TWENTY- FOURTH REPORT

Part I

on the implementation of Articles 2, 3 and 4 of the

European Social Charter

(Reporting period 1 January 2001 to 31 December 2004)

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 2
THE RIGHT TO JUST CONDITIONS OF WORK

Article 2 paragraph 2

Ad A to C:

No relevant changes.

Article 2 paragraph 3

Ad A to E:

No relevant changes.

Article 2 paragraph 4

Ad A to C:

The previous presentation should be updated as follows:

Regulations on night work were incorporated in the Working Hours Act (AZG) under the amendment BGBl. I No. 122/2002.

Night workers are defined as persons who work at least three hours during the night on at least 48 nights per calendar year, on a regular basis or if the collective agreement does not provide otherwise.

Night-time is defined as the period between 10 p.m. and 5 a.m.

Heavy night workers are defined as persons who perform night work under the conditions specified in Article VII (2), an Order issued under Article VII (3) or a collective agreement pursuant to Article VII (6) NSchG.

In principle, the average working time for heavy night workers on days on which night work is performed within a calculation period of 26 weeks may not exceed 8 hours, including overtime, unless that is permitted under collective agreement regulations. In such cases, there is an entitlement to **additional rest periods** (§ 12a AZG).

All night workers are entitled to free medical examinations pursuant to § 51 of the Worker Protection Act, in particular.

- Before commencing the activity
- Thereafter at two-year intervals
- After reaching the age of 50
- At yearly intervals after ten years of night work.

In the context of such examinations, night-time is defined as the period between 10 p.m. and 6 a.m., and night workers are defined as persons who work for at least 3 hours during the night regularly or on at least 30 nights per calendar year (§ 12b AZG).

All night workers have an entitlement vis-à-vis their employers to transfer, on request, to a suitable daytime job if conditions in the enterprise so allow, in the event of danger to health and if required by absolutely unavoidable care obligations towards children up to the age of 12 (§ 12c AZG).

Employers must ensure that night workers are informed about important events in the enterprise that affect the interests of night workers.

Reply to the supplementary questions of the Committee of Social Rights in Conclusions XVI-2 on Article 2 paragraph 4:

The **authorisation to issue Orders pursuant to § 21 AZG** has so far not been made use of.

One reason is that the Heavy Night Work Act entered into force in 1981. That Act introduced comprehensive compensation measures which, among other things, also reduced the time load. In addition to the reduction of lifelong working hours by the grant of special pensions and the reduction of annual working hours by the grant of additional vacation days, daily working hours were also shortened by granting additional rest periods (which are counted as working time) under an amendment to the Working Hours Act. That measure could also equally well have been the subject of an Order pursuant to § 21 AZG, but the legislator at the time decided to introduce a comprehensive legal regulation for groups of workers subjected to special stress.

Accordingly, health protection for the groups of workers subject to the NSchG was continuously expanded by means of amendments to the AZG (cf., for example, the above-mentioned amendment on the grant of additional rest periods if the daily working time of 8 hours, including overtime, is exceeded) or by extending the scope of the Act to other groups of workers (e.g. nursing staff).

Since compensation for work involving stress is already granted on the basis of legislation, collective agreements can provide for more favourable regulations.

Pursuant to Article VII (6) NSchg, a collective agreement is authorised to equate other types of work with heavy night work, within the meaning of Article VII (1) of that Act, if they entail unusual stress or if workers are exposed to the effect of pollutants or radiation. That possibility was used in the collective agreement for non-university research establishments, which also covered work involving exposure to ionising radiation.

Working hour regulations under collective agreements for hazardous or unhealthy work

In Austria, regulation of pay and other working conditions – within the legal parameters – falls within the autonomous sphere of responsibility of the collective agreement parties, i.e. the employers' and the workers' representative bodies. The extent to which the legal working week of 40 hours is reduced in the collective agreement is therefore left to the discretion of those bodies. That possibility was made use of in a number of branches, so that many collective agreements set a

normal working week for workers in a particular branch that is shorter than the working week provided by law.

Since collective agreements in Austria are as a rule concluded at the branch level, such reductions of working hours apply in principle to all workers of the branch in question, irrespective of the type of work performed. The conclusion of collective agreements at the branch level makes possible flexibility in taking into account current economic and social conditions in the relevant branch when determining wage and other working conditions. Uniform remuneration standards and working conditions are thus created within a branch by means of collective agreements, which also contributes to competitiveness within the branch.

However, within the general conditions provided by law, the collective agreement parties can delegate power to adjust to business requirements in particular areas, chiefly with regard to flexible working hours, to the parties to works agreements.

For example, the collective agreements for workers in the metallurgical and metal processing industry and in the iron- and metal-processing trade provide for a broad band model under which working hours can be so distributed over a period of 13 weeks that the average normal working week of 38.5 hours is not exceeded. The normal working week may not be more than 40 hours or less than 37 hours. A working week of less than 37 hours is possible if compensatory time-off is awarded in the form of whole working days. Such an arrangement must be established under a works agreement but must be agreed upon in writing with each worker in enterprises in which no works council has been set up. The collective agreement for the woodworking industry permits a distribution of the normal working week of 38.5 hours within a range of 35 to 45 hours by means of a works or individual agreement. Similar arrangements are provided for in the collective agreements for the chemical industry (range of 36 to 40 hours with a normal working week of 38 hours) and the building and carpentry trade (range of 35 to 45 hours with a normal working week of 39 hours).

Article 2 paragraph 5

Ad A:

The previous presentation should be updated as follows:

To date, exceptions from the weekend and holiday rest period have been authorised for the following branches or enterprises pursuant to § 12a ARG:

Branch/Enterprise	Activity	Reg.-No.	Cat.-No.
Suchard Schokolade GmbH	Chocolate manufacture and cocoa butter pressing	385/2005	IV/31/69
Confectionery industry	Chocolate manufacture and cocoa butter pressing	361/2002 95/2005	IV/31/570 IV/31/25
Manner (blue- and white-collar)	Manufacture of cocoa and hazelnut cream	257+268/2005	IV/31/49+50

Ankerbrot AG	Manufacture of bakery goods	449/2005	IV/31/73
Master Foods Austria, Bruck/Leitha, blue- and white-collar	Pet food in tins and flexible containers	57+74/2002 110/2003, 234+ 389/2004; 41+74/2005	IV/31/17 IV/31/12 IV/31/34 IV/31/67 IV/31/18
Banks and bankers	Private customer business in shopping centres	283/2001; 179/2002 135/2004 44/2002 ,124/2005	XVIII/91/3 XVIII/91/7 XVIII/91/5 XVIII/91/1 XVIII/91/2
EBEWE Pharma	Production of injection preparations	147/2002 173/2004	XI/45/3 XI/45/2
Tridonic-Bauelemente	Magnetic chokes and transformers	4/2002	XIII/56,57/3
Private educational institutions	Organisation of cultural events	141/2005	XXIII/97/2
SCA Hygiene Austria GmbH Betrieb Ortman	Manufacture of paper serviettes and handkerchiefs	119/1997	IX/41/4
FV Garagen, Tankstellen u. Servicestationen (blue-collar)	Sale under § 279 (2 of the industrial code, supervision and operation of machine washing plant	370/1998	XV/76/1
Petroleum and fuel trade, filling stations	Sale of certain goods under § 279 (2 Industrial code	223/2001	XV/71/14
City of Vienna Hospital (DO.B),	Doctors and dentists at health congresses, fairs, etc.	418/1998	XV/71-76/13
Bäderbetriebe Wien	Solariums	69/1998	XXI/95/6
Videotheques, white-collar	Hire	395/1998	XXIV/98/7
ADV und IT, white-collar	Services for business and customer-specific problems	36/2004	XIX/93/1
Chemical industry: blue collar Semperit Techn. Produkte GesmbH.	Manufacture of rubber and plastic moulded goods	297/2001	XI/45/12
Paper industry: Fa. Carl Joh. Merckens,	Manufacture of paperboard and glazed insulating pressboard	302/2000	IX/41/10
Chemical industry Semperit Reifen AG	Manufacture of tyres	270/1998 272/1998	XI/45/4 XI/45/6
Refund of Value added tax	Office work	23/2003	Ang/Gew/1
Tapered roller bearings	Hardening shop	152/2004	XIII/58/1
Raiffeisen	Banks in EKS und EKZ	187/2004	XVIII/91/10
Surface Specialities	Manufacture of plastics	60/2005	XI/45/1
Schmidt Ges mbH	Manufacture of printing ink	325/2005	XI/45/3
Metal trade Lighting and sound fittings	Public sector events	133/2004	XIII/52-59/2
Vöslauer (blue- and white-collar)	Soft drinks	252+267/2005	IV/32/14+15
Rauscher	Manufacture of tampons	342/2005	IX/41/9
Austria Tabak/Hainburg	Repair of DK1 machines; monthly inventories	366/2005	IV/32/16
Austria Tabak/Linz	Repair of DK22 machines	367/2005	IV/32/17
Tapered roller bearings	Mechanical finishing	376/2005	XIII/51-59/5
Ferrous/metal working industry, electrical and electronics	Work connected to flood relief 2005	423/2005	XIII/51-59/6; XIII/56,57/3

industry and textile industry			
Mantler Mühle	Cereals milling	450/2005	IV/31/74

Ad B and C:

No relevant changes.

ARTICLE 3
THE RIGHT TO SAFE AND HEALTHY WORKING CONDITIONS

Article 3 paragraph 1

Ad A:

The following laws and administrative regulations were amended in the reporting period 1 January 2001 to 31 December 2004:

General Labour Inspectorate:

Worker Protection Reform Act – ANS.RG, BGBl. I No. 159/2001, entering into force on 1 January 2002.

The Worker Protection Reform Act, entering into force on 1 January 2002, led to the following important changes in the Federal Labour Inspectorate Act (**Labour Inspectorate Act 1993)**, BGBl. No. 27/1993, the Federal Act on Safety and Health Protection at Work **(Worker Protection Act)**, BGBl. No 450/1994 and the Federal Act on Coordination in Construction Work **(Construction Work Coordination Act)** BGBl. I No. 37/1999.

Labour Inspectorate Act 1993 (ArbIG)

The regulations on inspections by the Labour Inspectorate (§ 18 ArbIG) were amended in the Labour Inspectorate Act. It is now within the discretion of the labour inspectors whether official action pursuant to §§ 4 and 5 is announced in advance, taking into account the success and purpose of the inspection and, as far as possible, the requirements of the enterprise. In the event of suspected danger to the life and health of the workers or in the event of suspected serious infringements, inspections should as before be carried out without prior notification.

Employers are no longer required to accompany the labour inspectors personally on the inspection. Instead they can instruct a person with adequate information to accompany the inspectors (§ 4 (7) ArbIG).

If inspections are carried out jointly with the Chamber of Labour (§ 18a ArbIG), the workers' and employers' representative bodies have the right to participate in the inspection.

The amendment now expressly provides that the penal provisions in connection with deviations from construction regulations are to be applied only if certain tolerance limits are exceeded (§ 9 (3a) ArbIG).

The requirement that the Labour Inspectorate must report even minor infringements, in the event of a repeated offence, has been abolished (§ 9 (3a) ArbIG).

The previous formal "Summons to Interrogation" to the Labour Inspectorate headquarters, which could also lead to production by the police, has been abolished.

The amendment also abolished the privileges of foreign enterprises. A regulation was included, according to which infringements by enterprises whose registered office is in a foreign country are also liable to prosecution. Administrative offences that are not committed inside Austria are regarded as having been committed at the place at which they were discovered (§ 24 (4) ArbIG).

Worker Protection Act (ASchG)

Services to enterprises by prevention officers – safety experts (SFK) and works doctors (AMED) – were reformed. The minimum availability periods are now based on a three-step risk classification, geared to the risks and stress situations at each individual workplace. This prevention time is the absolute minimum and must be supplemented if necessary by additional outsourcing (§ 82a ASchG).

In order to make possible flexible arrangements and an interdisciplinary approach in prevention, the periods of availability were so arranged that 40% of the time must be accounted for by SFK and 35% by AMED. The remaining time can be distributed between the two, according to need, or the services of other experts can be used, for example, occupational psychologists, chemists, toxicologists, ergonomics experts (§ 82 b ASchG). It is also possible to divide prevention time between several experts and to distribute such time freely over the calendar year.

As a result of the amendment, a health and safety committee must be set up (§ 88 (1) ASchG) in establishments with at least 100 workers, and in all other establishments as from the employment of at least 250 workers. The number of permanent committee members was reduced in order to ensure workability. The requirement to co-opt the Labour Inspectorate has been abolished.

Special attention must be given to older workers and their needs (§ 4 ASchG) in job assessment. Instruction must be given in the light of risks, that is to say, at regular intervals, but in any case if it is necessary on the basis of the assessment.

A general prohibition on smoking was introduced in all working areas in which smokers and non-smokers must work together for operational reasons (§ 30 (2) ASchG).

The amendment abolished the privileges of foreign enterprises. A regulation was introduced providing that enterprises whose registered offices are outside Austria are also liable to prosecution for infringements (§ 130 (7) ASchG).

Construction Work Coordination Act (BauKG)

In the coordination of construction work, the qualifications of the coordinators must be commensurate with the complexity of the construction project; the client can undertake the coordination work himself, if appropriate. If the areas of responsibility are clearly differentiated, coordination tasks may be assigned to several persons simultaneously or consecutively.

If inadequate safety measures are identified at a construction site, the employers affected must be informed, as they remain responsible for compliance with labour safety regulations (§ 5 (4) BauKG).

The amendment abolished the privileges of foreign enterprises. A regulation was introduced providing that enterprises whose registered offices are outside Austria are also liable to prosecution for infringements.

Orders issued during the reporting period:

Order of the Federal Minister for Labour and Social Affairs concerning regulations for the protection of the life, health and morals of workers in the performance of construction work (**Construction Worker Protection Order BauV)** BGBl. No. 340/1994, entering into force on 1 January 1995, amended by BGBl. II No. 313/2002 (entering into force on 10 August 2002) and BGBl. II No. 425/2003 (entering into force on 13 September 2003).

Order on the **technical training of safety experts** and the special features of safety services for underground mining – SFK-VO, BGBl. No. 277/95 amended by BGBl. II No. 342/2002, entering into force on 1 October 2002.

Order of the Federal Minister for Economics and Labour on the storage of pressurised gas containers **(Pressurised Gas Container Storage Order 2002** – DGPLV 2002), BGBl. II No. 489/2002, issued on the basis of the Industrial Code 1994 and the ASchG, entering into force on 21 December 2002.

Order of the Federal Minister for Economics and Labour for the protection of the health and safety of workers against risks from electricity (**Electricity Protection Order 2003** – ESV 2003), BGBl. II No. 424/2003, entering into force on 13 September 2003.

Order of the Federal Minister for Labour and Social Affairs amending the **Order on the Monitoring of Health at the Workplace** (VGÜ), BGBl. II No. 343/2002, entering into force on 1 October 2002, its § 9 being in force as from 1 August 2002.

Order of the Federal Minister for Economics and Labour amending the **Order on the Monitoring of Health at the Workplace** (VGÜ), BGBl. II No. 306/2004, entering into force on 24 July 2004.

Order of the Federal Minister for Economics and Labour amending the **Order on the protection of workers in using work equipment** (**Work Equipment Order** – AM-VO), BGBl. II No. 313/2002, entering into force on 10 August 2002.

Order of the Federal Minister for Economics and Labour on Threshold Values for Work Substances and Carcinogenic Substances (**Threshold Values Order 2003** – GKV 2003) GKV 2001; BGBl. II No. 253/2001, entering into force on 1 October 2001; BGBl. II No. 184/2003, entering into force on 1 September 2003; BGBl. II No. 199/2004, entering into force on 1 April 2004.

Order of the Federal Minister for Economics and Labour on the **Prohibition of and Restrictions on the Employment of Workers,** BGBl. II No. 356/2001, entering into force on 1 August 2001.

Liquefied Gas Order 2002 – FGV, BGBl. II No. 446/2002, entering into force on 1 July 2003.

Order on the certification of **Specialised Qualifications for the Preparation and Organisation of Stage and Lighting Work** (**Stage-FK-V**), BGBl. II No. 403/2003, entering into force on 1 January 2004 (obligations of employers) and on 1 October 2003 (Applications by training institutions for authorisation to organise courses).

Order on the Protection of Workers against Explosive Atmospheres (**Explosive Atmospheres Order** – VEXAT), BGBl. II No. 309/2004, entering into force on 1 August 2004.

Order on the Safety and Health of Workers in Carrying out Blasting Operations (**Blasting Operations Order** – SprengV), BGBl. II No. 358/2004, entering into force on 1 October 2004.

Transport Labour Inspectorate:

The following Acts and administrative regulations were amended in the reporting period:

Railway Workers Protection Order – EisbAV, BGBl. II No. 384/1999, as amended by BGBl. II No. 505/2004.

Tramways Order, BGBl. II No. 76/2000.

Federal Act on Inland Navigation (Shipping Act – SchFG), BGBl. I No. 62/1997, as amended by BGBl. I No. 123/2005.

Order on Navigational and Other Installations and Work on Waterways (Navigational Installations Order), BGBl. No. 334/1991, as amended by BGBl. II No. 249/2005.

Order on Technical Qualifications in the Inland Navigation Trade (Qualifications Testing Order – Inland Navigation Trade – EPVO-WSG), BGBl. II No. 225/2002.

Order on Fitting Out Ocean-Going Ships (Ships Fitting-Out Order), BGBl. II No. 139/1999, as amended by BGBl. II No. 394/2003.

Order on Safety Requirements for Passenger Ships (Passenger Ships Order), BGBl. II No. 150/2000, as amended by BGBl. II No. 252/2005.

Order on Training, the Award of Certificates and Watchkeeping Duties of Sailors (STCW – Order), BGBl. II No. 228/2000, as amended by BGBl. II No. 346/2005.

Federal Act on the Opening of Access to the Dispatching Services Market in Airports / Airport Dispatching Services Act – FBG, as amended by BGBl. I No. 32/2002.

Order on Requirements for the Grant of Airline Operating Certificates (AOC) 2004 – AOCV 2004, BGBl. II No. 425/2004,

Decree of the Federal Minister for Transport, Innovation and Technology concerning "Regulations for the blasting of avalanches from helicopters", October 2005.

Federal Employees:

The following changes result from the Employee Protection Reform Act, BGBl. I No. 131/2003, which entered into force with effect from 1 January 2004:

- The permissibility of the appointment of staff representatives as safety officers in establishments with more than 50 employees,
- The inclusion of follow-up evaluations in the prevention time,
- Increase of the key figures for the mandatory establishment of a health and safety committee,
- Flexible arrangements for the assignment of prevention time to safety experts, works doctors and other experts.

Orders issued in the reporting period:

- The Order of the Federal Government on the assignment of establishments and parts of establishments to risk classes, (risk classes order) BGBl. II No. 239/2002, entering into force on 1 July 2002,
- The Federal Workplace Order – B-AstV, BGBl. II No. 352/2002, entering into force on 1 October 2002,
- The Federal Government Order on the Protection of Federal Employees in the Use of Work Equipment (Federal Equipment Order – B-AM-VO), BGBl. II No. 164/2000, entering into force on 1 November 2002, and
- The Threshold Values Order 2001 – GKV 2001), BGBl. II No. 253/2001, entering into force on 1 November 2002

Ad B:

If substances for which a maximum workplace concentration has been determined are in use, employers must ensure that the value is not exceeded. Employers must make efforts to ensure that concentration is always below that value by as great a margin as possible (§ 45 (3) ASchG). If a substance is in use for which a technical guideline concentration has been determined, employers must ensure that the concentration is always below that value by as great a margin as possible (§ 45 (4) ASchG).

The Threshold Values Order primarily determines daily average values and short-time values (chiefly, 15 minutes), with which employers are required to comply. These values apply to all workers (on indefinite, fixed-term or temporary work contracts).

In addition, a list of the workers affected must be kept if carcinogenic substances or substances affecting the genetic make-up, reproductive function or group 3 or 4 biological substances are in use. Such lists must always be kept up to date and must be kept on record until the end of exposure. Thereafter, the lists must be transmitted

to the competent accident insurance authority, which must retain them for at least 40 years (§ 47 ASchG).

Pursuant to § 49 (1) ASchG workers may be employed on certain activities (e.g. with exposure to certain hazardous substances) only if a fitness test was carried out before commencing the activity, with subsequent follow-up examinations if the activity is continued. On commencement of the activity, a fitness test must have been carried out not more than two months previously (§ 6 (1) VGÜ). Annex 1 of the VGÜ prescribes that such examinations must be carried out at certain intervals, which must be observed whoever the employer may be in whose establishment the activity is performed. The Labour Inspectorate decides on medical fitness by means of a ruling (which need not be issued if the worker passes the fitness test (§ 53 (3) and (5) ASchG). If a ruling establishes unfitness on medical grounds, workers may no longer be employed on the activities specified in the ruling (§ 54 (2) ASchG).

Employers must keep records of all workers for whom fitness and follow-up examinations are required, to which all the reports of the examining doctors on medical fitness as well as any rulings of the Labour Inspectorate must be attached. Such records must be kept until the workers in question cease their employment in the establishment. Thereafter, the records must be transmitted to the competent accident insurance institution, which must keep them for at least 40 years (§ 58 ASchG). In the case of temporary workers, the temporary work agency is responsible for the records (§ 9 (5) ASchG).

Prevention of major industrial accidents

Most of the provisions of Directive 96/82/EC (SEVESO II) and Annex I of that Directive were implemented for industrial establishments in Chapter 8a and Annex 5 of the 2000 amendment to the Industrial Code, BGBl. I No. 88/2000. The scope of the SEVESO II Directive is defined in the form of staggered quantitative thresholds, to which minor changes have been made since the Convention on the Transboundary Effects of Industrial Accidents, BGBl. III No. 119/2000, was implemented concurrently.

The remaining parts of the Directive in so far as it lies within Federal competence for industrial establishments (approximately 90% of all installations that are covered by the Directive are industrial establishments) were implemented through the Industrial Accidents Order (IUV), BGBl. II No. 354/2002.

For installations not covered by the Industrial Code, implementation was carried out through the Waste Management Act (AWG) and the Mineral Raw Materials Act (MinRoG), in each case with reference to the corresponding passages of the Industrial Code. In parallel, the AWG also implemented the IUV, but such implementation is still pending for the MinRoG. Implementation is also pending for the area of blasting materials (explosives), which, however, is shortly to be covered by the Industrial Code (Validating Act on the Law of Installations, adopted by Parliament on 19 October 2005).

Some parts of the SOVESO II Directive fall within the competence of the Provinces. That applies in particular to Article 12 (Land-use planning) and parts of Article 11 (External emergency plans).

The Land-Use Planning and Disaster Protection Acts of the Provinces had to be adjusted or supplemented to comply with these provisions, but such adjustments have not yet been put in place in all cases. Relevant proceedings were still pending at the beginning of 2005 and the present status is not known.

Directive 96/82/EC has meanwhile been supplemented or amended by Directive 2003/105/EC. The time limit for implementation expired on 1 July 2005. The appropriate changes to the Industrial Code and the Mineral Raw Materials Act were undertaken in BGBl. I No. 85/2005. The corresponding measures at the level of Orders, under both the AWG and almost all Provincial Acts, are still pending (although the necessary changes are not very substantial).

At present (as of October 2005), approximately 140 sites in Austria are covered by the SEVESO II Directive.

Protection against ionising radiation:

The 1969 Radiation Protection Act was twice amended in the period between 1 January 2001 and 31 December 2004. The two amendments implemented the changes in European radiation protection law (Directive 29/96/EURATOM and Directive 122/2003/EURATOM).

In addition, the Medical Radiation Protection Order was issued in 2004, regulating the use of ionising radiation in medicine and implementing Directive 97/43/Euratom in national law. To work out the details of the two amendments, work was begun on a general radiation protection Order, an Order on protection against hazards from natural radioactive materials, an Order for the protection of airline staff against cosmic radiation and an intervention Order that will regulate action for the protection of the population in nuclear incidents.

Reply to the supplementary questions of the Committee of Social Rights in Conclusions XVI-2 on Article 3 paragraph 1:

Regulations for workers in non-typical employment

All worker protection provisions apply to all workers, irrespective of the type of their employment contract (indefinite, fixed-term, temporary work).

In any case, the general regulations under the Worker Protection Act – ASchG – apply. In particular, employers (or user undertakings) are required to make arrangements to **inform** workers adequately on risks to health and safety as well as on measures for the prevention of risk (§ 12 ASchG). Arrangements must also be made for adequate **instruction** on health and safety protection (§ 14 ASchG).

The protective measures of the ASchG, which require fitness and follow-up examinations, also apply to monitoring the health of temporary workers or workers on fixed-term contracts.

The following detailed provisions apply to temporary workers and the temporary work agency has the following obligations:

User undertakings are in any case required to inform temporary work agencies of the fitness requirements for the work and for granting them the necessary access to the health and safety documents. Temporary work agencies are required to inform workers before they are hired out of the dangers to which they may be exposed in the work that they are to perform, on the fitness requirements for the job or activity as well as on the necessity of fitness and follow-up examinations (§ 9 (3) 1 and 3 ASchG). Records of fitness and follow-up examinations must be kept by the temporary work agencies (§ 9 (5 ASchG).

Workers may be hired out for activities for which fitness and follow-up examinations are required only if such examinations have been carried out and no ruling has been issued of unfitness on health grounds. User undertakings are required to give evidence that they have verified that the examinations have taken place and that no unfitness ruling has been issued.

Pursuant to § 6 (4) AÜG, temporary work agencies are required to terminate the hiring immediately as soon as they know or must know that user undertakings have not complied with worker protection or welfare obligations, despite a reminder.

Protection of self-employed persons:

The Worker Protection Act (AschG) and the Orders issued under that Act require the employer to protect the life and health of workers, i.e. employees working in the establishment.

Pursuant to § 2 of the Worker Protection Act, workers within the meaning of the Act are all persons in all types of establishments subject to the Act who are working under an employment or training contract.

In this context, it is immaterial whether the employment is based on a work contract or other contract.

The worker must be in a de facto working relationship in which the legal basis was generated by the fact of integration, even if the employment is exercised without a valid contract.

Accordingly, apprentices, volunteers and trainees or family workers (family members) are classified as workers.

The only exceptions are home workers within the meaning of the Home Work Act 1960, BGBl. No. 105/1961. Appropriate protective provisions for home workers are contained in the Home Work Act and in Orders issued under that Act.

With regard to safe working conditions, self-employed persons are subject in Austria to the following regulations:

- Employers working in establishments or on building sites must conduct themselves in accordance with § 3 (5) AschG in such a way that they do not endanger the employees working there.
- An operating licence is necessary in establishments in which tradesmen, i.e. self-employed persons, may be endangered. Pursuant § 74 (2) 1 of the Industrial Code, a plant may not be constructed and operated without the approval of the authorities if it is capable by reason of the use of machines and equipment, its installations or for other reasons of endangering the life or health of the tradesmen. This licence lays down the safety arrangements necessary to avoid danger to the tradesman himself, neighbours or customers that might arise owing to the installations, the machines and equipment used or the method of work.
- If workers are also employed, the Trades Authority must take into account the requirements of worker protection in proceedings under the Industrial Code. The authority then also examines whether a project submitted meets worker protection requirements and whether further requirements and arrangements are necessary for the health and safety of the workers.
- Even after award of the licence, the Trades Authority must prescribe the necessary additional requirements according to the state of the art and scientific knowledge. In this regard, reference is made to the detailed presentation in the Twentieth Report.

The following regulations apply to the protection of third parties working alongside self-employed persons:

- If workers employed at workplaces are not under contract to the employer, the employer responsible for the workplace is required to make arrangements for their protection (§ 8 AschG, Coordination).

- In work at construction sites, self-employed persons are required to conduct themselves in accordance with the general principles of danger prevention pursuant to § 7 AschG, as well as to observe health and safety precautions.

- Under the Construction Work Coordination Act (BauKG), a construction site coordinator must be appointed, who must organise cooperation and coordination between the employers in activities for the protection of the workers and for the prevention of accidents and occupational dangers to health, also covering the self-employed persons working at the site (§ 5(3) 1 (BauKG). If dangers to health and safety are detected by workers, they must immediately inform the client, the project management and the employers and any self-employed persons who may be working at the site (§ 5 (4) BauKG). Pursuant to § 6 (4) 7 BauKG, advance notice must also include data on the number of enterprises and self-employed persons working at the site. Pursuant § 7 (7) BauKG, the client must ensure that the employers concerned, their prevention experts and workers as well as the self-employed persons working on the site have access to the health and safety protection plan.

Comments of the Austrian Representative Organisations

In summer 2002, the draft of a recommendation by the Council of the European Union on the improvement of the health and safety protection of self-employed workers was circulated to the Austrian bodies representing self-employed workers. As a reaction, the unanimous opinion was expressed that current regulations in Austria were adequate. An expansion of the current legal provisions for the protection of workers and self-employed workers was decidedly rejected.

Article 3 paragraph 2

Ad A:

Reference is made to the previous detailed presentation.

Monitoring of establishments by the General Labour Inspectorate:

Number of workplaces, building sites and external work places inspected.

In the period 2001-2004, the number of workplaces inspected (including Federal establishments) and of external workplaces as well as building sites rose slightly from 59,824 to 62,503. At the same time, the number of support and advisory interviews, which are becoming more and more important in the work of the Labour Inspectorate, rose from 27,309 to 30,331. Those inspections did not cover workplaces subject to supervision by the Agricultural and Forestry Inspectorates and the Transport Labour Inspectorate, employees in the administrative offices of the Provinces and local authority associations, the educational and scholastic institutions of the Provinces and local authorities, the religious institutions of the legally recognised churches and religious communities and domestic servants employed in private households.

Year	Workplaces inspected	External workplaces (Building) sites inspected	Total
2001	45,451	14,373	59,824
2002	46,086	13,327	59,413
2003	48,376	15,316	63,692
2004	47,924	14,579	62,503

Number of inspection visits 2001 to 2004

In the period 2001 to 2004 the number of inspection visits or inspections rose sharply from 100,373 to 115,250, chiefly because of the survey concerning the risk classification of workplaces, which was carried out for the first time in 2003 (2003: 17,668, 2004: 14,644). The survey was necessary in order to update the Labour Inspectorate statistics on establishments with special danger to health and safety,

because such establishments, irrespective of their size, must be inspected at least once per year and updated statistics are necessary for that purpose.

Year	Inspections in establishments	Inspections in external work (building) sites	Total[*)]
2001	79,221	21,152	100,373
2002	79,768	18,969	98,737
2003	93,829	23,982	117,811
2004	92,193	23,057	115,250

[*)] not including external inspections.

Proportion of workers covered

The number of workers covered by visits or inspections in workplaces and external work (building) sites rose, as shown in the following table, from 1,155,818 to 1,202,165 in the period 2001 to 2004. At the same time the proportion of workers covered by inspections in workplaces rose marginally from 42.6% to 42.8%.

Year	Workers covered by inspections in: Workplaces	External work (building) sites	Total	Percentage of workers covered by inspections in workplaces
2001	1,088,320	67,498	1,155,818	42.6
2002	1,100,453	64,440	1,164,893	42.5
2003	1,139,437	71,289	1,210,726	43.7
2004	1,132,999	69,166	1,202,165	42.8

Total number of enterprises inspected

In 2004 the total number of workplaces inspected (including Federal establishments) and external workplaces and building sites was 62,503.

Monitoring of Establishments by the Traffic Labour Inspectorate:

Number of inspections carried out and number of establishments and workplaces monitored, broken down by branch of activity								
Enterprises/ transport establishments	**Number of inspections carried out**				**Number of establishments and workplaces inspected**			
	2001	**2002**	**2003**	**2004**	**2001**	**2002**	**2003**	**2004**
Main and branch lines	555	535	510	537	220	268	134	120
Tramways	2	1	1	2	2	1	1	1
Cableways	97	84	91	74	97	82	91	73
Non-public railways	60	62	60	34	53	55	55	29
Sleeping and dining car enterprises	4	0	5	6	2	0	1	0
Post	139	159	193	162	130	145	184	150
Telecommunication	116	110	85	103	108	99	73	89
Shipping	105	101	87	72	12	5	5	7
Airlines	69	69	60	60	46	50	43	49
TOTAL (all transport enterprises)	**1,147**	**1,121**	**1,092**	**1,050**	**670**	**705**	**587**	**518**

Number of workers covered in inspections					
Year	Total number of workers covered in inspections	male		female	
		Adults	Juveniles	Adults	Juveniles
2001	30,100	24,177	29	5,890	4
2002	39,303	32,814	63	6,413	13
2003	37,792	31,864	147	5,765	16
2004	41,574	33,629	759	7,152	34

Total number of enterprises subject to inspection:

Breakdown of establishments/workplaces registered with the Transport Labour Inspectorate:

Number of workers	Number of works/workplaces			
	2001	2002	2003	2004
0 to 5	7,426	6,550	6,584	6,219
6 to 10	1,861	1,808	1,600	1,361
11 to 50	1,500	1,669	1,605	1,363
51 to 100	243	231	232	223
101 to 150	91	92	92	81
151 to 250	81	77	69	74
over 250	91	77	72	84
Total	11,293	10,504	10,254	9,405

Monitoring of agricultural and forestry establishments by the Agricultural and Forestry Inspectorates:

In the area of the Agricultural and Forestry Inspectorates attached to the Offices of the Provincial Governments, 10,052 establishments were inspected in the years 2001 to 2004 by an average of 18 inspectors, who, however were also employed on other tasks.

Year	Inspectors, absolute	Inspectors (full-time equivalent)	Works and external work sites inspected
2001	19	(not available)	3,059
2002	17	_ " _	2,707
2003	17	13	2,195
2004	18	14	2,091

In the period 2001 to 2004 the number of inspections declined from 4,281 to 2,611. That was mainly because inspectors had to perform a considerable volume of EU-related tasks as well as to formulate legal provisions, since there is no "central authority"; on the other hand, the number of advisory interviews increased, particularly with regard to evaluation.

Year	Inspection of workplaces
2001	4,281
2002	3,201
2003	2,948
2004	2,611

Ad B:

Monitoring of establishments by the General Labour Inspectorate:

Number of violations

The following table shows that the number of violations or infringements rose from 74,329 to 83,047 in the period 2001 to 2004.

Year	Infringements[*)]
2001	74,329
2002	73,209
2003	83,190
2004	83,047

[*)] Not including checks on drivers

Sectors in which violations were noted

In the period 2001 to 2004, most violations or infringements occurred in the following economic branches

	2001	2002	2003	2004
Sales, maintenance and repair of auto-mobiles and consumer durables	17,946	18,158	16,572	16,984
Construction	15,287	14,748	18,781	18,213
Hotel and catering trade	12,156	11,575	12,096	12,007

The decline in infringements in the sector of sales, maintenance and repair of automobiles and consumer durables was accompanied by slight increases in the building sector.

Action

In addition to advisory interviews for the elimination of abuses, which have priority, establishments were called upon in writing to correct those abuses; if necessary, reports were made to the administrative authorities. In parallel with the number of infringements, the number of written instructions and cases reported rose as follows:

Year	Instructions	Cases reported
2001	21,641	1,443
2002	21,884	2,008
2003	22,010	1,505
2004	22,132	1,814

Monitoring of establishments by the Transport Labour Inspectorate

Enterprises/transport undertakings	Infringements reported			
	2001	2002	2003	2004
Main and branch railway lines	986	980	845	945
Tramways	3	0	3	6
Cableways	770	485	961	608
Non-public railway lines	90	132	76	71
Sleeping and dining car enterprises	6	0	10	12
Post	300	305	451	381
Telecommunications	565	658	664	673
Shipping	55	34	71	56
Airlines	233	256	181	162
TOTAL (all transport sectors)	3,008	2,850	3,262	2,914

Action taken in this context, including legal action:

	2001	2002	2003	2004
Instructions	500	367	341	283
Offences reported	2	9	10	6

Monitoring of agricultural and forestry establishments by the Agricultural and Forestry Inspectorate:

In the period 2001 to 2004, 30,923 infringements were detected. 7,987 agricultural and forestry establishments were instructed in writing and in a few cases by word of mouth to take remedial action and, if necessary, offences were reported (19 cases).

Year	Infringements	Instructions	Offences reported
2001	9,303	2,893	6
2002	7,829	1,883	4
2003	6,761	1,565	6
2004	7,030	1,646	3

Ad C:

Monitoring of establishments by the General Labour Inspectorate

Work accidents and occupational diseases in general

In the period 2001 to 2004, the number of work accidents suffered by gainfully employed persons (not including accidents on the way to work) and recognised by the AUVA rose from 103,065 to 103,487. The number of fatal work accidents also rose slightly from 121 to 132, which is, however, within the normal statistical range, in view of the low absolute number of fatal work accidents.

On the other hand, the number of cases of occupational diseases recognised by AUVA decreased from 1,219 to 1,100. A detailed breakdown of work accidents by economic branches and of disease definitions is given in Tables 2 (work accidents) and 3 (occupational diseases), **Annex 1**.

Preventive action in the construction sector

Many different priority programmes were set up by the Labour Inspectorate in the reporting period in order to combat the occurrence of work accidents and occupational diseases. Every year other priorities were also set in the particularly dangerous area of construction work.

For example, in 2001 inspections were carried out throughout Austria to establish the extent of compliance with the provisions of the Construction Work Coordination Act (BauKG) and the Construction Workers Protection Order (BauV). 1,281 construction sites were visited; in 30% of the cases, the necessary safety devices for preventing falls were not installed.

As the result of a fatal work accident with a rack-and-pinion hoist, all construction enterprises, including their subsidiaries and branches, were informed about the matter in 2002 and were inspected after the end of the reporting period. Of 129 building hoists affected, 105 had been modified but work with 24 building hoists was

prohibited until modifications had been made. The workers received training and working instructions.

In 2002, a priority programme monitored action taken to protect workers against dangers from passing traffic in road construction work and the extent of compliance with the provisions of the Construction Work Coordination Act (BauKG) and the Construction Workers Protection Order.

A priority programme was conducted in 2003 to avoid the danger of falls, in which it was examined whether the danger of falling had been correctly understood and what protective action and precautions had been taken. In addition, it was examined whether equipment and machines had been correctly selected, used and maintained and what action had been taken to comply with coordination requirements.

The "2000-2005 Bakeries Health and Safety Protection Project"

This five-year campaign was carried out in partnership with representatives of the employers (Federal Bakers' Guild, Austrian Economic Chamber), representatives of the workers and the AUVA.

The campaign was divided into three successive phases

- First phase: Coordination and cooperation, intensive information, enterprise and inter-enterprise counselling of bakers (November 2000-June2002)
- Second phase: Further counselling and verification (January 2003-July 2004)
- Third phase: Further counselling and follow-up inspection (August 2004-November 2005)

All three phases were accompanied by intensive cooperation and training of the 32 labour inspectors involved. Tools were developed and emerging questions solved in cooperation with the guild or the General Accident Insurance Institute.

The basis for the campaign was provided by a **catalogue of basic requirements** agreed with the Federal Bakers' Guild (determination of the most important technical and organisational requirements for the reduction of mill dust). This tool enables employers and workers to recognise what action has to be taken in order to reach the target of "low mill-dust baking". The definition of this basic requirement has helped bakeries to identify sectors in which action is necessary and also to identify and assess risks (evaluation).

By 31 July 2004, a total of 2,162 person-to-person advisory sessions had been held throughout Austria. The inspections carried out led to the issue of 6,803 written instructions. The most frequently noted deficiencies were in working processes (dumping flour on the table and dust from sieving), followed by defective cleaning of machines, working surfaces and floors.

The third and final phase of the campaign, (follow-up inspection) began in August 2004. This third phase of the campaign concentrated on follow-up inspection of the bakeries that had received a written complaint in the second phase. The main defects were handling of flour, cleaning of machinery and silo permits. In addition,

intensive advisory work was continued, while intensified cooperation with prevention officers and their training were also important activities.

Evaluation of the third phase showed that the number of bakeries which received a further written complaint from the Labour Inspectorate fell from 758 in the second phase to 373; the total number of complaints was only 1,378.

In September 2005, the results of the campaign were presented at the Bakery and Confectionery Trade Fair in Wels, which takes place every two years, and bakeries that had received the "Good Practice" rating from the Labour Inspectorate were introduced. A film illustrating "Good Practice" was produced by the project team and is intended to lead by example.

This five-year Labour Inspectorate project will certainly make a long-term contribution to reducing the incidence of "baker's asthma". All bakeries in Austria have now been informed of the basic requirement and information on preventive action has been disseminated. The technical equipment of bakeries has improved and major changes in practices have taken place (e.g. in sifting instead of tipping flour, cleaning and maintenance standards). The Labour Inspectorate is now regarded in this branch as a competent advisory and inspection authority that applies consistent standards.

Priority programme in nursing homes in 2004

A priority programme on compliance with worker protection provisions in old people's and nursing homes in Austria was carried out and concluded by the Labour Inspectorates in 2004. In all, 348 homes (operated by local authorities and private institutions) with 23,027 employees (82% women) were visited throughout Austria by 77 labour inspectors (30 women, 47 men).

Through this nation-wide priority programme to monitor compliance with worker protection provisions, working conditions and gender-specific data were collected in this sector, most of whose employees are women. The particular target of the priority programme was to raise awareness of the specific risks and stress of "nursing occupations" and to provide appropriate information. For example, in addition to conducting surveys on workplace layout, the existence of health and safety documentation and the presence of prevention experts, the inspectors monitored the handling of biological working materials (including skin protection), the type of lifting devices used and the extent of their use as well as the existence of information as well as basic and advanced training on manual loads handling and on psychosocial stress for the staff.

The priority programme received ongoing support from the Gender-Mainstreaming Project Group within the Labour Inspectorate with the aim of taking gender aspects more systematically into account in Labour Inspectorate projects, particularly in risk prevention, in accordance with the EU Community Strategy on Health and Safety at Work 2002-2006.

2,246 infringements were noted in the area of employment restrictions (e.g. 221 in the identification of risks under the Maternity Protection Act) and in the area of technical, occupational medicine and work hygiene protection (e.g. 2,013 structural

deficiencies such as in communication routes, escape routes, staircases but also deficiencies with regard to health and safety documentation and the appointment of prevention experts). In 235 cases, instructions were issued to correct the situation in accordance with worker protection regulations under the Labour Inspectorate Act 1993 (ArbIG).

The most frequent deficiencies in the layout of workplaces were found in laundries, kitchens and ironing rooms. Most of the evaluation details identified were related to stress through exposure to working materials (unhealthy and biological working materials), skin protection and psychosocial stress.

This priority programme is intended to improve the prevention of skin diseases, diseases of the skeleto-muscular system and psychic disorders.

This priority programme is to be repeated in 2006.

Monitoring of establishments by the Traffic Labour Inspectorate

Statistics on **work accidents**:

A C C I D E N T S (2001-2004) broken down by transport sectors *)

Transport operations	Accidents 2001	thereof fatal	Accidents 2002	thereof fatal	Accidents 2003	thereof fatal		thereof fatal
Railways	3,011	11	2,360	10	2,672	9	2,591	5
Private railways	100	0	108	0	90	0	106	0
Tramways	579	0	412	0	354	0	386	0
Cableways	526	0	457	2	542	0	544	0
Post and Telecommunications	1,283	3	931	1	892	1	824	0
Shipping	32	1	23	0	18	0	8	0
Airlines	268	1	272	2	255	1	290	2
T O T A L	5,799	16	4,563	15	4,823	11	4,749	7

*) The figures represent the number of accident reports transmitted to the Transport Labour Inspectorate but do not indicate the number of work accidents actually recognised by the social insurance institutions.

Statistics of occupational diseases (broken down by transport branches/enterprises):

Transport branch/ enterpr	Medical reports of occupational diseases received in **2001**							
	TOTAL	**19**	**20**	**26**	**33**	**41**	**52**	**99**
Main- and branch lines	**39**	7	1	0	26	2	1	2
Private railways	**2**	0	0	0	2	0	0	0
Tramways	**4**	0	0	0	4	0	0	0
Cableways	**1**	0	0	0	1	0	0	0
Österr. Post AG, Telekom AG	**6**	2	0	2	1	1	0	0
Airlines	**2**	0	0	0	2	0	0	0
TOTAL (all trans-port sectors)	54	9	1	2	36	3	1	2

Transport branch/ enterprise	Medical reports of occupational diseases received in 2002						
	TOTAL	**19**	**26**	**27b**	**30**	**33**	**99**
Main- and branch lines	**32**	3	1	0	1	27	0
Private railways	**1**	0	0	0	0	1	0
Tramways	**1**	0	0	0	0	0	1
Cableways	**0**	0	0	0	0	0	0
Österr. Post AG, Telekom AG	**4**	2	1	0	0	1	0
Airlines	**1**	0	0	1	0	0	0
TOTAL (all transport sectors)	**39**	**5**	**2**	**1**	**1**	**29**	**1**

Transport branch/ enterprise	Medical reports of occupational diseases received in **2003**								
	TOTAL	**1**	**19**	**27a**	**30**	**33**	**38**	**52**	**99**
Main- and branch lines	**43**	**5**	**3**	**1**	**1**	**30**	**1**	**1**	**1**
Private railways	**1**	**0**	**0**	**0**	**0**	**1**	**0**	**0**	**0**
Tramways	**0**	**0**	**0**	**0**	**0**	**0**	**0**	**0**	**0**
Cableways	**0**	**0**	**0**	**0**	**0**	**0**	**0**	**0**	**0**
Österr. Post AG	**3**	**0**	**0**	**0**	**1**	**2**	**0**	**0**	**0**
Telekom	**0**	**0**	**0**	**0**	**0**	**0**	**0**	**0**	**0**
Airlines	**1**	**0**	**0**	**0**	**0**	**1**	**0**	**0**	**0**
TOTAL (all transport sectors)	**48**	**5**	**3**	**1**	**2**	**34**	**1**	**1**	**1**

Transport branch/ enterprise	Medical reports of occupational diseases received in **2004**							
	TOTAL	**19**	**20**	**22**	**30**	**33**	**41**	**99**
Main- and branch lines	**30**	**3**	**1**	**1**	**1**	**21**	**2**	**1**
Cableways	**2**	**0**	**0**	**0**	**0**	**2**	**0**	**0**
Private railways	**1**	**0**	**0**	**0**	**0**	**1**	**0**	**0**
Tramways	**1**	**0**	**0**	**0**	**0**	**1**	**0**	**0**
Post	**2**	**0**	**0**	**0**	**0**	**0**	**1**	**1**
Telekom	**1**	**0**	**0**	**0**	**0**	**1**	**0**	**0**
TOTAL (all transport sectors)	**37**	**3**	**1**	**1**	**1**	**26**	**3**	**2**

Code numbers according to list of occupational diseases

1	Diseases caused by lead and lead alloys or compounds
19	Skin diseases
20	Diseases caused by vibration in working with pneumatic tools and similar tools and machines
21	Pressure paralysis of nerves
26	Pneumoconiosis with objectively established decrease in vitality of respiration or circulation
27a	Asbestosis with objectively established decrease in vitality of respiration or circulation
27b	Malignant neoplasms of the larynx, lungs, pleura and peritoneum caused by asbestos
30	Asthma bronchiale caused by allergenic substances, if and so long as they compel the cessation of harmful activities
33	Noise-induced hearing impairment
38	Infectious diseases
41	Disorders of the lower respiratory tract or lungs caused by chemical irritants or toxic substances, with objective decrease in vitality of respiration or circulation
52	Polyneuropathy or encephalopathy caused by organic solvents or mixtures thereof in the event of regular exposure of substantial duration and extent
99	Pursuant to § 177 (2) ASVG

The progress reports of the Traffic Labour Inspectorate can be accessed under www.bmvit.gv.at/vai.

Monitoring of agricultural and forestry operations by the Agricultural and Forestry Inspectorates:

Year	Family workers			Employees	
	Work accidents	Occupational diseases	thereof fatal	Work accidents	thereof fatal
2001	6,031	93	65	1,617	7
2002	6,428	88	80	1,608	18
2003	5,934	122	76	1,935	16
2004	5,475	107	74	1,822	18

Article 3 paragraph 3

The previous presentation should be updated as follows:

Activities of the Worker Protection Advisory Board pursuant to § 91 of the Worker Protection Act in the reporting period 1 January 2001 to 31 December 2004:

1 January 2001 – 31 December 2002

Four plenary meetings of the Worker Protection Advisory Board took place in 2001 and 2002. The reform of worker protection in Austria was discussed; among other things a checklist for the work of the safety experts and works doctors was presented as an alternative to the system of minimum service periods. The accident insurance institution was informed about the organisation and activities of the prevention centres at all meetings.

1 January 2001 – 31 December 2004

Two plenary meetings of the Worker's Protection Advisory Board held in 1999 and 2000 were devoted to information concerning the organisation and activities of the prevention centres of the accident insurance institutions.

One plenary was entirely devoted to the subject of chemical working substances and dust. In the case of dust, the changeover from annual averages to daily averages was proposed, as well as a general change of the current short-time values, by analogy with the German system. It was proposed to adopt the German limit values for dust, bitumen, hydrocarbons and automobile fuels and to classify quartz dust as carcinogenic.

In the agricultural and forestry sector there is no organ analogous to the Workers Protection Commission. However, the amendment to the Agricultural Labour Act, BGBl I No. 160/2004, introduced provisions regarding cooperation on obligatory negotiations with the representative bodies. The implementing legislation can provide that the Agricultural and Forestry Inspectorate is required to hold discussions with the

employers' and workers' representative bodies at least twice yearly for the purpose of cooperation. Representatives of the accident insurance institutions as well as the authorities responsible for worker protection matters can be co-opted to participate in these discussions.

In a number of Provinces these provisions were promulgated before the above-mentioned Agricultural Labour Act amendment, for example in Burgenland with the amendment to the Agricultural Labour Order in LBGl. No. 28 2002.

As experience in the provinces shows, the implementation of these provisions can make a substantial contribute to promoting health and safety and improved working conditions, in the interests of both employees and employers.

In addition, the employers' and employees' representative bodies are given the opportunity of commenting on health and safety regulations in the agricultural and forestry sector before they are promulgated. It is also the duty of Works councils to monitor the implementation of and compliance with worker protection regulations.

Reply to the supplementary questions of the Committee of Social Rights in Conclusions XVI-2 on Article 3 paragraph 3:

Civil Service:

Pursuant to § 2 (1) of the Federal Staff Representation Act, BGBl No. 133/1967, it is the duty of the statutory staff representative body to represent the professional, economic, social, cultural and health interests of the employees. In § 9 (4) a of that Act, and on the basis of the duties outlined in its § 2, the departmental committees are in particular called upon to make suggestions and proposals with the aim of promoting the smooth operation of the service for the general benefit and in the interests of the employees as well as to collaborate pursuant to § 9 (1) a in the implementation and monitoring of compliance with regulations and instructions concerning employee protection and social insurance, and if necessary to make representations to the competent supervisory authority in such matters.

If no agreement is reached between the departmental committee and the competent supervisor, the matter must be referred to the competent next higher level of the hierarchy, in which an expert committee competent in the matter is set up. If no agreement is achieved between the competent supervisor and the relevant expert committee, the ultimate decision lies with the competent Federal Minister (§ 10). The most important provisions of the Worker Protection Act were taken over for employees in government departments by

- The Federal Employees Protection Act, BGBl I No. 70/1999 as amended by BGBl I 131/203,
- The Federal Government Order on the assignment of departments and parts of departments to risk classes, (Risk Classes Order) BGBL II No. 239/2002,
- The Federal Government Safety Officers Order (B-SVP-VO) BGBl II No. 14/2000,

- The Federal Government Order on Health Monitoring at the Workplace (B-VGÜ) BGBl. II No. 15/2000,
- The Federal Workplaces Order – B-AStV, BGBl II No. 352/2002,
- The Federal Government Order on the Protection of Federal Employees in the use of working equipment (Federal Working Equipment Order – B-AM-VO), BGBl. II No. 164/2000, as amended by Order in BGBl. II No. 313/2002 and
- The Limit Values Order 2001 – GKV 2001, (BGBl. II No. 253/2001)

By analogy with the provisions of the Workers Protection Act, the Federal Employees Protection Act (§ 84 B-BSG), BGBl. I No. 70/1999, provides that a health and safety committee must be set up in departments in which than more than 100 persons are regularly employed. In the case of departments with a low risk potential, this requirement applies only as from 250 employees.

The health and safety committee is required to ensure mutual information, exchange of experience and the coordination of health and safety facilities in the area of work of the department and to promote the improvement of health, safety and working conditions. All matters of safety, health protection and health promotion related to humane working conditions must be discussed, in particular the reports and proposals of the safety officers and the works doctors. The Work Protection Committee includes the department supervisor, the prevention experts and the staff representatives.

ARTICLE 4
THE RIGHT TO A FAIR REMUNERATION

Article 4 paragraph 1

Ad A to C:

No relevant changes

Ad D:

Taking into account **the negative conclusions of the Committee of Social Rights in its Conclusions XVI-2 on Article 4 paragraph 1,** Question D is answered as follows:

Different statistics are available on net wages: on the basis of national accounts (see **Annex 2** *BruttoNettoMonatseinkommen_VGR2004.xls),* the average monthly income was €1,710.00 in 2003. The average values were calculated for full-time equivalents and correspond to 1/12 of annual wages. For comparability with monthly wages/salaries under collective agreements, the annual values would have to be divided by 14 (because of the special payments), resulting in a reference value for the net monthly income per full-time worker of €1,465.71 in 2003. 50% of that value equals €732.85 (net) or approximately €902.00 (gross), i.e. before deduction of the 18% social insurance contributions. Wage tax is payable only as from a monthly income of €925.00.

However, the national accounts data include two components (severance pay and untaxed gratuities) that ought properly to be excluded for purposes of comparison. These two components are estimated to amount to 4% of total wages and salaries (3% severance pay, 1% gratuities), so that the values calculated above are reduced to €703.00 (net) or €858.00 (gross) for 2003.

More detailed information on the distribution of net incomes (though not on a full-time basis) is provided by the income report prepared every two years by STATISTIK AUSTRIA on the instructions of Court of Auditors. The most recent income report for 2004 contains a presentation by deciles (see **Annex 2** *Nettojahreseinkommen2002-2003.pdf)*. The last column (blue-collar/white-collar workers) does not include apprentices, marginal part-timers and civil servants. The arithmetic mean of net annual incomes was €17,083.00 in 2003. That value should be divided by 14 to arrive at the average net monthly income of €1,220.00. 50% of that reference value equals €610.00.

However, it seems justified to take the median income as a basis rather than the arithmetic mean, since the median excludes particularly high incomes. Unlike the arithmetic mean, the median does not react to a small number of top earners.

Taking the median income as a basis, the resultant value for 2003 is €15,740.00, which, when divided by 14 in order to take the special payments into account, gives a net monthly wage of €1,124.00. 50% of that equals €562.00 net.

Different results again are obtained on the basis of wage tax statistics (see Annex *Lst 2003_01.jpg*): The average net annual wage per worker according to the 2003 wage tax statistics was €16,745.00, corresponding to €1,196.00 per month. 50% of that amount equals €598.00.

Overall, the net income of about 1 million persons (out of a total of 3.7 million) was below that value (see **Annex 2** *Einkommen2003_Arbeitnehmer.pdf*).

However, the low-income sector is strongly influenced by marginal part-timers, apprentices, part-time workers and persons not employed all year round.

Depending on which statistics are taken as a basis, very different comparative values result, ranging from €562.00 to €703.00.

If these values are compared with those in the list of branches with minimum wages below €1,000.00 prepared by the trade unions (see **Annex 2** *branchenunter1000.pdf*), wages below the lowest comparable value are paid "only" to skiing instructors and newspaper sellers. Both of these branches are typical of employment for less than a year or as a second job.

Wages in agriculture and forestry:

According to the calculations of the Congress of Austrian Chambers of Agricultural Labour (see **Annex 3**), the average net monthly wage (not including the sole earners' tax credit) was €907.04 in 2003 and €943.45 in 2004.

Article 4 paragraph 2

Ad A and B:

No relevant changes.

Article 4 paragraph 3

Ad A and B:

The previous presentation should be updated as follows:

Equal Treatment Law in Austria was amended with effect from 1 July 2004. The chief purpose of the new equal treatment law is to implement the two Anti-Discrimination Directives issued pursuant to Article 13 of the EC Treaty, namely, Council Directive 2000/43/EC implementing the principle of equal treatment between persons

irrespective of racial or ethnic origin (Anti-Racism Directive) and Council Directive 2000/78/EC establishing a general framework for equal treatment in employment and occupation (Framework Equal Treatment Directive), which prohibits discrimination based on religion or belief, disability, age or sexual orientation, as well as Directive 2002/73/EC of the European Parliament and of the Council, amending Council Directive 76/207/EEC on the implementation of the principle of equal treatment for men and women as regards access to employment, vocational training and promotion, and working conditions (Equal Treatment Directive).

In addition to the areas of occupation and employment, the Anti-Racism Directive also covers the areas of social protection, social advantages, education and the access to and supply of goods and services; the Framework Equal Treatment Directive and the amended Equal Treatment Directive cover only the area of employment and occupation. All Directives apply to both the private and the public sectors.

The Directives were mainly implemented by the Federal Act promulgating a Federal Act on Equal Treatment (Equal Treatment Act – GlBG) and amending the Federal Act on the Equal Treatment of Women and Men in Labour Matters (BGBl I No. 66/2004). The previous Equal Treatment Act was renamed the Federal Act on the Equal Treatment Commission and the Office of the Equal Treatment Ombudsman – GBK/GAW Act – and was so amended that it now regulates the institutions (Equal Treatment Commission and the Office of the Equal Treatment Ombudsman) as well as procedure. The new Equal Treatment Act-GlBG incorporates the substantive provisions of the previous Equal Treatment Act and has been expanded to include the regulations resulting from the requirement to implement the Directives.

Exceptions to the scope of the Act are the offence of discrimination based on disability – because that was to be implemented in a special Act on the Equal Status of the Disabled (which has meanwhile taken place through the Federal Act on the Equal Status of the Disabled, BGStG, BGBl. I No. 82/2005) – the area of Federal Civil Service Regulations, which is provided for in the Federal Equal Treatment Act, BGBl. I No. 65/2004, and matters that fall within the competence of the Provinces.

The Equal Treatment Act contains the following <u>focal points:</u>

No one may henceforth be discriminated against directly or indirectly on the basis of gender, ethnic origin, religion or belief, age or sexual orientation in connection with a work contract, in particular

- On the establishment of the work contract,
- In the determination of remuneration,
- In the grant of voluntary social benefits that do not constitute remuneration,
- In basic and further training and retraining,
- In career development, particularly in promotions,
- In other working conditions,
- On termination of the work contract,

nor in other matters related to work, namely,

- In access to vocational guidance, vocational training, vocational further training and retraining outside of a work contract,
- In participation in an organisation of employees or employers,
- In conditions for access to independent gainful activity.

The Act covers not only employees but also home workers and persons with a similar status to employees.

Furthermore, no one may be directly or indirectly discriminated against on the basis of ethnic origin in other areas, namely,

- In social protection, including social security and health services,
- In social advantages,
- In education,
- In the access to and supply of goods and services available to the public, including housing.

In addition to the prohibition of sexual harassment contained in the previous Equal Treatment Act, gender-related harassment and harassment based on one of the forms of discrimination listed above will also henceforth be regarded as discrimination.

In addition, new regulations were introduced with regard to damages for infringement of the equal treatment requirement. The Equal Treatment Act provides for the following sanctions for all forms of discrimination:

- Restitution of pecuniary loss, i.e. positive damage and loss of profits or
- Restoration of the non-discriminatory situation and – in both cases – in addition
- Restitution in respect of incorporeal damage for the personal impairment suffered.

Also, the requirement of non-discriminatory advertising of posts has been introduced with regard to the new discrimination offences, accompanied by administrative sanctions.

A further innovation is the inclusion of a requirement for the active equal treatment of men and women, expressed as a target. That target must be taken into account in the drafting and implementation of legal and administrative regulations, policies and activities. In addition, positive action can be taken in all the areas of discrimination listed in the Act.

As a measure to reinforce protection against discrimination, a new prohibition of discrimination has been introduced, covering not only the employee lodging the complaint but also other employees as witnesses or colleagues supporting the complaint.

The task of the existing Equal Treatment Commission, which has so far been competent regarding equal treatment of the sexes, has been expanded to include all the discrimination offences listed above. The Equal Treatment Commission must therefore also deal with all questions related to discrimination, including those related to the new discrimination offences, and can in particular draft expert opinions and conduct individual investigations. However, it cannot receive claims for damages or performance, for which only the court is competent. The decisions of the Equal Treatment Commission are not binding. Infringements of the equal treatment requirement can also be asserted directly before the courts, and application can be made to the Equal Treatment Commission and the court independently of one another. With the new Equal Treatment Act, a provision was introduced according to which the court must deal with an expert opinion or the result of an investigation by the Equal Treatment Commission. If the court differs, it is required to state grounds.

The tasks of the Equal Treatment Ombudsman's Office, which is competent for the counselling and support of persons believing themselves to be discriminated against, have been expanded in an analogous manner.

Participation in proceedings before the Equal Treatment Commission by non-governmental organisations that consider themselves as representing the interests of certain groups affected by discrimination is regulated as follows:

- on the one hand, a person affected by discrimination can be represented by a representative of such a non-governmental organisation in the proceedings and
- on the other hand, the person affected can apply for the co-option of a representative of such a non-governmental organisation as a technical expert in the proceedings.

Provision is made for the involvement of non-governmental organisations in the court proceedings in the form of third-party intervention. An intervening party is a person who, without being a party to the proceedings, participates in support of one party in a legal dispute between other persons. The rule provides that the joinder of parties can participate in the court proceedings as an intervening party in support of victims of discrimination in order to assert the latter's rights.

The new law on equal treatment entered into force on 1 July 2004.

The new Equal Treatment Act-GlBG and the GBK/GAW Act are attached under:

http://www.bmwa.gv.at/BMWA/Themen/Arbeitsrecht/Arbeitsrecht/Gesetzestexte/default.htm

In the Federal sector, the three most recent EU Equal Treatment Directives have been implemented through the amendment to the Federal Equal Treatment Act, BGBl. I No. 65/2004, which entered into force with effect from 1 July 2004.

The following action has been taken:

- Expansion of the discrimination offences so far contained in the Federal Equal Treatment Act to adjust to the amended EU Equal Treatment Directive and the Anti-Discrimination Directives pursuant to Article 13 of the EC Treaty, with the exception of the offence of discrimination on grounds of disability;
- Extension of the scope to persons having freelance contracts with the Federal authorities;
- Inclusion of the express definition of the concepts of direct and indirect discrimination;
- Introduction of the discrimination offence of gender-related harassment as well as harassment on the basis of a discrimination offence under the two Anti-Discrimination Directives and relaxation of the burden of proof in all such forms of harassment;
- Inclusion of the target of the active equal status of men and women;
- Adaptation of measures for the enforcement of the law including regulations on damages to the amended EU Equal Treatment Directive and the two Anti-Discrimination Directives.

Progress report of the Federal Equal Treatment Commission 2002 and 2004:

The Federal Equal Treatment Commission is required to deal with all questions related to the equal treatment of men and women, the advancement of women and equal treatment irrespective of ethnic origin, religion or belief, age or sexual orientation in the Federal Service.

On application or ex officio, the senate in question must issue an expert opinion on whether there has been an infringement of the equal treatment requirement or a violation of the requirement of the advancement of women.

In the period 1 March 2000 – 1 March 2002, 25 applications were dealt with. In 20% of the cases, a violation of the equal treatment requirement or the requirement for the advancement of women was identified. In 16% of the cases, there was found to be no gender-related violation. In 8% of the cases, a violation in the form of sexual harassment was found. In 56% of the cases, an expert opinion was not issued for various reasons (settlement, non-competence, etc.).

In the period 1 March 2002 – 1 March 2004, 39 applications were dealt with. In 49% of the cases, a violation of the equal treatment requirement or the requirement for the advancement of women was identified. In 18% of the cases, there was found to be no gender related violation. In 3% of the cases, a violation in the form of sexual harassment was found. In 4% of the cases, it was impossible to exclude a violation of the equal treatment requirement. In 26 % of the cases an expert opinion was not issued for various reasons (settlement, non-competence, etc.).

As an example of the implementation of the EU Equal Treatment Directives in the sector of the Provinces, reference is made to the comments of the Vorarlberg Provincial Government.

The Act on the Prohibition of Discrimination (Anti Discrimination Act – ADG), LBGl. No. 17/2005, entered into force in June 2005. The Act applies inter alia to the civil service regulations and agricultural and forestry labour law.

The Act prohibits any form of discrimination, inter alia on the basis of gender. For example, under § 5 ADG, posts may not be advertised either publicly or internally in a discriminatory manner, and under § 6 ADG, regulations with a significant effect on emoluments and remuneration may not contain any discrimination and may not be applied in a discriminatory manner. In the event of a violation of the Anti Discrimination Act, the person affected is entitled to damages; furthermore, notices of dismissal or instances of summary dismissal in breach of the ADG are invalid. A person who was discriminated against in the grant of voluntary social benefits, basic or further training or other working conditions is entitled to claim the benefits withheld (§ 9(3) (4) ADG).

Damages for violation of the Anti Discrimination Act are regulated in §§ 7 ff. ADG, in which context § 9 ADG provides for minimum and maximum compensation rates.

A person is not recruited to a post owing to a violation of the ADG is entitled to damages of at least one month's remuneration if the person affected would have received the post, had the selection process been non-discriminatory, or a maximum of €500 if the employer can prove that the injury consisted solely of the refusal to consider that person's application.

In the event of discrimination in career development, damages amount to the difference in remuneration for three months if the employee would have been promoted, had the selection process been non-discriminatory, or a maximum of €500 if the employer can prove that the injury consisted solely of the refusal to consider that person's application.

In the assertion of claims, § 7 (3) ADG places a person discriminated against in a better procedural position. In the proceedings, that person need merely give credible evidence of discrimination, whereupon the opposing party must then prove that no discrimination took place.

In the Agricultural and Forestry sector no action was taken by the Equal Treatment Commission up to the entry into force of the ADG, i.e. the Commission was never convened. The provisions governing the Equal Treatment Commission were repealed and the relevant tasks were transferred to special anti-discrimination bodies that are competent with regard to various discrimination offences regulated by the ADG. To date, no cases are pending.

Current income data

The most important and comprehensive income data in Austria are based on administrative figures and contain no information on weekly or monthly working hours or hourly wages.

The General Income Report (most recently conducted for 2002 and 2003), which is prepared by Statistik Austria on the instructions of the Court of Auditors, contains inter alia a calculation of the incomes of persons in year-round full-time employment, the aim being to take working hours information into account to some extent. The results of the 2002 survey on the structure of wages and salaries (VESTE) contain inter alia hourly earnings. The survey is carried out in all EU Member States and contains information on enterprises with ten or more employees in major divisions C-K of the ÖNACE 1995 (Austrian Statistical Classification of Economic Activities); it thus covers the entire production sector as well as the services sector, with the exception of public administration, national defence and social insurance, and the education, health, veterinary and social sectors.

Reference is made to the EU structural indicator: “Gender-specific wage differential”.

The General Income Report reveals the following inter alia (see Table 1 in the **Annex 4**):

The negative income differential (gross incomes, median values) for women employed full-time all year round as compared with men fell from 23.1% in 2000 to 21.1% in 2003. It is greater in the lower range, and the gender-specific income differential in the first quartile fell from 26.1% in 2000 to 23.8% in 2003.

In terms of the average gross annual income (arithmetic mean) of women and men employed full-time all year round, the gender-specific income differential fell from 28.3% in 2000 to 27.3 % in 2003.

The hourly wages quoted in the EU structural indicator “Gender-specific wage differential” are based on the new EU-SILC survey of a random sample. This structural indicator states the difference between the average gross hourly earnings of men and women as a percentage of the average gross hourly earnings of men. According to that indicator, women earned 17% less than men in gross hourly terms in 2003. The differential was 20% in 2000 (on the basis of the European Community Household Panel, ECHP).

The results of the VESTE survey show inter alia (see Table 2 in the **Annex 4**) that gross hourly earnings in 2002 in enterprises with at least ten employees in the economic sectors C-K measured against the median amounted to €8.54 for women and €11.51 for men. That is to say that women earned 25.8% less than men per hour (not including extra hours worked and overtime).

Ad C:

No relevant changes.

Reply to the supplementary questions of the Committee of Social Rights in Conclusions XVI-2 on Article 4 paragraph 3:

Definition of the concept of remuneration:

According to established case law, which has not changed, the concept of remuneration means all benefits that a worker receives in return for making his/her working capacity available to the employer. That includes not only wages or salaries but also all allowances that do not represent compensation for out-of-pocket expenses.

Comparative remuneration:

The Austrian Equal Treatment Act provides that nobody may be directly or indirectly discriminated against for the reasons listed in the Act in setting remuneration. The local reference framework for the comparability of remuneration is not expressly defined in the Equal Treatment Act and interpretation is therefore left to judicature and legal doctrine. According to legal doctrine and judicature, the individual business establishment is the central reference framework for the Equal Treatment Act, but, as an exception, the reference framework can be expanded to include several establishments of the same enterprise. That applies primarily to workers on very special duties in which a comparison is possible only with similar employees in other establishments. However – according to the general principle of equal treatment in labour law that has long since been developed in judicature and legal doctrine and stems from the welfare duties of the employer – it is assumed that comparability between workers is possible only if they have a common employer.

In this context, it should be borne in mind that, owing to the structure and practice of Austrian collective bargaining, collective agreements are regularly concluded for branches and not for individual enterprises, with the result that the same minimum remuneration – by branches – applies above the level of the individual enterprise.

Procedure related to the assessment of activities/tasks in collective agreements:

As general wages policy in Austria falls within the autonomous responsibility of the collective agreement parties, it is the task of the workers' and employers' representative bodies to assess various aspects of an activity in an objectively correct and non-discriminatory manner within the meaning of the Equal Treatment Act. Relevant instructions are contained in a brochure *"Gleicher Lohn für gleiche und gleichwertige Arbeit – Leitfaden zu Bestimmungen der Entgeltgleichheit und nicht diskriminierender Arbeitsbewertung"* (Equal wages for work of equal value – a guide to provisions on equality of remuneration and non-discriminatory work assessment) published, after carrying out a research project in the summer of 2004, by the Federal Ministry for Health and Women, which is henceforth competent in such matters. This

guide offers information on non-discriminatory work assessment, for both employers and workers.

Criteria for the assessment of the existence of discrimination in remuneration:

The new Equal Treatment Act contains an express definition of direct and indirect discrimination. Direct discrimination means that a person is placed at a disadvantage as compared with another person on the basis of gender or another form of discrimination listed in the Act. Indirect discrimination exists if a regulation that is intrinsically neutral has the effect of placing persons at a disadvantage on grounds of gender or another form of discrimination listed in the Act, unless the relevant regulations, criteria or processes are objectively justified by a lawful aim and the measures to achieve that target are appropriate and necessary.

In the assessment of the question whether discrimination exists in remuneration, it must first be verified whether there is a differentiation and whether it constitutes a disadvantage. Next, it must be verified whether the work is identical or of equal value. Work is taken to be of equal value if – while the activities are not identical – no significant external differences exist on the whole in terms of background knowledge, training, effort, responsibility and working conditions. In addition, with regard to indirect discrimination, the question should be examined whether the discriminatory differentiation is objectively justified, as an exception, e.g. by longer service with one and the same enterprise and the resultant loyalty to that enterprise although the work may be identical or of equal value.

Interest is also payable in claiming remuneration *ex post facto*.

The current legal situation with regard to damages for discrimination:

The new Equal Treatment Act provides for the following regulations on damages for violation of the Equal Treatment Act:

- Restitution of the pecuniary loss, i.e. positive damage and loss of profits or
- Restoration of the non-discriminatory situation and – in both cases – in addition
- Restitution in respect of incorporeal damage for the personal impairment suffered.

In particular, the following concrete entitlements exist:

- Discrimination in the determination of remuneration: - The difference up to the higher remuneration due (and – as mentioned above – damages for the personal impairment suffered),
- Discrimination on the establishment of the work contract: - Damages amounting to at least one month’s remuneration if the applicant would have received the post had the selection process not been discriminatory, that is to say, that the applicant was the person best qualified for the post; damages up to €500.00 if the employer did not consider the application but the applicant

was not the best qualified person (and in both cases, damages for the personal impairment suffered),

- Discrimination in promotion: - Damages amounting to at least three months' remuneration if the person would have been promoted had there been non-discriminatory selection; damages of up to €500.00 if the employer did not consider the application but the applicant was not the best qualified person (and, in both cases, damages for the personal impairment suffered),
- Discrimination on severance of the work contract: - Possible challenge of notice of dismissal or summary dismissal before the court,
- Discrimination in the form of harassment: - Damages of at least €400.00,
- Discrimination in the form of sexual harassment: - Damages of at least €720.00.

Part-time work:

There is an express statutory prohibition of discrimination against part-time workers as compared with full-time workers in § 19d of the Working Hours Act.

Part-time workers may not be discriminated against on grounds of part-time work, unless objective reasons justify differential treatment.

Therefore, the hourly wages of part-time workers must be identical with those of full-time workers employed on identical work or work of the same value in one and the same establishment. The prohibition of discrimination also includes the provision that all components of remuneration granted to full-time employees must also be granted to part-time employees.

If remuneration rises after a certain period of service with the enterprise, an increase in remuneration is also due to part-time workers. An increase of the necessary period of service for part-time employees is not permissible. Exceptions exist only in so far as different claims are objectively justified. The burden of proof is reversed, so that the employer must prove objective justification for the differential treatment.

If, according to collective agreements, works agreements or work contracts, entitlements are calculated according to the extent of working hours, extra work regularly performed by part-time employees must also be taken into account, particularly in the calculation of the special payments.

Some collective agreements contain regulations that are intended to avoid unfavourable agreements for workers, under which a relatively small extent of part-time work is initially agreed to, while in practice the employer regularly demands extra work. This purpose is served either by means of supplements for extra work or a higher hourly wage for part-time employment. The latter provision also takes into account the greater intensity of work regularly observed in part-time work.

Current income data:

Women employed part-time earned 12.6% less per hour below the median than their colleagues employed full-time (VESTE 2002 see Table 2).

The gross hourly earnings of men employed part-time were 22.7% lower than those of men employed full-time.

The gross hourly earnings (median) of women employed part-time were 31.5% below those of men employed full-time.

The gender-specific income differential in part-time employment is 11.4% (median). In the third quartile, it is 26.9%. Among men, part-time work tends rather to occur in more highly qualified professional posts (e.g. scientific work), alongside part-time work in lower positions (e.g. unskilled work).

Among women, part-time employment is concentrated rather on occupations with lower qualifications. Part-time employees, especially women, are to some extent probably overqualified for the work that they do.

Part-time jobs, especially for women, are very strongly concentrated (in comparison to full-time jobs) in the economic sectors of “commerce/repair” and “real estate, business services” (including cleaning).

Among men, part-time jobs are represented to a relatively greater extent in “the hotel and catering trade”. Overall, however part-time jobs are less frequent among men (17% of total part-time jobs surveyed) than among women.

It is reiterated that the survey of earning structures does not cover a number of service branches relevant to women’s employment, part-time employment and wages, by comparison with full-time employment.

Article 4 paragraph 5

Ad A and B:

No relevant changes.