chamber of Labour  
(Bundesarbeitskammer)

The Austrian Economic Chamber  
(Wirtschaftskammer Österreich)

The Federation of Austrian Industry  
(Vereinigung der Österreichischen Industrie)

The Presidential Conference of Austrian Chambers of Agriculture  
(Präsidentenkonferenz der Landwirtschaftskammern Österreichs)

and

The Congress of Austrian Chambers of Agricultural Labour  
(Österreichischer Landarbeiterkammertag)

## **ARTICLE 1**

### **THE RIGHT TO WORK**

#### **Para 1 of Article 1**

#### **Basic remarks:**

Reference is made to the following reports, which contain extensive information on the questions raised:

- 2005, 2006 and 2007 Economic Reports Austria (pdf format):  
<http://www.bmwa.gv.at/BMWA/Schwerpunkte/Wirtschaftspolitik/Wirtschaftspolitik/006wirtschaftspolitik.htm>

Normally Chapter IV (The Labour Market) contains among other things accounts of the development of the labour market, the formulation of labour market policy including target architecture, use of resources and labour market promotion.

- The report "Labour Market Policy in Austria 2004/05 (English) and the report „Labour Market Monitoring 2004/05 sowie Arbeitsmarktmonitoring 2006“:  
<http://www.bmwa.gv.at/EN/Topics/Labourmarket/policy/default.htm>

See **Annex/Art.1**: Labour Market and Labour Market Policy 2004/05.pdf

Labour Market Monitoring 2004/05.pdf

Arbeitsmarktmonitoring 2006.pdf

2006 (forthcoming); the English version of the 2006 report will be forwarded as soon as it has been cleared

<http://www.bmwa.gv.at/BMWA/Schwerpunkte/Arbeitsmarkt/ArbeitsmarktPolitik/default.htm>

- Extensive information from the Federal Ministry of Economics on the economic and labour market system is available under:

<http://www.bmwa.gv.at/BMWA/Themen/Arbeitsmarkt/default.htm>      and      under  
<http://www.dnet.at/elis/>

Annual reports on the labour market situation are contained in:

<http://www.bmwa.gv.at/EN/Topics/Labourmarket/comparison/default.htm>      (English)  
 resp.

<http://www.bmwa.gv.at/BMWA/Schwerpunkte/Arbeitsmarkt/Arbeitsmarktdaten/default.htm> (German)

- Last but not least, reference is made to the business reports of the PES (the abbreviated version of the most recent report, for 2006 is available in English:  
<http://www.ams.or.at/neu/4441.htm>

### **Main features, functions, and task of Austrian labour market policy:**

In agreement with the social partners the following targets were set and communicated to the AMS in late April 2006

<http://www.bmwa.gv.at/EN/Topics/Labourmarket/targets/default.htm>

### **Labour market policy implementation targets set by the Federal Minister of Economics and Labour for the AMS:**

The Public Employment Service Act (section 59.2) obliges the Federal Minister of Economics and Labour to publish labour market policy targets for the [Public Employment Service Austria \(AMS\)](#).

In agreement with the social partners the following targets were set and communicated to the AMS in late April 2006:

- **„Maintain the AMS's top position in European benchmarking exercises:** Austria's public employment service should continue to face competition; maintain and improve its high level of service delivery; ensure and improve the quality of technical and organisational resources; refrain from any complacency in respect of existing achievements in client-focused service and target control mechanisms.
- **Upgrade early intervention:** Early intervention should bring an end to unemployment. Reducing the duration of unemployment spells remains the AMS's key target. Ideally, unemployment should not occur at all (not even as a result of structural change).
- **Promote equal opportunities of special labour market groups:** in terms of **female employment rates:** Austria has already exceeded the Lisbon objective and should now use as a new benchmark the employment rates of women in Scandinavian countries. 50% of the funds spent on active labour market policy should be channelled towards programmes encouraging the employment of women.

The AMS should undertake every effort to raise **young people's** educational attainment levels. This, in turn, is intended to improve their employment prospects.

Much needs to be done concerning the employment of **older workers**. Existing labour market policy tools should be supplemented by skills training guidance and advice to employers, age-compliant work organisation and upskilling, raising older workers' readiness to enter training and look after their health.

- **Keep an eye on long-term unemployment, reduce the existing stock of the chronically long-term unemployed:** This primarily requires networking and cooperation with Austria's Laender, with organisations for the disabled, prisons, health services, etc.
- **Improve quality and sustainability of labour market policy measures:** Scientific studies confirm the high level of AMS-driven measures. These are quality measures having a sustainable effect for participants. However, there

is still room for quality enhancement by tapping and using any existing potential for improvement.

- **Ensure proper agreements between the AMS and its clientele:** Since 1.1.2005 it has been obligatory for the AMS to devise (back-to-work) action plans for unemployed people ("Betreuungsplan"). It is a fact that such agreed plans improve job seekers' impression of being properly informed and counselled. Such action plans should also become standard fare for AMS guidance to employers.
- **Focus on clients:** The AMS should continue focusing its services on clients. Regular polls of clients, cooperation with client groups and consistent improvements should enhance client friendliness.
- **Ensure quality placement:** In addition to indicators for measuring client satisfaction, the AMS should also develop indicators for measuring quality. Special emphasis should be put on encouraging job seekers to take the initiative and use the AMS's self-service facilities. [EURES](#) should help enhance supra-regional mobility and provide information about the entire framework that governs the seeking and taking up of jobs in other European countries.
- **Enhance labour market transparency:** labour market policy processes require an utmost degree of transparency. To this end, the AMS's highly successful Internet platform [e-Jobroom](#) (only available in german language) has been created. The AMS should continue to optimise and fine-tune this tool to better meet client needs, and encourage analyses, scientific monitoring and research.“

**Content of „Labour Market Policy“ 2004/05 Report** (Annex/Art.1: Labour Market and Labour Market Policy 2004\_05.pdf):

<http://www.bmwa.gv.at/EN/Topics/Labourmarket/policy/default.htm>

1. THE AUSTRIAN LABOUR MARKET –DYNAMIC ADJUSTMENT TO STRUCTURAL CHANGES
2. PRINCIPLES OF THE AUSTRIAN LABOUR MARKET POLICY
3. ONGOING DEVELOPMENT OF AUSTRIAN LABOUR MARKET POLICY – RETURN TO FULL EMPLOYMENT
4. PERFORMANCE DATA OF THE PUBLIC EMPLOYMENT SERVICE (AMS) AND ACTIVE LABOUR MARKET POLICY
  - 4.1 Amount and structure of expenditure on labour market policy: an international comparison
  - 4.2 Job placement by the AMS
    - 4.2.1 Stock and placement
    - 4.2.2 Placement of job seekers
    - 4.2.3 International networking of job brokerage: EURES

- 4.2.4 Job information centres (BIZ)
- 4.3 Labour market promotion by AMS Individualised outcomes
- 4.4 Labour market policy for young people
- 4.5 EU enlargement and new trends in the employment of non-nationals
- 4.6. Overall economic burden relief and employment effects of labour market policy
- 5. SUBSISTENCE AND UNEMPLOYMENT – UNEMPLOYMENT INSURANCE
  - 5.1 Benefits
  - 5.2 Prerequisites for claiming unemployment benefit
  - 5.3 Amount of unemployment benefit
  - 5.4 Unemployment assistance
  - 5.5 Transitional benefit
  - 5.6 Advance payment of pension insurance benefits
  - 5.7 Employment promotion benefits
  - 5.8 Sanctions
- 6. ACTIVITIES OF COMMERCIAL RECRUITMENT AGENCIES
- 7. TEMPORARY WORK
- 8. ANNEX

### **Ad A and B:**

In reply to these questions, reference is made to the above reports and links; especially to

- <http://www.dnet.at/elis/>
- <http://www.dnet.at/bali/>:
- <http://www.bmwa.gv.at/BMWA/Schwerpunkte/Arbeitsmarkt/Arbeitsmarktdaten/default.htm>

In English you may find data on the following websites:

<http://www.bmwa.gv.at/EN/Topics/Labourmarket/policy/default.htm>

(Labour market monitoring“ (Data for 2006 available only in German)

More data you will find on the website of the Public Employment Service Austria – <http://www.ams.at>

Of specific relevance in this context: The annual report of the PES (the latest: 2006);

A summary in English („At a glance“) can be found:

<http://www.ams.at/neu/6654.htm?parent=|6654>

See also **Annex/Art.1**: Part Time.pdf

Total Unemployment.pdf

Youth Unemployment.pdf

Long Term Unemployment.pdf

### **Civil service:**

In early 2005, the Federal Government resolved, as part of its proactive apprenticeship training and youth employment strategy, to actively encourage apprenticeship training also at the federal ministries. This initiative is continued and has boosted the number of apprentices in the federal civil service as follows:

Number of apprentices:

March 2005: 418

December 2005: 901

December 2006: 949

In addition, targeted efforts are made to further improve the quality of apprenticeship training at the federal level, in order to increase the attractiveness of graduate trainees for the private labour market and in this way foster mobility between the public and private sectors.

This is achieved by accelerating the exchange of trainees with private businesses and by a proactive training strategy that emphasises linguistic competence in both their mother tongue and in foreign languages.

Within the scope of schemes to promote women, greater efforts are invested in training female apprentices in technological occupations because of the structurally better job prospects offered by such work. At present, women make up some 60% of apprentices.

The programme to promote the employment of disabled persons provides, with regard to federal employees, that the disabled are not just exempt from staff cuts but that their new employment is encouraged through setting aside permanent posts specially reserved for disabled persons.

	Total federal employees	Disabled	As a share of overall federal employees
<u>2001</u>	<u>195,289</u>	<u>4,658</u>	<u>2.39</u>
<u>2002</u>	<u>196,781</u>	<u>4,507</u>	<u>2.29</u>
<u>2003</u>	<u>180,934</u>	<u>4,328</u>	<u>2.39</u>
<u>2004</u>	<u>151,529</u>	<u>3,995</u>	<u>2.64</u>



<a href="#">2005</a>	<a href="#">157,355</a>	<a href="#">4,159</a>	<a href="#">2.64</a>
----------------------	-------------------------	-----------------------	----------------------

Source: [Bundessozialamt](#) (including civil servants in spun-off entities)

As to further specifics on this issue regarding the federal civil service, reference is made to the federal non-discrimination reports for 2004 and 2006 (Report by the Federal Government to the National Council on the state of implementation of equal rights and equal treatment of women and men), to be found at <http://www.frauen.bka.gv.at/site/5535/default.aspx>.

Between 1995 and 2005, the average age of federal employees rose from 40 years to 42.8 years, while the retirement age went up by about 2.8 years.

The share of part-time federal employees rose from about 10% in 1995 to 15% in 2005.

Women made up 35.9% of federal employment in 1995, a rate that rose to 38% in 2005.

(All figures are taken from the federal staff almanac, to be found at:

[www.bundestkanzleramt.at/Docs/2007/2/5/Personaljahrbuch2006.pdf](http://www.bundestkanzleramt.at/Docs/2007/2/5/Personaljahrbuch2006.pdf))

### **Ad C:**

Regarding this question, reference is made to the website maintained by the Federal Ministry of Economics and Labour: <http://www.dnet.at/elis/> (file "zeitreih\_OS.xls")

See **Annex Art. 1**: Tab\_OS1.pdf

The remarks of the Federal Chamber of Labour on youth unemployment inter alia are attached in **Annex/Art.1**: Chamber of Labour\_Art 1 para 1.doc

### **Statement by the Provincial Government of Vienna regarding questions A and C:**

In response to an initiative launched by the employees' representations, the Provincial Government of Vienna was the first state in Austria to set up a separate organisation aimed at pursuing an active labour market policy: the Wiener Arbeitnehmer/innen-Förderungsfonds (Fund to Promote Workers in Vienna, WAFF) established already in 1995.

Long-term unemployment particularly affects persons eligible to receive *Sozialhilfe* (social assistance).

Collaborating with the WAFF, the Municipality of Vienna has been developing a job placement project known as "Jobchance" which is specially targeted at recipients of social assistance.

The officers of Jobchance offer intense counselling and coaching to clients in search of work. They not only make use of official job offers, but actively search for new jobs tailored to their clients through intense contacts with employers. Jobchance continues its counselling even after the clients have successfully taken up work.

In 2006, measures of labour integration were further extended:

On the one hand new counsellors were added at Jobchance, on the other hand two new employment projects were developed in cooperation with NGOs that target their work specifically at young recipients of social assistance who are characterised by a degree of remoteness from the labour market. Both projects aim to return young beneficiaries to the primary labour market through work (traineeships and/or hiring out).

While beneficiaries participate in the project they are paid a normal salary and are supported by way of job coaching and skills training. After seven months, participants should be ready to be offered normal employment.

For migrants and persons entitled to asylum, Vienna, cooperating with several NGOs, offers German language courses that are specifically tailored to the needs of recipients of social assistance (child care, etc.).

In order to clarify whether a person is able to work and which placement procedures would be most suitable, a job diagnosis tool has recently been introduced. A key prerequisite for more job opportunities and an attractive business location is the cooperation between all major bodies involved in labour market and economic policies, so that cooperative schemes with the Economic Chamber and the Public Employment Service AMS proliferate.

Considering that unemployment is particularly prevalent among low- or inadequately skilled persons, all WAFF programmes focus on training and skills acquisition.

### **Reply to the supplementary questions on Para 1 of Article 1 in the Conclusions XVIII-1:**

On the question regarding:–

- measures specifically developed to solve the problem of long-term unemployment,
- the average time before a person is eligible for participation in an active labour market policy measure:

A key position in the struggle to prevent long-term unemployment is taken up by efforts to extend the early intervention strategy pursued for groups at a particularly great risk, such as older persons, the young as well as women, and which are explicitly specified in the targets defined by the Federal Minister to the Public Employment Service (AMS). Already in 2004, the AMS was instructed by law to offer participation in a training or reintegration measure to youths and persons aged 50+ after three months of unemployment. The labour market policy goals targeted by the AMS across the Austrian territory similarly accorded special attention to the early intervention strategy by including the following parameters in the list of objectives: keeping unemployment spells among the young and older persons short (not longer than six months), and preventing long-term unemployment (more than 12 months). The target of getting long-term unemployed back to work was again included as a goal in 2006. For all these targets, an overperformance could be achieved (see AMS Business Report for 2006). Measures taken by the AMS thus either aim to prevent people from passing into long-term unemployment or attempt to reintegrate the long-term jobless into the labour market. Responding to individual problems, a variety of measures is available to facilitate the (re)integration of persons marginalised from

work over a long term. The spectrum ranges from measures to support placement and skill-acquisition schemes to programmes to boost employment (for details see the AMS Business Report for 2006). Only about 2% of the young and 8% of the older jobless remained unemployed within the target period of six months in spite of intense efforts on the part of the placement and counselling staff; fewer than 2% of all registered unemployed passed into long-term unemployment (jobless for more than 12 months).

Success in the fight against long-term unemployment also derives from organisational measures such as the three-zone model and the obligatory monitoring plan, both of which aim to intensify counselling activities by the AMS (where necessary by obtaining external counselling services) in cases of persistent unemployment.

Depending on the regional labour market and individual problem situation, unemployed persons may be offered participation in an active labour market policy measure immediately after contacting the AMS. The following table provides an overview of the unemployment days preceding a measure for persons who completed a scheme in 2006. Obviously, there is a gap between offering and taking up a measure, due to the decision-making process undergone by the participant or the starting date of the measure, so that the days given in the table are approximations only, which need to be further reduced by this indeterminable time factor.

**Unemployment spells prior to the start of a measure, 2006**

<b>Stock</b>	<b>0 days</b>	<b>1 – 180 days</b>	<b>181 – 365 days</b>	<b>&gt;365 days</b>	<b>Total</b>
<b>Employment</b>	9,390	20,336	4,683	1,355	<b>34,516</b>
<b>Skills training</b>	79,100	124,056	36,036	4,467	<b>219,622</b>
<b>Support</b>	11,266	21,883	3,259	798	<b>33,349</b>
<b>Measures total</b>	<b>96,749</b>	<b>149,960</b>	<b>41,752</b>	<b>6,218</b>	<b>259,067</b>

Source: AMS DWH Verbleibsmontoring

### **Para 2 of Article 1**

#### **Elimination of all types of job discrimination**

##### **Ad A:**

The previous presentation should be updated as follows:

#### **Elimination of all types of discrimination due to disability:**

On 1 January 2006, a **package** consisting of a new act and amendments to existing acts aimed to ensure equal opportunities for people with disabilities entered into force [Federal Act adopting the Federal Equal Opportunities for People with Disabilities Act (Bundes-Behindertengleichstellungsgesetz; BGStG) and amending the Behinderteneinstellungsgesetz (Disabled Persons Employment Act), Bundesbehinderten-gesetz (Federal Disabled Persons Act), Bundessozialamtsgesetz (Act Governing Federal Social Service Authorities), Gleichbehandlungsgesetz (Equal Opportunities Act), Bundesgesetz über die Gleichbehandlungskommission und die Gleichbehand-lungsanwaltschaft (Equal Opportunities Board and Ombud for Equal Opportunities Act) and Bundes-Gleichbehandlungsgesetz (Federal Equal Opportunities Act); Federal Law Gazette I no. 82/2005, see [Annex/Art. 1: BGBl\\_82\\_2005.pdf](#)]. At the core of the package is an in-depth amendment to the **Behinderteneinstellungsgesetz** (BEinstG; Disabled Persons Employment Act), regulating the ban on discrimination of the disabled at work, and the new **Bundes-Behindertengleichstellungsgesetz** (BGStG, Federal Equal Opportunities for People With Disabilities Act), mandating a ban on discrimination in other key spheres.

**Council Directive 2000/78/EC** establishing a general framework for equal treatment in employment and occupation, banning discrimination based on religion or belief, disability, age or sexual orientation, is implemented, with regard to federal competences, in the Amendment to the BEinstG. Its ban on discrimination also spans federal employees. The Federal Disabled Persons Act introduced the position of **Behindertenanwalt** (ombud for disabled persons). This was accompanied by a federal constitutional act to accord recognition to **sign language** as an official language (Federal Law Gazette I no. 81/2005), and a Federal Equal Opportunities for People with Disabilities Act (Federal Law Gazette I no. 90/2006) which eliminated numerous discriminatory wordings from regulations governing the exercise of occupations.

At **Länder** (state) level, bans on discrimination based on disabilities have in turn been imposed (state laws governing employment of state and local government employees, state labour codes, other competences assigned to the *Länder* level under the Federal Constitution).

The ban on discrimination stipulated in the **Behinderteneinstellungsgesetz** BEinstG concerns specifically:

- the employment relationship including its run-ups (filing job application, hiring, wages, transport, termination);
- occupational and advanced training external to an employment relationship;
- membership in employers and employees organisations;
- conditions for access to self-employed work.

Same as provided in the laws regulating equal treatment in a general context, disability must not be a direct or indirect cause for discrimination, especially with regard to:

- establishing an employment relationship,
- specifying the wages,
- granting voluntary social benefits which do not constitute a monetary compensation;
- measures of occupational and advanced training and retraining;

- career opportunities, especially with regard to career advancement;
- other working conditions;
- terminating the employment relationship;

and in any other labour context, i.e.:

- access to occupational counselling, occupational training, continued vocational training and retraining outside an employment relationship,
- membership in an employees or employers organisation;
- conditions for access to self-employed work.

In addition to employees, the ban also covers home workers (Heimarbeiter) and persons of a status assimilated to employment.

The BGStG regulates the ban on discrimination due to a disability for the following areas of application:

- federal administration;
- general business to the extent that it involves access to and supply of goods and services available to the public (e.g. consumer transactions, access to the internet, any situation in which an individual is a customer or guest).

This also includes, i.a. (and comparable to Council Directive 2000/43/EC implementing the principle of equal treatment between persons irrespective of racial or ethnic origin):

- social protection, including social welfare and health services,
- social benefits,
- education (including access to university education).

The BGStG exceeds the Framework Directive 2000/78/EC throughout its entire sphere of application and is a model for all of Europe.

Both laws (BEinstG and BGStG) define **discrimination due to barriers** (e.g. construction, technical, communications), within the scope of the application of each law, as a special case of indirect discrimination whenever an effort to avoid such discrimination by eliminating such barriers could have reasonably been expected.

The ban on discrimination is regulated same as the right to equal treatment. However, going beyond the general right to equal treatment, the law to prevent discrimination of the disabled also encompasses **family members of the disabled**.

Same as provided in the equal treatment law, claims may be asserted in court. The rules on evidence are identical with those stipulated in the equal treatment law. Civil servants and public employees need to assert their claim through civil service channels. Before a claim can be asserted, it is necessary to institute **arbitration proceedings at the Bundessozialamt** (Federal Social Service Authority). Only when such arbitration fails is it possible to enter a claim in court. All deadlines are stayed for the duration of arbitration proceedings.

The costs of arbitration (interpreters, an external **mediator** if so requested by the parties) are paid by the state.

Initial experience from concrete cases has shown that arbitration in special, being a particularly low-threshold procedure, quite rightfully enjoys a high degree of acceptance. The offer to carry on talks towards conflict resolution within an informal

context is found to be very useful. Customer satisfaction (also among NGOs) is rather good, as evidenced by the current experience. In many cases, arbitration results in a mutually agreed solution of the conflict to the satisfaction of all parties.

Deadlines for asserting claims in court or vis-à-vis the employer are similar to those stipulated in the equal treatment law:

Discrimination on entering an employment relationship, regarding career opportunities or harassment must be asserted within six months. Discriminatory termination of employment, dismissal or retirement must be appealed against within two weeks. For all other claims, a three year limitation period applies.

Under the BEinstG, NGOs may be included in court proceedings by way of **third-party intervention** by Österreichische Arbeitsgemeinschaft für Rehabilitation (Austrian National Council of Disabled People), the umbrella organisation of associations concerned with disabled persons. Under the scope of the BGStG, this umbrella organisation is also granted the right to take legal action reserved to associations in the form of a “**Verbandsklage**”.

Regarding sanctions and legal remedies the following should be noted:

Same as the Equal Opportunities Act, the BEinstG as amended provides for sanctions in the case of discrimination as follows:

- compensation for the economic loss, i.e. a positive loss and lost profit, or
- institution of a state of non-discrimination, and, in both cases, also
- solatium for the personal derogation suffered.

Specifically, the following concrete claims can be asserted:

- discrimination on establishing an employment relationship: damages amounting to at least one month's pay if the applicant had obtained the position had the selection been free of discrimination, i.e. if the person was the best qualified applicant for the job; damages of up to € 500.– if the employer did not consider the application and the person was not the best qualified applicant;
- discrimination in determining the pay: difference to the higher pay due to the person;
- discrimination in promotion: damages amounting to the difference in pay of at least three months' pay if the person had otherwise been promoted; damages of up to € 500.– if the employer did not consider the application and the person was not the best qualified applicant for promotion;
- discrimination in termination of employment: the person can contest termination or dismissal in court, or has legal remedies with his/her administrative authority to fight discriminatory pensioning-off;
- discrimination by harassment: damages of at least € 400.–.

The BGStG provides for the following sanctions:

- compensation for the economic loss, i.e. a positive loss and lost profit, and
- solatium for the personal derogation suffered.

A “Verbandsklage” filed under the BGStG aims to establish the existence of a disability.

The BGStG provides for **transitional rules** applicable for buildings existing or approved, as well as facilities, systems and means of transport approved/licensed in connection with public transport before the legal package entered into force.

The package of acts regulating equal opportunities for people with disabilities entered into force on **1 January 2006**.

The relevant **Federal Law Gazette (BGBl I no. 82/2005)** is enclosed.

### **Public service:**

#### **Federal Equal Opportunities Act**

Bundesgleichbehandlungsgesetz B-GIBG – master version in Federal Law Gazette no. 100/1993, entered into force on 2 December 1993; last amended in Federal Law Gazette I no. 165/2005.

#### **History:**

The 1979 Act regulating equal treatment in private businesses expressly excludes public service employment relationships from its scope of application. It was therefore necessary to develop a separate law to establish equal opportunities in public service. In view of the EEA Treaty and the intended (at that time) accession of Austria to the European Community, it was necessary to harmonise the Austrian laws governing equal opportunities to EC law which provided for more far-reaching protection against discrimination.

Furthermore, the UN convention on eliminating discrimination of women (Federal Law Gazette no. 443/1982) needed to be transformed into the sphere of public service, which ultimately led to the adoption of the Federal Equal Opportunities Act of 1993, Federal Law Gazette 100/1993.

Its 2004 amendment (Federal Law Gazette I no. 65/2004) implemented, for the federal civil servants, Council Directive 2000/43/EC implementing the principle of equal treatment between persons irrespective of racial or ethnic origin, Council Directive 2000/78/EC establishing a general framework for equal treatment in employment and occupation, banning discrimination based on religion or belief, disability, age or sexual orientation, and Directive 2002/73/EC of the European Parliament and of the Council of 23 September 2002 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.

#### **Objective:**

This law aims to secure the equal position and equal treatment of women and men, as well as equal treatment regardless of ethnic origin, religion or belief, age or sexual orientation (anti-discrimination). Furthermore, the Federal Equal Opportunities Act provides for special measures to support women in public service and for relevant reporting.

#### **Content:**

Ban on direct and indirect discrimination based on gender, ethnic origin, religion or belief, age or sexual orientation, especially in connection with:

- establishing an employment or training relationship,
- determining the pay,
- granting fringe benefits that do not constitute a payment,
- measures of training and further education within a department,
- career opportunities, especially promotion and assignment to more highly paid jobs (functions),
- other working conditions, and
- termination of the employment or training relationship.

Anchoring of the objective to actively grant equal opportunities to women and men.

Promotion of women in order to achieve occupational equal opportunities for women and men.

In an act of self-commitment by the federal administration to act as model employer, the B-GIBS includes an express **obligation to promote women**, as well as a section on **specific measures to promote women in federal service (= positive discrimination)**.

Under the **obligation to promote women**, the employer is obliged to eliminate any underrepresentation of women as a ratio of overall employees and functions, as well as existing discriminations in connection with the employment relationship. Ways to eliminate such discriminations must be identified in an action plan to promote women which must be developed by the central administrative body for the ministry (upon obtaining a proposal by the Working Group on Equal Treatment Issues).

Women applying for a higher-ranking position (function) who are equally qualified as the best qualified male competitors must be preferred, in line with the requirements of the action plan, until women take up at least 40% of such higher-ranking positions (functions).

The B-GIBS furthermore provides that women must be preferentially treated in admitting them to training and further education measures that qualify them for undertaking higher-ranking positions (functions), as stipulated by the action plan.

The B-GIBG also provides for reporting duties specifically directed at the federal civil service:

- Each Federal Minister must, upon expiry of the two-year period of validity of the action plan to promote women, report to the Minister responsible for women's affairs on the implementation status regarding equal treatment and the promotion of women and submit proposals for eliminating discriminatory practices.
- These reports are combined in a summarising report that must be submitted to the Federal Government by the Minister responsible for women's affairs and that also includes information on the work of the Federal Equal Opportunities Board.
- With due regard to the report submitted by the Minister responsible for women's affairs, the Federal Government must submit, every two years, to the Lower House of Parliament a report on the implementation status regarding equal treatment and the promotion of women.

Further, the B-GIBG includes special employment rules that aim to foster equal opportunities in the federal public service:



- obligation for the gender-neutral tendering of positions and functions;
- obligation to include a notice on the obligation to promote women in the tender;
- stipulation that the membership of public service boards must include a share of women corresponding to the applicable ratio of women or, in the event that no woman need to be appointed in spite of this proportional representation, women's representatives are allowed to participate in an advisory capacity;
- obligation of territory-wide notification of all functions and positions that offer a career opportunity;
- statutory provision that any type of discrimination is deemed a dereliction of official duty.

Assessment of sexual and other harassment ("mobbing") as a fact of discrimination:

A clear case of gender-based discrimination establishing the competence of the Equal Opportunities Board is a situation where the employee is:

- directly harassed by the employer;
- discriminated against by the employer who fails to remedy a case of harassment by a third party; or
- harassed by a third party.

Stipulation of a one-off compensation (damages) in the case of discrimination:

- **leading to non-employment** (no employment relationship is established):
  1. in the case of direct discrimination: min. 3 months' pay at the V/2 rate (V/2 pay currently € 2,090.20 per month);
  2. in the case of indirect discrimination: up to 3 months' pay at the V/2 rate.
- **leading to non-promotion:**
  1. in the case of direct discrimination: difference in pay (remuneration) for at least three months;
  2. in the case of indirect discrimination: up to three months;
- **in the determination of pay for contractual employees:** payment of the difference plus solatium for the personal derogation suffered;
- **in the granting of fringe benefits:** title to such benefits (or compensation for economic loss) plus solatium for the personal derogation suffered;
- **regarding measures of training and further education:** title to inclusion (or compensation for the economic loss) plus solatium for the personal derogation suffered;
- **in the granting of equal working conditions:** title to inclusion (or compensation for the economic loss) plus solatium for the personal derogation suffered;
- **in the termination of the employment or training relationship:** upon application or suit by the sufferer the termination or dismissal must be declared ineffective;
- **in the case of sexual or other harassment:** title to compensation for the loss suffered. If the disadvantage does not involve an economic loss, at least € 720.– (for all types of harassment).

In order to implement equal treatment and the promotion of women in federal employment, the B-GIBG provides for special institutions and regulations:

- a separate Federal Equal Opportunities Board for federal employees, to act as an arbitral board for complaints (members: 1 representative of the Federal Ministry for Health and Women's Affairs, 2 persons who have at least three years of experience in labour and social law or in federal employment law, 1 person of at least three years of experience in federal employment law, 2 representatives of the interministerial working group for equal opportunities issues, 4 representatives of the Trade Union of Public Service Employees);
- the establishment of working groups on equal opportunities at the central administrative bodies (its members are the "equal opportunities officers");
- appointment of equal opportunities officers (to be appointed by the head of the department, a minimum of 3 and a maximum of 7; their brief: accepting and responding to enquiries, requests and complaints, passing such on to the working group for equal opportunities issues, organising meetings with contact women, filing of disciplinary complaints);
- appointment of contact women in the departments (appointment by the chairperson of the working group; their brief: accepting and responding to enquiries, requests and complaints, advising female employees in issues of equal opportunities and women's promotion);
- interministerial working group, set up with the Ministry responsible for women's affairs (members: chairpersons of the working groups, two representatives each of the Trade Union of Public Service Employees and the Trade Union of Postal and Telecommunications Employees; chaired by the Minister responsible for women's affairs; brief: advising the Federal Government).

**Facilitating the burden of proof** for discriminated employees in procedures with the Equal Opportunities Board and in asserting a discriminatory fact in court. The furnishing by the employee of **prima facie evidence** suffices. The employer must prove that it has not discriminated against such employee.

**Anchoring of the prohibition of discrimination** as a measure to strengthen protection against discrimination:

The prohibition of discrimination aims to protect affected employees as well as other persons, such as witnesses or persons furnishing information, against responses by the employer to a complaint or suit aimed to enforce equal opportunities.

In **linguistic terms**, the B-GIBG was worded to be explicitly gender-neutral, in accordance with the resolutions by the Federal Government concerning **gender-neutral language**, by using both the feminine and the masculine form in the statutory provisions. After all, a law that refers to women in many of its provisions should ensure that women feel specifically included in such law.

### **Cases handled by the Federal Opportunities Board:**

Total: 25 expert opinions in 2006

#### Result:

Senate I, competent for equal treatment of women and men (12 expert opinions)

9 cases: violation of the stipulation of equal treatment and women's promotion found

2 cases: no discrimination found

1 case: sexual harassment found

Senate II, competent for anti-discrimination (13 expert opinions)

5 cases: no violation of the prohibition of discrimination found

2 cases: no discrimination due to belief found

1 case: discrimination due to sexual orientation found

2 cases: discrimination due to age found

3 cases: discrimination due to belief found

**Findings of the Federal Equal Opportunities Report of 2006 (published in January 2007):**

During the reporting period of 1 March 2004 to 1 March 2006, the Senate I handled **34 applications**:

Result:

6% (2 cases): no expert opinion prepared

50% (17 cases): violation of the stipulation of equal treatment/promotion of women

6% (2 cases): no violation of the stipulation of equal treatment/promotion of women

21% (7 cases): sexual/other harassment

17% (6 cases): discrimination under the B-GIBG cannot be excluded

**Equal opportunities acts at *Länder* level:**

During 2004–06, all nine Austrian *Länder* implemented the anti-discrimination directives 2000/43/EC and 2000/78/EC.

For an example, reference is made to the *Land* of **Salzburg**:

**Salzburg:**

On 1 May 2006, the Salzburg Equal Opportunities Act (“S.GBG”) entered into force, combining the two previously applicable acts governing equal treatment (Equal Opportunities Act at *Land* level and at local government level).

The Act furthermore included provisions on equal opportunities for state-level teachers, which had so far been missing.

The Act incorporates many innovations: it now distinguishes between two types of discrimination – direct and indirect; recognises seven discrimination facts (gender, age, disability, ethnic origin, religion, belief, sexual orientation); stipulates a ban on extra-occupational discrimination; increases the number of equal opportunity boards from three to five; and raises the entitlement of damages in case of sexual harassment to a minimum of €720.–.

Furthermore, the Act obliges employers to actively encourage equal treatment of disabled employees, raises the women’s quota to 45%, prohibits unequal treatment when a private person makes use of a public service regulated under a law at *Land* level, and has many more relevant regulatory provisions.

**Ad B and C:**

No significant changes.

**Reply to the supplementary questions on Para 2 of Article 1 in the Conclusions XVIII-1:**

**Age-based discrimination:**

The Equal Opportunities Act prohibits any discrimination, whether direct or indirect, based on age in the working world. The stipulation of equal treatment in connection with an employment relationship applies in particular with regard to the establishment of an employment relationship, the determination of pay, the granting of fringe benefits that do not constitute a remuneration, measures of occupational training and further education, career opportunities, especially regarding promotion, and the termination of an employment relationship. Elsewhere in the working environment, equal treatment must be accorded with regard to access to vocational guidance, vocational training, further vocational education and retraining outside an employment relationship, membership of and participation in a trade union or employers' association or organisation whose members belong to a given occupational group, and in the conditions of access to self-employment. It also stipulates the need for non-discriminatory tendering of job positions by employers and placement agencies, as well as penal provisions.

Reflecting Directive 2000/78/EC, the requirement of equal treatment is not breached for any of the grounds for discrimination enumerated above if such a characteristic, by reason of the nature of the particular occupational activities concerned or of the context in which they are carried out, constitutes a genuine and determining occupational requirement, provided that the objective is legitimate and the requirement is proportionate.

For some grounds for discrimination, such as age, the directive allows specific exceptions which have been included in the Equal Opportunities Act. Accordingly the Act does not see any age-based discrimination when it is objectively and reasonably justified by legitimate – specifically enumerated – aims, mainly with regard to employment policy, labour market and vocational training objectives, and if the means of achieving it are appropriate and necessary.

“Age” within the meaning of the Equal Opportunities Act covers a person’s years of age, so that it includes discrimination of older as well as younger persons.

Accordingly, wage and salary schemes based solely on a person’s years of age would constitute an inadmissible unequal treatment. This does not, however, exclude the use of other criteria – such as occupational experience or years of employment with a given company. Both occupational experience, which is valuable for the employer due to the employee’s work, and the years of employment in a given company, a criterion which indicates such employee’s ties to the company and saves the employer from having to hire and train new employees, are acceptable criteria. If it is possible to show that the wage and salary schemes are based on these criteria, this is an acceptable differentiation even though in its effect it prefers older workers over younger employees.

**Damages:**

Regarding the upper limits for damages, it should be noted that the limits provided for discrimination in the establishment of an employment relationship and in career opportunities (especially with regard to promotion) apply only when the applicant was

not the best-qualified candidate and the damage caused by discrimination consists solely of the application being rejected immediately and not leading to the establishment of an employment relationship or promotion even if it had been considered, because other candidates were more suitable. Only in such cases is the solatium for the personal derogation suffered limited to € 500.—.

Inasmuch, Austrian law emulates the rulings of the European Court of Justice (e.g. RS Draempaehl C-180/95), which was also reflected in Article 18 of Directive 2006/54/EC.

For a person who would have obtained the position or promotion if the choice had been free of discrimination, the law provides no upper limits, but rather minimum limits on an open-ended scale: at least one month's pay regarding the establishment of an employment relationship, a difference of at least three months' pay regarding career opportunities, each together with a solatium for the personal derogation suffered, similarly without any upper limit on an open-ended scale. Similarly, no upper limits are established for the other grounds for discrimination.

Such rules on damages in the Equal Opportunities Act correspond to the EU directives (antidiscrimination directives and amended equal treatment directive) which similarly provide that sanctions be effective, proportionate and of a deterrent effect.

In the case of discriminatory termination or dismissal, the Equal Opportunities Act provides for sanctions in the form of contesting of a termination or dismissal in court if the employment relationship was terminated on grounds of discrimination listed in the Act or because of asserting claims under the Equal Opportunities Act which were not obviously unjustified. This right to contest under the Equal Opportunities Act is designed as an individual right due to the affected party and not as a claim under the works constitution pursuant to the Industrial Relations Act, so that it protects not just employees in operations which must have a works council under the Industrial Relations Act (i.e. operations of at least five employees), but also employees in smaller operations of fewer than five employees.

When a termination or dismissal is successfully contested, it is revoked as being legally ineffective; the employment relationship is deemed to be valid and to have continued without interruption. The regulation of the Equal Opportunities Act is guided by the time-tested general termination protection rules of the Industrial Relations Act, according to which the works council or employee can contest a termination if it is based on disapproved grounds and against social fairness. Accordingly, no claims for damages are provided in the Equal Opportunities Act, apart from restoring a non-discriminatory status.

### **Employment of non-nationals in public service:**

Under Austrian public employment law, Austrian citizenship or the citizenship of a country to whose citizens Austria must grant, under a state treaty within the scope of European integration, the same rights of occupational access as are enjoyed by Austrian citizens (nationals) is necessary to be accepted in the federal public service. However (consistent with the established practice of the European Court of Justice), employment assignments which require a special tie to Austria such as can only be expected from Austrian citizens may be assigned solely to persons of Austrian citizenship. Such assignments include specifically those that involve the direct or

indirect participation in the execution of sovereign responsibilities and the performance of general state concerns.

**Repeal of Para 2 of Section 8 of the Ausländerbeschäftigungsgesetz (Aliens Employment Act; AuslBG):**

In the summer of 2005, a government bill was submitted to Parliament which aimed to eliminate this provision entirely. It was pointed out that this provision was not in actual fact applied and was thus “dead” law. Furthermore, no sanctions had ever been provided if employers were to disregard it. The bill did not find a majority in Parliament, although legislators substantially reduced the provision’s scope of application. It now applies only to cases of first access to the labour market, thus potentially affecting only a negligible group of workers from non-EEA states who are first accepted for employment and whose employment is furthermore limited to one year. The amendment entered into force on 1 January 2006.

As amended, Para 2 of Section 8 now reads:

“(2) An employment permit first granted to a foreign national shall furthermore be tied to the stipulation that, in order to preserve the jobs of national employees,

a) in the event of job cuts the employment relationships of foreign nationals be terminated prior to those of nationals;

b) in the event of short working hours within the meaning of the Labour Market Promotion Act the employment relationships of foreign nationals be terminated if such action could prevent short working hours in the long run.

Before taking any action within the meaning of subpara a) above, the employer shall notify the regional office of the Public Employment Service if the reduction in the number of jobs would reach a considerable scope in proportion to the overall number of workers employed by the operation.”

**Ban on forced labour:**

**Ad D to G:**

No essential changes.

**Para 3 of Article 1**

**Ad A to E:**

No essential changes.

In reply to this question reference is made to the last Austrian report and to the last presentations in „**Labour Market Policy in Austria**“ (**Annex/Art. 1**: Labour Market and Labour Market Policy in Austria.pdf).

PES data on jobseekers and vacancies (see **Annex/Art. 1**: Public Employment Service Austria, Annual Report 2006 „At a Glance”).

Federal Organisation of the PES (as of 12/2006)

In reply to this question reference is made to **Annex/Art. 1**: Public Employment Service Austria, Annual Report 2006 „At a Glance“, p. 10.

**Para 4 of Article 1**

See reporting on Articles 9, 10 and 15.

## **ARTICLE 9**

### **THE RIGHT TO VOCATIONAL GUIDANCE**

#### **Ad A to D:**

No essential changes.

#### **Ad D:**

In its previous conclusion, the Committee noted that labour market policy services could be offered to foreigners only if they were lawfully resident in Austria and were entitled to unemployment insurance, and asked for explanations on this point (Conclusions XVIII-2):

Austrian labour market services are offered to all persons who are integrated in the labour market. Foreigners do not necessarily have to be entitled to unemployment insurance.

#### **Reply to the supplementary questions on Article 9 in the Conclusions XVIII-2:**

**On the question regarding the results of the action plans, projects and measures to increase the rate of women in non-traditional occupations referred to in the 24<sup>th</sup> Report:**

The measures listed are associated with the **action plans** to promote gender equality implemented by the **Federal Ministry of Education (BMUKK)** from 2000 to the end of 2006. In terms of mainstreaming and starting out from the declaration and action platform of the Fourth World Women's Conference in Beijing, they are a comprehensive approach to implementing equal opportunities for women and men in the field of education, encompassing the entire ministry. The focus is on school quality and gender mainstreaming; gender-sensitive vocational orientation; promotion of girls/young women in crafts, technologies and the life sciences; development of networks; implementing of gender mainstreaming in the educational institutions.

Even though some activities were implemented only in some aspects, a parallel effort regarding **information and awareness-raising** has helped to position such activities as suggestions which were taken up by other multipliers.

#### **Overview of BMUKK projects in 2001–2006:**

##### **FIT – Frauen in die Technik (Women into Technology)**

**Extending training and vocational opportunities by including technology and life sciences in curricula for female students from age 17**

“FIT is the most important programme to provide technological information to girls entering universities and vocational colleges.” The FIT project aims to boost the women's share in technological and life science courses, thereby increasing and improving occupational opportunities for women. This is done by motivation and targeted guidance, as well as accompanying and supporting young women with regard to training and career opportunities in technology and the life sciences.



The project has been in place at six university and vocational college locations (Graz, Linz, Klagenfurt, Innsbruck, Vienna and Salzburg) since 2001. Cofinancing by ESF (since 2001) and the inclusion of FIT in the fFORTE initiative since 2004 has made it possible to expand the schemes. Every year, at least 1,500 (occasionally more than 1,600) female students from about age 17 get a closer look at the FIT range (at university, vocational college or other college); another 5,000 female students per year are informed within the scope of events at their schools. As surveys of participants found, it has been possible to influence their choice of university education and awaken or strengthen their interest in life science and technological studies.

<http://www.bmukk.gv.at/fit>

### **mut! - Mädchen und Technik (Courage! – Girls and Technology)**

#### **Innovative models to imbue vocational orientation and technology experience in girls at general secondary schools, pre-vocational schools, technical colleges, kindergarten and parental schools**

The project, financed by ESF and fFORTE and launched in 2002, aimed to promote girls in technological education and to increase the share of women in technical colleges and occupations by raising gender sensitivity and gender competence among teachers and anchoring gender mainstreaming in the school context.

A panel of ten girl guidance agencies and eight women's offices by the provincial governments, in cooperation with Akzente in Salzburg which was responsible for project implementation, developed and tested a wealth of materials, methods (for workshops) and curricula for gender-sensitive occupational orientation over the two project phases (2002–2004, 2004–2006). By concentrating on different regional focuses, mut! accessed a wide spectrum of school players involved in the process of the pupils' occupational choice, especially teachers, who were included in the implementation of measures and thus helped secure sustainability at the school location.

Within the scope of the project, a **multitude of teaching materials** was developed:

- **Berufsorientierungslehrplan für mutlige (Vocational Orientation Curriculum for the Courageous):** description of 20 selected materials recommended for gender mainstreaming in teaching vocational orientation.
- **Spurensuche – eine Entdeckungsreise durch die Berufsorientierung für Eltern und Töchter (Searching for Traces: A Journey Through Vocational Orientation for Parents and Daughters):** brochure offering participatory activities for parents and daughters, covering, i.a., occupational opportunities, daughters and their strong points, role models for girls.
- **Die Top 10 der mutligen Mädchenförderung (Top Ten Ideas for Courageous Promotion of Girls):** brochure of best practices in gender-sensitive occupational orientation of girls. CD-ROM/DVD with concepts, presentations, methods and literature on practical vocational orientation and promotion of girls in technology and crafts.
- **HTL-Ideenkatalog (Catalogue of Ideas for Engineering Colleges):** catalogue of concrete examples of good practices and practical hints to achieve gender mainstreaming in engineering colleges.

Between 2002 and 2004, the scheme reached 2,300 girls aged 10 to 15, 550 teachers, 53 schools, 770 businesses, 615 parents and 2,500 other multipliers and interested parties.

Between 2004 and 2006, the scheme encompassed more than 12,500 participants in all of Austria, more than half of them girls.

For 2007, a continuation is planned, which focuses on the structural foundation.  
<http://www.mut.co.at/>

### **“Ready” project**

#### **Occupational orientation and life planning for girls aged 13–15**

In the autumn of 2001, a project called **“READY”** was launched for girls aged 13–15 (general secondary and prevocational schools). It involves workshops for occupational orientation and life planning held by female experts from girl guidance agencies. They are integrated in the occupational orientation courses at school and are currently held at about 16 school locations in four provinces. “READY” aims to improve labour market opportunities for girls and young women, to extend their perspectives to reach out to non-traditional vocations, to guide, orient and support them in their choice of occupation and life planning, to discuss role clichés and to strengthen their self-awareness. In parallel to working with girls, workshops are held with their teachers to furnish them with ideas for their teaching. The project has been able to increase the girls’ interest in technology and to boost sensitivity among teachers.

Up to 2006, the project was financed from funds obtained from the European Social Fund and from the BMUKK. It involves up to 500 girls and numerous teachers every year.

The project is scheduled to run up to early 2008.

<http://www.bmukk.gv.at/schulen/unterricht/ba/ready.xml>

### **IMST**

#### **Gender network to improve the teaching of maths and life sciences and reduce the gender gap**

##### **Gender sensitivity and gender mainstreaming within the IMST project**

The project involved a large variety of activities aimed to weaken the stereotypical role models and foster the individual promotion of pupils, especially in the teaching of maths and the life sciences. It developed the foundations for gender sensitivity in teaching (especially maths and the life sciences) to get teachers to appreciate gender mainstreaming and help them investigate their own teaching for and change it to accommodate gender sensitivity. The scientific results from IMST2 on “gender sensitivity” were published by the BMBWK in 2005. Within the scope of IMST2, the “Lise” website <http://netscience.univie.ac.at/lise/index1.html> (originally a site on girls and physics) was redesigned and extended to include other life sciences. The site aims to help girls recognise their talent in physics and technology and to strengthen their self-confidence in these fields. A newly created IMST gender network increased the spread of gender sensitivity throughout the IMST project; the various guidance and training offers increased gender competences in the teachers and multipliers involved and added value to gender mainstreaming.

A university course specifically directed at gender multipliers is planned and envisaged to be launched in 2008. Training courses are held to add skills to IMST teams regarding sensitivity and gender mainstreaming. The gender network underwent an external evaluation in November 2005, which found a “successful performance in terms of implementing and integrating gender sensitivity and gender mainstreaming given the short time and framework available”. A gender status analysis is currently being planned.

<http://www.bmukk.gv.at/schulen/unterricht/ba/imst3.xml>

### **“MIT – Mädchen/Frauen in die Technik“ (MIT – Girls and Women into Engineering) scheme**

#### **Promotion of projects to reduce prejudice and role clichés for girls at engineering schools**

The MIT scheme aims primarily at girls at engineering schools, as well as at teachers and boys, attempting to sensitise (teachers, parents, students) in order to eliminate prejudices and role clichés. By encouraging girls and highlighting women in engineering, the scheme is designed to give a boost to the very slow rise in the number of girls at technological schools. The BMUKK supports concrete measures and small-scale projects such as information events, engineering days for girls, courses in rhetorics, presentation and self-confidence training for girls and workshops for boys, accompanied by annual in-service education for teachers of engineering colleges.

The scheme has been in place since 1998 and is being continued. Over this period, commitment on the part of principals and teachers of engineering colleges has been observed to grow.

<http://www.bmukk.gv.at/schulen/unterricht/ba/mit.xml>

### **Contribution of the Public Employment Service (AMS):**

Breaking through traditional role models which continue to persist, especially in families with a migratory background, is a difficult and drawn-out process which always requires the assent of the person involved in order to be successful, especially in the course of counselling and guidance processes. In addition to measures of information – directed at people seeking work or training as well as their (potential) employers –, a range of other activities are therefore necessary, including the provision of child-care facilities in order to enable better reconciliation of job and families. Although the AMS is assigned a key role in this respect, an improvement can be achieved solely by the interaction of all parties involved.

Starting in 2005, the AMS has been studying progress achieved through AMS schemes, deploying a specially developed target-oriented effect monitoring scheme based on an indicator system (“GM Syndex”). The GM Syndex maps developments in the labour market of relevance to the provision of equal opportunities for women and men, drawing on 20 parameters (basic indicators) proportionate to a reference group. These studies have shown that AMS measures reduce inequality between men and women in three sectors of the labour market:

- greater labour participation rate among women,
- better positioning of women in the employment system, and
- better compensation of risks associated with unemployment.

It has not been possible to eliminate inequalities in the income from work. In this respect it should be noted that this factor, while substantially contributing to the inequality between women and men, is exempt from any direct influence from AMS (for a summary of the study see **Annex/Art. 9: Study\_Synthesis.doc**).

In order to increase women's interest in engineering professions and break up persistent role thinking, the AMS offers a salary calculator on its internet homepage to highlight the difference in income from traditional women's jobs and engineering jobs: <http://www.berufslexikon.at/fit-gehaltsrechner/>

### **Information on the “Betreuungsplan” (monitoring plan) concept:**

The monitoring plan, intended and designed as a key tool for the targeted, structured and logically reproducible monitoring and guidance of job-seekers, was first implemented in the early 1990s consequent to job counselling talks and is perceived as a pivotal approach to the guidance of unemployed persons. Under the provisions of Section 38c of the Act Governing the Public Employment Service (AMSG), effective as of 1 January 2005, this tool was legally standardised, in order to increase customer satisfaction and improve the suitability of measures to counsel, place and qualify job-seekers. As a new feature of the monitoring plan, it now needs to include a reasoning for the intended procedure and document the agreement between parties on its content.

If such agreement cannot be reached, the AMS is charged with laying down the monitoring plan on its own, with maximum regard to the unemployed person's interest, and give reasons for its action. This is to ensure a uniform, useful and predictable procedure in line with the trust principle for attending to and placing unemployed persons. An AMS guideline defines the minimum content of a monitoring plan:

- initial situation: issues of relevance to monitoring, e.g. obligations for monitors, availability, strengths and potentials, need for support;
- goal: e.g. placement in the agreed occupational sector, defining the place of work, scope of employment (full/part time), working hours with due regard to the individual and objective framework;
- activities on the part of the AMS to achieve this goal;
- activities on the part of the job-seeker to achieve this goal;
- reasoning for intended procedure;
- contacting: intervals, appointment schedule;
- duration of the monitoring plan;
- framework conditions for the necessary communication between AMS and job-seeker, e.g. on the result of placement attempts;
- documentation on whether or not an agreement on the plan could be achieved.

The activities performed by the counsellor and job-seeker in implementing the monitoring plan must be continually supervised and evaluated in terms of their goals. If the practical experience thus obtained or a change in (subjective) prerequisites or (objective) external conditions calls for an adaptation or modification of the counselling strategy, the monitoring plan needs to be adjusted or modified accordingly. Monitoring plans can be customised to attend to individual problems and counselling needs.

Together with the introduction of the monitoring plan, the reasonability provisions (Section 9 of the Unemployment Insurance Act, AIVG) were made more flexible in order to encourage people to accept jobs in new occupations consequent to the ongoing structural change. The timely refocus (which needs to find expression in an appropriate monitoring agreement) is designed to prevent long-term unemployment and all its attendant negative consequences without losing precious time, thereby encouraging the optimal deployment of human resources and preventing their de-skilling.

#### **On the three-zone model:**

An evaluation carried out in 2004 consequent to rolling out the three-zone model produced the following findings:

It was possible to consistently focus services and work-flows at external clients (enterprises and job-seekers/workers) and align them along process needs. In this way, services were bundled in accordance with needs and one-stop access implemented for a large number of clients. Substantial improvements were achieved for both internal work-flow planning and client scheduling. Client as well as staff surveys documented the improved performance, which is the more notable since the period was affected by a marked increase in unemployment which in turn led to a growing work load for individual staff members. The potentials achieved from the more efficient use of staff capacities could be (and were shown to be) utilised to strengthen resources dedicated to business services, the establishment and successive extension of the call centre/service line and the ***successful handling of a broader brief with essentially the same human resources***.

The concrete figures make it clear that (during the roll-out period of 2001–2003) essentially the same number of staff not only coped with a substantially greater inflow of job-seekers without any deterioration in services, but actually reduced average retention times, boosted the number of outflows within less than 3 months, and significantly expanded aid activities (see table below).

Parameters	2000	2003
Stock of unemployed	194,314	240,079
Additions	728,672	847,442
Retention time in days	118	101
Outflows after less than 3 months	507,850	546,881
Processing of application for benefits in days	15.9	13.3
Persons assigned to aid schemes	338,719	685,025

On the equal opportunities issue reference is made to the reply to Question E.

## ARTICLE 10

### THE RIGHT TO VOCATIONAL TRAINING

#### Para 1 of Article 10

##### Ad A:

The previous presentation should be updated as follows:

##### A.a.:

The duties of the universities are determined in the Universities Act 2002 as follows:

- the advancement of learning (research and teaching), and the advancement, appreciation and teaching of the arts;
- education through science, and the advancement and appreciation of the arts;
- academic, artistic, pedagogical and critical training for occupations requiring the application of academic knowledge and methods, as well as training in artistic and academic abilities to the highest levels;
- the training and career advancement of junior academics and young artists;
- continuing education, particularly postgraduate training;
- equality of the sexes, and the advancement of women.
- Concerning students with disabilities they have the right to be examined according to an alternative method if they suffer from a permanent disability which makes it impossible for them to take an examination in the prescribed manner and the other method does not limit the content and standards of the examination.

##### A.b.:

Austria allocated **5.4 % of its GDP in 2004 to education** at all levels.

Expenditure for universities:

	<b>in Mio. EUR</b>
public universities (inkl. DUK)	2.118,517
universities of applied sciences (ohne FHR)	162,153
private universities <sup>1), 2)</sup>	30,5

##### A.c to A.e.:

The number of vocational and technical training institutions:

	<b>number</b>
public universities (incl. DUK)	22
universities of applied sciences (without FHR)	18
private universities <sup>1)</sup>	10

Number of teachers:

	<b>number</b>
public universities (incl. DUK)	13.129,60
universities of applied sciences (ohne FHR) <sup>3)</sup>	8.600,00
private universities <sup>1)</sup>	not available

Number of pupils:

	<b>full-time</b>	<b>part-time</b>
public universities (incl. DUK)	224.119	--
universities of applied sciences (without FHR)	27.310	1.116
private universities <sup>1), 4)</sup>	3.872	--

1) Source: Statistik Austria

2) Expenditures 2004

3) Source: FHR

4) Schoolyear-2006/07

In the 2005/2006 academic year, 320,323 pupils were attending Austrian vocational schools in the compulsory sector – at the intermediate and higher levels.

#### Vocational schools, compulsory sector, 2005/2006

172 schools

5,835 classes

128,287 pupils (including 44.834 girls)

4,505 teachers

Vocational schools, intermediate, 2005/2006

441 schools

2,290 classes

52,927 pupils (including 26.608 girls)

Vocational schools, higher, 2005/2006

296 schools

5,421 classes

134,346 pupils (including 67.155 girls)

In 2005/2006, 21,107 teachers were employed at intermediate and higher vocational schools.

**Ad B and C:**

No relevant changes

**Ad D:**

The previous presentation should be supplemented and updated as follows:

**Federal aid for students is an expense of the public sector that supports post-secondary education:**

As a rule, direct federal aid to students is only granted on the basis of differentiated social criteria and only in cases of concurrent academic advancement.

The various types of federal aid to students are regulated in the Student Support Act of 1992 ("Studienförderungsgesetz 1992"):

Support measures for needy students have been improved since the academic year 2001/02:

The number of study grants has been increased by 18 % (2005/06: 48.461).

The number of students who receive a reimbursement of their tuition fees has been increased by 27 % (2005/06: 41.756).

The number of students who receive an extra grant for studying abroad has been increased by 61 % (2005/06: 2000).

The **amounts of study** grants may vary according to a number of different situations. The following monthly amounts apply:

- single students: € 424 (€ 5,088 / year)



- students whose parents have died: € 606 (€ 7,272 / year)
- married students: € 606 (€ 7,272 / year)
- self-supporting students: € 606 (€ 7,272 / year)
- students who have to move: € 606 (€ 7,272 / year)
- students with children: € 666 (€ 7,992 / year)

### **Support measures for needy students for studying abroad:**

Students receiving national grants who spend a study period abroad keep their national support for up to two years and can receive an **extra grant** to cover their additional expenses abroad. These students also receive a reimbursement of their tuition fees.

For a detailed description of the Austrian support measures please consult the Internet page of the **Study Grant Authority** ("**Studienbeihilfenbehörde**") [www.stipendium.at](http://www.stipendium.at)

### **Ad E:**

All in question E mentioned groups of people have the same right to access to universities (i.e. the right to academic, artistic and pedagogical training), as long as they fulfill the conditions for admission to degree programmes at a university.

### **Reply to the supplementary questions to Para 1 of Article 10 in the Conclusions XVIII-2:**

**Access of non-EEA citizens to Fachhochschulen** (university type vocational colleges without the right to confer doctorates, FH):

Admission to FH study courses is granted regardless of citizenship and based solely on compliance with the admission criteria. Nationals of Charter signatories who have their legal habitual abode in Austria or who are legally employed here enjoy equal treatment.

### **Sufficient study places at the vocational colleges:**

FH study courses were introduced to Austria in 1994. From the 700 students then placed in 10 study courses the institution has since expanded to, currently, 28,500 students in 195 study courses. In order to provide for sufficient FH study places, the FH development and financing plan III foresees a target- and need-focused expansion to 33,000 study places by 2009/10.

### **Sufficient study places at universities:**

Austria has no restrictions on access to university education – every young person can study whatever s/he wants. As a result, some studies are extremely popular among the young. Accordingly, the Federal Government allocated more than € 500 million in additional funds for infrastructural measures over the next years, as well as an additional € 526 million for the general university budget.

### **Sufficient places in school:**

The question concerns vocational schools at secondary and tertiary levels ("BMHS"). All pupils intending to attend a BMHS and meeting the criteria for acceptance will

also be accepted. In order to enable as many pupils as possible to attend their chosen school or course, a registration system has been introduced that asks for the applicants' priorities. In most cases, the first priority can be met. Where this is not the case, pupils are assigned as provided by their second priority.

### **Para 2 of Article 10**

#### **Ad A to E:**

The previous presentation should be updated as follows:

Made with a view to developing and securing the dual system of apprenticeship training, an amendment to the Berufsausbildungsgesetz (Vocational Training Act, BAG), Federal Law Gazette I no. 5/2006, provided the statutory foundation for the modular design of apprenticed occupations.

To this end, the amendment comprises provisions for the design of the training regulations to be issued by the Federal Minister of Economics and Labour, as well as regulations specifying the content of apprenticeship contracts made between the apprentice and his/her principal based on the training regulations governing modular apprenticed occupations.

Training regulations governing modular apprenticed occupations must be designed in line with the following principles:

The Federal Minister of Economics and Labour is authorised to specify a modular training for a given apprenticed occupation. The requisite regulations provide for a basic module of at least two years (one year in exceptional cases) and a main module of at least one year. Overall, the apprenticeship must run for a period of three years. In addition, a special module of six months or one year must be provided for in-depth and specialised training. Altogether, the apprenticeship period must not exceed four years.

The basic module covers the skills and knowledge required for the fundamental work involved in one or more apprenticed occupations; the main module specifies the skills and knowledge required for the relevant apprenticed occupation; and the special module includes further skills and knowledge on special production methods and services as required by a given occupation. The regulations governing modular apprenticed occupations also specify the extent to which the basic module of any one apprenticed occupation can be combined with the main or special module of another apprenticed occupation.

Apprenticeship training within the scope of a modular apprenticed occupation must follow the following rules:

The training of an apprentice to a modular apprenticed occupation must comprise one basic module and one main module for a duration of altogether three years at a minimum. Within a maximum training period of four years, an apprentice may be trained in another main module or one or two special modules. The apprenticeship contract must specify the names of the basic module, main module(s) and, where applicable, the special module(s) and the duration of apprenticeship for these, which altogether must not exceed four years.

Training for a modular apprenticed occupation must include education in the basic knowledge (basic module) and expert knowledge (main module) required for the occupation. The choice of a special module allows apprentices to acquire an additional skill, an important future asset for apprentices in view of the ongoing specialisation in many occupations and the resulting labour market demand for skills. This specialisation option also aims to get more enterprises to train apprentices and to offer young people further opportunities to acquire skills that will be useful in the labour market.

Since 2005 there is (again) an increasing number of apprentices. By 2005 122.378 and by 2006 125.961 young people were in an apprenticeship training.

Total number of apprentices:

	2000	2001	2002	2003	2004	2005	2006
Total	126.600	123.762	120.486	119.040	119.071	122.378	125.961
Male	84.150	82.393	80.518	79.485	80.037	82.120	83.858
Female	42.450	41.369	39.968	39.555	39.034	40.258	42.403

Sectors:

	2005	2006
Crafts, trades and services	59.268	60.372
Male	47.579	48.254
Female	11.689	12.118
Industry	15.355	15.364
Male	13.451	13.447
Female	1.904	1.917
Commerce	18.490	19.005
Male	6.147	6.308
Female	12.343	12.697
Banking and insurance	942	1.047
Male	418	461
Female	524	586
Transport	2.042	2.072
Male	1.523	1.496
Female	219	576
Tourism and leisure industries	14.441	14.756
Male	6.892	7.074
Female	7.549	7.682

IT and consulting	2.545	2.754
Male	1.411	1.444
Female	1.134	1.310
Non-Chamber	7.369	7.677
Male	3.204	3.369
Female	4.165	4.308
Non-Chamber §§ 29 u. 30	1.926	2.914
Male	1.495	2.005
Female	431	909

The ten currently most popular apprenticeships:

Female

Apprenticeship Trade	Number	Percentage
1. Retail trade	10.305	24,5
2. Hairdresser and wigmaker (stylist)	5.476	13,0
3. Office assistant	5.262	12,5
4. Restaurant specialist	2.216	5,3
5. Cook/restaurant specialist	1.853	4,4
6. Cook	1.779	4,2
7. Hotel- and restaurant-trade commercial assistant	1.252	3,0
8. Administrative Assistant	920	2,2
9. Pharmaceutical trade assistance	909	2,2
10. Florist	801	1,9

Male

Apprenticeship Trade	Number	Percentage
1. Motor vehicle engineering	6.996	8,3
2. Electrical installations engineering	4.987	5,9
3. Retail trade	4.385	5,2
4. Technical designer specialising in	4.100	4,9

machine engineering technology		
5. Joinery	3.937	4,7
6. Cook	3.899	4,6
7. Bricklayer (Maurer)	3.197	3,8
Plumbing and air-conditioning		
8. technician specialising in gas and water fitting/heating fitting	2.927	3,5
Metal industry technician		
9. specialising in metal treatment engineering	2.791	3,3
10. Painter	2.147	2,6

Sector	Training enterprises		Apprentices	
	Total	in %	Total	in %
Crafts, trades and services	21.973	55,8	60.372	47,9
Industry	1.539	3,9	15.364	12,2
Commerce	6.085	15,4	19.005	15,1
Banking and insurance sector	228	0,6	1.047	0,8
Transport	403	1,0	2.072	1,6
Tourism and leisure industries	4.944	12,5	14.756	11,7
IT and Consulting	1.655	4,2	2.754	2,2
Non-chamber	2.496	6,3	7.677	6,1
Non-chamber §§ 29 u.30	75	0,2	2.914	2,3
<b>TOTAL</b>	<b>39.398</b>	<b>100,0</b>	<b>125.961</b>	<b>100,0</b>

Source: Austrian Chamber of Commerce, Apprenticeship Statistics

Total number of pupils in vocational schools - 10th grade 2005/2006

School	Males	Females
Part-time Vocational schools	<b>44,9</b>	<b>20,8</b>
Medium level Vocational schools - total	10,6	12,3
Secondary Schools and Colleges -total	23,2	30,5
Academic secondary school	16,8	23,8

Total	100,0	100,0
Absolute numbers	<b>55.220</b>	<b>51.150</b>

**Ad F:**

All citizens of Contracting States who have their lawful normal residence in Austria enjoy equal access to apprenticeship training in Austria:

The necessity of using different documents is explained by the fact that some documents (for example, the exemption certificate, settlement certificate) permit not only access to apprenticeship training but simultaneously full access to the labour market (the right to take up any employment outside of and without an apprenticeship).

**Reply to the additional questions on Para 2 of Article 10 in the conclusions XVIII-2:****Apprenticeship market in Austria and measures taken by the Federal Government:**

By the end of 2006, 125,961 people in Austria were in an apprenticed position. After a decline in apprenticeships over the past years, their number has been recovering for the last two years, by altogether 4.8%, due to the good economic situation and the success of additional apprenticeship promotion schemes.

Nevertheless, 5,148 persons were still registered with the AMS as looking for an apprenticeship position at the end of 2006, against 2,746 open positions. In purely mathematical terms, this makes for an additional 2,402 positions required across all sectors as of the end of 2006.

In response to the tight situation in the apprenticeship market, the measures under the **Jugendausbildungssicherungsgesetz** (Youth Training Consolidation Act; **JASG**), in place since 1998, have been developed and expanded in both qualitative and quantitative terms over the past years. These measures aim to provide school leavers who fail to find a suitable apprenticeship position with assistance and apprenticeship positions through a non-business-operated safety net. At their core are courses of up to 12 months (preceded by vocational orientation modules and accompanying support) which teach skills and knowledge of the respective apprenticed occupation. JASG participants who fail to change into a business apprenticeship position during or after successfully graduating from such a course are offered an opportunity to continue their years of training in **JASG courses** up to taking their final apprenticeship examination, always with a view to getting the youths into a regular apprenticeship.

Special JASG courses offer “integrative vocational training” (partial or extended apprenticeship), which had been introduced in 2003 and which is offered to individuals who are handicapped in social, talent-related or physical respects. Starting in 2004/05, inter-operational training places pursuant to Section 30 of the Berufsausbildungsgesetz (Vocational Training Act) have been established within the scope of JASG, which chiefly aim to make use of free training capacities in business-operated training workshops. The cost of such measures is mostly borne by AMS, with about 25% contributed by the *Länder*. All JASG courses make special efforts to

interest young women in an apprenticeship for an engineering job or other job with a low share of women, in order to extend the occupational choice of women.

Participation has grown substantially over the past years. At the end of 2006, 6,852 young people (below the age of 25; 3,102 female and 3,750 male) took a JASG course, of which 843 (309 women and 534 men) attended an integrative vocational training course.

In order to get further businesses to train apprentices and offer apprenticeships, operations that create additional apprenticeship positions for AMS-registered applicants have, since September 2005, been granted funding staggered by training years (**special programme for additional apprenticeship positions**). Up to mid March 2007, this programme had funded about 23,600 persons. In 2006, some € 42 million were paid out for this purpose from AMS funds. According to statistical figures by the Austrian Economic Chamber, the number of apprentice-training operations could be raised by about 1,700 since 2004. The government programme provides for the continuation of this subsidy into the training year of 2007/08.

(**Annex/Art. 10** includes a statement by the Federal Chamber of Labour on this subject).

### **Para 3 of Article 10**

#### **Ad A to E:**

The previous presentation should be updated as follows:

#### **AMS skills training focus:**

Of the jobless registered with the AMS, almost one in two has no training beyond statutory schooling, and one out of three has, at most, completed an apprenticeship. Among those of statutory schooling only, the risk of unemployment is more than double the average (see *AMS Business Report for 2006*, p. 11). In view of this background, the skills training programmes run by the AMS, which provide the traditional backbone to Austrian labour market policy, are of particular importance.

In recent years, funding for labour market policies has been substantially increased. In 2006, funds (including capitalised accrued funds) spent on promotional measures reached a record € 1,788 million, an increase of 15% over the previous year. Within the scope of a government initiative known as “Unternehmen Arbeitsplatz” (Corporate Working Place; see *AMS Business Report for 2006*, pp. 28/29, *Labour market policy in Austria in 2006*), the active promotion budget in particular was raised to € 847 million. Of this sum, some € 567 million (about 67%) were spent on training and further training measures (a plus of 43% over 2005). Added to this were € 280 million in capitalised accrued funds (excluding social insurance contributions; against € 242 million in 2005), invested almost exclusively in skills training (continued payment of unemployment benefit and unemployment assistance during AMS training, subsistence payment while participating in labour foundation measures, etc.).

In 2006, some 309,000 individuals were newly included in labour market promotion schemes. About 252,000 persons (more than 80%) were enabled to participate in a training or further training measure. AMS skills-training schemes are typically aimed at youths who have problems entering an occupation, persons with no (or no longer

useful) vocational training, women trying to reenter the labour market (after family-related interruptions), persons with disabilities of relevance for the labour market, older persons, workers affected by structural change and threatened by the loss of their job, etc. (for information on target-group specific labour market policy see the *Economic Report 2007 by the Federal Ministry of Economics and Labour*, pp. 146–157, or *AMS Business Report*, pp. 33–38 – see **Annex/Art. 10**: *Wirtschaftsbericht 2007.pdf* and *Geschäftsbericht 2006.pdf*).

The AMS offers a wide range of skills training schemes (see also *AMS Business Report*, pp. 30–32). In addition to more general programmes such as occupational orientation and placement support courses, specialist education schemes have been greatly expanded over the past years. Thus, the number of specialist courses outsourced by the AMS to external educational bodies rose from about 43,000 in 2001 to some 120,000 in 2006. Similarly remarkable has been the growth of educational measures in the external market (i.e. not within the frame of courses commissioned by the AMS) utilised through allowances paid towards course fees. The number of persons granted such allowances rose from 20,000 in 2001 to about 53,000 in 2006. The introduction of the so-called Blum Bonus introduced a further momentum to the AMS promotion of apprenticeship positions (see *Labour market policy in Austria in 2006, 2007 Economic Report by the Federal Ministry of Economics and Labour*, p. 149; *AMS Business Report*, p. 36). Some of the training and skills-acquisition measures commissioned or financed by the AMS result in a certificate or legally recognised diploma for successful participants. In this way, some 80,000 persons completed labour market policy schemes funded by the AMS in 2006 which awarded them a certificate or diploma.

#### **Ad F:**

No essential changes.

### **Para 4 of Article 10**

#### **Ad A to E:**

No major changes.

### **Reply to the supplementary questions on Para 4 of Article 10 in the Conclusions XVIII-2:**

#### **Tuition fees (or rather contributions) for non-EEA citizens:**

Under Para 1 of Section 4 of the Studienförderungsgesetz (Act Governing Financial Assistance to Students), citizens of contracting parties to the Agreement on the European Economic Area (EEA) and of parties to the Treaty Establishing the European Community as well as third-country nationals enjoy the same legal position as Austrian citizens to the extent ensuing from these agreements.

Citizenship of a contracting party to the EEA *per se* does not entitle a student in Austria to any financial assistance.

With regard to eligibility for scholarships, the following EEA citizens enjoy the same legal position as Austrian citizens:



- migrant workers, provided they were gainfully employed prior to commencing their studies and did not come to Austria for study purposes (a contextual link is necessary between work and the object of their education);
- children of migrant workers;
- persons integrated in the state education system (e.g. several years of school attendance and graduation with a university entrance qualification in Austria);
- persons who have lived in Austria for at least five years.

Furthermore, third-country nationals enjoy the same legal position as Austrian citizens after residing in Austria for at least five years.

For more detailed information on scholarships in general see [www.stipendium.at](http://www.stipendium.at), the homepage of the scholarship board.

The tuition fees are uniform throughout Austria, and do not vary depending on the type or quality of the university or any other characteristics. The higher amount payable by third-country nationals is the result of the assumption that such persons will not actively contribute to the Austrian tax revenue system after completing their studies because they will return to their home countries. However, many LDCs are exempt from tuition fees through special treaties or within the scope of Austrian development aid.

#### **Scholarships for pupils from non-EEA countries:**

A national from a country outside the EEA will enjoy the same legal treatment as an Austrian citizen only when at least one parent was liable to pay income taxes in Austria for at least five years and had the centre of his/her vital interests in Austria (Item 3 of Section 1a of the Schülerbeihilfengesetz; Act Governing Scholarships for Pupils, SchBG). This is to ensure that only such non-Austrians will enjoy this benefit who have established a minimum relationship with Austria. Any change to this legal situation can be effected only by Parliament.

## **ARTICLE 15**

### **THE RIGHT OF PHYSICALLY OR MENTALLY DISABLED PERSONS TO VOCATIONAL TRAINING, REHABILITATION AND SOCIAL RESETTLEMENT**

#### **Para 1 of Article 15**

##### **General:**

The compendium of laws to ensure equal opportunities for people with disabilities, effective as of 1 January 2006, has made for substantial improvements in the situation of people with disabilities in Austria. Its ban on disability-based discrimination constitutes another major step to advance Austria's policy for the disabled. Discrimination protection covers people with physical, mental, psychological or sensory disabilities and their family members.

In addition to the **Federal Equal Opportunities for People with Disabilities Act** (Bundes-Behindertengleichstellungsgesetz; BGStG), which regulates the ban on discrimination in a day-to-day context, and a thoroughly revised amendment to the **Disabled Persons Employment Act** (Behinderteneinstellungsgesetz; BEinstG), which covers discrimination in a working environment, an amendment of the **Federal Disabled Persons Act** (Bundesbehindertengesetz) established the position of Ombud for equal opportunities for disabled persons (Encl., Federal Law Gazette I no. 82/2005, see **Annex/Art. 15**: BGBl\_82\_2005.pdf).

The Ombud advises and supports individuals who feel discriminated within the meaning of the BGStG or Sections 7a to 7q of the BEinstG, and is also authorised to carry out investigations regarding the discrimination of disabled persons, publish reports and develop recommendations on all issues that concern disabled people.

##### **Ad A:**

The previous presentation should be updated as follows:

The lack of a definition for the terms "people with disabilities" or "disability" in the Austrian constitution results in a shortage of statistical data.

The data given below thus are based on the BEinstG under which all employers in Austria are obliged to employ one eligible disabled person for every 25 employees.

"Eligible disabled persons" within the meaning of the law are Austrian citizens, refugees who have been granted asylum and for as long as they are entitled to permanent residence on Austrian territory, and citizens of states that are party to the European Economic Area, always provided their degree of disability is at least 50%. The disability is evaluated upon the disabled person's application in a procedure (assessment procedure) with the participation of medical experts carried out by the locally competent provincial office of the Bundessozialamt (Federal Social Service Authority).

As of 31 December 2006, 93,387 eligible disabled persons were counted, of whom 61,754 were employed.

The Public Employment Service (AMS), within the scope of its statutory brief to ensure more equal opportunities in the labour market, uses a more extended definition of disability:

Disabled people include persons who are “eligible” under federal and/or state laws, as well as persons suffering from a physical or mental impediment (regardless of the degree of their disability) that is documented by a medical expert opinion or regarding which *prima facie* evidence is produced. Due to such impediment, they have problems in job placement or a restricted choice of occupations.

### **Ad B:**

The previous presentation should be updated as follows:

The following laws ensure effective exercise of the right by physically or mentally disabled persons to vocational training and occupational and social integration or reintegration: apart from the Disabled Persons Employment Act (Behinderteneinstellungsgesetz; BEinstG), the General Social Insurance Act (Allgemeines Sozialversicherungsgesetz; ASVG) and other social insurance regulations at federal level, these are specifically the Disabled Persons Acts at *Länder* level (Vienna, Upper Austria, Styria, Salzburg, Vorarlberg), the Tyrolean Rehabilitation Act, the provisions of Chapter 4 (aid to disabled persons) of the Lower Austrian Social Assistance Act, of Chapter 4 (aid to disabled persons) of the Burgenland Social Assistance Act, and of Chapter 3 (aid to integrate disabled persons) of the Carinthian Social Assistance Act.

The Public Employment Service Act, the General Social Insurance Act as well as the Disabled Persons Acts and Social Assistance Acts at *Länder* level provide for measures of integration for disabled persons such as occupational integration in the form of vocational training, work training, retraining and follow-up training at schools, enterprises, integrative enterprises or similar facilities, job placement and, if necessary, trial employment.

In an amendment to the Federal Constitution (B-VG), Federal Law Gazette I no. 87/1997, the following sentences were added to Para 1 of Article 7 (principle of equality):

“Nobody may be discriminated due to their disability. The Republic (federal, state and local levels) professes to guaranteeing equal treatment of disabled and non-disabled people in all spheres of everyday life.”

The ban on discrimination commits federal, state and local governments to not exercising any discrimination against physically or mentally disabled people, and thus creates a constitutional right which, contrary to the previous Para 1 of Article 7, applies not just to citizens but to all persons. This clause is designed to enhance rather than change the equality principle according to which (only) objectively justified differentiation is permitted.

The second sentence of the new regulation is designed as a definition of a state goal, committing all territorial authorities to strengthening their efforts to promote and support disabled people and work towards equal treatment in all spheres of life.

The Federal Equal Opportunities for People with Disabilities Act (BGStG), effective since 1 January 2006, regulates the ban on discrimination for all federal

administrative authorities (sovereign and private enterprise administration, with the exception of civil service laws), in the transactions between private persons regarding access to and supply of goods and services (i.e. particularly consumer transactions).

In cases of special public interest, the Österreichische Arbeitsgemeinschaft für Rehabilitation is authorised to file a Verbandsklage (legal action reserved to associations) for ascertainment of discrimination.

Under the Disabled Persons Act at *Länder* level, disabled persons are entitled to the following: integration aid, aid for sheltered work, occupational therapy, aid for accommodation, personal aid. The body providing aid to the disabled may furthermore pay for the travel and transport of disabled persons and, where necessary, accompanying persons, from their home to a facility providing aid to disabled persons and back. The cost of training is discharged by bodies responsible under the various rehabilitation laws, depending on the type of disability. To the extent that training takes place in public schools, the federal government discharges most of the cost associated with such training, analogously to discharging school fees for other persons.

### **Measures by the *Länder* (examples):**

The previous presentation should be updated and supplemented as follows:

#### **Burgenland:**

Under the Burgenland Social Assistance Act of 2000, Chapter 4, "Aid for the disabled" (Bgl. SHG 2000, State Law Gazette no. 5/2000 as amended), disabled persons are those who, due to a disease or defect, are permanently and substantially impaired in their development and capacity to obtain a reasonable school and vocational training or acceptable employment based on their school and vocational training, or who are unable to exercise their previous or another acceptable gainful occupation.

Diseases and defects under this provision are:

- *permanent functional impairment* of the body, the organs and organ systems, such as the lack or functional impairment of body parts or sensory organs, congenital deformations and defects, conditions resulting from illness, accident or injury;
- *permanent mental defects* such as impairment from brain damage, impairment by mental diseases, congenital intellectual incapacity.

Primarily age-caused diseases and defects do not constitute a disability.

Benefits include i.a.:

- occupational integration,
- sheltered work,
- accommodation in facilities for the disabled,
- occupational promotion and care, and
- personal assistance; social rehabilitation for eligible disabled.

Aid for occupational integration includes:

- job orientation,

- vocational training (training for semi-skilled worker),
- training, retraining and follow-up training, counselling in enterprises, training workshops and similar facilities for up to eight months; to be extended if the success of a measure depends on longer aid, and then granted for as long as is actually necessary,
- trial period in a workplace, and
- grants for adapting private cars for the use of disabled persons who need them to reach the workplace, including the fitting of an automatic transmission and changeover to manual operation.

Aid by sheltered work aims to provide disabled persons, who due to a disease or defect cannot successfully compete against non-disabled persons in the labour market, with a suitable ("sheltered") workplace that pays a compensation under the collective bargaining agreement or of a level that is customary in the enterprise. For a disabled person working in an integrative enterprise (i.e. an enterprise consisting mostly of sheltered workplaces) who is paid the full compensation under the collective bargaining agreement, the body running such integrative enterprise is compensated for the difference between the value of the disabled person's actual work input and the payment under the collective bargaining agreement, up to a maximum of the reference rate (in 2006: € 424.50).

In cases of special hardship, this state grant may be topped up by up to 1.5 times the reference rate. If a disabled person works in a job outside an integrative enterprise and receives the full payment as is customary for a non-disabled person, the employer is also entitled to a state grant (in late 2006: 78 sheltered workplaces).

Partially or fully in-patient accommodation in a facility for the disabled may be provided when the disabled person, due to his/her disease or defect, is unable to lead a self-determined life. Housing can be provided in addition to aid by sheltered work or occupational therapy and supervision.

Occupational therapy and supervision may be granted to a disabled person who does not meet the prerequisites for granting aid by sheltered work, either not at all or temporarily or no longer, provided that this helps to maintain and develop that person's skills and integration in society.

Personal aid may be granted to disabled persons to eliminate or relieve their mental and social problems in their occupational and social integration. Personal aid must be given by way of counselling accorded to the disabled persons and their environment on useful arrangements of their living situation.

Partially and fully in-patient facilities offer:

- fully assisted living,
- partly assisted living,
- occupational therapy (supervision and therapy in day-care facilities for disabled people),
- offers for training for semi-skilled jobs.

Frequently, measures of aid for the disabled are combined: housing typically is provided together with being referred to an occupational therapy facility (sheltered workshop, day-care centre).

As of June 2005, 15 facilities offered housing for 268 persons and 26 day-care facilities provided care for 548 people. Six facilities furnished semi-skilled training for 72 applicants.

### **Vienna:**

Benefits under the Vienna Disabled Persons Act (WBHG) are granted to persons who, consequent to a disease or defect, are permanently and seriously impaired in their capacity to obtain reasonable education and schooling or to achieve and maintain a gainful occupation.

Upon application of the disabled person, an evaluation test investigates their eligibility for a given benefit. This team is made up of interdisciplinary members who investigate the claim and suitable aid scheme and approve it if the prerequisites have been met. As an average of 2006 some 5,600 disabled persons claimed a benefit. A clear majority of beneficiaries is of working age.

The Vienna Disabled Persons Act provides for a number of measures to integrate persons into gainful employment:

#### Aid for occupational integration:

Such aid covers vocational training, job training as well as retraining and follow-up training in schools, enterprises, workshops and similar facilities. It also provides for trial work in a workplace.

#### Aid for sheltered work:

The object of such aid is to safeguard a job for disabled persons who cannot successfully compete against non-disabled people in the labour market. A prerequisite for this type of aid is that the disabled person is able to work for at least half the compensation due to non-disabled people under the same working conditions. Two types of aid are distinguished: 1. aid in a sheltered workplace (job with a private employer), and 2. aid in a sheltered workshop (enterprises that offer exclusively or mostly jobs for disabled people).

#### Occupational therapy:

This type of aid is offered to people whose physical or mental state bars their vocational training or occupational integration even under sheltered conditions. Occupational therapy offers means and facilities that serve to maintain and improve existing skills and the person's integration in society.

Benefits of occupational integration are chiefly rendered by the Public Employment Service and Federal Social Service Authority, while rehabilitation measures are benefits covered by the social insurance institutions.

Reflecting the composition of the target group, most of the measures of occupational and social rehabilitation are of the following types:

- occupational therapy for about 3,800 disabled persons,
- wage grants for sheltered workplaces for about 150 disabled persons,
- apprenticeship training for about 130 young disabled persons,
- integration services for about 700 disabled persons,
- skill-acquisition projects for about 100 disabled people.

Assessment of vocational skills is important inasmuch as the WBHG provides for granting such measure as accounts for the specific characteristics of the disability and that is necessary and useful to achieve the best possible success. The assessment as provided in the WBHG does not include any evaluation of the person's rehabilitation prospects.

Methods of occupational rehabilitation are adjusted by consultation with the relevant non-state social insurance institutions.

This field includes some 800 care workers trained in remedial and special-needs therapy, clinical psychology, disabled therapy, diplomated social work, special care for the disabled, nursing assistance, etc.

Vienna funds the employment of disabled people with subsidies of about € 58 million, of which:

- € 51 million are for occupational therapy,
- € 1.7 million are for wage grants,
- € 0.5 million are for integration projects,
- € 4 million are for skill acquisition and rehabilitation projects.

### **Ad C:**

No essential changes.

### **Reply to the supplementary questions on Para 1 of Article 15 in the Conclusions XVIII-2:**

#### **New definition of “disability” which also accounts for the classification schemes of, e.g. WHO:**

The questions and deliberations in the conclusions on Article 15 (1) 2<sup>nd</sup> paragraph, starting with “The Committee notes that...” are misleading inasmuch as no thought is given to developing a **new** definition of “disability”, but only to adjusting to contemporary needs the criteria for eligibility, which use the 1965 Richtsatzverordnung (Ordinance Governing Reference Rates) based on Sections 7 and 9 of the Kriegsopferversorgungsgesetz (Act Governing the Provision for War Victims) of 1957.

#### **Criteria for determining eligibility:**

Under current law, an assessment of the degree of disability for the purposes of the Behinderteneinstellungsgesetz (Disabled Persons Employment Act; BEinstG), Bundesbehindertengesetz (Federal Disabled Persons Act; BBG) and Familienlastenausgleichsgesetz (Family Burdens Equalisation Act) of 1967 is performed by medical experts based on the 1965 Ordinance Governing Reference Rates issued under Sections 7 and 9 of the 1957 Act Governing the Provision for War Victims.

An assessment of the degree of disability on the basis of an ordinance that is over 40 years old and was initially intended to provide for war victims no longer appears adequate both from a medical point of view and in view of the average requirements posed by the labour market. Legislators have thus passed an Amendment to the BEinstG granting, in its Para 3 of Section 14, the Federal Minister of Social Affairs

and Consumer Protection the authority to issue an ordinance to determine criteria for assessing a person's degree of disability that meets today's needs, while maintaining the previous ordinance for matters of social compensation (e.g. provision for war victims and other victims).

In 2005, a working group was established with the brief to revise the ordinance on reference rates. Its members are representatives of the Associations for War Victims and the Disabled, the Austrian National Council of Disabled People, the head physicians and administrators of the Federal Social Service Authority and the Federal Appeals Board.

Subsequently, medical subcommittees (made up of head physicians of the Federal Social Service Authority, experienced freelance experts, clinicians and representatives of physicians' associations, all of them contributing on an unpaid basis) coordinated by the Federal Ministry of Social Affairs and Consumer Protection (BMSK) developed new criteria for assessing disability.

They replaced the former reference rates, which had been rigidly diagnosis-oriented by a classification based on functional restrictions. Closely correlated with the wording of the draft ordinance, a draft manual was prepared for physicians charged with the assessment that covers diagnostic methods and criteria broken down in great detail at a medical level. Long years of expertise and scientific insights were combined in a hands-on guideline for assessment that incorporates the requirements of relevance for the labour market.

A raw draft has been drawn up and is currently undergoing practical testing in the form of double assessments of 1000 cases, weighted by the frequency of body systems affected. The results of the double assessments will be incorporated in the draft ordinance, discussed by the working group and submitted to an evaluation procedure. If everything goes well, the new ordinance should enter into force on 1 July 2008.

As already mentioned several times, the AMS uses an extended disability definition which accounts for health-based impediments if they are of relevance for employment.

### **Number of disabled children (up to age 18), including those suffering from mental disabilities:**

See **Annex/Art. 15**: BMUKK\_Sonderpädagogik.pdf (bm:ukk school statistics: children of school age with special needs and **Annex/Art. 15**: BMUKK\_Education of SEN-students.pdf (English summary on teaching children with special needs). In the autumn a special survey is being carried out of higher-level secondary school children with mental and physical handicaps. Findings will be available as of the end of November.

### **During the last reporting period, no law had yet been passed to protect disabled persons against discrimination (including education):**

Protection against discrimination under the Bundes-Behindertengleichstellungsgesetz (Federal Equal Opportunities for People with Disabilities Act, BGStG) applies to spheres within federal competence and, as a rule, to all legal relationships involving



access to and supply with goods and services available to the public, provided that they fall within direct federal competence.

This also includes education and training. When it comes to schooling and vocational training, competences are complex. In simplified terms, vocational training is mostly (with the exception of farming and forestry) a federal competence. Issues of internal school organisation (e.g. the development of curricula) for statutory schools are a federal matter, while external organisations (e.g. school buildings) are the competence of the *Länder*. Tertiary schools, including universities, are generally a federal matter.

**On the question whether the figure of 28,900 children in statutory schools (special-needs schools, primary schools, general secondary schools and pre-vocational schools) is identical with the overall number of disabled children of school age:**

The above figure, obtained from the BMUKK, refers solely to school-age children with special needs. These include children with behavioural problems as much as children suffering from a physical or mental handicap, to the extent that such a handicap results in some deviation from the curriculum (e.g. exemption from PE, etc.). Where a handicap does not result in a deviation from the curriculum it is not included in the statistical figures.

**On the question regarding integration training at the various levels of teacher training:**

Teacher training colleges are basically autonomous in deciding their curricula, although there are regulations in the Hochschulcurricula-Verordnung (University Curricula Ordinance; HCVO):

Section 3 General educational goal: The studies shall be designed, with due regard to social, pedagogical, economic, technological and educational developments, as scientifically founded and vocationally relevant university education, according due consideration to requirements such as, especially, life-long learning, **integrative pedagogy**, living foreign languages, German as a second language, individualisation and differentiation of teaching, special-needs didactics, media pedagogy, use of modern information and communication technologies, achieving competences in e-learning, establishment of international, European and intercultural relationships, gender mainstreaming, strengthening of social competences, **integration of disabled people**, promotion of the talented and highly talented. Section 4 (5): For **disabled students**, the requirements of the curricula shall be modified with due regard to their disability and the application of deviating examination methods which may be applied for under Section 63 (1) 7 of the 2005 University Act, where the educational goal to be achieved through the selected study course must be feasible.

**Access of mentally disabled children to general and special-needs schools:**

The special needs definition comprises children and youths who, due to their physical or mental disability, cannot follow the teaching in elementary school (VS), general secondary school (HS) or the lower level of academic secondary school (AHS) without special-needs assistance. This definition includes all types of disabilities. No provision is made for (statistical) differentiation by types of disabilities (labelling, "marginal cases", assignment problems for children with multiple disabilities). Parents have the statutory right to choose between a special-needs school and integrated

education. Currently, pilot schemes on integration can be carried out for the ninth (prevocational) year of statutory schooling. The government programme envisages granting a legal title for integration in higher-level secondary schools.

**Persons with disabilities and health-caused placement handicaps in skills training measures organised by the AMS:**

As shown in the enclosed Table 1, AMS skills-training allowances were granted to 4,920 disabled persons in 2006 (under the BEinstG and/or the respective disabled persons acts at *Länder* level), a plus of 23.9 percent over 2003.

Furthermore, 21,194 persons suffering from health-caused placement handicaps were given an opportunity for training or further training (44.5% more than in 2003).

Most of these persons attended courses commissioned by the AMS and financed through grants for staff and material costs (about two thirds of the eligible disabled, and about three quarters of the people suffering from a health-caused placement handicap, respectively of the group of people paid a skills-training grant). These programmes span activation and vocational orientation courses as well as – increasingly – technical skills training.

In 2006, fully 70% of all attendants with disabilities or placement handicaps obtained technical training or further training (a plus of 102.7% over 2003 for both groups).

Also substantially extended were (usually technical) skills training offers outside the range of AMS courses which may be supported through grants towards covering the course fee and other individual grants. In 2006, one out of five AMS-qualified persons suffering from a disability or a health impediment registered with the AMS was included in a measure of this type.

**Table 1: Disabled persons newly included in AMS assistance schemes in 2006 (disabled pursuant to AMS definition and disabled persons eligible under the law), and changes against 2005 and 2001**

	Newly included in 2006			Changes against 2005			Changes against 2001		
	AMS disabled	Eligible disabled pursuant to BEinstG and/or provincial BehG	Total	AMS disabled	Eligible disabled pursuant to BEinstG and/or provincial BehG	Total	AMS disabled	Eligible disabled pursuant to BEinstG and/or provincial BehG	Total
<b>Employment measures, of which:</b>	<b>6,379</b>	<b>1,939</b>	<b>8,309</b>	<b>35%</b>	<b>14%</b>	<b>30%</b>	<b>32%</b>	<b>37%</b>	<b>33%</b>
Integration grant	3,886	1,399	5,281	32%	11%	27%	28%	36%	30%
Non-profit project	1,131	294	1,425	35%	23%	32%	45%	41%	45%
Socioeconomic operation	1,438	256	1,694	46%	25%	43%	33%	31%	32%
<b>Skills training measures, of which:</b>	<b>21,194</b>	<b>4,920</b>	<b>25,995</b>	<b>21%</b>	<b>17%</b>	<b>21%</b>	<b>33%</b>	<b>26%</b>	<b>31%</b>
Work foundation	434	74	508	16%	4%	14%	63%	34%	59%
AMS course	15,847	3,190	18,980	19%	15%	18%	30%	17%	27%
Skills training in the external education market	4,245	956	5,195	33%	39%	34%	50%	46%	49%
Apprenticeship grant	382	51	433	42%	18%	39%	68%	51%	66%
<b>Support measures, of which:</b>	<b>4,864</b>	<b>2,773</b>	<b>10,893</b>	<b>-49%</b>	<b>-1%</b>	<b>8%</b>	<b>13%</b>	<b>65%</b>	<b>52%</b>
Counselling and monitoring facility	6,241	2,387	8,620	11%	-1%	8%	57%	76%	62%
<b>Total</b>	<b>28,975</b>	<b>7,259</b>	<b>36,023</b>	<b>21%</b>	<b>9%</b>	<b>18%</b>	<b>33%</b>	<b>32%</b>	<b>33%</b>

### **On the effectiveness of AMS skills-training schemes for persons with disabilities and health-caused placement handicaps:**

The effectiveness of labour market promotion measures can be monitored on an ongoing and Austria-wide basis with a relatively high degree of currency by way of AMS data warehousing, using data from the Federation of Austrian Social Insurance Institutions and linking them with AMS data.

This evaluation tool can also be used to analyse the retention time of people with disabilities and health-caused placement handicaps: Tables 2 to 7 show the findings of a survey that identified the beneficiaries who held a non-funded or funded employment exactly three months after exiting (at different times) a given skills-training measure (general AMS course, technical AMS course or measures in the “external” education market) as a proportion of all participants who at that time did not benefit from any follow-up AMS skills-training measure (e.g. within the scope of a multi-stage integration path). The retention analysis included all exits from schemes in 2005. In order to reduce as much as possible problems caused by multiple exits in the course of longer periods of study, the monthly employment rates were first analysed before an annual average was calculated from them.

The annual average placement rates after AMS courses thus determined are slightly higher for certified disabled persons than for persons with AMS-documented health-caused placement handicaps. Persons disabled under the BEinstG or a provincial Disabled Persons Act achieve an average employment rate of 27.1% after participating in an AMS course in 2005, and of 29% following a technical course. Persons coded by the AMS as having health-caused impairments achieved integration rates of 25.5% from AMS courses and of 27.6% from technical courses. Schemes in the “external” education market show a higher effectiveness in achieving employment rates of about one in three both with disabled persons and persons with health-caused placement handicaps, which appears to be primarily due (as in other target groups) to motivational factors<sup>1</sup> and better motivation for such measures among participants. In conclusion it should be noted that any interpretation of these results needs to consider the frequently serious disadvantages suffered by the group analysed.

---

<sup>1</sup> A grant towards course costs awarded for measures in the “external” education market is often the result of a person's own initiative or actively pursued goal to obtain skills training.

**Table 2: Employment rates of disabled persons<sup>1</sup> three months after exiting an AMS course<sup>2</sup>, 2005**

Exit month	Total number of exits	Number of persons in AMS skills training three months after exiting	Number of persons in funded/non-funded employment three months after exiting	Employment rate three months after exit <sup>3</sup>
January 05	191	23	45	<b>26.79%</b>
February 05	230	22	55	<b>26.44%</b>
March 05	263	41	70	<b>31.53%</b>
April 05	261	33	57	<b>25.00%</b>
May 05	240	28	53	<b>25.00%</b>
June 05	246	38	56	<b>26.92%</b>
July 05	282	43	54	<b>22.59%</b>
August 05	217	31	60	<b>32.26%</b>
September 05	277	38	59	<b>24.69%</b>
October 05	206	27	41	<b>22.91%</b>
November 05	233	29	61	<b>29.90%</b>
December 05	490	114	117	<b>31.12%</b>
<b>Employment rate after 3 months, annual average</b>				<b>27.10%</b>

1 Disabled persons under the BEinstG and/or provincial Disabled Persons Act

2 Courses commissioned by the AMS and funded by carrier organisations: measures to support active job seeking, vocational orientation courses, technical skills training or work training

3 Employment rate = 3<sup>rd</sup> column/((1<sup>st</sup> column–2<sup>nd</sup> column)/100)

**Table 3: Employment rates of persons with health-caused impairments<sup>1</sup> three months after exiting an AMS course<sup>2</sup>, 2005**

Exit month	Total number of exits	Number of persons in AMS skills training three months after exiting	Number of persons in funded/non-funded employment three months after exiting	Employment rate three months after exit <sup>3</sup>
January 05	832	94	163	<b>22.09%</b>
February 05	1,149	107	260	<b>24.95%</b>
March 05	1,269	104	316	<b>27.12%</b>
April 05	1,373	99	311	<b>24.41%</b>
May 05	1,200	99	310	<b>28.16%</b>
June 05	1,296	96	271	<b>22.58%</b>
July 05	1,347	162	275	<b>23.21%</b>
August 05	1,130	116	272	<b>26.82%</b>
September 05	1,205	144	263	<b>24.79%</b>
October 05	1,132	119	236	<b>23.30%</b>
November 05	1,226	133	266	<b>24.34%</b>
December 05	2,085	378	593	<b>34.74%</b>
<b>Employment rate after 3 months, annual average</b>				<b>25.54%</b>

1 Persons coded by the AMS as suffering from health-caused impairments

2 Courses commissioned by the AMS and funded by carrier organisations: measures to support active job seeking, vocational orientation courses, technical skills training or work training

3 Employment rate = 3<sup>rd</sup> column/((1<sup>st</sup> column–2<sup>nd</sup> column)/100)

**Table 4: Employment rates of disabled persons<sup>1</sup> three months after exiting a technical AMS course, 2005**

Exit month	Total number of exits	Number of persons in AMS skills training three months after exiting	Number of persons in funded/non-funded employment three months after exiting	Employment rate three months after exit <sup>2</sup>
January 05	116	15	28	<b>27.72%</b>
February 05	154	14	40	<b>28.57%</b>
March 05	181	34	48	<b>32.65%</b>
April 05	179	27	43	<b>28.29%</b>
May 05	157	17	39	<b>27.86%</b>
June 05	160	23	39	<b>28.47%</b>
July 05	193	32	40	<b>24.84%</b>
August 05	143	22	43	<b>35.54%</b>
September 05	198	31	43	<b>25.75%</b>
October 05	144	17	31	<b>24.41%</b>
November 05	158	22	46	<b>33.82%</b>
December 05	350	84	81	<b>30.45%</b>
<b>Employment rate after 3 months, annual average</b>				<b>29.03%</b>

1 Disabled persons under the BEinstG and/or provincial Disabled Persons Act

2 Employment rate =  $3^{\text{rd}} \text{ column} / ((1^{\text{st}} \text{ column} - 2^{\text{nd}} \text{ column}) / 100)$

**Table 5: Employment rates of persons with health-caused impairments<sup>1</sup> three months after exiting a technical AMS course, 2005**

Exit month	Total number of exits	Number of persons in AMS skills training three months after exiting	Number of persons in funded/non-funded employment three months after exiting	Employment rate three months after exit <sup>2</sup>
January 05	462	64	93	<b>23.37%</b>
February 05	713	74	183	<b>28.64%</b>
March 05	796	80	230	<b>32.12%</b>
April 05	910	68	223	<b>26.48%</b>
May 05	790	72	214	<b>29.81%</b>
June 05	842	75	196	<b>25.55%</b>
July 05	891	128	197	<b>25.82%</b>
August 05	712	84	187	<b>29.78%</b>
September 05	794	95	194	<b>27.75%</b>
October 05	714	80	165	<b>26.03%</b>
November 05	768	103	176	<b>26.47%</b>
December 05	1,371	395	281	<b>28.79%</b>
<b>Employment rate after 3 months, annual average</b>				<b>27.55%</b>

1 Persons coded by the AMS as suffering from health-caused impairments

2 Employment rate =  $3^{\text{rd}} \text{ column} / ((1^{\text{st}} \text{ column} - 2^{\text{nd}} \text{ column}) / 100)$

**Table 6: Employment rates of disabled persons<sup>1</sup> three months after exiting an AMS skills training course in the “external” education market<sup>2</sup>, 2005**

Exit month	Total number of exits	Number of persons in AMS skills training three months after exiting	Number of persons in funded/non-funded employment three months after exiting	Employment rate three months after exit <sup>3</sup>
January 05	28	2	10	<b>38.46%</b>
February 05	39	7	14	<b>43.75%</b>
March 05	52	3	19	<b>38.78%</b>
April 05	58	4	26	<b>48.15%</b>
May 05	46	0	15	<b>32.61%</b>
June 05	55	10	15	<b>33.33%</b>
July 05	47	2	13	<b>28.89%</b>
August 05	30	3	10	<b>37.04%</b>
September 05	36	5	7	<b>22.58%</b>
October 05	42	3	6	<b>15.38%</b>
November 05	55	8	13	<b>27.66%</b>
December 05	79	13	17	<b>25.76%</b>
<b>Employment rate after 3 months, annual average</b>				<b>32.70%</b>

1 Disabled persons under the BEinstG and/or provincial Disabled Persons Act

2 Skills training in non-AMS courses funded, i.a., by a grant to course fees

3 Employment rate = 3<sup>rd</sup> column/((1<sup>st</sup> column–2<sup>nd</sup> column)/100)

**Table 7: Employment rates of persons with health-caused impairments<sup>1</sup> three months after exiting an AMS skills training course in the “external” education market<sup>2</sup>, 2005**

Exit month	Total number of exits	Number of persons in AMS skills training three months after exiting	Number of persons in funded/non-funded employment three months after exiting	Employment rate three months after exit <sup>3</sup>
January 05	143	15	51	<b>39.84%</b>
February 05	210	32	80	<b>44.94%</b>
March 05	240	29	91	<b>43.13%</b>
April 05	252	25	84	<b>37.00%</b>
May 05	249	21	69	<b>30.26%</b>
June 05	292	28	86	<b>32.58%</b>
July 05	239	27	67	<b>31.60%</b>
August 05	147	25	27	<b>22.13%</b>
September 05	200	13	51	<b>27.27%</b>
October 05	259	21	77	<b>32.35%</b>
November 05	275	27	76	<b>30.65%</b>
December 05	307	40	89	<b>33.33%</b>
<b>Employment rate after 3 months, annual average</b>				<b>33.76%</b>

1 Persons coded by the AMS as suffering from health-caused impairments

2 Skills training in non-AMS courses funded, i.a., by a grant to course fees

3 Employment rate = 3<sup>rd</sup> column/((1<sup>st</sup> column–2<sup>nd</sup> column)/100)

### **Information on participation of persons with disabilities to higher education:**

Universities do not distinguish between disabled and non-disabled students. Therefore very little data concerning this issue exists on university-level.

The study "Social Circumstances of Students with Disabilities, 2006" from July 2007 finds that disabled students amount to approximately 1 % of all Austrian students. Thus about 1000 disabled students are studying at universities and universities of applied science.

### **Para 2 of Article 15**

#### **Ad A:**

The previous presentation should be updated as follows:

On the entry into force of the compendium of laws to ensure equal opportunities for people with disabilities on 1 January 2006, an amendment of the Disabled Persons Employment Act implemented the ban on discrimination of disabled persons in the working world. The ban affects labour law, federal civil service law and all other aspects of employment.

The ban on discrimination of disabled persons applies in particular with regard to:

- establishing an employment relationship (applications, hiring),
- agreement of the compensation,
- granting of fringe benefits,
- training, further training and retraining measures,
- career opportunities,
- other working conditions,
- termination of employment (discriminatory firing or dismissal may be appealed against in court),
- access to vocational guidance, training, further training and retraining outside an employment relationship,
- membership in and work for an employees' or employers' organisation or an organisation whose members belong to a given occupational group, including the use of benefits offered by such organisations,
- conditions of access to self-employed work.

This amendment also implements the Council directive establishing a general framework for equal treatment in employment and occupation for disabled persons at a federal level (for details see the report on Para 2 of Article 1).

#### **Ad B:**

Integrative enterprises employ some 1,500 disabled persons. They have employment contracts that correspond to those for non-disabled people, are paid wages under the collective bargaining agreement and enjoy trade union rights. Under the Austrian constitution, integration of very seriously disabled people who cannot be employed in the open labour market is the responsibility of the *Länder*. To this end, day-care and occupational facilities have been set up.



## Reply to the supplementary questions on Para 2 of Article 15 in the Conclusions XVIII-2:

### Persons with disabilities or health-caused placement handicaps in AMS employment measures:

In order to assist the (re)integration of groups disadvantaged in the labour market, the AMS grants temporary funding of employment relationships, by way of either integration subsidies paid for individual workplaces or project-oriented employment measures. In 2006, an integration subsidy was paid to 1,399 eligible disabled persons and 3,886 persons suffering from a health-caused handicap (a plus of 12.7% and 47.9% respectively over 2005). Non-profit employment projects included 294 disabled persons and 1,131 persons with health-caused placement problems (a plus of 30.0% and 53.5% respectively over 2005), while socioeconomic employment operations recorded 256 and 1,438 additions respectively in 2006 (a plus of 32.6% and 86.5% respectively over 2005). Drawing on a special programme for the disabled, funded at € 18 million, disabled persons and, primarily, persons with health-caused handicaps were given more funding within the scope of AMS employment programmes in 2006 and 2007.

### On the labour market situation of the disabled in Austria (2003–2006)

#### Employment of disabled persons:

Of a total of 93,830 eligible disabled persons registered as of 1 December 2006 (most recent data), 48,208 had jobs with employers obliged to employ disabled persons, and 9,705 had jobs with employers not thus obliged. Another 3,841 eligible disabled persons were self-employed. Accordingly, 66% of the eligible disabled were in an employment relationship as of 1 December 2006.

The following table shows the employment of eligible disabled persons between 1 December 2003 and 1 December 2006. Since 1 December 2003, employment among the eligible disabled rose by altogether 2,741 or +4.6% to 61,754:

<b>Employed eligible disabled persons, 2003–2006</b>				
	<b>As of 1 Dec 2003</b>	<b>As of 1 Dec 2004</b>	<b>As of 1 Dec 2005</b>	<b>As of 1 Dec 2006</b>
With employers obliged to employ disabled persons	46,149	45,594	46,906	48,208
With employers not obliged to employ disabled persons	9,250	10,168	9,743	9,705
In self-employment	3,614	3,729	3,773	3,841
<b>Total</b>	<b>59,013</b>	<b>59,491</b>	<b>60,422</b>	<b>61,754</b>

Source: BMSK

A clear distinction needs to be made between the definition of the eligible disabled and the definition used by the AMS. The latter comprises people who, according to an AMS assessment, for other health reasons are considered to be disabled because of their impeded placement opportunities, although they are not disabled in the legal sense of the term. In order to be included in this group it suffices to furnish a medical expert opinion which certifies a health impairment that is of relevance for placement. As this group obviously contains solely registered unemployed, **no equivalent employment data are available.**

In view of the fact that the definition of this group has caused multiple confusion in the past with regard to the subject and data on the “disabled unemployed”, and repeated changes in the delimitation have produced variable and therefore inefficient figures with the AMS, and since furthermore no equivalent employment data are available, consideration is at present given to improving the legal delimitation of this category of disabled persons.

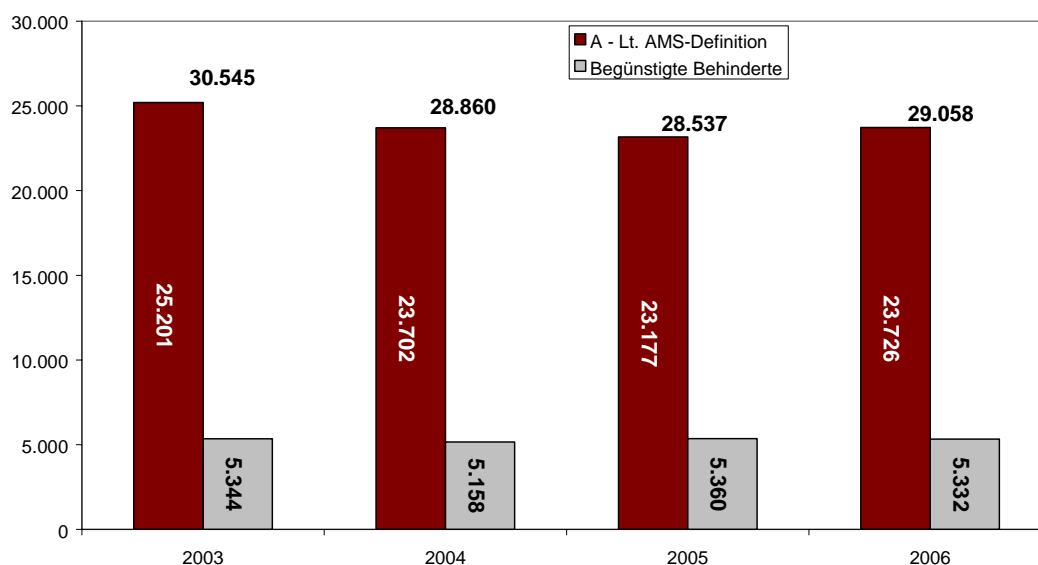
### Registered disabled job seekers:

As an annual average of 2006, a total of 29,058 disabled job seekers (disabled in the legal sense and persons with placement impairments as per AMS definition) were registered with the AMS, a rise of 522 or 1.8% over the previous year, but a decline of 1,487 or 4.9% over 2003. The growth vis-à-vis 2005 is due mostly to a statistical effect. Under a special AMS programme directed at the disabled in 2006, registered persons with placement impairment were increasingly categorised as “disabled” in order to give them the benefit of this special programme. Consequently, the number of disabled persons under the AMS definition rose by 549 (+2.4%) to 23,726 as an annual average of 2006 against the previous year. Compared to the average annual stock of 2003, figures for this group also declined by 1,475 (–5.9%). The stock of eligible disabled (under the Disabled Persons Employment Act, Victims Assistance Act and/or Provincial Civil Servants Act) in 2006 is actually moderately declining against 2005 (by 28 or 0.5%) as well against 2003 (by 12 or 0.2%).

The following time series shows the development of disabled persons registered as seeking jobs in 2003–2006, broken down by eligible disabled and by the stock of persons who are deemed to be disabled under an AMS assessment inasmuch as they are handicapped in their placement prospects.

### Registered disabled job seekers, annual average stocks, 2003–2006

#### Entwicklung der vorgemerkten behinderten Arbeitssuchenden Jahresdurchschnittsbestände 2003 bis 2006



For the development at *Länder* level, the following table provides pertinent data:

Development of registered disabled unemployed, broken down by *Länder*  
Average annual stocks, 2003–2006

		2003	2004	2005	2006	Absolute change 2006_2003	Percentage change 2006_2003
Burgenland	as per AMS definition	695	676	716	892	197	28.3%
	eligible disabled	122	111	114	127	5	4.4%
	<b>total</b>	<b>817</b>	<b>786</b>	<b>830</b>	<b>1,019</b>	<b>202</b>	<b>24.7%</b>
Carinthia	as per AMS definition	1,392	1,293	1,296	1,407	15	1.1%
	eligible disabled	445	440	497	564	119	26.8%
	<b>total</b>	<b>1,837</b>	<b>1,733</b>	<b>1,792</b>	<b>1,972</b>	<b>134</b>	<b>7.3%</b>
Lower Austria	as per AMS definition	3,925	3,687	3,641	4,198	273	7.0%
	eligible disabled	584	602	670	679	95	16.3%
	<b>total</b>	<b>4,509</b>	<b>4,288</b>	<b>4,311</b>	<b>4,876</b>	<b>368</b>	<b>8.2%</b>
Upper Austria	as per AMS definition	2,537	2,485	2,525	2,718	181	7.1%
	eligible disabled	454	413	479	512	58	12.8%
	<b>total</b>	<b>2,991</b>	<b>2,898</b>	<b>3,004</b>	<b>3,230</b>	<b>239</b>	<b>8.0%</b>
Salzburg	as per AMS definition	924	906	851	770	–154	–16.7%
	eligible disabled	134	150	141	123	–10	–7.8%
	<b>total</b>	<b>1,058</b>	<b>1,055</b>	<b>992</b>	<b>893</b>	<b>–164</b>	<b>–15.5%</b>
Styria	as per AMS definition	3,544	3,200	3,687	3,649	105	3.0%
	eligible disabled	2,006	1,886	1,945	1,926	–80	–4.0%
	<b>total</b>	<b>5,550</b>	<b>5,086</b>	<b>5,633</b>	<b>5,575</b>	<b>25</b>	<b>0.5%</b>
Tyrol	as per AMS definition	1,642	1,583	1,712	1,984	342	20.8%
	eligible disabled	162	152	153	162	1	0.5%
	<b>total</b>	<b>1,804</b>	<b>1,735</b>	<b>1,865</b>	<b>2,146</b>	<b>342</b>	<b>19.0%</b>
Vorarlberg	as per AMS definition	1,070	1,170	1,221	1,273	204	19.1%
	eligible disabled	135	160	178	182	47	34.7%
	<b>total</b>	<b>1,205</b>	<b>1,330</b>	<b>1,399</b>	<b>1,456</b>	<b>251</b>	<b>20.8%</b>
Vienna	as per AMS definition	9,472	8,703	7,528	6,835	–2,637	–27.8%
	eligible disabled	1,303	1,245	1,182	1,056	–247	–19.0%
	<b>total</b>	<b>10,775</b>	<b>9,948</b>	<b>8,711</b>	<b>7,891</b>	<b>–2,884</b>	<b>–26.8%</b>
Austria	as per AMS definition	<b>25,201</b>	<b>23,702</b>	<b>23,177</b>	<b>23,726</b>	<b>–1,475</b>	<b>–5.9%</b>
	eligible disabled	5,344	5,158	5,360	5,332	–12	–0.2%
	<b>total</b>	<b>30,545</b>	<b>28,860</b>	<b>28,537</b>	<b>29,058</b>	<b>–1,487</b>	<b>–4.9%</b>

### Job uptake of registered disabled job seekers:

In 2003, 28,912 of all registered disabled (eligible disabled and other persons with placement handicaps) took up a job, compared to 33,729 in 2006 (a growth of 4,817 or 16.7% against 2003). For 2006, a clear increase in work uptakes over 2005 was found, by 5,452 or 19.3%. In 2006, registered disabled unemployed made up 12.1% of the overall number of job seekers (a minus of 0.6 percentage points over 2003).

Table: Disabled and health-impaired persons approved for funding<sup>1</sup> in AMS skills training programmes, 2003–2006

	2003		2004		2005		2006	
	<i>Eligible persons<sup>2</sup></i>	Health-impaired persons <sup>3</sup>	<i>Eligible persons<sup>2</sup></i>	Health-impaired persons <sup>3</sup>	<i>Eligible persons<sup>2</sup></i>	Health-impaired persons <sup>3</sup>	<i>Eligible persons<sup>2</sup></i>	Health-impaired persons <sup>3</sup>
<b>Total AMS skills training</b>	<b>3,972</b>	<b>14,670</b>	<b>3,919</b>	<b>14,757</b>	<b>4,096</b>	<b>16,647</b>	<b>4,920</b>	<b>21,194</b>
of which: work foundations	74	248	97	354	71	364	74	434
AMS courses <sup>4</sup>	2,603	11,232	2,557	11,687	2,710	12,830	3,190	15,847
of which: technical skills training	1,369	5,131	1,519	6,448	1,867	8,426	2,211	10,967
External education market <sup>5</sup>	514	2,339	485	2,194	579	2,831	956	4,245
Grants for apprenticeship places	37	113	37	131	42	222	51	382

1 Persons approved for a grant in the relevant year

2 Disabled persons under the Disabled Persons Employment Act and/or provincial Disabled Persons Act

3 Persons coded by the AMS as suffering from health-caused impairments

4 “Carrier-funded” courses commissioned by AMS

5 Skills training in non-AMS courses funded, i.a., by a grant towards course fees

### Development of the Austrian disability policy:

Legislation facilitating the occupational integration of different groups of people with disabilities was gradually developed. The “finality principle” has applied after having been enshrined in the Act on Employment of Invalids (now Disability Employment Act) in 1973. This means that people with disabilities have a claim to the benefits granted under the law, e.g. financial aid or special dismissal protection, regardless of the type and cause of their disability.

The Federal Disability Act of 1990 introduced the Federal Disability Advisory Board with an advisory capacity in fundamental questions concerning disability policy. Furthermore, the Federal Disability Act lays down basic provisions concerning the coordination of rehabilitation measures. A legal basis was created for social service centres and counselling services for children and young people.

### The Austrian federal government’s disability concept

Disability is one the manifold forms of human life. It has to be accepted as such and should not prevent the group affected in any way from participating in social life. A disability may have effects on all spheres of life. A modern disability policy is therefore a task encompassing the entire society. It has to be based on a holistic approach to the human being equally taking into account his/her physical, mental, psychological, social and cultural needs.

The principles of the Austrian disability policy were defined in the “Austrian federal government’s disability concept” in 1992. The disability concept was prepared by the then Federal Ministry of Labour and Social Affairs in cooperation with the “Österreichische Arbeitsgemeinschaft für Rehabilitation (ÖAR)”, the umbrella association of Austrian disability organisations. With its comprehensive approach to a disability policy, this concept goes far beyond the scope of previous policy statements.

Since 1992 it has served as a guideline for the Austrian disability policy. It is founded on the principle of “mainstreaming”, according to which the disability policy is a task of the entire society, which has to be taken into account in all political concepts and measures.

In the meantime this principle has been reinforced by several resolutions at international level. The federal government’s disability concept contains the key objectives for the individual spheres of life, such as childhood, school, vocational training, work, health, building, housing, transport, leisure activities and long-term care provision. In those areas which are predominantly the responsibility of the Laender the objectives of the concept should be understood as a mandate of the Federal Republic to the Laender.

In accordance with this concept, the Austrian disability policy should be founded above all on the principles of prevention, integration, normalisation, independence as well as access to all areas of life. These principles give rise to different projects and objectives focusing on an optimal social inclusion of people with disabilities.

### **Protection against discrimination in the Constitution**

Based on the change of paradigms, according to which people with disabilities are increasingly regarded as players in society rather than objects of welfare, a special protective clause for people with disabilities was enshrined in the Constitution in 1997.

In July 1997 the Amendment to Art 7(1) of the Federal Constitution Act was adopted by Parliament with the votes of all political parties.

“Nobody may be discriminated on grounds of a disability. The Republic (the federal government, Laender and municipalities) is committed to guaranteeing the equal treatment of people with and without disabilities in all spheres of every-day life.” (Federal Law Gazette I No. 87/1997).

As a first effect of the new constitutional provision, a working party reviewed the entire federal legislation for provisions explicitly and implicitly discriminating disabled people. A Federal Act was adopted in 1999 to amend a total of 9 acts with a view to eliminating provisions discriminating people with disabilities.

### **Disability Equality Package**

The year 2003 was declared “European Year of People with Disabilities”(EYPD). The objective of the European Union was to raise awareness of the special needs of people with disabilities, to ensure protection against discrimination, equal treatment and equal opportunities.

The European Year of People with Disabilities gave fresh impetus to the disability policy in Austria. On the one hand, the EU Framework Directive on Equal Treatment in Employment and Occupation had to be transposed into national law also with

regard to people with disabilities (in respect of all other groups threatened by discrimination, Amendments to the Equal Treatment Act and to the Federal Equal Treatment Act for the federal civil service were adopted).

On the other hand, the National Council (the first chamber of the Austrian Parliament) appealed to the federal government by unanimous resolution of all parliamentary groups on 9 July 2003 to draft a Federal Disability Equality Act.

On 6 July 2005 the National Council adopted a disability equality package, including the Federal Disability Equality Act as well as Amendments to the Disability Employment Act and to the Federal Disability Act. This equalisation package is a milestone in the Austrian disability policy. It offers for the first time enforceable protection against discrimination for people with disabilities and enshrines legal consequences if the prohibition of discrimination is violated.

The key elements of the **Disability Equality Act** are as follows:

- **Scope:** In private law the focus is on consumer protection. As far as the public sector is concerned, the Act covers the entire federal administration, including selfgoverning bodies.
- **Broader definition** of the group of persons. Specific groups of family members are also protected in the law.
- **Prohibition** of discrimination on grounds of disability.
- **Legal consequences** in the event the discrimination prohibition is violated, including provisions regarding the liability for damages.
- **Mediation** as a core element of **compulsory conciliation procedures** with the Federal Social Office before enforcing claims before a court.
- **Changing rules on the burden of proof** for the benefit of the person affected: he/she is only required to give a credible account of his/her claim of discrimination.
- **Introduction of class-action lawsuits:** In severe cases, the ÖAR may bring action for declaring discrimination on the basis of a resolution of the Federal Disability Advisory Board adopted by a two thirds majority.
- **Equitableness review:** Unlike other groups of persons, people with disabilities are often discriminated in connection with barriers in buildings and other barriers whose removal may involve considerable costs. In examining an alleged case of discrimination due to barriers, the costs of removing the barriers have to be assessed to establish whether the expenditure would cause a disproportionate financial burden. If no equitable solution can be found for removing the barriers, at least efforts have to be made to decisively improve the situation of those affected to ensure equal treatment to the extent possible.
- **Transitional provisions.** Basically, it will become possible to assert claims for damages on grounds of discrimination due to existing **barriers in buildings** or in **transport** only as from 1 January 2016. Before that date, legal action against discrimination in these areas can be taken only if new buildings or new transport facilities/systems are concerned or if the barriers have been erected illegally. As far as existing buildings or transport systems-/facilities are

involved, claims for damages on grounds of discrimination can be asserted if the expenditure for removing the barriers does not exceed a specific limit (as from 2007: EUR 1,000, as from 2010: EUR 3,000, as from 2013: EUR 5,000).

The Amendment to the **Disability Employment Act** covers the prohibition of discrimination in employment (including the federal civil service). This is also a step to ensure legal transparency for employees and employers as the present Disability Employment Act also contains protective rules concerning employees with disabilities.

The protection against discrimination covers in particular equal treatment with regard to establishing work relations, fixing the pay, measures of basic and advanced training as well as retraining, career advancement, other terms of employment, terminating work relations, membership and participation in an employees' or employers' organisation or an organisation whose members belong to a special occupational group as well as the conditions regarding access to self-employment.

The Amendment provides for a definition of the target group, legal consequences, compulsory conciliation procedures including mediation, equitableness review and rules on the burden of proof similar to the Disability Equality Act. It also lays down that the employer has an obligation to make adequate arrangements for people with disabilities (transposing Article 5 of the EU Framework Directive).

Moreover, harassment on grounds of disability and instructions to employees to discriminate or harass are forbidden. To avoid discrimination of people with disabilities by barriers at the workplace, employers must make adequate arrangements for people with disabilities.

The protection against discrimination covers the following groups of persons

- people with disabilities (all types of disabilities; contrary to other areas of the Disability Employment Act, no formal evidence of discrimination has to be furnished; it is sufficient to establish credibly that a person was discriminated "on grounds of disability"),
- close relatives of people with disabilities (it would for example be discriminating to refuse to promote a qualified staff member who is the mother of a severely disabled child for fear of absence from work due to long-term care),
- employees who appeared as witnesses or informants in court in a discrimination case or supported the complaint of another employee.

### **How can one enforce his/her rights?**

If the prohibition of discrimination is violated, damages are due and – with the exception of recruitment and promotion – the benefits/measures withheld on grounds of discrimination (e.g. a social benefit or the participation in a training programme previously not approved) must be granted retroactively. Both types of claims can be enforced.

An action for invalidation may be filed against discriminatory dismissal or termination. In court proceedings the burden of proof on the person affected is less strict. Claims concerning the discrimination of civil servants have to be lodged with the supervisory authority.

Before enforcing claims arising from non-compliance with the prohibition of discrimination, conciliation proceedings have to be conducted at the Federal Social Office. These conciliation proceedings suspend all deadlines. In the framework of conciliation, the Federal Social Office offers mediation by an external mediator, whose services are free of charge for the parties involved.

Furthermore, through the **Amendment to the Federal Disability Act**, an independent Disability Ombudsman was established within the Federal Ministry of Social Affairs and Consumer Protection.

See also **Annex/Art.15**: Behindertengleichstellung\_Jahresbericht 2006.pdf.

**On the question of how many disabled persons were employed due to the quota specified in the Disabled Persons Employment Act:**

As of 1 December 2006, 48,208 so-called eligible disabled persons held jobs with employers obliged to employ disabled persons under the Disabled Persons Employment Act (BEinstG).

In addition, about 9,700 eligible disabled persons held jobs with employers not under such an obligation, and some 3,800 eligible disabled persons were self-employed.

Note: Under the BEinstG, employers in Austria employing 25 or more workers are obliged to hire one eligible disabled person for every 25 staff members.

**Proportion of persons previously working in integrative operations entering the open labour market:**

So far, the transition of disabled persons employed in integrative operations to the general labour market has not been systematically and comprehensively registered. In line with current efforts to improve the permeability of integrative operations, such registration is foreseen in the future.



## **ARTICLE 18**

### **THE RIGHT TO ENGAGE IN A GAINFUL OCCUPATION IN THE TERRITORY OF OTHER CONTRACTING PARTIES**

#### **Para 1 of Article 18**

##### **General:**

The European Union adopted six directives that affect migration:

- 2003/109/EC concerning the status of third-country nationals who are long-term residents;
- 2003/86/EC on the right to family reunification;
- 2004/114/EC on the conditions of admission of third-country nationals for the purposes of studies, pupil exchange, unremunerated training or voluntary service;
- 2004/81/EC on the residence permit issued to third-country nationals who are victims of trafficking in human beings or who have been the subject of an action to facilitate illegal immigration, who cooperate with the competent authorities;
- 2004/38/EC on the right of citizens of the Union and their family members to move and reside freely within the territory of the member states – which, however, applies only to EEA citizens;
- 2005/71/EC on a specific procedure for admitting third-country nationals for the purposes of scientific research.

All directives were implemented in the Austrian Establishment and Residence Act (Niederlassungs- und Aufenthaltsgesetz; NAG 2005) and in the Austrian Aliens Employment Act (Ausländerbeschäftigungsgesetz; AuslBG), which entered into force on 1 January 2006 (Federal Law Gazette I no. 157/2005 as amended in Federal Law Gazette I no. 99/2006 and Federal Law Gazette I no 218/1975 as amended in Federal Law Gazette I no 99/2006; see **Annex/Art. 18:** NAG 2005.htm and AuslBG.htm).

##### **Exercise of the right of vocational mobility within the EU by a third-country national of long-term resident status in another Member State:**

As a rule, exercising the right of vocational mobility within the EU requires the status of long-term resident within the meaning of Directive 2003/109/EC.

It is only the acquisition of long-term resident status granted on the basis of this Directive that entitles persons to exercise this right. The field “type of resident status” must be stamped with “long-term resident EC”.

The legal basis for exercising the right of vocational mobility in Austria is provided in Sections 49 and 50 of the Niederlassungs- und Aufenthaltsgesetz (Act Governing Establishment and Residence in Austria; NAG).

The following residence permits are issued to third-country nationals exercising their right of vocational mobility:

- establishment permit, except gainful employment: compliance with the general issue requirements and availability of a quota place;
- limited establishment permit, to exercise a dependent gainful occupation: compliance with the general issue requirements, availability of a quota place and eligibility under the *Ausländerbeschäftigungsgesetz* (Act Governing the Employment of Aliens; AuslBG);
- limited establishment permit, to exercise a self-employed gainful occupation: compliance with the general issue requirements, availability of a quota place;
- residence permit for training purposes.

The ordinance implementing the NAG defines all relevant and unlimited residence titles (also under the former legal situation) *ex lege vis-à-vis* the “long-term EC resident status”. However, such titles are legally effective only within Austria and do not entitle persons to exercise the right of vocational mobility in the EU within the meaning of the Directive. This requires an explicit stamp of “long-term resident status EC” in the relevant field.

General comments on the “long-term resident status EC” title (implementation of Directive 2003/109/EC):

- Documentation of unlimited right of establishment, regardless of the document’s term of validity.
- Issued to third-country nationals who had uninterrupted entitlement to establishment over the past five years, on condition that the general issue requirements and the integration agreement have been met.
- The title includes the right to free access to the labour market.

An alien holding an employment permit or work permit who loses his/her job does not automatically lose his/her residence permit.

Aliens can be expelled in any of the cases listed in Section 54 of the *Fremdenpolizeigesetz* (Aliens Police Authority Act).

**Ad A and C:**

**With regard to wage earners:**

The permits for the employment of aliens required by employers under the provisions of the Aliens’ Employment Act, BGBl. No. 218/1975, as amended, are awarded liberally within the maximum Federal quota and the *Land* quotas established annually. Similarly, the provisions of the Austrian Establishment and Residence Act (*Niederlassungs- und Aufenthaltsgesetz*; NAG 2005) are applied as liberally as possible.

Strictly speaking, foreigners who wish to engage in gainful activity in Austria need an Austrian residence document for entry into and residence in the country (residence

permit or establishment permit), which also covers gainful activity. The residence document confers not only the right to residence in Austria during its period of validity but also (usually) the right of multiple entry into Austria.

Since Austria's entry into the EEA, nationals of an EEA Member State have been exempted from visa requirements and have had freedom of establishment; therefore, they merely need a valid travel document. In addition, they enjoy mobility on the Austrian labour market (except nationals of new EU-member states subject to the transitional periods on free movement according to Accession Treaty of 2003 – in principle they still need work permits for taking up a dependent employment in Austria).

The Aliens' Employment Act, which regulates the access of foreign workers to the Austrian labour market, is no longer applicable to this group of persons. Spouses and children (aged up to 21, or beyond if receiving maintenance) of an EEA citizen resident or at least regularly dwelling in Austria enjoy freedom of establishment and mobility on the Austrian labour market even if they are not themselves EEA citizens. If they are not in any case exempted from visa requirements on the basis of bilateral agreements, they are entitled to entry or residence documents.

On the basis of bilateral agreements and the EU-Switzerland Agreement on Free Movement of Persons, which entered into force on 1 June 2002, Swiss citizens are entitled to an indefinite stay after entry with a valid travel document. Swiss nationals and their (third country) spouses and children (until age of 21 or as long as they receive financial support of their parents) enjoy right of establishment. Since 1 June 2004 they do not need any work permit for taking up employment in Austria.

The initial admission of further foreign workers from abroad to take up employment in Austria is subject to certain restrictions, as the result of the maximum quota system under the Aliens' Employment Act. This restriction on further new admissions is necessary in order to give Austrian workers and foreign workers who have already established themselves here – in particular, family members of a migrant worker entering Austria in the context of family reunification – better chances of access to the labour market.

The quota system operates as follows:

The binding maximum Federal quota determines the highest permissible proportion of foreigners in the potential workforce.

All authorised employed and unemployed aliens are included in the maximum Federal quota; according to the Aliens' Employment Act, they may not account for more than 8% of the total Austrian potential workforce.

The Order on exceeding the maximum Federal quota (BHZÜV) ensures that certain groups of aliens whose employment is in the public or the general economic interest can be admitted even if the maximum Federal quota is exceeded, but up to the level of at most 9% of the total Austrian potential workforce.

Furthermore, applications for employment permits cannot be refused on grounds that the maximum Federal quota is exceeded if the alien in question has acquired an entitlement to unemployment insurance benefits.

Maximum Land quotas

Separate maximum *Land* quotas are determined in order to protect the maximum Federal quota; the total of all the maximum *Land* quotas is less than the maximum Federal quota.

If a maximum *Land* quota is exceeded, an investigation procedure comes into effect.

#### Special quotas

Under § 5 of the Aliens' Employment Act, the Federal Minister of Economics and Labour can determine special quotas by issuing Orders to meet short-term requirements for skilled foreign workers and harvest helpers.

Employment permits that are issued in the context of such a quota also constitute residence permits for the duration of the employment. In such cases, the period of validity of the employment permit may not exceed six months, or six weeks under a harvest helper quota.

#### **With regard to self employed:**

The previous presentation should be updated as follows:

Section 14 of the Industrial Code of 1994 regulates the right of establishment by foreign nationals in Austria for the purpose of exercising a trade under the Industrial Code. Except as otherwise provided in this Federal Act (with regard to arms traders, chimney sweeps, job placement and temporary agency businesses), foreign nationals who are natural persons may exercise trades same as Austrian nationals if this has been agreed in state treaties. Nationals of states with which no such state treaty has been concluded, persons granted asylum or stateless persons may, except as otherwise provided in this Federal Act, exercise trades same as Austrian nationals when they are entitled to reside in Austria under the pertinent regulations to exercise a gainful occupation.

Third-country nationals (aliens who are not EEA citizens) who are not yet legal residents (first applicants) and who want to exercise a trade in Austria require a residence permit that permits them to be self-employed in order to legally exercise such trade.

Legal entities and registered partnerships that are neither domiciled nor established in Austria must not exercise a trade, except when otherwise provided in state treaties.

Citizens (and analogously legal entities) of the European Union or states party to the European Economic Area are governed by the freedom of establishing a business and the free movement of services.

#### **Ad B:**

The latest data on employment permits issued or refused are given below:

#### **2006 :**

Granted : 27.085

Refused : 4.320

**Replies to the supplementary questions on Article 18, paragraph 1 in Conclusions XVII-2:**

Ad question concerning improvements by the implementation of the EU-Directives concerning family reunification, long term migrants, etc. (valid since 1 January 2006):

Third country spouses and children who come to Austria for the purpose of family reunification have access to the labour market and receive after only one year of legal residence the same kind of employment authorization which the one who reunifies them (so-called sponsor) has. That means:

If the sponsor holds e.g. an exemption certificate or long-term residence permit (Niederlassungsnachweis oder Daueraufenthalt-EG) what most of them do, the family members will also get an exemption certificate. Third country parents and parents-in-law of EEA citizens (who are not subject to transitional periods) are exempted from the AuslBG (beside third country spouses and children of EEA citizens who may enjoy that status at the Accession of Austria to the EEA – Agreement in 1994) . Third country nationals who have the status of a long-term resident in another EU-Member state and want to stay in Austria have full access to the Austrian labour market only one year after their admission to the Austrian labour market.

Beside the refugees recognized according to the Geneva Convention the asylum seekers with subsidiary protection status ("Non-refoulement-cases") enjoy full access to the Austrian labour market after a one year waiting period (during the waiting period an initial work permit may be issued to them).

Ad question concerning overview on sectors/occupations where the initial work permits are granted :

A big part of initial work permits is granted in the seasonal business in tourism, agricultural and forestry sectors. Reunified family members of integrated third country workers may also be admitted in all of the other sectors (foreigners are not excluded from any sector). Key worker admissions are also possible in all sectors.

Ad question, whether the decrease in extensions of work permits corresponds to an increase in the number of permanent work permits or what other reasons account for such development :

Yes, the decrease in extension of work permits corresponds to an increase in the number of permanent work permits. The possibilities of getting a permanent work permit were extended very much, especially following the amendments of the AuslBG in 2005.

Ad question concerning the number of applications for initial work permits granted and extended for third country nationals :

There was a misunderstanding on the possibility of delivering statistical data in 2002; we cannot deliver data where third country nationals of Contracting Parties of the ESC are separated from other third country nationals, because in Austria non-ESC nationals are treated the same way as are ESC-nationals.

The number of initial employment permits for third country nationals shows a rather big decrease. This decrease results mainly from the accession of 10 countries to the EU in 2004.

Initial employment permits granted to third country nationals in 2006 (first time applications): 5.074

Initial work permits refused to third country nationals in 2006 (first-time applications): 2.738

Initial work permits of third country nationals extended in 2006: 2.439

Extension of Initial work permits of third country nationals refused In 2006: 38

Ad question as to how the quota system applies to citizens of Contracting Parties to the Charter which are not members of the European Union or EEA :

If the provincial or federal maximum numbers are exceeded the priority of integrated foreigners (EEA and third country nationals) in filling a position is examined more strictly. An application for a newcomer (from a new EU-member state subject to transitional arrangement or from a third country) may be refused if the open position can be filled by an integrated foreigner.

### **Para 2 of Article 18**

#### **Ad A and C:**

The previous reporting should be updated as follows:

Engaging in gainful employment by aliens in Austria is regulated by the Federal Act of 20 March 1975, Federal Law Gazette 218, governing the employment of aliens (Aliens Employment Act – AuslBG), as amended.

Pursuant to the provisions of the AuslBG, labour market authority permits are needed for the employment of an alien, which may be issued as an extra document or included in the residence document (as is the case for an establishment permit for key workers, document of establishment and long-term EC resident status).

With regard to the types of procedure or types of work authorisations, reference is made to the remarks in the 23<sup>rd</sup> Austrian report on Article 19 paragraph 2 (Ad A and B) and on paragraph 6 ("Access to the labour market"):

#### **Article 19 paragraph 2 Ad A and B:**

*Since the reform of 1 January 2003, the Aliens' Employment Act provides in principle for two procedures for the initial admission of workers who are nationals of third States:*

*The new key personnel admission procedure for highly qualified workers with special knowledge and skills in the framework of a separate quota in the annual establishment Order:*

*After submission of applications by the potential employers and an interdepartmental verification procedure with the Public Employment Service (one-stop-shop principle) regarding their qualifications as key personnel and the satisfaction of other requirements under labour market law, such key personnel receive from the aliens authority an establishment permit (as key personnel), which entitles them, without any further legal formalities, to engage in the authorized occupation with a particular employer for a maximum of eighteen months.*

*The conditional assurance or employment permit procedure for the initial admission of workers employed for a fixed-term and for integrated aliens without entitlement to a permanent work permit or establishment permit:*

*With the conditional assurance, which is issued to the employer by the Public Employment Service provided that the requirements under labour market law are met, the foreign worker as a rule receives a residence permit from the Austrian mission abroad or from the aliens authority, subject to meeting the requirements under aliens law. On submission of the two documents, the employer receives an employment permit from the Public Employment Service (PES) and may then recruit the foreign worker. In the case of integrated aliens, an employment permit is awarded on principle if the requirements under labour market law are met and given special socio-humanitarian considerations.*

*Since 1 January 1998, a medical examination has no longer been required as a prerequisite for granting an employment permit.*

*Neither of these two procedures is necessary if the third-State national holds a work permit, an exemption certificate, a proof of establishment, a “long-term resident’s EC residence permit or a “settlement permit – unrestricted”.*

*An alien receives a work permit on application to the Public Employment Service if he has been employed in the regular labour market for 52 weeks in the last 14 months. It is issued for two years and is valid only in the Federal Province of issue. An exemption certificate is awarded to foreigners who do not hold an establishment permit but have been employed in Austria for at least five years (in the last eight years), or have been married to an Austrian citizen for at least five years, or, in the case of young people, have attended the last year of their compulsory education in Austria, or have so far been exempted from application of the Aliens’ Employment Act as favoured third-State family members of an Austrian or other EEA citizen and are still lawfully resident in Austria, or they are spouse or unmarried minor children of the above-mentioned holders of exemption certificate and have been lawfully resident in Austria for twelve months. Exemption certificates are issued for five years in each case and entitle the holders to take up any work throughout Austria.*

*Subject to meeting certain requirements under the law concerning aliens (good behaviour, integration agreement, secure maintenance or income, etc.), foreigners are issued proof of establishment by the aliens authority (on application) after five years of lawful establishment or on the basis of their status as favoured family members of an EEA citizen or of an Austrian after two years of main residence in Austria. The proof of establishment combines an indefinite right of establishment with unrestricted access to the labour market in a single document.*

*Since 1 st January 2006 the so-called residence title “long-term resident’s EC residence permit” (§ 45 NAG) replaces the proof of establishment as a type of document. This residence title is issued under the same requirements as was the proof of establishment and also combines an indefinite right of establishment with unrestricted access to the labour market in a single document as the proof of establishment. Moreover it also gives more rights to its holder than the proof of establishment, particularly the right to stay three months in another EU-member state for seeking an employment there without having to apply for an extra visa. Proofs of establishment which were issued before 1 January 2006 are still valid and may be exchanged for that document. For keyworkers who prove an uninterrupted admission to dependent employment of twelve months during their eighteen months of stay in*

*Austria and for holders of long-term resident's EC residence permit" who have been downgraded from that status because of expulsion measures which cannot be enforced on them because of certain (humanitarian) reasons a "settlement permit – unrestricted" (§ 8 para 2 Z 3 NAG) is issued and entitles to unrestricted access to labour market in Austria.*

*In a slightly modified manner the above-mentioned rules for third-state national also apply - for the duration of the transitional provisions on the free movement of persons set down in the Accession Treaty of Athens of 16<sup>th</sup> April 2003- to the initial labour market admission of nationals of the eight Central and East European countries which became Member states of the EU on 1<sup>st</sup> of May 2004. Since the right of establishment is not subject to the transitional provisions, the establishment quota (for third state nationals) is not applicable to the nationals of these new EU-member states, they therefore may enter and reside in Austria without a visa or residence or establishment permit. However, for their initial admission to the labour market the employer has to apply for an employment permit which may be issued if the requirements of labour market law are met - especially if he/she is a key worker. According to the Accession Treaty the principle of community preference provides that nationals of new EU member states enjoy priority against a third-state national who has no integration degree in Austria if a position cannot be filled by unemployed Austrian citizens or nationals of the EU-15 or integrated third-state nationals.*

*After having been admitted to the Austrian labour market uninterruptedly for one year or fulfilling the requirements for a work permit or an exemption certificate or a proof of establishment, the nationals from the new member states enjoy free access to the labour market in Austria. After they make a declaration to this effect to the Public Employment Service, they may be issued with a special document called confirmation certificate (according to Article 32a of the Aleins' Employment Act) which gives proof of their status. Family members of such integrated workers from the new Member states also have free access to the Austrian labour market provided they had been legally resident in Austria on 1<sup>st</sup> of May 2004 (day of accession) or as soon as they have been legally resident in Austria for 18 months or immediately after 1<sup>st</sup> of May 2006. They also may be issued with a confirmation certificate.*

#### Article 19 paragraph 6 Ad A to C:

##### Access to the labour market:

*Under the 2002 amendment to the law concerning aliens, requirements for the access of family members to the labour market were substantially relaxed. In the authorisation procedure, special importance is attached to the criterion of "advanced integration", as a result of which foreigners who are already established in Austria, particularly family members, are granted priority in access to employment. In addition, a proof of establishment was created, which any alien can receive after five years of lawful establishment and with which he/she has unrestricted access to the Austrian labour market. Young aliens who do not yet meet that requirement and have completed their last year of compulsory education in Austria, receive an exemption certificate and are thereby also equally treated with Austrians on the Austrian labour market. Additional relaxations in the granting of employment permits were also provided for in the case of young persons who join their families after the age of compulsory education and have not yet completed the 18th year of life, and for family*



*members affected by violence in the family, in the context of the amendment to the Order on Exceeding the Maximum Federal Number.*

*After the transitional provisions on free movement of persons in the Accession Treaty of Athens became valid on 1<sup>st</sup> of May 2004, family members of integrated workers from the new Member states have free access to the Austrian labour market provided they had been legally resident in Austria on 1<sup>st</sup> of May 2004 (day of accession) or as soon as they have been legally resident in Austria for 18 months or immediately after 1<sup>st</sup> of May 2006. After they make a declaration to this effect to the Public Employment Service, they may be issued with a special document called confirmation certificate (according to Article 32a of the Act Governing Employment of Foreign Nationals) which gives proof of their status.*

On initial admission, not only the criteria of key personnel status or certain integration characteristics, but also in particular the following requirements under labour market law must be met: the situation and development of the labour market must allow the employment and there must be no objections on the basis of important public interests or general interests of the economy (§ 4 (1)). After the *Land* maximum quotas have been exceeded, a stricter labour market review procedure becomes operative (§ 4 (6)) and, after the Federal maximum quota is exceeded, only the groups of persons mentioned in the Order on exceeding the Federal maximum quota may be admitted. Furthermore, an initial admission can be refused on the grounds mentioned in § 4 (3) (AuslBG), for example, if the employer has repeatedly infringed the provisions of the AuslBG, if the employer does not comply with prevailing wage and working provisions, or if the alien cannot produce the appropriate residence permit pursuant to the NAG 2005 or FrePolG 2005 in the employment permit procedure.

The operation of the aliens procedure in Austria is governed by the principles of the General Administrative Procedures Act 1991, BGBl. No. 51, as amended. Accordingly, the regional offices and *Land* offices competent with regard to the employment of foreign workers must issue rulings on applications for the grant of employment permits and in the case of refusal of the admission of key personnel. Both the employers and – if personal circumstances of the aliens were decisive with regard to the decision, also the aliens – have the right of appeal against such decisions.

Most labour migrants and their family members established in Austria, being either third-country nationals (by far the greater number) or EU citizens from any of the eight CEE countries that joined the EU on 1 May 2004, hold long-term permits to work such as a work permit, extended work permit, document of establishment, **long-term EC resident status** or vocational mobility certificate, which grants most of them the right to mobility across the entire territory of Austria, and some of them at least the right to mobility within any one *Land* (work permit) or, if they are EU citizens from any of the EU-15, acceptance without any further work permit.

It should also be noted that Austria is among the countries (if not the country) with the highest share of third-country nationals in the labour market and in active employment within the entire EAA, and has experienced a briskly growing rate of naturalisation over the past ten years. Apart from third-country nationals, numerous EU citizens, both from the new Member States and (particularly) from Germany, have entered the Austrian labour market since Austria joined the European Union.

#### **Ad B:**

No essential changes.

**Para 4 of Article 18**

No essential changes.