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# EUROPEAN SOCIAL CHARTER

2nd National Report on the implementation of the European Social Charter

submitted by

## THE GOVERNMENT OF AUSTRIA

(Articles 2, 4, 5, 6, 26 and 28)
for the period 01/01/2009 – 31/12/2012)

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## CYCLE 2013

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## ARTICLE 2
## THE RIGHT TO JUST CONDITIONS OF WORK

### ARTICLE 2§1

Not ratified by Austria.

### ARTICLE 2§2

**In response to the first question:**

No substantial changes compared with previous reporting on Art. 2§2 of the European Social Charter of 1961.

During the period under review, only the additional activities listed below were included in the catalogue of the ordinance (Federal Law Gazette no. 149/1989 as amended, is based on Section 12 of the Rest Periods Act (*Arbeitsruhegesetz, ARG*), Federal Law Gazette no. 144/1983 as amended) issued by the Federal Minister of Labour, Social Affairs and Consumer Protection, permitting work at these activities on public holidays:

- Construction site inspections by the Construction Workers' Holiday and Severance Pay Fund (*Bauarbeiter-Urlaubs- und Abfertigungskasse*) for the purpose of implementing the Anti-Wage and Social Dumping Act (*Lohn- und Sozialdumping-Bekämpfungsgesetz, LSDB-G*)
- Activities by the Oesterreichische Nationalbank in the public interest
- Manufacturing of bio-ethanol

Apart from that, existing exceptions were defined in more detail.

Reply to the additional question on Art. 2§2 in the Conclusions XIX-3 (2010):

Referring to the information previously provided on Section 9 of the Rest Periods Act, the following explanation is provided:

In accordance with the principle of rest on public holidays, it is assumed that employees do not work on public holidays. Section 9 Paras. 1 and 2 *ARG* specifies that every employee retains his or her claim to remuneration that would be lost because of a public holiday during, which work cannot be performed. The employee is entitled to the remuneration they would have received if the day were an ordinary work day and not a public holiday (lost-work principle - *Ausfallsprinzip*).

In the case of wages paid by the piece, task or job or similar or other remuneration or wages based on performance, Para. 3 specifies the amount to be paid as the average calculated for the previous 13 weeks fully worked.

Employees who by way of exception do work on a public holiday are entitled not only to the remuneration defined in Para. 1 (which everyone receives) but also to the remuneration due for the work performed on the public holiday or to a corresponding amount of time off in lieu of the holiday, as defined in Para. 5.

Thus, employees always receive base pay, regardless of whether they work on the holiday, while those actually working on that day receive suitable additional remuneration (or compensatory time).

**In response to the second question:**

No specific implementation measures during the period under review.

**In response to the third question:**

No statistics available.

**ARTICLE 2§3**

**In response to the first question:**

No substantial changes compared with previous reporting on Art. 2§3 of the European Social Charter of 1961.

**In response to the second question:**

No specific implementation measures during the period under review.

**In response to the third question:**

No statistics available.

**ARTICLE 2§4**

**In response to the first question:**

Austrian legislation generally aims at preventing, avoiding and reducing inevitable risks to the employees' health and safety.

Preventive action for avoiding hazards is laid down in the **Workers Protection Act** (*ArbeitnehmerInnenschutzgesetz, ASchG*), Federal Law Gazette no. 450/1994 as amended (**see also Art. 3**) and, for workers in agriculture and forestry, in the **Agricultural Labour Act** 1984 (*Landarbeitsgesetz, LAG*), Federal Law Gazette no. 287.

In addition, compensatory measures for particularly hazardous jobs have been defined in the **Heavy Night Work Act** (*Nachtschwerarbeitsgesetz*, *NSchG*), Federal Law Gazette no. 354/1981 as amended. The main consideration in this case is the type of activity as opposed to the sector of employment. Working hours are reduced by granting rest periods of at least 10 minutes, which are to be counted as working time and thus reduce overall daily and weekly working hours. Additional leave is also granted for these jobs.

These provisions consequently apply to workers employed in the sectors listed by the European Committee of Social Rights (ECSR), i.e. steel work, metal processing, chemical and pharmaceutical industries, carpentry, building and the wood treatment sector, if required to work under conditions that include the following, as listed in the Austrian Heavy Night Work Act:

- working under particularly strenuous heat or consistently noisy conditions;
- where the use of tools, machinery and vehicles subject the body to vibrations that pose a health risk;

- where respiratory protective equipment (respirators or breathing apparatus) must be worn regularly and during for at least four hours of working time;
- where continually exposed through inhalation to harmful substances capable of causing an occupational illness;
- specialised construction work in hot furnaces;
- where workers perform heavy physical labour while exposed to particularly strenuous heat.

In addition, the **collective agreements** for these sectors stipulate one to two **fewer working hours** per week than the 40 hours normal working time defined by law. Normal working time is 38 hours in the chemical sector; 38.5 hours in the iron and metal manufacturing and processing sector, in the iron and metal processing trade, and in the wood processing trade; and 39 hours in the construction and carpentry trades.

**Section VII Para. 2 *NSchG*** specifies that a worker also performs heavy night work within the meaning of Section VII Para. 1 when working under the following conditions:

- Mining
  a) in exclusively or mostly underground mining;
  b) in surface mining under exposure to both vibration and noise;
  c) in tunnelling work and gallery construction;
  d) in outdoor solution mining operations at a depth of more than 100 metres under exposure to both vibration and noise or heat or under risk of exposure to unhealthy substances;
- where the body is exposed to particularly strenuous heat (this exists where at average outdoor temperatures climatic conditions are affected by operations to an extent equivalent to or more unfavourable than the strain of working for the majority of working hours at 30 °Celsius and 50% relative humidity and an air velocity of 0.1 metres per second);
- when working mostly in walk-in refrigeration rooms where the room temperature is below -21 °Celsius or if working procedures require continuous movement between such refrigeration rooms and other working areas;
- under consistently noisy conditions, where the noise level exceeds 85 dB (A), or under non-continuous noise at a level exceeding an equivalent value;
- where the use of tools, machinery and vehicles subject the body to vibrations that pose a health risk;
- where respiratory protective equipment (protective devices, respirators or breathing apparatus) must be worn regularly or during at least four hours of working time or diving equipment for two hours;
- when working at computer work stations (i.e. workplaces consisting of a monitor, keyboard for data entry and any information storage device as a single functional unit), where work at the monitor and working hours at this device are predominant for the employee’s overall job; any other control units are considered equivalent to a keyboard for data entry if operating such units or the associated working conditions represent a comparable strain on employees;
- where continually exposed through inhalation to harmful substances capable of causing an occupational illness within the meaning of Annex 1 of the General Social Insurance Act (*Allgemeines Sozialversicherungsgesetz, ASVG*);
- during specialised construction work in hot furnaces;

- where workers perform heavy physical labour while exposed to particularly strenuous heat, in which case the equivalent strain limit as defined in no. 2 is to be reduced by 10%. Heavy physical labour is performed where a worker burns at least 2000 kilogram calories during an eight-hour period of work;
- where workers perform a final visual inspection of a cathode ray tube under excitation, if this task is is predominant in the employee's overall job.

The Federal Minister of Labour and Social Affairs issued an ordinance, Federal Law Gazette no. 53/1993, concerning strain within the meaning of Section VII Para. 2 nos. 2, 5 and 8 *NSchG*; the ordinance specifies criteria for determining particularly strenuous heat conditions based on temperature measurements, strain on workers' health due to vibrations, and concentration levels of inhaled harmful substances. These provisions now also apply to work at mining operations.

As of 1 January 2013, workers mainly employed with fire departments are also considered to perform heavy night work when they work shifts and are deployed or in readiness for deployment for at least six hours during the period between 10 pm and 6 am. Notwithstanding the basic rule specified in Section VII Para. 1 *NSchG*, the aforementioned also applies where working hours regularly consist to a substantial extent of readiness to work.

Pursuant to Section VII Para. 6 *NSchG*, collective agreements may put other work activities at night on par with heavy night work if they entail extraordinary strains or if the employees are exposed to harmful substances or to radiation. The Collective Agreement for Non-University Research Institutions, for instance, made use of this option and included work under exposure to ionising radiation.

The amendment to *NSchG* published in Federal Law Gazette no. 473/1992 introduced protective measures for nursing staff. For each instance of heavy night work, as of 1 January 1993 an employee has been entitled to one hour of compensatory time (two hours as of 1 January 1995). Heavy night work is considered to exist where hospital employees at one of the specifically listed facilities (including trauma units, admission units, trauma clinics and intensive care units) are required to provide direct services to patients for at least six hours during the period between 10 pm and 6 am. Collective agreements or ordinances can include within the scope of the *NSchG* employees in other organisational units of hospitals who are exposed to a similar strain as those groups already entitled to compensatory time off.

Moreover, in the case of employees working at tasks associated with a special health risk, Section 21 of the **Working Hours Act** (*Arbeitszeitgesetz, AZG*), Federal Law Gazette no. 461/1969 as amended, specifies the possibility of stipulating reduced working hours for such workers in an ordinance.

Section 22 of the aforementioned act also specifies reduced working hours for workers performing repairs in hot furnaces at iron and steel manufacturing or coking plants. Several ordinances specify tasks to which reduced working hours apply as well. Usually these provisions lay down limits to the time spent at tasks that vary according to the danger or health hazard posed by the particular type of work.

Pursuant to Section 11 Para. 6 *AZG*, the Labour Inspectorate can order that businesses, business units or certain workers (e.g. assembly-line workers) observe rest periods in addition to those specified in Section 11 Para. 1 of the cited law, where required based on the difficulty or other effect of the work on employees'

health; Section 11 Para. 7 of the cited law defines such rest periods as working time, thus effectively reducing working hours.

Pursuant to Section 10a of the **Paid Annual Leave Act** (*Urlaubsgesetz, UrlG*), Federal Law Gazette no. 390/1976 as amended, employees are entitled to two additional working days of annual leave for every year in which on at least 50 occasions they perform at least six hours of heavy night work within the meaning of the *NSchG* during the period from 10 pm to 6 am (Section 10a Para. 1 *UrlG*). The entitlement increases to four working days after performing such work for five years and to six working days after 15 years. If an employee performs heavy night work less than 50 but more than 40 times during one year of annual leave entitlement, the employee is entitled for that annual leave year to the number of additional working days leave specified in Section 10a Para. 1 *UrlG*, if during the immediately preceding annual leave year the employee performed heavy night work at least 100 times (Section 10a Para. 1a *UrlG*). Section 10a Paras. 1b and 1c *UrlG* specify the employee's entitlement to an additional working day of annual leave per annual leave year for the case where the employee performs heavy night work at least 50 times in addition to the occasions of heavy night work that resulted in additional annual leave under Para. 1 or Para. 1a.

Finally, the statutory benefit referred to as the "special pension payment" (*Sonderruhegeld*) is to be regarded as substantially shortening the overall working life of the beneficiaries, specifically men as of 57 years of age and women as of 52 years of age (i.e. three years prior to earliest possible eligibility for early retirement benefits based on a long insurance period) who meet certain requirements specified in detail in the law. This reduction is intended to compensate for the previous burden on individuals' health due to heavy night work.

Reduced working hours are also specified in Section 208 of the **General Mining Police Ordinance** (*Allgemeinen Bergpolizeiverordnung*), which has legislative effect, as published in Federal Law Gazette no. 114/1959 and last amended by the ordinance in Federal Law Gazette II no. 164/2000 and the federal acts in Federal Law Gazette I nos. 38/1999 and 164/1999: The number of daily working hours is to be reduced to six where employees work in hot weather (i.e. at temperatures of 30 °Celsius and higher). It is expressly prohibited to assign employees to other tasks. In addition, the employees coming under this ruling must be assigned to such work only for one month at most, after which they must be employed at tasks under cooler weather conditions.

No general provisions exist that would grant additional days leave to **public-sector employees at federal level** who perform hazardous work or work entailing a health risk. The amount of paid leave granted specifically to public-sector employees and the number of paid public holidays in general is much higher in Austria than the international average, which is why no extension of paid leave is considered warranted in such cases. Employees are, however, compensated for the greater hazard or the risk to health through additional fees paid as a salary supplement.

To compensate for special hardships, public employees with the police force and prison staff are entitled to one hour of credit on their working time accounts for each night-shift served. The credit on the working time account can also be paid out.

Provisions differing from the above apply to public-sector employees of the Austrian *Laender* (states) and municipalities, who do in fact receive additional days leave.

As a result of several resolutions passed by the government of Upper Austria, physicians and medical technical staff employed at isotope, x-ray and radium units of state hospitals as well as the medical technical staff employed with the health services departments at District Administration Authorities are entitled to several additional days of leave on condition of meeting certain requirements.

Vorarlberg legislation governing employment with the *Land* and municipalities specifies up to four working days of additional annual leave for employees working at jobs associated with special health risks. This specifically includes tasks performed by radiological technicians and physicians in radiology departments and such professionals' tasks in radio-oncology departments. The regulation also includes medical and nursing staff working at tasks entailing a special hazard of infection (e.g. in pulmonology departments).

The Federal Employees Protection Act (*Bundes-Bedienstetenschutzgesetz, B-BSG*), Federal Law Gazette I no. 70/1999, applies to employees at federal administrative offices, except for employees of state-owned businesses. The latter fall under the provisions of the Workers Protection Act (*ArbeitnehmerInnenschutzgesetz, ASchG*).

The administrative offices (departments or sub-units) falling within the scope of the *B-BSG* are classified based on the Hazard Class Ordinance, Federal Law Gazette 239/2002, and assigned to the classes I to III depending on the hazards posed to employees' health (hazard potential).

Occupational medical care was legally introduced for administrative offices (departments or sub-units) as of the following dates: 1 July 1995 (where a high hazard potential exists), 1 January 1997 (moderate hazard potential), and 1 January 2000 (low hazard potential).

The regulations specified in the Agricultural and Forestry Workers Protection Ordinances (*Land- und forstwirtschafliche ArbeitnehmerInnenschutzverordnungen*) of the individual *Laender* apply to agricultural and forestry operations that are subject to the provisions of the Agricultural Labour Regulations (*Landarbeitsordnungen*) of that particular federal state.

In the case of **mining**, no general classification of tasks according to hazard level exists, i.e. there is no categorization of specific jobs as more or less hazardous or harmful to health. Yet, in the interests of protecting the lives and health of employees, Section 109 Para. 2 of the Mineral Resources Act (*Mineralrohstoffgesetz, MinroG*), Federal Law Gazette I no. 38/1999, requires parties holding mining rights to take special measures towards preventing accidents at work and occupational illnesses and such measures as are necessary to meet the hygiene requirements posed by working in this trade, as well as to install warning systems, alarm systems and other communications systems in order to allow action to be taken immediately as required. The aforementioned measures must ensure that working procedures and conditions are designed to meet the requirements of the best available techniques, mining safety and medicine, and specifically of occupational hygiene, occupational physiology and ergonomics, in this way achieving the most effective level of protection of employees' lives and health while taking into consideration all conditions involved in carefully performing tasks. To reach these objectives, the party holding mining rights is required to issue written instructions such as are necessary for ensuring the safety of employees and the protection of their health, the safe use of mining equipment, and safe performance of hazardous work (work clearance).

It follows from the wording of the legislation as cited above that the measures required pursuant to the Mineral Resourced Act from the party holding mining rights include those of the kind listed in Art. 2§4 of the European Social Charter; these relate specifically to measures to be taken immediately in the individual case based on a legal mandate, where the authorities are entitled to require any necessary action in consideration of the special aspects of the specific case. Under these circumstances, any general regulation at ordinance level is to be regarded as only secondary in importance. Beyond this, since 1 January 1999 the *ASchG* has applied to activities falling within the scope of the *MinroG* (refer to Art. 3 below).

**<u>In response to the second question:</u>**

No specific implementation measures during the period under review.

**<u>In response to the third question:</u>**

Over the last decades (from 1990 onwards) the number of occupational accidents has decreased by an average of 39.3% across all sectors. Fatal accidents have in fact declined by 59.0%, and by 31.0% since 2001 (source: Statistics Austria). This trend can be observed both for low-risk and high-risk sectors. One example is the mining sector, where both accident numbers as well as accident rates show a falling trend.

This decline in accidents at work is the result of:

- continuing improvement of occupational safety and health regulations;
- implementation of advanced technology;
- continuing improvement of work equipment and working procedures;
- preventive measures at the workplace (based on risk assessment);
- growing awareness of occupational safety and health within companies;
- the requirement for preventive consulting, as well as the activities of safety officers;
- preventive measures taken by the labour inspection and accident insurance institutions;
- enforcement of regulations by the Labour Inspectorate as well as the active role it takes in industrial licensing procedures.

**<u>Article 2§5</u>**

**<u>In response to the first question:</u>**

<u>Reply to the supplementary questions on Art. 2§5 in the Conclusions XIX-3 (2010):</u>

The Federal Act of 3 February 1983, Federal Law Gazette no. 144, on weekly rest periods and working time on holidays, or **Rest Periods Act** (*Arbeitsruhegesetz, ARG*), provided a new legislative basis for the right to rest on Sundays and holidays; this legislation applies to the large majority of employees, including those employed in mining operations. The *ARG*, along with the Ordinance on the Rest Periods Act

(*Arbeitsruhegesetz-Verordnung*), Federal Law Gazette no. 149/1984, entered into force on 1 July 1984.

**The *ARG* specifies the following basic provisions with regard to weekly rest periods:**

- During every calendar week employees are entitled to a rest period of 36 consecutive hours, which must include the Sunday (weekend rest). Employees are only allowed to work during such periods as permitted by exemptions defined in the applicable provisions (Section 3 Para. 1 *ARG*).
- Weekend rest must begin on Saturdays by no later than 1 pm for employees in general and by 3 pm for employees carrying out tasks such as financial statements preparation closing activities, cleaning, maintenance and repairs that are absolutely necessary (Section 3 Para. 2 *ARG*).
- At businesses running several continuous shifts on working days, weekend rest must begin at the end of the night shift from Saturday to Sunday at the latest and must end at the beginning of night shift from Sunday to Monday at the earliest (Section 3 Para. 3 *ARG*).
- If, in the context of public holidays, working days are granted as days off and the lost working time is distributed across the working days of weeks before or after such days off, the beginning of weekend rest may be postponed to Saturday 6.00 p.m. at the latest (Section 3 Para. 4 ARG)
- Employees required to work during any period of weekend rest under the working time scheme applicable to them are entitled to a rest period of 36 consecutive hours each calendar week (weekly rest) in lieu of weekend rest. Weekly rest must include one whole weekday (Section 4 *ARG*).
- To make shift work feasible, the weekly rest period can be shortened to 24 hours, provided that employees are ensured an average weekly rest period of 36 hours within a four-week reference period. The rest period can be less than 24 hours or the reference period more than four weeks only if approved by the competent federal minister provided that this is required for important reasons and compatible with employees' interests. Such approval has to be modified or withdrawn as soon as the aforementioned conditions no longer apply. Rules derogating from the above can be stipulated in collective agreements for employees working on large construction sites operated in the public interest, or on torrent and avalanche control sites, or in the publishing or distribution of daily newspapers and Monday morning papers (Section 5 *ARG*).
- Sections 10 to 22 *ARG* specify additional exemptions from the weekly rest period as well as special provisions. Refer in this context to the detailed explanation of rest on public holidays under Art. 2§2.
- Pursuant to Section 12a *ARG*, collective agreements can permit exemptions from rest on weekends and public holidays if necessary in order to avoid any economic disadvantage and to secure employment.
- If appropriate in view of the type of work, the permitted activities are required to be listed individually in the collective agreement along with the set time needed for completion. Any exemption pursuant to Section 12a *ARG* must be defined in the collective agreement and may not be agreed only for a particular business.
- It cannot be ruled out, however, that the parties negotiating collective agreements (i.e. in most cases the Austrian Trade Union Federation (*Österreichischer Gewerkschaftsbund*) and the Austrian Federal Economic Chamber (*Wirtschaftskammer Österreich*) may approve exemptions for individual

businesses. The key point is that it is the parties to collective agreements who negotiate and sign such agreements and not individual employers with their works councils.

Exemptions pursuant to Section 12a *ARG* have been approved for the following industries or businesses:

**Collective agreements pursuant to Section 12a *ARG***

| Industry/business | Activity | In force since |
|---|---|---|
| SCA Hygiene Austria GmbH - Ortmann facility | Manufacturing of napkins and handkerchiefs | 1 May 1997 |
| Industrial bakeries | 8 December | 18 November 1997 |
| Professional Association of Garage, Petrol Station and Service Station Enterprises (blue-collar workers) | • Sales pursuant to Section 279 Para. 2 Industrial Code (*Gewerbeordnung, GewO*)<br>• Supervision and operation of automatic washing equipment | 1 October 1998 |
| KFA of the City of Vienna (employment code B) | Physicians and dentists at health events, trade fairs etc. | 1 November 1998 |
| Vienna public swimming pools | Solariums | 1 January 1998 |
| Chemical industry, Semperit Reifen AG, Traiskirchen plant (blue-collar and white-collar workers) | Manufacturing of tyres | 1 August 1998 |
| Paper industry:<br>Carl Joh. Merckens, Schwertberg | Manufacturing of cardboards and pressboards | 2 April 2000 |
| Petroleum and fuel trade, petrol stations (blue-collar and white-collar workers) | Sale of specific goods pursuant to Section 279 Para. 2 *GewO* | 1 January 2001 |
| Chemical industry: Blue-collar workers<br>Semperit Techn. Produkte GesmbH., Wimpassing plant | Manufacture of rubber and plastic moulded goods | 15 May 2001 |
| VAT refunds | Office | 1 October 2002 |
| Automatic data processing and IT (white-collar workers) | Services for company or customer-specific problems | 1 January 2001 |
| Taper roller bearing | Hardening | 1 February 2004 |
| Raiffeisen | Banks on shopping streets and in shopping centres | 1 February 2004 |
| Surface specialities | Manufacturing of synthetic resins | 11 November 2004 |
| Schmidt GesmbH | Printing ink manufacturing | 12 April 2005 |
| Red Cross | Disasters, epidemics and other unforeseeable incidents | 1 October 2006 |

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|---|---|---|
| | threatening the lives and health of human beings, with the addition of no more than two related training exercises each year | |
| Energy supply companies (white-collar employees) | Energy exchange trading and auxiliary activities | 1 September 2008 |
| Agip GmbH (works agreement, white-collar workers) | Financial statements preparation between 1 and 15 January | 1 January 2007 |
| Wholesale trade (chapter VI/B/2 of the framework collective agreement for trade) | Customer service and customer care, sale of goods and directly related activities<br>Saturday afternoons | 1 January 2007 |
| Graphic arts (blue-collar and white-collar workers) | Works agreement or individual contract (approved by the *Paritätische Kommission*, the parity commission for wages and prices) | 4 December 2008 |
| Sound and lighting technicians (Annex 5 of the framework collective agreement for metal trade employees) | Events in the interest of society/the general public (incl. preparatory work and follow-up) | 1 January 2009 |
| Raiffeisen-Lagerhäuser, Lower Austria<br>(Section 5a of the framework collective agreement) | Household, gardening and building supply stores; Saturday afternoons | 1 March 2009 |
| Mail order business | Customer service and customer care as well as order acceptance by phone | 1 January 2006 |
| Video shops (white-collar workers) | Rentals | 1 November 1998 |
| (BABE - professional association for) private education institutions | Service activities in carrying out cultural and educational events | 1 January 2013 |

Exemptions are found in some additional 30 fixed-term collective agreements, the number of which varies over the course of time, however. About half of those fixed-term collective agreements are renewed each year - a tendency that has been seen over several years now - and are concluded anew each year for the same activities, particularly in the food manufacturing sector.

Among the activities currently exempted from general rest periods provisions there are several collective agreements for the electrical and electronics industry, the metal industry, automotive supply and the chemical industry; examples include the manufacturing of components for generators and photovoltaic modules, of precision parts for safety components, and the production of polyamide powder.

Any employee required on the basis of such exemption and under the applicable work schedule to work during the weekend rest period is entitled to an uninterrupted 36-hour rest period that must include a full working day each calendar week.

- Any employee who, on the basis of the applicable regulations specifying exemptions, is required to work during the weekly rest period, i.e. during weekend

or weekly rest, is entitled during the following working week to substitute rest equal to the amount of time worked during the weekly rest period. This substitute rest is to be counted towards the employee's weekly working time. Substitute rest has to be taken immediately before the beginning of the subsequent weekly rest period, unless otherwise agreed prior to commencing the work for which the employee is entitled to substitute rest (Section 6 *ARG*).

- Employees retain their entitlement to remuneration for hours of work lost due to any substitute rest, specifically to the amount of remuneration they would have received if hours of work had not been lost due to substitute rest; in this case the average pay of the last 13 fully worked works (Section 9 *ARG*) is to be used as the basis for any performance-related remuneration or premium.
- Any employee required to work during weekend rest is entitled on request to time off to perform any religious duties (Section 8 *ARG*).

The penal provisions conform with the provisions listed under Art. 2§2.

**Managing executives**

Pursuant to Section 1 Para. 2 no. 5 *ARG*, managing executives, who are entrusted with autonomously exercising key management responsibilities, are exempt from the provisions of the *ARG*.

As such individuals are in a position similar to employers, it can be assumed that managing executives are independently able to assert their interests over and against their employer, without the support of specific labour-law protection.

Key management responsibilities within the meaning of the *ARG* exist where, by virtue of an employee's position, that employee is entrusted with managing major divisions of the company, such as being in charge of the business or technical management or management of the entire company organisation, in such a way that the employee influences under their own responsibility the continued existence and development of the entire company.

For other employees not falling within the scope of the *ARG*, regulations governing weekend rest are specified in **special legislation**, examples of which include: Section 9 of the Bakery Workers' Act (*BäckereiarbeiterInnengesetz, BäckAG*) 1996, Federal Law Gazette no. 410 as amended, Section 6 of the Domestic Help and Domestic Employees Act (*Hausgehilfen- und Hausangestelltengesetz, HGHAG*), Federal Law Gazette no. 235/1962 as amended, and Section 14 Para. 4 of the Homeworking Act (*Heimarbeitsgesetz, HAG*), Federal Law Gazette no. 105/1961 as amended; these laws take into account the special features of the employment relationships concerned, the population's needs regarding supply and services, occupational safety as well as the public interest.

Accordingly, Section 44 of the Theatre Employment Act (*Theaterarbeitsgesetz, TAG*), Federal Law Gazette I no. 100/2010 now specifies that persons who contract with a party operating a theatre to perform non-artistic work must be granted each calendar week an uninterrupted 36-hour rest period that must include a full working day. Due to the special features of working as an artist, no corresponding regulation exists for the artistic staff.

Under Section 5a of the **Employment of Children and Young People Act** (*Kinder- und Jugendlichen-Beschäftigungsgesetz, KJBG*), Federal Law Gazette no. 599/1987 as amended, children of 13 years and older are generally permitted to be deployed for individual light tasks under the conditions listed there, yet Para. 4 no. 1 of that

section unconditionally prohibits such employment on Sundays and statutory holidays.

Pursuant to Section 19 *KJBG,* young persons in employment are entitled to a period of 43 consecutive hours time off, which must include the Sunday. The prohibition of employment on Sundays (Section 18 Para. 1) does not apply to hotels and restaurants, hospitals, music, theatre or other performances, and to work at sports grounds or playgrounds. When young persons do work on Sundays, they must get every second Sunday off.

Section 7 of the **Maternity Protection Act** 1979 (*Mutterschutzgesetz, MSchG*), Federal Law Gazette no. 221 as amended, prohibits pregnant women and nursing mothers from working on Sundays and statutory holidays.

This does not apply in the following cases (Section 7 Para. 2 *MSchG*):

- employment in music performances, theatre performances, public shows, amusements, festivities, film recordings, in the hotel and restaurant industry and in businesses with uninterrupted rotating shifts, within the scope of the otherwise permissible work on Sundays and public holidays;
- employment in businesses where work on Sundays and public holidays is permitted, provided that the weekly rest period for the entire staff falls on a certain working day;
- employment in businesses where work on Sundays and public holidays is permitted, if the business does not regularly employ more than five employees and there is only one other employee apart from the pregnant woman or nursing mother who can perform a job of the same kind.

At the employer's request, the Labour Inspectorate may approve of additional exemptions in individual cases where unavoidable for operational reasons (Section 7 Para. 3 *MSchG*).

The employee is entitled to an uninterrupted rest period of at least 36 hours (weekly rest) in the calendar week following work on Sunday, and to an uninterrupted rest period of at least 24 hours after a night rest in the week following work on a public holiday; during this rest period the employee must not work. Weekly rest must include one whole weekday (Section 7 Para. 4 *MSchG*). The exemptions apply only if female employees are not prohibited from working on Sundays and public holidays for other reasons (Section 7 Para. 5 *MSchG*).

For pregnant women and nursing mothers who work as homeworkers, delivery deadlines must be set so as to allow orders to be carried out without requiring work on Sundays or public holidays (Section 31 Para. 2 *MSchG*).

For persons employed in the federal public service, Section 48 Para. 2 of the **Civil Service Act** 1979 (*Beamten-Dienstrechtsgesetz, BDG*), Federal Law Gazette no. 333, specifies that Sundays, statutory holidays and Saturdays are to be kept free of work unless necessitated by any urgent job requirements or other public interests. Where public employees work according to a shift, rotating or normal work schedule requiring them to regularly work on Sundays or public holidays and they are assigned to duty on a Sunday or public holiday, an appropriate substitute rest period must be specified. Mainly public-service employees employed in the police force or as prison staff and in military service are affected by shift or rotating work schedules.

Section 48 *BDG* 1979 specifies 40 hours as the regular weekly working time for public-service employees. A work schedule is to be specified that distributes weekly working time as evenly as possible and for the long term over weekdays (i.e. Mondays to Fridays) while taking into account any specific job-related requirements as well as the legitimate interests of the public employees. The statutory staff representation body is entitled to participate in drawing up or modifying the work schedule. The provisions of Section 48 *BDG* 1979 as outlined above apply accordingly to contractual public employees.

Comparable provisions apply to public employees of the *Laender* and municipalities.

Section 29 of the General Staff Regulations for the Armed Forces (*Allgemeine Dienstvorschriften für das Bundesheer*), Federal Law Gazette no. 43/1979 as amended, specifies the periods of duty applying to members of the **Austrian Armed Forces** who perform military or national training service. Accordingly, the period of duty must not exceed eight hours on Mondays to Fridays and five hours on Saturdays, after deduction of the time for preparing for duty in the morning as well as the time for taking meals and recreation; these periods may only be slightly exceeded and only for good reasons.

The weekly period of duty for soldiers employed with the Armed Forces is defined as 41 hours, pursuant to the Ordinance of the Federal Government extending the period of duty for certain public employees with the Federal Ministry of Defence, Federal Law Gazette no. 584/1995.

In the case of employees in **agriculture and forestry**, Section 64 Para. 1 of the Agricultural Labour Act (*LAG)* specifies Sundays as statutory rest days in addition to public holidays as defined in the Holiday Rest Act 1957 (*Feiertagsruhegesetz, FtrG*), Federal Law Gazette no. 153 as amended. The related executory laws must designate the individual public holidays and define which of the other public holidays (i.e. compulsory and permissible) are to be additionally regarded as rest days.

In their respective agricultural labour regulations, the *Laender* have issued appropriate provisions to execute the general legal principle stated above. Some of the specific agricultural labour regulations define the Sunday rest period as the time from Saturday evening (5, 6 or 7 pm) until Monday morning (5 or 6 am) while others specify only the 24-hour period encompassing the Sunday, as a rule from midnight Saturday until midnight Sunday.

Several of the **collective agreements** also contain regulations on the weekly rest period:

The collective agreement for metalworkers stipulates for working time to end on Saturdays at 12 noon as a rule in single-shift operations. In continuous operations, working time is to be distributed so as to ensure observance of the minimum rest period defined by law. Any security guards or desk clerks/doormen working regularly on Sundays and public holidays must be allowed 36 consecutive hours of time off each week. Every three weeks this time off must also include a Sunday.

The collective agreement for white-collar workers in trades stipulates the end of working time on Saturdays as 1 pm unless shift schedules require other working times; working time is required to end at 12 noon on 24 December, and on 31 December at the same time as for blue-collar workers employed in that business.

The collective agreement for the graphics art sector stipulates 12 noon as the end of working time on Saturdays. Exceptions are defined for shift work and the production of daily newspapers.

In the collective agreement for the food, beverages and tobacco industry it is stipulated for employees whose normal working hours include Sundays to receive a substitute rest day. While the substitute rest day is subject to the same conditions as Sundays, a public holiday cannot be granted in lieu of it.

As specified in the applicable collective agreement, musicians are entitled to one paid rest day each week when regularly required to work more than four days per week. If by way of exception the rest day cannot be taken due to a special occasion, as compensation for working on that day musicians are entitled to 1/26 of the monthly wage specified in the collective agreement.

Musicians frequently unable to take rest days off are entitled to 1/13 of the minimum wage specified in the collective agreement for each forfeited rest day. In all of these cases a substitute rest day can be granted in place of the remuneration. Musicians must recognise as their day off any rest day ordered by their particular company. The rest day may be moved to another day by way of exception only if the musician is notified of the change at least three days in advance.

The collective agreement for the commercial and technical staff of Austrian Airlines stipulates a work week of 38 to 45 hours, which differs from the normal 40-hour work week.

The collective agreement for blue and white-collar workers at public airfields stipulates a 40 or 46-hour work week for security and control staff.

Employees of Austro Control GesmbH are allowed to work up to 12 hours daily, according to the company-specific collective agreement. Limits on working hours are permitted to be further exceeded if necessary in order to maintain air traffic (Section 18 *AZG*).

The collective agreement for the employees of the Austrian Cable Cars (*Österreichische Seilbahnen*) stipulates the following provisions governing weekly rest periods:

- In view of the special features of this business, Sundays and public holidays are considered working days, whereas work schedules must be arranged so as to ensure every employee one day off during each working week. At least 15 of the days off work each year have to be Sundays.
- Work schedules must be arranged so as to allow every employee a rest period of at least 10 hours between ending work and beginning work again. Exceptions are only permitted in cases of natural disasters or serious disruptions of operations or when urgent maintenance work is required.

As stipulated in the collective agreement governing the employment relationship for employees of Danube navigation businesses, which entered into force on 1 May 2003, work is permitted on Sundays and public holidays only for station personnel in passenger navigation - either for the purpose of maintaining transport services based on a tariff schedule, clearing passenger ships or for performing other necessary activities such as selling tickets - as well as for ship personnel. For employees working on ships, regular daily working time can be up to twelve hours. Daily working time may exceed ten hours or, in exceptional cases, twelve hours if

required in order to maintain transport services (in emergencies or disasters). Within a 24-hour working day, every employee is entitled to a total of eleven consecutive hours of rest, which can be taken while the ship is travelling or is moored. Such a substitute rest day is to be agreed in advance between employees and their superiors. Employees who work mostly on Saturdays, Sundays and public holidays are not entitled to substitute rest, provided that they receive a rest period of 36 consecutive hours during the week. In freight shipping, every crew member is entitled to twelve hours of rest during each 24-hour period of duty, to be taken as two rest periods of six consecutive hours each.

The collective agreement for trade-sector employees stipulates in the case of employees at sales points of retail companies with up to 25 permanent employees that the following options can alternatively be stipulated as of 1 January 1997 under a works agreement or, where no works council has been established, by individual written agreement, in addition to the special provisions of the *ARG* (Section 22 et seq.):

- employees can work after 1 pm on up to four Saturdays within an eight-week period if they have an equal number of Saturdays off; or
- employees can work after 1 pm on three Saturdays within a four-week reference period if, within each reference period, they have one Saturday and one Monday off.

As of 1 January 2004 a third option in addition to the first two can alternatively be stipulated, namely that employees can work on five Saturdays within a ten-week period. As another option regarding the above, employees can work on six Saturdays if they have two Mondays off.
Part-time employees with whom work on Saturdays only has been stipulated can work every Saturday.

Any measures that allow divergences from the statutory provisions governing daily and weekly working time do not affect the regulations specifying the weekly rest period.

Labour Inspectorates along with the activities of works councils or staff representation bodies ensure that employees are actually able to take the weekly rest period off.

Since the Rest Periods Act (*ARG*), Federal Law Gazette no. 144/1983, entered into force, regulations on the weekly rest periods have been introduced for most employees, either in the form of legislation or through collective agreements.

No such regulations exist for caretakers (that would be contrary to the nature of the profession) or for employees of private teaching and education institutions.

It can be assumed that the large majority of employees in Austria are covered by provisions, either in the form of legislation or through collective agreements, specifying a weekly rest period.

Each and every person working within the framework of an employment relationship is covered by labour protection laws, even where employment is temporary, part-time or in the context of representing another employee or of temporary agency work. An employment relationship exists where an individual performs work for an employer on a permanent basis, the individual is bound by the employer’s instructions and performs work within the employer’s company organisation.

**In response to the second question:**

No specific implementation measures during the period under review.

**In response to the third question:**

In 2009 the Labour Inspectorate recorded 139 violations of the *ARG*, 46 of which were in the construction sector, 22 in hotels and restaurants and 15 in trade, maintenance and repair of cars and durables. Compared to 2008, this represents a 34% decrease in the total number of *ARG* violations.

In 2010 the Labour Inspectorate recorded 150 violations of the *ARG*, 43 of which were in the construction sector, 21 in hotels and restaurants and 31 in trade, maintenance and repair of cars. Compared to 2009, this represents an 8% increase in the total number of *ARG* violations.

In 2011 the Labour Inspectorate recorded 266 violations of the *ARG*, 116 of which were among drivers, 69 in manufacturing, 33 in construction and 79 in trade, maintenance and repair of cars. This represents 2.4% of the total of 11,165 violations of labour protection laws.

As part of a targeted campaign, the number of business inspections in order to verify compliance with working time and rest period regulations increased to 12,148 in 2011, over 7,907 the year before.

Apart from the statistics kept by the Labour Inspectorate on violations identified during the period under review, the only other source of specific data is from Statistics Austria; according to this information the number of employees working on Saturdays rose slightly from 1.726 million to 1.730 million during the period under review, whereas the percentage relative to the total number of dependently employed workers actually decreased from 43% to 42%. The number of individuals working regularly on Saturdays remained roughly unchanged at 1.232 million (30.6% over 29.9% of the total dependently employed population).

The number of those employed on Sundays actually fell, from 1.018 million to 1.010 million (i.e. from 25.3% to 24.6%), while the number employed regularly on that day decreased considerably, from 692,300 to 671,500 (i.e. from 17.2% to 16.3%).

**Article 2§6**

**In response to the first question:**

**Private-sector employees**

Pursuant to Section 2 of the Employment Contract Law Adaptation Act (*Arbeitsvertragsrechts-Anpassungsgesetz, AVRAG*), Federal Law Gazette no. 459/1993 as amended, the employer is required to hand out to the employee a statement of the terms and conditions (*Dienstzettel*), specifying the main rights and obligations arising from the employment contract, immediately upon commencement of the employment relationship. The above-mentioned statement must specifically include the following details:

- Names and addresses of the employer and the employee;

- Date of commencement of the employment relationship;
- For employment relationships concluded for a defined period, the date of termination;
- Notice period and dates for giving notice;
- Habitual place of work or job site;
- Employee's planned activity;
- Initial amount of pay (base wage or salary, additional remuneration components such as special payments) and wage or salary due date;
- Amount of annual leave;
- Employee's regular daily or weekly working hours as agreed;
- Standards of collective law applicable to the employment contract (i.e. collective agreement, statute, minimum wage scheme, apprenticeship pay as specified, works agreement); and
- Name and address of the employee's corporate provision fund (*Betriebliche Vorsorgekasse* or *BV-Kasse*) or, for employees falling under the Act on Construction Workers' Annual Leave and Severance Pay (*Bauarbeiter-Urlaubs- und abfertigungsgesetz, BUAG*), Federal Law Gazette no. 414/1972 as amended, name and address of the Construction Workers' Holiday and Severance Pay Fund (*Bauarbeiter Urlaubs- und Abfertigungskasse, BUAK*).

Employers are not required to hand out a *Dienstzettel* for employment relationships lasting no longer than one month or where a written employment contract containing all of the required details is handed out.

The employee must be notified in writing of any change in the above-mentioned details immediately and no later than one month after the change enters into effect, unless the change results from a change of law or of standards of collective law.

Pursuant to Section 1 Para. 4 *AVRAG*, Section 2 *AVRAG* is not applicable to employment relationships falling under the Domestic Help and Domestic Employees Act (*Hausgehilfen- und Hausangestelltengesetz, HGHAG*). The *HGHAG* does, however, include a separate provision implementing the requirements of Art. 2§6 Rev ESC.

Specifically, Section 2 Para. 1 *HGHAG* states the requirement to record upon establishment of an employment relationship the main rights and obligations arising from that relationship in an employment certificate (*Dienstschein*) as shown in the annex to *HGHAG.* This *Dienstschein* must be signed by the employer and by the employee (or by the legal representative in the case of minors) and one copy must be handed out to the employee. These rules similarly apply to any changes or additions to the rights and obligations stipulated in the *Dienstschein*.

The *Dienstschein* includes the following details:

- Employer's name and address;
- Employee's name and address;
- Employee's date of birth;

- Commencement and, for temporary employment, date of termination of the employment relationship;
- Length of the notice period as agreed;
- Trial period as stipulated (not more than one week);
- Place of employment;
- Employee’s duties in the household;
- Any special duties, e.g. care in the case of illness, child care, cleaning of vehicles, gardening, care of pets etc.;
- Monthly (weekly) pay as agreed;
- Compensation for special tasks;
- Benefits in kind as agreed;
- In the absence of benefits in kind, the corresponding amount of compensation;
- Whether or not accommodation is provided;
- Whether or not sleeping facilities are provided;
- Amount of annual leave;
- Working hours on weekdays: from - to;
- Working hours on Sundays and public holidays: from - to;
- Opportunity of attending religious services on Sundays and religious holidays;
- An afternoon off after 2 pm during the week on: Monday - Tuesday - Wednesday - Thursday - Friday - Saturday

**Public-service employees**

Public-service is a concept under which all activities within the authorities of Federal, *Land* and local government and also other corporations or institutions under public law are subsumed. The individuals who perform the activities of the public-service, in the context of a public-service relationship, are called public employees (*öffentlich Bedienstete*), a generic term which includes both civil servants (*Beamte*) and contract public employees (*Vertragsbedienstete*).

There are two types of employment relationship between public employees and their public-service employer: that of the civil servant, which is a public law relationship, and that of the contract public employee, which is a private law relationship. The difference between the two forms of employment in the public-service lies mainly in the fact that a civil servant is appointed (*ernannt*) and as a matter of principle remains in the service of a public employer for life.

**Employment relationships with the Federal Government under private law**[1]

In employment relationships falling under the Contractual Public Employees Act 1948 (*Vertragsbedienstetengesetz, VBG*), Federal Law Gazette no. 86 as amended, the employer is required to provide the contractual public employee with a written copy of the employment contract and any supplements to the contract immediately upon

[1] For employees at state (Laender) level, corresponding provisions exist in local law.

commencement of the employment relationship and no later than one month after any change takes effect. The copy is required to be signed by both parties to the contract (Section 4 Para. 1 *VBG*).
Section 4 Para. 2 *VBG* specifies the minimum requirements of the employment contract to be provided in written form. It must always include the following terms:

- the date on which the employment relationship begins;
- whether the contractual public employee has been hired for a certain place of work or a local administrative area;
- whether the contractual public employee has been hired to substitute another employee and if so whom;
- whether employment is for a trial period, a pre-defined period or an indefinite period and, in the case of a defined period of employment, the termination date;
- the type of work for which the contractual public employee has been hired and the salary schedule, salary group and, where applicable, the evaluation group to which the employee has accordingly been assigned; the latter applies where salary groups are divided into evaluation groups, whereas assignment to such groups is for a limited period in the cases specified in Section 68;
- the amount of time per week the contractual public employee will work (full-time or part-time employment);
- any basic training pursuant to Section 67 the employee is required to successfully complete in order to finish the training phase;
- a statement that the *VBG* and the ordinances issued in implementing that Act shall apply as amended to that employment relationship.

The compulsory written copy of the employment contract and certain minimum terms had already been required by the original version of the *VBG*, Federal Law Gazette no. 86/1948, which entered into force on 1 July 1948. The Contractual Public Employees Reform Act (*Vertragsbedienstetenreformgesetz, VBRG*), Federal Law Gazette I no. 10/1999 adapted Section 4 Paras. 1 and 2 *VBG* to reflect the provisions specified in Council Directive 91/533/EEC of 14 October 1991 on an employer’s obligation to inform employees of the conditions applicable to the contract or employment relationship. Provisions were specifically supplemented to include dates by which the written copy is required to be handed out; i.e. it was specified that such was required immediately upon commencement of the employment relationship and by no later than one month after any change takes effect. More detailed definitions of the minimum content of employment contracts were also included, such as whether the contractual public employee was hired to substitute another employee and if so whom, and the date of employment termination in the case of a fixed-term employment relationship.

All employment relationships with the Federal Government that are based on private law fall - except for several specific cases - within the scope of application of the *VBG* and thus within Section 4 Paras. 1 and 2 of that law.

The *VBG* contains no provision that would exclude any short-term employment, jobs entailing a small number of working hours, occasional employment or any activities of a special kind from applicability of Section 4 Paras. 1 and 2 *VBG*.

According to a ruling by the Austrian Supreme Court of Justice (*Oberster Gerichtshof*, *OGH*), the requirement pursuant to Section 4 Para. 1 *VBG* for an employment contract to be concluded in written form constitutes an administrative rule, and failure to comply with it does not affect the validity of the employment

contract (e.g. *OGH* ruling of 7 June 2001, 9 ObA 328/00a). This means that failure to observe the provision specified in Section 4 Para. 1 *VBG* cannot prevent establishment of the employment relationship with the contractual public employee. Yet the *OGH* has expressly ruled that contractual public employees are entitled to a signed copy of the employment contract and this right can be enforced if necessary through court action.

**In response to the second question:**

No specific implementation measures during the period under review.

**In response to the third question:**

No specific data available.

**Article 2§7**

**In response to the first question:**

**Private-sector employees**

Whereas no general statute regulating night work exists, a number of relevant provisions are specified in individual federal acts.

The most significant of these is the Working Hours Act (*Arbeitszeitgesetz, AZG*), which has included regulations governing night work since the amendment issued as Federal Law Gazette I no. 122/2002.

As defined in Section 12a *AZG*, night workers are employees who regularly, or unless otherwise stipulated by collective agreement, work at least three hours during night-time for at least 48 nights within any calendar year.

Night is considered the time between 10 pm and 5 am.

Heavy night workers are employees who perform night work under the conditions listed in Section VII Para. 2 of the Heavy Night Work Act (*Nachtschwerarbeitsgesetz, NSchG*), in an ordinance as specified in Section VII Para. 3 of that act, or in a collective agreement as specified in Section VII Para. 6.

In general, the average number of hours worked by heavy night workers on days involving night work must not exceed eight hours, as calculated over a 26-week reference period (including overtime), unless permitted otherwise by standards of collective law. In such cases workers are entitled to additional rest periods (Section 12a *AZG*).

In derogation from the above, for the case of drivers of motor vehicles Section 14 *AZG* specifies night as the time between 12 midnight and 4 am and night work as any activity performed during this period. The daily working time on days when a driver performs night work may not exceed ten hours. A driver having performed night work is entitled to time in lieu within 14 days by way of extension of any daily or weekly rest period by the hours of night work performed.

Every night worker is entitled to free health assessments under Section 51 of the Workers Protection Act (*ArbeitnehmerInnenschutzgesetz, ASchG*) as follows:

– before commencement of the work;
– thereafter at intervals of two years;
– after their 50th birthday or after having performed night work for ten years at intervals of one year.

For determining entitlement to such assessments, night is considered the time between 10 pm and 6 am and a night worker is defined as any worker working regularly or during 30 nights or more within a calendar year at least three hours during night-time (Section 12b *AZG*).

Night workers, if they so request, are entitled to transfer by their employers to suitable day work according to the employer's available in-house options where a hazard to their health exists or where required by indispensable care duties towards children up to age twelve (Section 12c *AZG*).

Employers are required to ensure that night workers are informed of major in-house developments affecting the interests of night workers.

Provisions of a substantially identical nature are also specified in the Bakery Workers' Act (*BäckereiarbeiterInnengesetz, BäckAG*) 1996 and in the Hospital Working Hours Act (*Krankenanstalten-Arbeitszeitgesetz, KA-AZG*). The *BäckAG*, moreover, additionally specifies a statutory night work supplement. Pursuant to Section 5 *BäckAG,* workers are to receive a night work wage supplement for any work performed between 8 pm and 6 am. The supplement amounts to 75% for hours worked between 8 pm and 4 am and 50% between 4 am and 6 am.

Section 62 of the Agricultural Labour Act 1984 (*Landarbeitsgesetz, LAG*) specifies that workers are entitled to an uninterrupted night rest period of at least eleven consecutive hours every 24 hours, even during the busy season. The night rest period is normally considered the time between 7 pm and 5 am. Night rest can be reduced in exceptional cases, i.e. under extraordinary circumstances such as when bad weather or other natural disasters, or any hazard to livestock, crops or forests are imminent. Yet any shorter night rest is required to be compensated by a commensurately longer rest period during the days following immediately thereafter.

The Domestic Help and Domestic Employees Act (*Hausgehilfen- und Hausangestelltengesetz, HGHAG*) specifies that employees:

- living in the employer's household
  - who are 18 years of age or older are entitled to a minimum ten-hour rest period, which is to include the time between 9 pm and 6 am, or
  - who have not reached the age of 18 are entitled to a minimum twelve-hour rest period, which is to include the time between 8 pm and 7 am;
- not living in the employer's household
  - who are 18 years of age or older are entitled to a minimum 13-hour rest period, which is to include the time between 9 pm and 6 am, or
  - who have not reached the age of 18 are entitled to a minimum 15-hour rest period, which is to include the time between 8 pm and 7 am.

Where the members of the employer's household include small children (i.e. children up to age three) or where the employer or another member of the household has a physical disability requiring constant care and provision of such care cannot be

ensured in any other way, alternative rest periods can be stipulated but are required to be stated in writing in the employment certificate (*Dienstschein,* Section 2 Para. 1).

The night work regulations specified in the *HGHAG* do not apply, however, in the case of persons subject to the Home Care Act (*Hausbetreuungsgesetz, HbeG*).

**Employees at federal level**[2]

In the case of public-service employees, Section 48e of the Civil Servants Act (*Beamten-Dienstrechtsgesetz, BDG*) specifies that the working time of civil servants regularly required to perform duties for at least three hours between 10 pm and 6 am (i.e. to perform night work) must not exceed eight hours per 24-hour period on average during a reference period of 14 calendar days. For night workers whose duties involve an exceptional hazard or a considerable physical or mental strain (heavy night work), working time must not exceed eight hours per 24-hour period during which they perform night work. At their request, night workers are entitled to have their health assessed by a physician before taking up duties and thereafter in regular intervals of no more than three years. The Federal Government bears the expense of such assessments. Night workers having health issues that are proven to be associated with working at night are required to be assigned to a reasonable job not involving night work if appropriate for that job.

The same applies accordingly to contractual public employees.

**<u>In response to the second question:</u>**
No specific implementation measures during the period under review.

**<u>In response to the third question:</u>**

No specific data available.

Night is generally considered the time between 10 pm and 5 am (refer to the comments on Question 1).

[2] For employees at state (Laender) level, corresponding provisions exist in local law.

# ARTICLE 4
# THE RIGHT TO A FAIR REMUNERATION

## Article 4§1

**In response to the first question:**

No substantial changes compared with previous reporting on Art. 4§1 of the European Social Charter of 1961.

**In response to the second question:**

The **Litigation Association of NGOs against Discrimination** (*Klagsverband zur Durchsetzung der Rechte von Diskriminierungsopfern*) was founded in 2004 for the purpose of providing legal support to individuals affected by discrimination within the meaning of the Austrian legal system and of all legal acts of the European Union that are based on Art. 19 TFEU (ex Art. 13 TEC). The *Klagsverband* lodges complaints before courts and conducts model proceedings, prepares applications to be submitted to the Equal Treatment Commission, represents clients before the Senates and in court (as far as permissible according to the Labour and Social Courts Act (*Arbeits- und Sozialgerichtsgesetz, ASGG*) and the Code of Civil Procedure (*Zivilprozessordnung, ZPO*)); the association is also active in public affairs, keeps records of legislation and court rulings, offers training and submits opinions on draft legislation.

The association lists the reasons for discrimination according to frequency as follows: ethnic origin 40%, disability 40%, religion 8%, gender 4%, sexual orientation 4%, age 4%. The *Klagsverband* received a grant of EUR 35,000 from funding for women's projects in 2009 and another EUR 45,000 in each of the years 2010, 2011 and 2012.

**In response to the third question:**

Reply to the supplementary question on Art. 4§1 in the Conclusions XIX-3 (2010):

Apart from a few isolated fields of activity, practically all sectors have collective agreements, all of which stipulate wage/salary schedules and thus a minimum wage.[3]

In Austria, 94% of all employees fall under a collective agreement. Exceptionally high percentages are covered by such an agreement in the sectors (as classified by the Federal Economic Chamber) Trades and Crafts, Industry, and Commerce (98-99%). The coverage rate is 95% for employees in the sectors Banking and Insurance and Transport and Traffic. Somewhat lower coverage rates are found in the sectors Information and Consulting (85%) and Tourism and Leisure (90%). At 82%, the lowest percentage of employees fall under a collective agreement among businesses not belonging to the Economic Chamber (e.g. self-employed professionals and those in the health and social-services sector).

In the case of sectors where not all employers are represented by a statutory interest group (teaching, research, health, social services, concierges, caretakers, print media), it cannot be assumed that any collective agreement reached with a voluntary-membership employers' association entitled to enter into collective agreements will indeed apply to the entire sector, even though the employers'

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[3] See also Annex "Comments of the Austrian Federal Chamber of Labour", page 5 et seq.

association is eligible to negotiate such agreements. In this context it should be noted, however, that minimum wage schemes and statutes are applicable.

All minimum wage schemes provide for a minimum wage of more than EUR 1,000.

Only a single remaining collective agreement specifies a minimum wage less than EUR 1,000.00, namely the currently applicable agreement for newspaper workers in dispatch and related areas, which stipulates a monthly wage of EUR 807.84 (EUR 186.57 weekly) for delivery personnel.

**Article 4§2**

**In response to the first question:**

No substantial changes compared with previous reporting on Art. 4§2 of the European Social Charter of 1961.

Reply to the supplementary questions on Art. 4§2 in the Conclusions XIX-3 (2010):

*According to the report, public-sector employees receive an enhanced 50% pay rate for longer hours or time off in lieu. The Committee asks whether the time off granted in such cases is longer than the overtime hours worked (as required by case law).*

Yes, more compensatory time-off is granted than the number of overtime hours worked. Specifically, pursuant to Section 49 Para. 4 of the Civil Servants Act 1979 (*Beamten-Dienstrechtsgesetz, BDG*), compensation for overtime hours on weekdays is required to be provided at a ratio of 1:1.5 hours off or according to the statutory salary provisions, or at a ratio of 1:1 hours off and, in addition, on the basis of the salary provisions. Compensation for overtime worked on public holidays is required to be provided according to the statutory salary provisions in all cases.

*The Committee requests information on whether the statutory provisions on compensation for overtime apply to all categories of workers. The next report should indicate if there are any exceptions, namely as regards senior state officials or senior managers.*

Whereas the Working Hours Act (*Arbeitszeitgesetz, AZG*) does specify a number of exemptions for certain groups, most of the provisions include a form of compensation for working overtime. The following groups receive no statutory compensation:

- Managing executives;
- Teaching and educational staff at private teaching and education institutions;
- Caretakers and homeworkers;

For employees falling under the Hospital Working Hours Act (*Krankenanstalten-Arbeitszeitgesetz, KA-AZG*) entitlement to compensation for working overtime may be waived by collective agreement.

In the public sector, the provisions governing overtime work apply both to public-service employees (civil servants) and to contractual public employees.

The provisions do not apply, however, to senior public-service employees (e.g. heads of subordinated administrative offices, of subdivision heads in federal ministries, division heads, department heads) as these employees’ fixed salary or an additional salary supplement is regarded as compensation for the additional time worked and the additional workload.

*The Committee also requests information on the activities of the Labour Inspection in respect of any breaches related to the failure to pay overtime wages.*

Failure to pay overtime wages does not constitute an administrative offence and is consequently not punishable by sanction; rather, any alleged claims must be brought before a civil court. Thus, the Labour Inspectorate has no competence in such cases.

**In response to the second question:**

No specific implementation measures during the period under review.

**In response to the third question:**

No specific data available.

**Article 4§3**

**In response to the first question:**

Previous reporting on Art. 4§3 of the European Social Charter of 1961 is updated as follows:

**Private-sector employees**

The Equal Treatment Act (*Gleichbehandlungsgesetz, GlBG*) was additionally amended through Federal Law Gazette I no. 7/2011, which entered into force on 1 March 2011. As part of implementing the National Action Plan on Gender Equality in the Labour Market, the amendment provided for measures aimed at improving income transparency as a means of reducing the income differences between men and women. Substantive law and procedural rules were also improved in order to enable more effective enforcement of the equal treatment principle.

The first measure for combating income disparity was the requirement for businesses with a minimum number of employees to prepare income reports. In 2010 this requirement applied to employers with more than 1,000 permanent employees. The report had to be submitted to the competent works council or, in businesses not having a works council, to be made available in a place generally accessible for all employees by no later than 31 July 2011. The Act specifies a schedule for introducing the requirement incrementally from 2011 onwards. To businesses with more than 500 permanent employees, the requirement applies as of 1 January 2012 (i.e. to prepare a report for 2011); to those with more than 250 employees, as of 1 January 2013 (2012 report); and to those with more than 150 employees, as of 1 January 2014 (2013 report). These businesses are subsequently required to prepare a remuneration analysis every two years. To ensure data privacy, the data in the income report is required to be anonymised and must not allow individuals to be identified.

The second measure for improved income transparency is the statutory requirement to indicate the minimum pay level in job advertisements. Specifically, the minimum remuneration for the job as defined in the corresponding collective agreement, statutory provisions or other standards of collective law must be indicated in the ad. Where the employer is prepared to provide overpayment, this is additionally required to be indicated. The Act specifies sanctions for cases where advertisements do not meet these requirements: upon a first-time infringement the district administration

authority issues an admonition, and a repeated breach is punishable with an administrative penalty of up to EUR 360.

As a third measure, where individual cases of pay discrimination are suspected, the Equal Treatment Ombuds Office and the Equal Treatment Commission's Senates are legally authorised to collect income data on reference persons from the competent social insurance institution. It has in fact proven very difficult in practice to collect reference income data in cases of suspected discrimination.

The amendment additionally specifies the following improvements:

- Protection against discrimination extended to include individuals subject to discrimination due to their close relationship with a person having a protected characteristic (i.e. associative discrimination);
- Increased minimum claim of EUR 1,000 (previously EUR 720) for damages in cases of (sexual) harassment;
- Compulsory non-discriminatory advertising of residential space;
- Provisions in the law exempting members of the Equal Treatment Ombuds Office and the Equal Treatment Commission's Senates from instructions and subjecting them to the Federal Chancellor's supervision with respect to the implementation of Section. 20 Para. 2 of the Federal Constitutional Law (*Bundes-Verfassungsgesetz, B-VG*);
- Abrogation of confidentiality in proceedings before the Equal Treatment Commission;
- Equal treatment legislation pertaining to persons with disabilities harmonised with the amendments to the *GlBG.*

<u>Part-time work</u>

Section 19d of the Working Hours Act (*Arbeitszeitgesetz, AZG*) is a statutory provision that expressly prohibits the discrimination of part-time workers as compared with full-time employees.

Part-time workers must not be disadvantaged due to working part-time unless objective reasons warrant such different treatment.

Thus, the hourly wage paid to part-time workers must be identical to that paid to full-time workers doing the same or a similar job at that business. The prohibition of discrimination additionally entails the provision that any and all pay components granted to full-time workers must also be accorded to part-time employees.

If the pay level increases after a certain period of employment, part-time employees are also entitled to such a pay increase. It is not admissible to increase for part-time employees the employment period required for an increase.

A part-time employment agreement is no hindrance for advancement within pay schedules, while specifically years worked part-time are not taken into account on a pro-rated basis.

Exemptions are permitted only in cases where objective reasons warrant different entitlements. The burden of proof is reversed, i.e. the onus is on employers to prove that objective reasons warrant different treatment.

Where collective agreements, works agreements or employment contracts stipulate for entitlements to be based on the number of working hours, the extra hours regularly worked by the part-time employee are also to be taken into account, specifically when computing the special payments (additional monthly salaries).

Especially in the trade sector, employers often used to agree (and still do so) with employees part-time contracts entailing relatively few hours, only to regularly order extra hours later in practice.

Originally, attempts were made to counteract this abuse at the level of collective agreements, i.e. either wage supplements for extra hours or a higher hourly wage were stipulated for part-time employees. The latter measure reflects the regularly observed tendency of part-time workers to work more intensively.

A statutory extra-hours supplement has been in effect since 1 January 2008. Section 19d Para. 3 *AZG* defines extra hours as hours worked beyond the agreed number of working hours. Part-time employees are obliged to work such hours only where:

- statutory provisions, standards of collective law or work contracts so require;
- times of greater demand or preparatory and concluding activities (Section 8) require such extra hours; and
- such extra hours do not conflict with any worker's interests deserving consideration.

Pursuant to Section 19d Para. 3a *AZG*, employees are entitled to a supplement of 25% for extra hours. The supplement is computed on the basis of the normal pay for each hour worked. For wages paid by the piece, task or job, the supplement is to be based on the average earned during the previous 13 weeks.

Several exemptions from this rule are, however, specified in Section 19d Paras. 3b to 3f *AZG*:

- (3b) No supplement is to be paid for extra hours where:
    - time in lieu in a ratio of 1:1 is provided within any quarter of a calendar year or any other defined period of three months in which such extra hours have accrued;
    - flexible working time has been stipulated and the agreed working time on average is not exceeded across the period of flexible working time.
- (3c) If collective agreements define normal weekly working hours for full-time employees of less than 40 hours, and if no supplement or a smaller supplement than the one set out in Para. 3a is agreed for the difference between normal working hours under collective agreement and those under law, equivalent compensation is to be provided to part-time employees for any extra hours worked, either without the addition of a supplement or with a smaller supplement.
- (3d) If, along with the supplement defined in Para. 3a, additional supplements under law or collective agreement are applicable to such extra work, the employee is entitled to only the highest supplement.
- (3e) Compensation for extra hours worked may also be agreed in the form of time in lieu. Any supplement for extra hours must either be taken into account when determining time in lieu or has to be paid separately.
- (3f) Finally, collective agreements may permit derogations from Paras. 3a to 3e.

Assessment of potential cases of pay discrimination

Labour and social courts

First of all, we would like to point out that there is no database of court rulings on the Equal Treatment Act. Consequently, the related rulings have become known to the Federal Ministry of Labour, Social Affairs and Consumer Protection only from the relevant literature. This basically includes precedent-setting decisions handed down by the Austrian Supreme Court of Justice (*Oberster Gerichtshof*, *OGH*).

In the reporting period from 1 January 2009 to 31 December 2012, the *OGH* dealt once with the issue of gender-related discrimination involving the determination of remuneration.

OGH 8 ObA 26/11 of 28 March 2012

In this case the employee alleged discrimination in the setting of her pay level, arguing that her employer had used arbitrary criteria for determining her salary category and for granting salary increases.

In response, the Supreme Court ruled in general that, even if not immediately transparent, the criteria applied for determining remuneration were not necessarily non-objective. It was the employer's responsibility to elucidate the basis of such criteria and the underlying rationale. The *OGH* found that varying remuneration could also be justified in cases where apparently identical jobs were performed by employees with differing levels of training and job qualification.

In the specific case the *OGH* drew attention to the fact that the co-worker referred to by the complainant for comparison had, in contrast to the complainant, one year of specialised professional experience with a chartered accountant and had passed the examination for accountants.

In deciding on pay increases, the employer had considered both objective and subjective factors, whereas the latter included factors such as errors made and the satisfaction of superiors, which are covered by the collective agreement and are independent of the employee's gender.

The *OGH* ruling of 28 March 2012 consequently identified no case of discrimination as alleged.

Equal Treatment Commission

The Equal Treatment Commission for the private sector (*Gleichbehandlungskommission für die Privatwirtschaft, GBK*) has been set up in the Federal Chancellery and consists of three Senates. The Equal Treatment Commission examines individual cases and draws up expert opinions.

While the courts are not bound by the case-by-case examinations of the Equal Treatment Commission, courts have to present grounds for any differing decisions. Cases can be brought before the Equal Treatment Commission and the labour and social courts independently of each other.

The individual examinations carried out by the Equal Treatment Commission are made public on the website of the Federal Chancellery (in German).

http://www.frauen.bka.gv.at/site/5467/default.aspx

Senate I is in charge of equal treatment of women and men in the working world. Individuals who feel discriminated against at work on grounds of their sex can file a complaint to Senate I of the Equal Treatment Commission for the private sector. Senate I is also in charge of cases of multiple discrimination.

Senate II is in charge of equal treatment in the working world, irrespective of ethnic origin, religion or belief, age or sexual orientation.

Senate III is responsible for equal treatment in other areas, irrespective of gender or ethnic origin.

Consequently, Senate I or Senate II is in charge of cases of pay discrimination.

The following complaints were dealt with and/or received by Senates I and II of the Equal Treatment Commission in the period under review from 1 January 2009 to 31 December 2012:

Senate I of the Equal Treatment Commission:

2009:

Number of applications requesting the examination of gender-related discrimination involving the determination of remuneration: 18

Outcome of the examination:

Discrimination concerning the determination of remuneration (by gender): 6 (women)

No discrimination concerning the determination of remuneration (by gender): 4 (women), 2 (men)

Withdrawal of application: 6

2010:

Number of applications requesting the examination of gender-related discrimination involving the determination of remuneration: 7

Outcome of the examination:

Discrimination concerning the determination of remuneration (by gender): 2 (women)

No discrimination concerning the determination of remuneration (by gender): 3 (women)

Withdrawal of application: 2

2011:

Number of applications requesting the examination of gender-related discrimination involving the determination of remuneration: 10

Outcome of the examination:

Discrimination concerning the determination of remuneration (by gender): 2 (women)

No discrimination concerning the determination of remuneration (by gender): 1 (woman)

Reporting pursuant to Section 13 Equal Treatment Commission and Equal Treatment Ombuds Office Act (*GBK/GAW-Gesetz*): 1

Withdrawal of application: 2

Examination pending: 4

2012:

Number of applications requesting the examination of gender-related discrimination involving the determination of remuneration: 11

Outcome of the examination:

Withdrawal of application: 2

Examination pending: 9

Senate II *GBK*:

2009-2012

Number of applications requesting the examination of discrimination based on ethnic origin, religion or belief, age or sexual orientation, involving the determination of remuneration: 0

Finally, reference is made to the Equal Treatment Reports for the private sector pursuant to Section 24 *GlBG*, which are jointly published by the Federal Chancellery and the Federal Ministry of Labour, Social Affairs and Consumer Protection every other year. They contain information about relevant court rulings and the activities of the Equal Treatment Commission. The reports (in German) can be downloaded from the following website:

http://www.frauen.bka.gv.at/site/5536/default.aspx

**Employees at federal level**

The Federal Act on the Equal Treatment of Women and Men and the Advancement of Women within the Federal Authorities (*B-GlBG*) entered into force on 13 February 1993 (Federal Law Gazette no. 100/1993).

The Act consists of four parts, only the first two of which contain relevant subject matter.

The first part comprehensively specifies the provisions implementing the equal treatment principle, the second part sets out the rules applying to the institutions that deal with the *B-GlBG*, part three contains special provisions applying to teachers employed by the Austrian *Laender* and to university staff, and part four consists entirely of transitional and final provisions.

In the part relating to equal treatment (equal treatment principle = prohibition of discrimination), it is stated that no one must be subject to discrimination on grounds of gender, age, ethnic origin, religion, sexual orientation or belief.

The provisions within the part relating to equal treatment which are intended to advance women require that, with regard to career advancement as well as education and training, women are to receive special support until the goal of true gender equality between women and men is achieved in federal public service.

The legislation applies to contractual public employees and civil servants, quasi-freelancers contracting with a federal authority, apprentices, participants in administrative internships pursuant to the Contractual Public Employees Act 1948 (*Vertragsbedienstetengesetz, VGBG*), individuals in national training service, and candidates for employment or training with the Federal Government.

Exemptions from the principles of equal treatment or advancement of women exist only where gender is a prerequisite for a certain job. The Act applies to federal public-service employees and to a limited extent to teachers employed by the *Laender.*

Since 2008 the *B-GlBG* has been amended and modified as follows:

2009 amendment to the *B-GlBG*:

- The women's quota as defined in the provisions specifying special measures for the advancement of women increased to 45%;
- Extension of the period for filing a complaint in cases of sexual harassment to three years;
- Discrimination due to pregnancy and maternity is henceforth *ex lege* discrimination;
- More detailed specification of women's right to participate in commissions;
- Intangible damages also awarded after termination on discriminatory grounds is successfully contested and the employment relationship is "restored".

2010 amendment to the *B-GlBG*:

- Federal Government required to prepare income reports;
- Associative discrimination;
- Increasing the minimum claim for damages to EUR 1,000 in cases of (sexual) discrimination;
- Clarification of conditions for removal from office.

2011 amendment to the *B-GlBG*:

- The women's quota as defined in the provisions specifying special measures for the advancement of women increased to 50%;
- Inclusion in the Federal Government income reports of part-time employees and those employed for less than a year;
- Requirement to indicate minimum remuneration in job postings by the Federal Government;
- Obligation to submit information to the Federal Chancellor for the purpose of evaluating discrimination protection.

2012 amendment to the *B-GlBG*:

- Discrimination protection extended: discrimination based on an individual's status as parent or non-parent is prohibited; where selecting among job applicants, the income of a candidate's registered partner not to be taken into account in a discriminatory way;
- Specifications for computing intangible damages;
- Extension of the period of limitation in cases of harassment (as in sexual harassment) to three years;
- Specification of the requirement for the Federal Chancellor to engage in dialogue with NGOs;

- Clarification of Federal Equal Treatment Commission sessions as non-public; chairperson can order separate hearings in cases of (sexual) harassment.

Federal Equal Treatment Commission

During the period of 1 March 2008 to 1 March 2010, 49 applications were handled. No complaints were expressly related to pay discrimination.

During the period of 1 March 2010 to 1 March 2012, 63 applications were handled. No complaints were expressly related to pay discrimination; as in previous years, the large majority of cases concerned (alleged) discrimination involving career advancement.

**In response to the second question:**

Since taking up activities, the Equal Treatment Ombuds Office has been providing training to works council members on the topic of "Equal pay for equal work and work of equal value" as part of the evening courses held by the trade unions. The income reports have increasingly been a topic of such training sessions since 2011.

Since then, specialists from the Equal Treatment Ombuds Office have been informing employers and HR managers about the new transparency rules (see above) in the context of equal pay courses. In cooperation with bodies such as the Public Employment Service and the Federal Economic Chamber, training is also regularly offered on the subject of compulsory remuneration information in job advertisements.

The National Action Plan on Gender Equality in the Labour Market, published in June 2010, is an important instrument towards improving the situation of women in the employment market. Through consultations with all federal ministries, the *Laender*, the social partners, NGOs, private companies and researchers, a package of 55 specific measures were defined under the NAP on Gender Equality as a means of achieving four strategic goals: (i) diversifying educational paths and career choices; (ii) increasing women's labour force participation and full-time employment; (iii) increasing the number of women in management positions; and (iv) reducing the gender pay gap. Of the total of 55 measures, 32 measures or 58% have been fully implemented. Another 13 measures have been partially implemented or are in the process of implementation.

According to Eurostat, the gender pay gap in the private sector as based on gross hourly earnings is 23.7% (2011). The 2011 amendment to the Equal Treatment Act (*Gleichbehandlungsgesetz, GlBG*), Federal Law Gazette I no. 7/2011 specifies the requirement for companies to introduce the preparation of income reports in stages. As of 2013 the requirement applies to companies with more than 250 employees, and as of 2014 those with more than 150 employees fall under the requirement. Workshops have been offered to private-sector businesses and a guide for preparing income reports made available. The reports are required to list the average income of women and men in each of the employment categories and in employment category years. The aim is to allow verification of remuneration for equal work and work of equal value. The amendment to the *GlBG* also specifies the requirement for salary details to be included in job advertisements. Sanctions for infringements have been imposed since 1 January 2012. The effects of these measures will be evaluated in 2013. Enhanced transparency is provided by the income calculator, which has been

available since 3 October 2011 (www.gehaltsrechner.gv.at, in German). This online tool can be used to calculate average guidance values for women's and men's wages and salaries according to sector or occupational group. Relevant factors such as education, work experience or the type of work are taken into account.

*Frauen-Rechtsschutz*, a Vienna-based association active throughout Austria, pursues with its project "Legal protection for women and children" the goal of breaking down the barriers in accessing the legal system which women and children experience in criminal proceedings as victims of violence, in enforcing civil claims where violence threatens or has occurred, in marital and family proceedings, and when asserting their rights to equal treatment as defined in employment and social laws.

The association provides financial support for legal representation and for the purpose of filing for model proceedings. A grant recipient since 1998, the association received EUR 15,000 in support from funding for women's projects in 2009 and EUR 30,000 in each of the years 2010, 2011 and 2012.

**In response to the third question:**

**Private sector**

Comprehensive income data for Austria are contained in the General Income Report (*Allgemeiner Einkommensbericht*) of the Austrian Court of Audit and in the Structure of Earnings Survey (SES).

The **General Income Report of the Austrian Court of Audit** (http://www.rechnungshof.gv.at/berichte/ansicht/detail/rechnungshof-veroeffentlicht-einkommensbericht-2012-1.html, available in German only) reveals the following:

Expressed in terms of mean gross annual income (fully unadjusted), the gender pay gap was 39.6% in 2011, i.e. women earned on average this much less than men. This -40% difference has remained more or less the same over the past 13 years. This can be explained for the most part by the extremely large, increasing percentage of women working part-time. The median income in 2011 was EUR 18,549 among women and EUR 30,690 for men. Since the onset of the financial and economic crisis in 2008, the difference has slightly decreased by 1.3 percentage points (refer to Table 1). The gender income gap is smaller among higher incomes than in the lower income range, specifically 32.5% in the third quartile versus 51.9% in the first quartile. The consistently substantial income gap in the lower income range has decreased by 4.4% since 2008. This can be attributed to a real and nominal decline in male incomes within the lower income range since 2008, which in turn is partly due to more frequent part-time employment among men.

The income disparity experienced by women differs depending on social status. While the pay gap between men and women, expressed in terms of gross annual income (unadjusted), amounted to 56.8% for blue-collar workers and 49.7% for white-collar workers in 2011, it was significantly smaller in the public-employment sector (22.7% for contractual public employees and 6.2% for civil servants).

If only persons employed full-time all year round are considered, the income difference between genders in terms of mean gross annual income is 18.5% (see General Income Report 2012, Table 21, p. 47).

One noteworthy fact is that income differences among year-round full-time employees are significantly smaller in the public sector (contractual public employees 6.9%; female civil servants actually earn 1.1% more than their male colleagues) than in the private sector (blue-collar workers 31%, white collar-workers 34%).

The Austrian **Structure of Earnings Survey (SES)** examines companies with ten or more employees in production (sections B-F of ÖNACE 2008) and in services (sections G-N and P-S). It does not include entities of section O (public administration and defence; compulsory social security). This means that education and teaching, human health and social work activities, as well as arts, entertainment and recreation are not included in the survey.

The SES is carried out every four years. The latest findings (SES 2010) reveal a gender difference in median gross hourly earnings of 21.1% to the disadvantage of women (excluding extra hours and overtime; excluding apprentices). The median hourly earnings of women working part-time are 14.1% lower than those of women working full-time (difference among men: 24.5%). The gross hourly earnings of women working part-time are 28.4% below those of men working full-time (see Table 2).

Significant differences in earnings become evident when looking at the median gross hourly earnings by sector. The lowest gross hourly rates are generally paid in the sectors of “Administrative and support service activities” (women: EUR 8.44, men: EUR 11.13) and “Accommodation and food service activities” (women: EUR 7.69, men: EUR 8.33). High wages and salaries are paid to women working in “Financial and insurance activities” (women: EUR 16.62, men EUR 22.15) and in “Electricity, gas and water supply” (women: EUR 17.48, men: EUR 22.12). However, there are also big gender-specific differences in earnings in industries with higher earnings standards.

Differences in earnings between the genders vary considerably among the individual sectors. The smallest differences in earnings can be identified in “Transportation and storage” (4%), “Human health and social work activities” (5.8%) and in “Water supply, sewerage, waste management and remediation activities” (6.9%). Major earnings disparities can be seen between men and women in the sectors “Other service activities” (28.5%), “Education and teaching” (24.8%) and “Financial and insurance activities” (24.8%). In all sectors surveyed, the gross hourly earnings of women are lower than those of men (see Table 3).

As of 2008, the SES serves as the data source for the annual **EU structural indicator** referred to as **the “Gender pay gap”**, published periodically by EUROSTAT. The SES, which is carried out in all EU Member States, now provides a comparable, harmonised basis for this structural indicator going back to 2006.

The structural indicator reveals for Austria in 2011 a gross hourly earnings difference between genders of 23.7% (arithmetic mean of gross hourly earnings, including extra hours and overtime, including apprentices).

Please refer to the summary entitled “Dependently employed persons by economic section” (Table 4) on the issue of the jobholders in the various economic sectors. The data published by the Federal Ministry of Labour, Social Affairs and Consumer Protection (annual average values for 2012) are based on data collected by the Main Association of Austrian Social Security Institutions (*Hauptverband der österreichischen Sozialversicherungsträger*). It can be seen that 25.2% of the employees in the sector with the highest employee numbers, namely “Manufacturing”

(with a total of 583,285 employees), are female. An above-average share of female employees at 59% is found in the second largest sector ("Public administration and defence, compulsory social security") and at 54.9% in the third largest ("Wholesale and retail trade and repair of motor vehicles and motorcycles"), specifically with a 74.2% share in retail trade. The share of female employees is particularly large in the sections "Activities of households as employers" (86.6%, with a total of only 3,021 employees) and "Human health and social work activities" (76.2%). The share of women is particularly small in "Construction" (12.2%), "Mining" (13.2%) and "Electricity, gas and water supply" (17%).

The most important economic sections for the employment of women are: "Public administration"; "Trade and repair"; "Human health and social work"; and "Manufacturing".

**Table 1: Gross annual income of dependently employed persons, in total**

| | Quartile/median | Women | Men | Difference (%) |
|---|---|---|---|---|
| **2011 (in EUR)** | First quintile (20%) | 5,469 | 11,804 | 53.7 |
| | First quartile (25%) | 8,041 | 16,721 | 51.9 |
| | Median (50%) | 18,549 | 30,690 | 39.6 |
| | Third quartile (75%) | 30,342 | 44,970 | 32.5 |
| | Fourth quintile (80%) | 33,814 | 49,939 | 32.3 |
| | Average | 21,913 | 35,379 | 38.1 |
| **2010 (in EUR)** | First quintile (20%) | 5,498 | 12,374 | 55.6 |
| | First quartile (25%) | 8,034 | 17,032 | 52.8 |
| | Median (50%) | 18,270 | 30,316 | 39.7 |
| | Third quartile (75%) | 29,954 | 44,431 | 32.6 |
| | Fourth quintile (80%) | 33,424 | 49,364 | 32.3 |
| | Average | 21,647 | 35,074 | 38.3 |
| **2009 (in EUR)** | First quintile (20%) | 5,475 | 12,564 | 56.4 |
| | First quartile (25%) | 8,006 | 17,296 | 53.7 |
| | Median (50%) | 18,112 | 30,102 | 39.8 |
| | Third quartile (75%) | 29,602 | 44,602 | 33.6 |
| | Fourth quintile (80%) | 33,053 | 49,000 | 32.5 |
| | Average | 21,403 | 34,911 | 38.7 |
| **2008 (in EUR)** | First quintile (20%) | 5,393 | 13,427 | 59.8 |
| | First quartile (25%) | 7,872 | 18,009 | 56.3 |
| | Median (50%) | 17,704 | 29,938 | 40.9 |
| | Third quartile (75%) | 28,826 | 43,565 | 33.8 |
| | Fourth quintile (80%) | 32,130 | 48,342 | 33.5 |
| | Average | 20,864 | 34,787 | 40.0 |
| **2007 (in EUR)** | First quintile (20%) | 5,439 | 13,393 | 59.4 |
| | First quartile (25%) | 7,804 | 17,693 | 55.9 |
| | Median (50%) | 17,217 | 29,057 | 40.7 |
| | Third quartile (75%) | 27,977 | 42,190 | 33.7 |
| | Fourth quintile (80%) | 31,091 | 46,773 | 33.5 |
| | Average | 20,218 | 33,771 | 40.1 |
| **2006** | First quintile (20%) | 5,189 | 12,546 | 58.6 |

| | | | | |
|---|---|---|---|---|
| **(in EUR)** | First quartile (25%) | 7,507 | 16,734 | 55.1 |
| | Median (50%) | 16,713 | 28,102 | 40.5 |
| | Third quartile (75%) | 27,165 | 40,816 | 33.4 |
| | Fourth quintile (80%) | 30,184 | 45,262 | 33.3 |
| | Average | 19,572 | 32,479 | 39.7 |
| **2005** | First quintile (20%) | 5,086 | 12,050 | 57.8 |
| **(in EUR)** | First quartile (25%) | 7,326 | 16,246 | 54.9 |
| | Median (50%) | 16,296 | 27,375 | 40.5 |
| | Third quartile (75%) | 26,407 | 39,487 | 33.1 |
| | Fourth quintile (80%) | 29,285 | 43,729 | 33.0 |
| | Average | 19,005 | 31,426 | 39.5 |
| **2004** | First quintile (20%) | 4,994 | 12,111 | 58.8 |
| **(in EUR)** | First quartile (25%) | 7,189 | 16,203 | 55.6 |
| | Median (50%) | 15,977 | 26,894 | 40.6 |
| | Third quartile (75%) | 25,746 | 38,452 | 33.0 |
| | Fourth quintile (80%) | 28,508 | 42,561 | 33.0 |
| | Average | 18,501 | 30,713 | 39.8 |
| **2003** | First quintile (20%) | 4,979 | 12,146 | 59.0 |
| **(in EUR)** | First quartile (25%) | 7,122 | 16,157 | 55.9 |
| | Median (50%) | 15,792 | 26,507 | 40.4 |
| | Third quartile (75%) | 25,342 | 37,801 | 33.0 |
| | Fourth quintile (80%) | 28,054 | 41,865 | 33.0 |
| | Average | 18,247 | 30,278 | 39.7 |
| **2002** | First quintile (20%) | 5,161 | 12,452 | 58.6 |
| **(in EUR)** | First quartile (25%) | 7,238 | 16,322 | 55.7 |
| | Median (50%) | 15,620 | 26,055 | 40.0 |
| | Third quartile (75%) | 24,827 | 37,058 | 33.0 |
| | Fourth quintile (80%) | 27,458 | 41,049 | 33.1 |
| | Average | 17,939 | 29,850 | 39.9 |

| | | | | |
|---|---|---|---|---|
| **2001 (in EUR)** | First quintile (20%) | 5,018 | 12,956 | 61.3 |
| | First quartile (25%) | 7,082 | 16,582 | 57.3 |
| | Median (50%) | 15,304 | 25,592 | 40.2 |
| | Third quartile (75%) | 24,321 | 36,274 | 33.0 |
| | Fourth quintile (80%) | 26,869 | 40,167 | 33.1 |
| | Average | 17,538 | 29,464 | 40.5 |
| **2000 (in EUR)** | First quintile (20%) | 4,874 | 13,261 | 63.2 |
| | First quartile (25%) | 6,884 | 16,618 | 58.6 |
| | Median (50%) | 14,976 | 25,094 | 40.3 |
| | Third quartile (75%) | 23,759 | 35,595 | 33.3 |
| | Fourth quintile (80%) | 26,308 | 39,431 | 33.3 |
| | Average | 17,204 | 29,305 | 41.3 |
| **1999 (in EUR)** | First quintile (20%) | 4,849 | 13,127 | 63.1 |
| | First quartile (25%) | 6,814 | 16,349 | 58.3 |
| | Median (50%) | 14,773 | 24,614 | 40.0 |
| | Third quartile (75%) | 23,356 | 34,831 | 33.0 |
| | Fourth quintile (80%) | 25,824 | 38,532 | 33.0 |
| | Average | 16,888 | 28,481 | 40.7 |
| **1998 (in EUR)** | First quintile (20%) | 4,847 | 13,236 | 63.4 |
| | First quartile (25%) | 6,772 | 16,279 | 58.4 |
| | Median (50%) | 14,551 | 24,006 | 39.4 |
| | Third quartile (75%) | 22,745 | 33,839 | 32.8 |
| | Fourth quintile (80%) | 25,143 | 37,414 | 32.8 |
| | Average | 16,503 | 27,907 | 40.9 |

Dependently employed persons excluding apprentices, including marginal part-timers.
Difference as a percentage of men's income.
Gross annual income: total of all gross earnings pursuant to Section 25 of the Austrian Income Tax Act (*Einkommensteuergesetz, EKStG*).

Source: General Income Report of the Court of Audit (RH), Vienna 2000, (page 162 et seq.), 2002 (page 170 et seq.), 2004 (page 172 et seq.), 2006 (page 250 et seq.).
Figures for 2006 and 2007: RH 2008, Statistical Annex, page 2 et seq.
Figures for 2008 and 2009: RH 2010, Statistical Annex, page 2 et seq.
Figures for 2010 and 2011: RH 2012, Statistical Annex, page 2 et seq.

**Table 2**

**Gross hourly earnings of full-time and part-time employees in 2010 (SES)**

| Quartile/ average | Women (in EUR) | Men (in EUR) | Difference (%) |
|---|---|---|---|
| *Full-time employees* | | | |
| First quartile (25%) | 9.23 | 11.40 | 19.04 |
| Median (50%) | 11.88 | 14.25 | 16.63 |
| Third quartile (75%) | 15.72 | 19.21 | 18.17 |
| Average | 13.46 | 16.93 | 20.50 |
| *Number of dependently employed* | *466,248* | *1,175,576* | |
| *Part-time employees* | | | |
| First quartile (25%) | 8.18 | 8.19 | 0.12 |
| Median (50%) | 10.21 | 10.76 | 5.11 |
| Third quartile (75%) | 13.67 | 16.10 | 15.09 |
| Average | 11.81 | 14.33 | 17.59 |
| *Number of dependently employed* | *455,905* | *138,357* | |
| *Full-time and part-time employees* | | | |
| First quartile (25%) | 8.60 | 11.06 | 22.24 |
| Median (50%) | 11.04 | 13.99 | 21.09 |
| Third quartile (75%) | 14.69 | 18.94 | 22.44 |
| Average | 12.64 | 16.66 | 24.13 |
| *Number of dependently employed* | *922,153* | *1,313,933* | |

Gross hourly earnings excluding extra hours and overtime (including, however, supplements for night work, shift-work and work on Sundays and public holidays).

Note: “average” denotes the arithmetic mean. Excluding apprentices. Part-time employees: all persons whose regular work time is shorter than the normal work time stipulated by the Working Hours Act (*AZG*) or collective agreement.

The survey includes companies with ten or more employees in industry (sections B-F of ÖNACE 2008) and in Services (sections G-N and P-S of ÖNACE 2008). Sections P-S of ÖNACE 2008 (formerly M-O of ÖNACE 2003) have been surveyed since 2006. Sections not included are A “Agriculture, forestry and fishing” and O “Public administration and defence, compulsory social security”. Due to the fact that workplaces categorised under survey units of section O, in particular the areas education, human health and social work activities, as well as arts, entertainment and recreation (under sections P, Q and R) could not be included in the survey. In addition, the section “Water supply and waste management” in the “Industry” sector does not include municipal employees.

Source: Structure of Earnings Survey (SES) 2010, Statistics Austria 2013, www.statistik.at/web_en/

**Table 3**
**Gross hourly earnings without extra hours and overtime[1)] by economic activity** (October 2010)

| Economic activity by ÖNACE 2008 section | | Women | | Men | | Difference |
|---|---|---|---|---|---|---|
| | | *Number of dependently employed* | *Median in EUR* | *Number of dependently employed* | *Median in EUR* | ***Gross hourly wages in %*** |
| **Total** | | 922,153 | 11.04 | 1,313,933 | 13.99 | 21.09 |
| B | Mining and quarrying | 921 | 12.10 | 6,175 | 13.61 | 11.09 |
| C | Manufacturing | 126,757 | 11.45 | 382,421 | 15.17 | 24.52 |
| D | Electricity, gas and water supply | 4,009 | 17.48 | 19,952 | 22.12 | 20.98 |
| E | Water supply, sewerage, waste management and remediation activities | 2,512 | 10.97 | 10,027 | 11.78 | 6.88 |
| F | Construction | 20,704 | 12.15 | 172,802 | 13.28 | 8.51 |
| G | Wholesale and retail trade, repair of motor vehicles and motorcycles | 235,735 | 10.06 | 181,873 | 12.97 | 22.44 |
| H | Transportation and storage | 32,408 | 12.13 | 132,883 | 12.64 | 4.03 |
| I. | Accommodation and food service activities | 67,312 | 7.69 | 46,454 | 8.33 | 7.68 |
| J | Information and communication | 19,507 | 16.16 | 38,406 | 20.19 | 19.96 |
| K | Financial and insurance activities | 53,708 | 16.62 | 52,484 | 22.15 | 24.97 |
| L | Real estate activities | 10,817 | 11.93 | 8,332 | 14.93 | 20.09 |
| M | Professional, scientific and technical activities | 46,913 | 13.68 | 46,155 | 18.04 | 24.17 |
| N | Administrative and support service activities | 75,892 | 8.44 | 96,749 | 11.13 | 24.17 |
| P | Education | 57,261 | 12.65 | 42,774 | 16.86 | 24.97 |
| Q | Human health and social work activities | 121,064 | 12.86 | 39,623 | 13.65 | 5.79 |
| R | Arts, entertainment and recreation | 14,999 | 10.25 | 17,373 | 12.34 | 16.94 |
| S | Other service activities | 31,633 | 10.72 | 19,450 | 15.00 | 28.53 |

| | | | | | | |
|---|---|---|---|---|---|---|
| B-F | Industry and construction | 154,903 | 11.63 | 591,377 | 14.54 | 20.01 |
| G-N, P-S | Services | 767,250 | 10.92 | 722,556 | 13.37 | 18.32 |

*Source:* Statistics Austria, Structure of Earnings Survey 2010, excluding apprentices, workplaces categorised under survey units of ÖNACE section O “Public administration and defence, compulsory social security” were not included, concerning primarily sections P and Q as well as E and R.

[1)] Gross earnings excluding extra hours and overtime (including, however, supplements for night work, shift-work and work on Sundays and public holidays).

**Table 4**
**Dependently employed persons by economic section (ÖNACE 2008; annual average values 2013)**

| Economic activity by ÖNACE 2008 section | Dependently employed persons (absolute numbers) | | | Share of women in % |
|---|---|---|---|---|
| | Total | Women | Men | |
| Agriculture, forestry and fishing | 20,577 | 7,299 | 13,278 | 35.47 |
| Mining and quarrying | 5,668 | 747 | 4,921 | 13.18 |
| Manufacturing | 583,285 | 146,991 | 436,294 | 25.20 |
| Electricity, gas and water supply | 26,669 | 4,526 | 22,143 | 16.97 |
| Water supply, sewage and waste management, and remediation activities | 14,537 | 3,040 | 11,497 | 20.91 |
| Construction | 248,065 | 30,240 | 217,825 | 12.19 |
| Wholesale and retail trade, repair of motor vehicles and motorcycles | 525,227 | 288,265 | 236,962 | 54.88 |
| Transportation and storage | 182,792 | 37,540 | 145,252 | 20.54 |
| Accommodation and food service activities | 191,606 | 113,257 | 78,349 | 59.11 |
| Information and communication | 77,963 | 26,157 | 51,806 | 33.55 |
| Financial and insurance activities | 117,986 | 59,416 | 58,570 | 50.36 |
| Real estate activities | 40,794 | 24,913 | 15,881 | 61.07 |
| Professional, scientific and technical activities | 155,330 | 82,316 | 73,014 | 52.99 |
| Administrative and support service activities | 184,735 | 79,943 | 104,792 | 43.27 |
| Public administration and defence, compulsory social security | 540,810 | 318,989 | 221,821 | 58.98 |
| Education | 96,495 | 54,552 | 41,943 | 56.53 |
| Human health and social work activities | 230,966 | 176,047 | 54,919 | 76.22 |
| Arts, entertainment and recreation | 34,921 | 15,897 | 19,024 | 45.52 |
| Other service activities | 87,300 | 60,777 | 26,523 | 69.62 |
| Activities of households as employers; undifferentiated goods- and services-producing activities of households for own use | 3,021 | 2,616 | 405 | 86.59 |
| Activities of extraterritorial organisations and bodies | 647 | 392 | 255 | 60.59 |
| Other | 96,063 | 85,002 | 11,061 | 88.49 |

Note: Since 2008, businesses have been classified according to ÖNACE 2008. Contracts of quasi-freelancers, quasi-freelancers with marginal part-time employment contracts and marginal part-timers are not included in the classification of economic activities. National-service conscripts and childcare benefit recipients are not included in the classification of economic activities but referred to separately.

*Source*: Federal Ministry of Labour, Social Affairs and Consumer Protection, BALI (budget, labour market and unemployment benefit data) online data retrieval system, on the

basis of the data published by the Main Association of Austrian Social Security Institutions. Free query of 18 March 2013. http://www.dnet.at/bali/

**Employeess at federal level**

The income report as specified in Section 6a of the Federal Equal Treatment Act (*Bundes-Gleichbehandlungsgesetz, B-GlBG*) (in German, http://www.bka.gv.at/DocView.axd?CobId=48968) provides details of income differences by gender among federal employees.

**Income differences in federal public service**

With regard to the income gap between women and men, the remuneration system for federal public employees, and specifically the statutory pay schemes, offer one benefit over individual salary agreements: work of equal value is awarded equal pay – regardless of gender. There is no possibility of treating job candidates unequally by offering them different pay levels, because the salary level depends on how the position is classified. The mean incomes of women in federal public service are nonetheless lower than those of men, although the percent difference is much smaller than in the private sector. When adjusted for number of working hours, the gender pay gap in federal public service is 15%, whereas in all of Austria the difference in average income between women and men in full-time employment over the entire year is 21%.

The gender pay gap in federal public service can for the most part be attributed to the following general factors related to income: the amount of overtime a person works, the person's professional qualifications and age and whether the person holds a management position. For occupational groups where individuals work both in contractual employment relationships and in relationships according to public law, any comparison between female and male incomes is encumbered by the fact that civil servants and contractual public employees are paid according to differing schemes, while the percentage of civil servants differs between women and men.

Please refer also to the study published by the Austrian Federal Minister for Women entitled "Gender-specific income differences. Indicators for monitoring" (*Geschlechtsspezifische Einkommensunterschiede. Indikatoren für ein Monitoring*, available in German at http://www.frauen.bka.gv.at/site/5461/default.aspx#a1). The study identified a set of 20 relevant indicators for Austria that are to be used to systematically monitor any changes in the gender pay gap. One of the key findings of the study is that the unequal wages and salaries offered at the entry level are a major determinant for the existence of the overall income difference between men and women. Inequalities when climbing the career ladder and inequalities resulting from child care obligations also play a major role.

**Income report pursuant to Section 6a *B-GlBG* for the federal public service**

| Data basis: 2011 calendar year | Full-time employees | | Gross annual income | | Average age | |
|---|---|---|---|---|---|---|
| | Men | Women | Men | Women | Men | Women |
| **General administration** | **23,833** | **19,513** | **40,671** | **32,042** | **46.9** | **43.8** |
| A1, v1 | 3,817 | 2,087 | 68,030 | 56,595 | 46.3 | 42.2 |
| A2, v2 | 7,300 | 4,402 | 51,153 | 43,133 | 47.2 | 42.8 |
| A3, v3, h1 | 6,417 | 7,984 | 34,780 | 31,449 | 47.2 | 44.7 |
| A4-7, v4-7, h2-5 | 4,852 | 4,673 | 26,060 | 23,862 | 44.9 | 42.1 |

| Data basis: 2011 calendar year | Full-time employees | | Gross annual income | | Average age | |
|---|---|---|---|---|---|---|
| | Men | Women | Men | Women | Men | Women |
| DKL | 1,217 | 647 | 67,064 | 53,481 | 54.4 | 53.0 |
| ADV-SV | 473 | 90 | 56,415 | 51,126 | 44.1 | 46.5 |
| **Police and prison staff** | **27,144** | **3,321** | **48,775** | **37,877** | **43.8** | **31.2** |
| E1 | 660 | 27 | 72,970 | 55,622 | 49.0 | 43.1 |
| E2a | 10,381 | 479 | 54,351 | 43,956 | 48.4 | 38.9 |
| E2b, Border Control | 14,810 | 2,343 | 45,828 | 38,143 | 42.0 | 31.5 |
| E2c, Asp | 2,129 | 813 | 16,095 | 16,483 | 24.3 | 23.1 |
| DKL | 63 | - | 45,956 | - | 51.3 | - |
| **Judges, public prosecutors** | **1,341** | **1,184** | **82,154** | **65,256** | **46.4** | **40.9** |
| R3, III | 103 | 29 | 134,863 | 120,316 | 53.7 | 51.1 |
| R2, II | 111 | 72 | 100,427 | 99,657 | 51.6 | 50.0 |
| R1a, R1b, I | 776 | 709 | 80,406 | 68,970 | 47.2 | 43.0 |
| Court of Asylum | 42 | 31 | 80,275 | 72,482 | 46.4 | 44.4 |
| Judge candidates | 92 | 185 | 26,523 | 24,037 | 29.2 | 28.3 |
| St3, Procurator General | 10 | 5 | 120,318 | 108,792 | 54.7 | 47.1 |
| St2, STII | 40 | 20 | 78,980 | 76,416 | 46.7 | 45.0 |
| St1, STI | 205 | 193 | 68,818 | 58,625 | 42.2 | 37.0 |
| **Military service** | **14,870** | **297** | **38,367** | **26,386** | **40.6** | **29.6** |
| (MBO1, MZO1) | 675 | 34 | 82,621 | 61,709 | 45.4 | 41.0 |
| (MBO2, MZO2) | 2,223 | 21 | 52,382 | 37,930 | 41.8 | 31.1 |
| (MBUO1, MZUO1) | 6,872 | 26 | 39,798 | 33,329 | 46.5 | 34.8 |
| (MBUO2, MZUO2) | 2,564 | 95 | 29,894 | 27,107 | 31.7 | 28.5 |
| MZCh | 1,005 | 125 | 21,526 | 20,933 | 24.2 | 26.1 |
| DKL | 839 | - | 37,223 | - | 50.4 | - |
| International Operations Forces (KIOP) | 1,166 | 15 | 27,568 | 26,539 | 23.1 | 25.8 |
| **Teachers** | **15,741** | **18,094** | **63,054** | **53,661** | **48.8** | **46.6** |
| L1, l1 | 12,750 | 14,898 | 65,970 | 55,088 | 49.1 | 46.5 |
| L2, l2 | 2,772 | 3,078 | 52,001 | 47,778 | 47.1 | 46.8 |
| L3, l3 | 36 | 21 | 23,859 | 24,577 | 42.0 | 47.9 |
| Teachers at teacher education colleges (LPH, lph) | 167 | 103 | 86,029 | 84,567 | 55.9 | 54.2 |
| **School supervision** | **172** | **95** | **80,202** | **80,902** | **56.3** | **54.4** |
| **Nursing** | **69** | **131** | **41,629** | **38,866** | **44.5** | **46.7** |
| K2, k2 | 21 | 13 | 42,648 | 35,472 | 44.6 | 40.4 |
| K3, k3 | 6 | 15 | 50,722 | 50,847 | 51.8 | 52.5 |

| Data basis: 2011 calendar year | Full-time employees | | Gross annual income | | Average age | |
|---|---|---|---|---|---|---|
| K4, k4 | 30 | 70 | 42,738 | 40,008 | 45.4 | 46.3 |
| K5, k5 | - | 6 | - | 36,578 | - | 48.5 |
| K6, k6 | 12 | 28 | 27,509 | 30,325 | 38.2 | 46.5 |
| **Other** | **66** | **10** | **37,341** | **34,429** | **52.9** | **49.3** |

## Article 4§4

Not ratified by Austria.

## Article 4§5

**In response to the first question:**

Taking into account the supplementary question on Art. 4§5 in the Conclusions XIX-3 (2010), previous reporting on Art. 4§5 of the European Social Charter of 1961 is updated as follows:

Deductions from wages are prohibited in Austria unless permitted or required on the basis of general or special statutory provisions, of collective agreements or works agreements, or of an agreement concluded within the framework of statutory provisions between the parties to the employment contract.

Statutory wage deductions include in particular payroll tax, social security contributions (employee’s share), the contribution to the employees’ statutory interest group, the contribution to housing subsidies, the works council contribution and, in the case of workers subject to the Act on Bad Weather Compensation for Construction Workers 1957 *(Bauarbeiter-Schlechtwetterentschädigungsgesetz*), Federal Law Gazette no. 174, the contribution to the bad weather compensation fund (employee’s share).

The law applicable to wage garnishment, i.e. the statutory provisions governing the enforcement of financial claims, have been laid down in Sections 290 et seq. of the Austrian Enforcement Code (*Exekutionsordnung, EO*). They are available as last amended free of charge on the Internet through the Legal Information System of the Republic of Austria (RIS, www.ris.bka.gv.at, in German).

In the case of claim enforcement, protection against attachment exists for the obligor; such protection is mandatory and specified in the law (Section 293 *EO*) and has to be observed on the authority’s own initiative. The *EO* distinguishes between claims that are not subject to attachment (Section 290 *EO*) and those that are subject to attachment to a limited extent, with the latter consisting of an amount exempt from attachment (referred to as *Existenzminimum* or “minimum subsistence”) and a component subject to attachment (Section 290a *EO*).

Examples of income components not subject to attachment include compensation for expenses, while claims not subject to attachment include statutory allowances, e.g. attendance allowance and family allowance.

Claims subject to attachment to a limited extent include: regular remuneration from an employment relationship (regardless of whether based on private or public law), pension benefits and statutory maintenance payments. Certain limitations apply to claims that are subject to attachment to a limited extent (Section 290a *EO*). The obligor must retain an exempt amount not subject to attachment (minimum subsistence level) that is determined according to procedures detailed in the Enforcement Code, i.e. in Section 291a *EO* and, in the case of enforcement of maintenance payments, in Section 291b *EO*. The third-party debtor is responsible for computing the exempt amount not subject to attachment, and that party is liable to consequently pay to the creditor pursuing the claim the share subject to attachment. The minimum subsistence level consists of a set amount (referred to as the "general base amount", set at EUR 837 as of 1 January 2013) that additionally increases with the number of maintenance obligation claims (the Code recognises a maximum of five, cf. Section 291a Para. 2 no. 2 *EO*) and with the income level. This means, that the minimum subsistence level increases with the amount the obligor's income, which is intended as an incentive for that person toward paying off debts. Any income superseding EUR 3,340 a month (as of 1 January 2013) is subject to unlimited attachment, however.

Pursuant to Section 291a *EO*, an annual adjustment of the amount results from the dependency on the equalisation supplement reference rate, which is defined in the General Social Insurance Act (*Allgemeine Sozialversicherungsgesetz, ASVG*). To simplify calculation, the Federal Ministry of Justice publishes a table with the individual amounts of the minimum subsistence level on the ministry's website (www.bmj.gv.at).

http://justiz.gv.at/internet/file/2c9484852308c2a60123ec387738064b.de.0/2013.pdf

Where the amount not subject to attachment is contested, the court of execution may be petitioned to rule whether maintenance obligations are to be taken into account when calculating the exempt amount not subject to attachment, or whether any payment received or a part thereof is subject to attachment and, if so, to what extent (Section 292k Para. 1 nos. 1 and 2 *EO*).

To avoid cases of hardship, under certain circumstances the court may increase the exempt amount not subject to attachment (Section 292a *EO*). This may be the case where the obligor has significantly higher expenses due to the need for personal assistance or due to disability or illness or where that party is subject to extraordinary expense as a result of professional or occupational activities. When taking decisions pursuant to Section 292a *EO*, the court is obliged to carefully balance interests.

The court may also be petitioned to reduce the amount not subject to attachment in individual cases (Section 292b *EO*). This may be the case, for instance, where regulary maintenance claims specified by law cannot be fully collected through execution.

The risk of garnishment of the sum reserved for minimum subsistence when the funds are remitted to the obligor's bank account, is prevented by provisions specifying account protection: Any garnishment of a bank account balance is to be reversed to the extent of the balance amount equalling the portion of income not subject to attachment that has been allocated for the period from garnishment until the next payment is received (Section 292i *EO*).

Conversely, provisions are specified in the *EO* to prevent the obligor from entering into agreements with the third-party debtor that would put the creditor pursuing the

claim at a disadvantage. Where the obligor works for the third-party debtor and that party has undertaken to regularly provide services as compensation to another third party, the attachment lien resulting from a garnishee order extends to claims held by the third party against the third-party debtor. The claim held by the third party is thus subject to attachment, as if it were assigned to the obligor. Along with the prohibition of disposal, the execution authorisation is to be served both to the obligor and to the third-party debtor (Section 292d *EO*, referred to as “prevention of wage transfer”).

Another problem that may also arise is where the obligor performs work for the third-party debtor within the framework of a permanent relationship; whereas normally compensation would be paid, in this case only a relatively small amount or nothing at all is agreed as compensation. In such a case the third-party debtor is considered to owe an appropriate level of pay to the creditor pursuing the claim (Section 292e *EO*, “wage concealment”).

Special provisions govern cases where claims are executed to collect maintenance payments: Section 7 Para. 2 *EO* specifies that, as a general rule, the pursued claim cannot be enforced prior to the due date. Yet Section 291c *EO* specifies an exception for cases where privileged maintenance claims as defined in Section 291b *EO* exist. In such cases, claims scheduled to become due in the future can also be enforced (i.e. future income is attached for future claims). The right of attachment acquired through garnishment of a claim to pay additionally extends to wage or salary payments due after the attachment is levied; the dependent entitled to maintenance payments is consequently entitled, on the basis of an execution title and execution authorisation, to the obligor’s regular claims to wages or salary as these become due.

The minimum subsistence level defined for the context of collecting statutory maintenance claims is lower, i.e. reduced to 75% (minimum subsistence level in the case of maintenance claims, refer to Section 291b Para. 2 *EO*).

Regarding any other aspects, the International Labour Organization’s Protection of Wages Convention (No. 95; Federal Law Gazette no. 20/1952) can be used as a reference, which was ratified by Austria.

**<u>In response to the second question:</u>**

The legal framework is applied by the ordinary courts of law in enforcement proceedings; they also rule on disputes arising from this legal framework.

# ARTICLE 5
# RIGHT TO ORGANISE

## In response to the first question:

No substantial changes compared with previous reporting on Art. 5 of the European Social Charter of 1961.

## In response to the second question:

No specific implementation measures during the period under review.

## In response to the third question:

**Statistics on associations in Austria from 2009 to 2012** (in German) are provided below for information purposes.

Vereinsstatistik 2009.pdf

Vereinsstatistik 2010.pdf

Vereinsstatistik 2011.pdf

Vereinsstatistik 2012.pdf

## ARTICLE 6
## THE RIGHT TO BARGAIN COLLECTIVELY

### ARTICLE 6§1

**In response to the first question:**

No substantial changes compared with previous reporting on Art. 6§1 of the European Social Charter of 1961.

**In response to the second question:**

No specific implementation measures during the period under review.

**In response to the third question:**

No specific implementation measures during the period under review.

### ARTICLE 6§2

**In response to the first question:**

Taking into account the additional questions on Para. 2 of Article 6 in the Conclusions XIX-3, previous reporting on Para. 2 of Article 6 of the 1961 Social Charter is updated as follows:

For a significant part of the Austrian economy, Part I (collective law) of the Labour Constitution Act *(Arbeitsverfassungsgesetz, ArbVG)*, Federal Law Gazette no. 22/1974 as amended, provides the legal basis for collective bargaining and the conclusion of overall contracts (collective agreements). Its provisions basically apply to employment relationships of all kinds defined in contracts under private law. The following employment relationships are exempted: employment relationships with the Federal Government, *Laender* governments, local authorities associations and municipalities as well as employment relationships with businesses, enterprises, institutions, foundations and funds administrated by these territorial corporate bodies where the content of the employment contracts is, according to a law, pre-defined to a large extent, as well as employment relationships of agricultural and forestry workers subject to Para. 3 of Art. I of the 1984 Agricultural Labour Act *(Landarbeitsgesetz, LAG)*, Federal Law Gazette no. 287 as amended as well as employment relationships governed by the Homeworking Act 1960 *(Heimarbeitsgesetz, HAG)*, Federal Law Gazette no. 105/1961 as amended. However, both the *LAG* and the *HAG* set forth equivalent instruments to establishing overall agreements.

Collective agreements are written agreements concluded by corporate bodies entitled to enter into collective agreements representing employers on the one hand and employees on the other hand. Collective agreements specify, above all, the mutual rights and obligations of employers and employees arising from the employment relationship, particularly involving the amount of remuneration to be paid (Section 2 *ArbVG*).

According to Section 4 *ArbVG,* corporate bodies entitled to enter into collective agreements are legal interest groups (on the part of employers, this is the Austrian Federal Economic Chamber *(Wirtschaftskammer)*, on the part of employees, this is the Austrian Chamber of Labour *(Arbeiterkammer)*), voluntary-membership occupational associations that were awarded the entitlement to enter into collective agreements by the Federal Arbitration Board *(Bundeseinigungsamt)* (such as the Austrian Trade Union Federation *(Österreichischer Gewerkschaftsbund)*), legal entities under public law for their own employees, associations for their own employees who were awarded the entitlement to enter into collective agreements.

According to Section 6 *ArbVG*, legal interest groups are entitled to enter into collective agreements only where no voluntary-membership occupational association entitled to enter into collective agreements has concluded a collective agreement. In practice, collective agreements in Austria are concluded between the Federal Economic Chamber on the part of the employers and the Austrian Trade Union Federation on the part of the employees.

As a consequence, usually all employers of a sector are subject to collective agreements due to their compulsory membership in the Federal Economic Chamber. As Section 12 *ArbVG* stipulates the non-member effect *(Außenseiterwirkung),* i.e. the legal effects of collective agreements also apply to employees who are not members of the Austrian Trade Union Federation, this results in a high coverage regarding collective agreements of employment relationships in Austria.

With a view to the procedural rules involved in concluding collective agreements, the *ArbVG* only contains provisions on depositing and publishing collective agreements. Pursuant to Section 14 Para. 1 *ArbVG*, each collective agreement has to be deposited by the involved entities entitled to enter into collective agreements with the Federal Ministry of Labour, Social Affairs and Consumer Protection without delay after conclusion in the form of two - in case of collective agreements for employees in agriculture and forestry falling within the scope of the *ArbVG* in the form of three - identical copies duly signed by the parties to the agreement, indicating the parties' addresses.

According to Section 14 Para. 3 *ArbVG*, the Federal Ministry of Labour, Social Affairs and Consumer Protection has to ensure that the conclusion of the collective agreement is published in the official gazette *"Amtsblatt zur Wiener Zeitung"* within one week after the deposit. The publication costs have to be borne equally by the parties to the agreement. Section 14 Para. 4 ArbVG provides more detailed formal requirements regarding the notification of the depositing entity concerning the publication, as well as regarding the authorities to be notified thereof.

Hence legislation basically leaves the way of how to enter into collective agreements for their members in the individual case to the associations designated to enter into collective agreements on the basis of individual organisational provisions (e. g. the laws on chambers, statutes of association, etc.) and authorised on the basis of the stipulations of the *ArbVG* or other legal provisions.

In practice, it is employees' associations that are primarily interested in entering into collective agreements. They can make use of any and all means permitted by the legal system for bringing about the conclusion of an agreement between the parties. Even if not explicitly regulated, these means also include industrial action, which is used in Austria only in rare cases, however.

For already existing collective agreements, the ArbVG provides that a collective agreement not containing any provisions on its term of validity can be terminated after one year within a notice period of at least three months on the last day of each calendar month. The other party to the contract must be informed about the termination by registered letter (Section 17 Para. 1 ArbVG).

Collective agreements in many cases contain provisions on how to amend existing agreements. Apart from termination provisions, collective agreements often stipulate that, in the case of termination, collective bargaining on a new agreement has to be taken up.

Statutory arbitration - established for collective agreements in Austria on a voluntary basis - provides for the participation of the Federal Arbitration Board in the resolution of disputes regarding collective agreements. The Federal Arbitration Board can only provide support upon request of one of the contracting parties. A valid arbitration award can only be issued if both parties to the dispute have declared in advance and in writing to submit to the award.

ILO Convention (No. 98) on the Right to Organise and Collective Bargaining was ratified by Austria and published in Federal Law Gazette no. 20/1952.

Response to the general inquiry regarding the possible extension of the scope of collective agreements:

For employees who are not members of the signatory association, Section 12 ArbVG lays down the non-member effect: If the employer is subject to a collective agreement, their employees are bound by that collective agreement even if they are not members of the concluding employee association.

In line with Sections 18 to 21 ArbVG, the instrument referred to as extension declaration (Satzungserklärung) is relevant in particular for employees of employers who are not members of the association concluding the collective agreement on the part of the employer: Upon request of one of the parties to a collective agreement, a duly published collective agreement that is in force and has reached prevailing significance can be extended by means of an extension declaration of the Federal Arbitration Board to cover similar employment relationships that were previously not subject to a collective agreement. The extension declaration extends the scope of a collective agreement to include employment relationships of essentially the same nature.

**In response to the second question:**

No specific implementation measures during the period under review.

**In response to the third question:**

Currently, some 450 collective agreements are in force in Austria. As a rule, collective agreements are concluded between employer and employee associations in the course of sector-specific collective bargaining taking place annually.

**ARTICLE 6§3**

**In response to the first question:**

Conciliation and voluntary arbitration procedures for settling labour disputes were established in Austria both by law and collective agreements.

Pursuant to the provisions of the ArbVG, the Federal Arbitration Board has to initiate conciliation procedures in case of collective-agreement disputes upon request of one of the parties concerned.

The Federal Arbitration Board has to act as a mediator between the parties to the dispute and work towards coming to an agreement to settle the dispute. In settling the dispute, the Federal Arbitration Board can only issue an arbitration award if both parties to the dispute have declared in advance and in writing to submit to the award. Any written agreements and arbitration awards are considered collective agreements.

For settling disputes arising in the context of the conclusion, amendment or revocation of specific works agreements, the ArbVG stipulates that - upon request of one of the parties to the dispute - an arbitration board has to be established at the social and labour court of first instance within the jurisdiction in which the business is situated. In the framework of administration of justice, the arbitration board is established and the chairperson and the co-arbitrators are appointed by the president of the competent court.

The arbitration board has a mediating role, makes proposals on the settlement of disputes and works towards an agreement between the parties to the dispute. If necessary, it has to make a decision. This decision must be made as quickly as possible within the scope of the applications submitted by the parties, carefully weighing the interests of the business on the one hand and those of the employees on the other hand. In doing so, the arbitration board is bound to the concordant pleading and applications of the parties to the dispute. The decision constitutes a works agreement and is absolute.

Apart from these statutory proceedings, a number of collective agreements themselves provide for establishing arbitration institutions, usually referred to as arbitral tribunals, conciliation boards, etc. As a rule, these arbitration bodies are composed of representatives of the parties to a collective agreement on an equal basis, with either side alternatingly taking the chair or an impartial third party being elected chairperson.

The tasks of this arbitration board can be twofold. On the one hand - in connection with individual disputes – it can be used as a preliminary stage of labour court proceedings. In this case, individual employers and employees are not obliged to bring the matter before such arbitration board and/or do not forfeit their right to legal proceedings by doing so. However, the parties to a collective agreement are obliged to convince their members to make use of the services of arbitration boards as a first step and commit themselves not to represent at court members refusing such arbitration procedure.

On the other hand, most of these arbitration boards are - in the same composition - in charge of matters falling within the above mentioned responsibility of the Federal Arbitration Board. Many of these collective agreements set forth that - in case an agreement cannot be reached - the contracting parties have to turn to the Federal Arbitration Board.

The reason for using such arbitration boards is that the members' expertise often seems to be more important than the authorities' judicial knowledge. This is why these boards are specified in many collective agreements for sectors with widely

differing employment relationships and business conditions (e. g. collective agreements for artists, musicians, etc.).

**Works agreements with "compulsory arbitration" (*Zwangsschlichtung*)**

Part II (labour relations) of the Labour Constitution Act (*ArbVG)* lays down enforceable and replaceable-approval works agreements:

Enforceable works agreements (Section 97 Para. 1 no. 1 to 6a *ArbVG*)

Such works agreements concern the following matters:

- General organisational provisions concerning the employees' conduct in the business;
- Principles regarding the employment of temporary agency workers;
- Selecting the corporate provision fund *(Betriebliche Vorsorgekasse, BV-Kasse)* pursuant to the Corporate Staff and Self-Employment Provision Act *(Betriebliches Mitarbeiter- und Selbständigenvorsorgegesetz, BMSVG)*, Federal Law Gazette I no. 100/2002 as amended;
- General determination of the beginning and end of the daily working time, the duration and time of breaks and the distribution of working time across the individual days of the week;
- Way of accounting and, in particular, time and place of the payment of remuneration;
- Measures to prevent, remove or mitigate the impact of restructuring measures, if they entail substantial disadvantages for all or a majority of the employees (referred to as "social plan");
- Type and intensity of participation of the works council in the administration of training, educational and welfare institutions owned by the business or enterprise;
- Measures for the adequate use of company equipment and resources;
- Measures to prevent, remove, mitigate or compensate the exposure and stress caused for employees performing night work or heavy night work.

If no agreement can be reached in the abovementioned matters with regard to the conclusion, amendment or revocation of such a works agreement between the business owner and the works council, the decision is - unless this is regulated by a collective agreement or statutes - made by the arbitration board (Section 97 Para. 2 *ArbVG*) upon request of one of the parties to the dispute. This means that in such matters the works agreement can be enforced by either of the two parties against the will of the other party by turning to the arbitration board.

The arbitration board is established for the individual case and only upon request of one of the two parties to the dispute (works council or business owner). It is established at the place of the social and labour court of first instance in the jurisdictional district where the business is situated.

The arbitration board is composed of a chairperson and four co-arbitrators. Upon consensual request of both parties to the dispute, the chairperson is appointed from among the professional judges; if no agreement can be reached, by the President of the Court. Two co-arbitrators each are appointed by the works council and the business owner, one of whom is selected from a list of co-arbitrators which is created periodically and contains co-arbitrators throughout Austria.

The decision of the arbitration board constitutes a works agreement; no legal remedy is admissible.

The abovementioned facts primarily involve general subject matters (e. g. organisational provisions, determination of the general beginning and end of the daily working time). A general regulation of these matters by means of a works agreement is in the interest of all those involved and ensures the proper operation of the business.

If no agreement can be reached due to the refusal of one of the parties, the employer may regulate the matter by means of an instruction or individual agreement. However, as the only option this does not seem useful. With regard to both protecting the employees' interests and meeting the needs of the business, it seems reasonable to give the parties the opportunity of addressing an arbitration board above company level and this way settling such matters that are essential for the smooth operation of the business in a well-balanced fashion.

Beyond that, the fact that the arbitration board is entrusted with relatively few cases shows that the sole existence of an arbitration board and the resulting theoretical opportunity of having recourse to it contributes a lot to the parties' enhanced efforts to come to a consensual solution acceptable to all parties involved because they have much more influence on such a consensual decision than on a decision made by the arbitration board.

Furthermore, the composition of the arbitration board and the arbitration procedure itself make allowance for the special character of this type of dispute resolution: Primarily, the works council and company management determine the composition of the arbitration board. The arbitration board is bound to coinciding pleadings of the parties to the dispute; apart from this it has to weigh the interests and make a decision.

In actual practice, arbitration boards are an instrument to get deadlocked negotiations going again. In many cases the arbitration board does not have to make a decision; rather, the works council and the company management autonomously agree on a works agreement.

Replaceable-approval works agreements (Section 96a *ArbVG*)

When implementing systems

- with automated support for the collection, processing and transmission of employee data beyond the scope of general personal information and professional qualifications (staff information systems), as well as
- for the assessment of employees of the business where these systems collect data the use of which is not justifiable by work-related needs (staff assessment systems),

the business owner is obliged to negotiate with the works council prior to the implementation of these measures and, if required, enter into a works agreement. If an agreement cannot be reached, the business owner can turn to the arbitration board, which can then make a decision which replaces the consent of the works council; such decision constitutes a works agreement. With regard to any other aspects, the provisions stated in the context of enforceable works agreements above apply to the arbitration board.

The main socio-political aim of this regulation is to protect employees from interference with their privacy, potentially caused by measures taken by the business owner that are not subject to approval by the works council pursuant to Section 96 *ArbVG.*

Additionally, it aims to enhance the participation of employees in decision-making on technological changes in this particularly sensitive field.

It is important to note that no instructions may be given and individual agreements are not admissible. As long as no works agreement has been entered into and no decision has been made by the arbitration board, instructions and individual agreements are not possible. This way legislation makes allowance for the great interest of employees and staff representation bodies to have a say in introducing staff databases and staff data processing systems as well as employee tests by granting the works council a relatively favourable position in negotiations.

Yet by enshrining this form of participation, the law also makes allowance for the interest of the business owner, i.e. by providing the option of having recourse to an arbitration board above company level in case the works council refuses to agree on some regulation without giving any reason, the business owner can reach a decision on the introduction, as well as the structure and design, of such systems in the company. The arbitration board acts as a judicial reviewing body and can make use of any and all possibilities of mediation and settlement.

Relation between collective agreements with the same subject matter and works agreements with “compulsory arbitration” (*Zwangsschlichtung*):

Works agreements are enforced by means of compulsory arbitration only in the above mentioned matters if no collective agreement (or statutes) governing the subject matter is/are available.

If a collective agreement exists, this does not rule out that a works agreement on the same matter may be concluded, but merely excludes enforceability.

Such a works agreement can therefore be considered an optional works agreement *(fakultative Betriebsvereinbarung)*.

However, the works agreement may still be enforceable if the collective agreement merely contains general provisions.

**In response to the second question:**

No specific implementation measures during the period under review.

**In response to the third question:**

In 2009, the Austrian labour and social courts issued decision in 10 arbitration procedures, in 2010 in 17, in 2011 in 4 and in 2012 in 8. The procedures mostly concerned regulations pertaining to working hours and rest periods as well as “social plans”, i.e. measures to prevent, remove or mitigate the impact of restructuring measures, if they entail substantial disadvantages for all or a majority of the employees.

**ARTICLE 6§4**

Not ratified by Austria.

## Article 26
## THE RIGHT TO DIGNITY AT WORK

### ARTICLE 26§1

### In response to the first question

**Private-sector employees**

Sexual harassment was first stipulated as a discriminatory offence in the Austrian Equal Treatment Act (*Gleichbehandlungsgesetz, GlBG*), Federal Law Gazette no. 833/1992, which entered into force on 1 January 1993. In the amendment in force since 1 July 2004 (Federal Law Gazette I 2004/66) a new definition of the offence of sexual harassment was provided in Section 6 *GlBG*:

Section 6 Para. 1 of the Equal Treatment Act sets forth that discrimination on the grounds of gender is also present if a person is sexually harassed by the employer or is discriminated against by the employer because the latter culpably fails, in a case of sexual harassment by a third party in connection with his or her employment relationship, to render appropriate assistance.

This provision is a specific manifestation of the employers' general duty of care, stipulating as one of employers' obligations in this context that they have to take the necessary precautions to protect employees from being harassed by fellow employees. According to the prevailing view, the aim of this clause is to protect the right of employees to privacy in all its various facets (regarding, for instance, living, health, morality and property). Employees of minor age need even more special protection.

In addition, pursuant to Section 6 Para. 1 *GlBG*, discrimination on the grounds of gender is also present if a person is harassed by a third party in connection with his or her employment relationship or by a third party not related to the employment relationship, which means that other harassments in the working world are included in the scope.

Section 6 Para. 2 *GlBG* defines sexual harassment as conduct belonging to the sexual sphere that undermines the dignity of a person (in Federal Law Gazette I 2008/98, in force since 1 August 2008, the clause "or at least attempts to" was added) that is unwanted, inappropriate or offensive to the person concerned and creates, or attempts to create, a threatening, hostile or humiliating employment environment for the person or represents an impediment to the employee's career. In this context it is irrelevant whether the rejection or toleration of sexual harassment is detrimental to the employment relationship.

According to Section 6 Para. 3 *GlBG,* discrimination is also present in case someone instructs someone else to harass another person.

As sexual harassment is a specific type of general gender-based harassment, the *GlBG* was extended in 2004 (Section 7) to include the discriminatory offence of gender-based harassment.

Section 7 Para. 1 of the Equal Treatment Act sets forth that discrimination on the grounds of gender is also present if a person is harassed by gender-based conduct by the employer himself or herself or is discriminated against by the employer because the latter culpably fails, in a case of sexual harassment by a third party in connection with his or her employment relationship, to render appropriate assistance.

In addition, discrimination on the grounds of gender is also present if a person is harassed by gender-based conduct of a third party in connection with his or her employment relationship or a third party not related to the employment relationship.

The discriminatory offence of gender-based harassment is present according to Section 7 Para. 2 *GlBG* in the case of gender-based conduct that undermines the dignity of a person (in Federal Law Gazette I no. 2008/98, in force since 1 August 2008, the clause "or at least attempts to" was added) that is unwanted, inappropriate or offensive to the person concerned and creates, or attempts to create, a threatening, hostile or humiliating employment environment for the person or represents an impediment to the employee's career. Gender-based harassment is one of several types of mobbing. Section 7 *GlBG* does not refer to mobbing in general but specifies only the aspect of gender-based mobbing. The forms of conduct that constitute gender-based mobbing include, for example, oral comments and gestures, writing, displaying and disseminating written comments, images and other material. The conduct must be significant and create a vexatious or hostile working environment in general. Acts of harassments may also severely affect the rights of those harassed in their working, economic and social lives.

According to Section 7 Para. 3 *GlBG*, discrimination on the grounds of gender is also present in case someone instructs someone else to harass another person.

In Federal Law Gazette I 2011/7, which entered into force on 1 January 2012, an additional clause (Para. 4) was added both to Section 6 and 7 of the *GlBG*, stipulating that discrimination is also present if a person is (sexually) harassed because of his or her close relationship to another person on the grounds of the latter individual's sex. By adding these clauses, associative discrimination was enshrined as a discriminatory offence in the law and it was made clear that protection of the Equal Treatment Act also applies to those persons who suffer discrimination owing to their close relationship to a person with a protected characteristic. In this context, the concept of "close relationship" does not only apply to family relations but includes association as friends and wards. The close relationship does not only refer to existing statutory commitments (e. g. parents' duty of care for their children or duty of care between spouses) but also extends to reasonable social and moral assistance and care duties. This includes family members, civil-law partners and friends as well as, for instance, the relationship between teachers and students. In the working environment, coworkers cannot per se be assumed to have a "close relationship". Whether or not such a close relationship is present between fellow employees is to be reviewed on a case-by-case basis.

In the case of sexual harassment according to Section 6 or gender-based harassment according to Section 7, the person subject to the harassment is entitled to reimbursement for the harm or loss suffered under Section 12 Para. 11 *GlBG* from the harasser, and in the case of Section 6 Para. 1 no. 2 or Section 7 Para. 1 no. 2 *GlBG* also from the employer. If the harm suffered is not only a financial loss, the person harassed is entitled to appropriate compensation in an amount of at least EUR 1,000 for the personal injury suffered. Any claims under Section 12 Para. 11 *GlBG* have to be brought before court within one year.

Where, in case of a dispute, the person harassed claims to have suffered from an act of discrimination as set forth in Section 6 or 7, he/she has to establish the probability of this claim. The defendant has to furnish proof that, taking into account all circumstances, it is more probable that the facts presented by the defendant are true (Section 12 Para. 12 *GlBG*).

Section 13 *GlBG* explicitly stipulates that in response to a complaint or to the legal prosecution of claims arising from violation of the equal-treatment principle employees must not be discriminated against.

Apart from bringing an action before court, the victim has the option of lodging an application with the Equal Treatment Commission seeking examination of the case for non-compliance with the equal-treatment principle or seeking consultation by the Equal Treatment Ombuds Office.

The filing of the application and/or receipt of the request with the Equal Treatment Ombuds Office interrupts the period stipulated for bringing compensation claims before court up to the beginning or dismissal of court proceedings; the employee has in any case another three months' time to bring his/her claims before court.

### Employees at federal level[4]

In the Federal Equal Treatment Act (*Bundes-Gleichbehandlungsgesetz, B-GBG*), "sexual harassment" is defined in Section 8 as discrimination that does not only imply claims to compensation but also constitutes a violation of official duty, leading to disciplinary proceedings.

"Sexual harassment" is defined as any conduct belonging to the sexual sphere that undermines the dignity of a person, or attempts to do so, that is unwanted, inappropriate, degrading, insulting or offensive to the person concerned and

1. creates, or attempts to create, a threatening, hostile or humiliating employment environment for the person or
2. where the fact that the affected person rejects or tolerates behaviour on the part of the employer or by superiors or fellow employees that belongs to the sexual sphere, this explicitly or implicitly becomes the basis of a decision affecting this individual's access to vocational training, employment, continued employment, promotion or remuneration, or to any other decision made in the employment or training sphere.

Discrimination is also present in case someone instructs someone else to harass another person.

In the case of third persons, including representatives of the employer, the elements of the offence can be met if they actively behave in a harassing way or, passively, if they culpably fail to prevent harassment by third persons or to render appropriate assistance.

Persons affected by sexual harassment in connection with an employment or training relationship are entitled to compensation from the harasser for the damage suffered. Where a representative of the employer has discriminated against a person actively or passively, the harassed person is [additionally] entitled to compensation from the Federal Government. Apart from that, immaterial damage can be asserted; the minimum compensation in such case is EUR 1,000.

The period for filing an application in the case of sexual harassment is three years. The application has to be submitted to the competent administrative authority if the harassed person is a public-service employee; in case he/she has an employment contract under private law, the offence has to be brought before court. In addition, an

[4] For employees at state (Laender) level, corresponding provisions exist in local law.

application seeking confirmation of the discrimination can be taken before the Federal Equal Treatment Commission, which will provide an expert opinion on the case.

**In response to the second question:**

The Equal Treatment Ombuds Office carried out a series of workshops for knowledge multipliers throughout Austria in 2010, providing comprehensive information on the topic of sexual harassment in the sphere of employment and in the access to and supply of goods and services, as well as on the topic of harassment in connection with other reasons stipulated in the *GlBG*. Using specific, anonymised examples actually processed by the Equal Treatment Ombuds Office, the legal framework, the options of prosecution and enforcement and the Equal Treatment Ombuds Office's practical experience were discussed.

Companies, specifically where a case of sexual harassment took place, regularly undergo training modules offered by the Equal Treatment Ombuds Office.

**In response to the third question:**

**Private-sector employees**

Equal Treatment Ombuds Office

The Equal Treatment Ombuds Office was established to provide consulting and assistance to persons employed in the private sector who feel discriminated against in the working world on the grounds of their sex, ethnic origin, religion or belief, age or sexual orientation and in other accurately defined spheres on the grounds of their ethnic origin or their sex (Equal Treatment Commission and Equal Treatment Ombuds Office Act - *Bundesgesetz über die Gleichbehandlungskommission und die Gleichbehandlungsanwaltschaft, GBK/GAW-Gesetz;* Federal Law Gazette 108/1979 as amended by Federal Law Gazette I I 7/2011).

From the number of requests regarding consulting services in connection with gender-based harassment and harassment related to other grounds of discrimination that are received by the Equal Treatment Ombuds Office, no conclusions can be drawn on the statistical incidence of harassment and sexual harassment due to the small size of the organisation and the probably large number of cases not reported.

In the field of sexual and gender-based harassment, the number of queries has, following strong increases seen before, decreased over the past few years: 2009: 494 consultation requests, 2010: 422, 2011: 345, 2012: 303. This corresponds to some 20% of all consultation requests in the field of equal treatment of women and men in the working world; formerly, this percentage was up to one-third. However, this does not imply that sexual harassment in the sphere of work has decreased. According to the experience of the Equal Treatment Ombuds Office, this decrease is rather due to recent changes in the law that caused a surge of other elements of discrimination in consultation requests.

In the field of access to and supply of goods and services, requests to obtain consultation on gender-based and sexual harassment (e. g. at driving schools, in connection with crafts services rendered in people's homes) were taken to the Equal Treatment Ombuds Office only in rare cases.

Equal Treatment Commission:

Please refer to the information on the Equal Treatment Commission under Article 4§3.

As can be seen, Senate I of the Equal Treatment Commission is in charge of examining cases of sexual harassment in the employment context and Senate III in other spheres.

The following complaints were dealt with and/or received by Senates I and III of the Equal Treatment Commission in the period under review from 1 January 2009 to 31 December 2012:

Senate I of the Equal Treatment Commission:

2009:

Number of applications requesting the examination of gender-based discrimination through sexual harassment: 21

Outcome of the examination:

Discrimination through sexual harassment (by sex): 8 (women)

No discrimination through sexual harassment (by sex): 4 (women)

Withdrawal of application: 8

Beyond the sphere of competence of the Senate I of the Equal Treatment Commission: 1

2010:

Number of applications requesting the examination of gender-based discrimination through sexual harassment: 26

Outcome of the examination:

Discrimination through sexual harassment (by sex): 13 (women), 1 (man)

No discrimination through sexual harassment (by sex): 4 (women)

Withdrawal of application: 6

Beyond the sphere of competence of Senate I of the Equal Treatment Commission: 1

Examination pending: 1

2011:

Number of applications requesting the examination of gender-based discrimination through sexual harassment: 18

Outcome of the examination:

Discrimination through sexual harassment (by sex): 4 (women)

No discrimination through sexual harassment (by sex): 2 (women)

Withdrawal of application: 2

Examination pending: 9

2012:

Number of applications requesting the examination of gender-based discrimination through sexual harassment: 27

Outcome of the examination:

Withdrawal of application: 4

Examination pending: 23

Senate III of the Equal Treatment Commission:

2009:

Number of applications requesting the examination of gender-based discrimination through sexual harassment: 0

2010:

Number of applications requesting the examination of gender-based discrimination through sexual harassment: 1

Outcome of the examination:

Discrimination through sexual harassment (by sex): 1 (woman)

2011-2012

Number of applications requesting the examination of gender-based discrimination through sexual harassment: 0

The individual examinations carried out by the Equal Treatment Commission are published on the website of the Federal Chancellery (in German).

http://www.frauen.bka.gv.at/site/5467/default.aspx

Finally, the private-sector Equal Treatment Reports to be submitted by the Federal Government to the National Council every other year are an important instrument.

These reports consist of the activity report of the Equal Treatment Commission, the report of the Federal Ministry of Labour, Social Affairs and Consumer Protection on the further development of the Equal Treatment Act, commentaries or reports of interest groups and a report on the activity of the Equal Treatment Ombuds Office.

The reports can be found on the website of the Federal Chancellery (in German):

http://www.bka.gv.at/site/5536/default.aspx

**Employees at federal level**

Federal Equal Treatment Commission:

The Federal Equal Treatment Commission (*Bundes-Gleichbehandlungskommission, B-GBK*) has been set up in the Federal Chancellery and consists of two Senates. It is a designated administrative institution of the Federal Government that can be addressed by public-service employees in the case of discrimination.

The Senates evaluate, upon application or on the authority's own initiative, if the equal treatment principle was violated on a case-by-case basis. Senate I additionally examines compliance with the principle of promoting women.

The individual examinations carried out by the Federal Equal Treatment Commission are published on the website of the Federal Chancellery (in German):

http://frauen.bka.gv.at/site/5513/default.aspx.

Senate I is in charge of the equal treatment of women and men.

Senate II is in charge of equal treatment, irrespective of ethnic origin, religion or belief, age or sexual orientation.

Accordingly, Senate I of the Federal Equal Treatment Commission is in charge of examining cases of sexual harassment.

The following complaints were dealt with and/or received by the Federal Equal Treatment Commission in the period under review from 1 January 2009 to 31 December 2012:

2009:

Number of applications requesting the examination of gender-based discrimination through sexual harassment: 1

Outcome of the examination:

Withdrawal of application: 1

2010:

Number of applications requesting the examination of gender-based discrimination through sexual harassment: 0

2011:

Number of applications requesting the examination of gender-based discrimination through sexual harassment: 1

Outcome of the examination:

Discrimination through sexual harassment (by sex): 1 (woman)

2012:

Number of applications requesting the examination of gender-based discrimination through sexual harassment: 4

Outcome of the examination:

Examination pending: 4

Finally, the public-sector Equal Treatment Reports to be submitted by the Federal Government to the National Council every other year are an important instrument. These reports provide information on the progress of efforts taken in the field of equal treatment and promotion of women in public office and on the activity of the Federal Equal Treatment Commission.

The reports can be found on the website of the Federal Chancellery (in German):http://frauen.bka.gv.at/site/7676/default.aspx.

**Article 26§2**

Not ratified by Austria.

## ARTICLE 28

## THE RIGHT OF WORKERS' REPRESENTATIVES TO PROTECTION IN THE UNDERTAKING AND FACILITIES TO BE ACCORDED TO THEM

**In response to the first question:**

**Private-sector employees**

The powers of the staff are laid down in the Labour Constitution Act *(Arbeitsverfassungsgesetz, ArbVG).* The staff's legal capacity is established by the staff bodies elected by the employees. The law provides for the mandatory formation of such bodies, with the obligation principally resting with the staff. A particular sanction is not stipulated in case of failure to establish a body representing the staff; however, the lack of capacity to act invalidates the legal of powers of the staff and is therefore detrimental to them. Depending on the applicable statutory right to organise, different models of organisation can be distinguished, including staff meetings, an election committee for the works council election and the works council (if applicable, also a works committee, central works council, group works council, works council meeting, European Works Council, SE-works council or SCE-works council).

Sections 115 to 122 as well as Section 39 Para. 3 *ArbVG* set forth the legal position of works council members:

a. For members of the works council and persons equal in status on the basis of specific reasons laid down by labour-law provisions (substitute members, members of the election committee, candidates), Sections 120 to 122 *ArbVG* contain special provisions on the protection against termination of employment and dismissal, aiming at protecting employees in labour-law functions from losing their jobs on grounds possibly related to their function. In order for termination or dismissal to be effective in such cases, court-approval has to be obtained beforehand by way of litigation. The employer has to prove specific grounds for termination or dismissal.

According to Section 121 *ArbVG*, the court may only approve of the termination of a works council member in the following cases: if the business owner furnishes proof that, in case of a permanent closure or limited operation of the business or a closure of individual company divisions, the respective works council member cannot be continued to be employed - despite his/her request - at a different workplace within the business facility or at a different facility of the business without considerable damage being caused; if the works council member cannot carry out the work defined in the employment contract, provided that his or her ability to work cannot expected to be restored anytime soon and continued employment or the performance of a different kind of job by the works council member, which the member has agreed to perform, is unreasonable to the business owner; or if the works council member persistently neglects the duties arising from his/her employment relationship and it is unreasonable to the business owner for reasons of work discipline to continue to employ the works council member.

According to Section 122 *ArbVG*, the court may only give its consent to a summary dismissal if the works council member intentionally mislead the business owner about circumstances that are essential for the conclusion of the contract or the intended employment relationship; if the works council member commits a breach of trust in

the framework of their work or if he/she has received and accepted unjustified advantages in their job from third parties without the business owner's knowledge; if the works council member has disclosed a business or trade secret or has operated, without the business owner's consent, an ancillary business which is detrimental to her deployment in the business operation; if the works council member has committed a premeditated offence punishable by a prison term exceeding one year or an offence committed with the intent to enrich himself/herself; this applies only to offences to be prosecuted ex officio or upon application of the business owner; or if the works council member has been involved in violence against or substantial defamation of the business owner, the members of the business owner's family working or present in the business or any employees of the business, provided that due to this behaviour, useful collaboration between the works council member and the business owner cannot be expected any longer. In the last two cases, the employee may be notified of the dismissal if the court's consent is obtained subsequently. If the court dismisses the action seeking consent to the dismissal, it does not have legal effect.

In any of the cases listed above, the court may only give its consent to a dismissal if the continued employment of the works council member is considered unreasonable for the employer.

Besides the works council, the central works council, the works committee and the group works council, there are special representative bodies: the youth representation body in accordance with Sections 123 et seq. as well as the representation body of persons with disabilities in line with Section 22a of the Disability Employment Act *(Behinderteneinstellungsgesetz, BEinstG)*. The aforementioned stipulations apply to them analogously.

b. Works council positions are holders of an honorary office, i. e. the function is not remunerated. Of course, the remuneration of a works council member must not be reduced due to his/her mandate. Furthermore, the prohibition of discrimination applies to works council members under labour law.

Pursuant to Section 115 *ArbVG*, the works council mandate has to be principally exercised in the spare time. However, in practice, there is a considerable number of exceptions leading in fact to a reversal of this regulation. The *ArbVG* provides for four different types of circumstances requiring release from work for works council members:

- Release from work to perform a function pursuant to Section 116 *ArbVG*: works council members are granted the necessary time off to meet their responsibilities, with full remuneration being paid. The actual necessity is aligned with objective criteria. According to case law established by the Supreme Court of Justice, paid time off has to be granted, for instance, for participating in trade union events involving discussions of company-specific tasks falling within the statutory responsibilities. No explicit agreement or application is required in such cases, as this is a legally justified claim; the works council member only has to give notice of his/her absence. According to the Supreme Court of Justice, the business owner may require a notice in writing.
- In line with Section 117 *ArbVG*, a certain number of works council members has to be permanently released from work in companies employing 150 employees and more. According to the Supreme Court of Justice, the

business owner has no right to verify the necessity of or influence the selection of the works council member(s) to be released from work.
It is important to note that the remuneration of permanently released work council members continues to increase along the same lines as the remuneration of colleagues comparable to them.

- Educational leave according to Section 118 *ArbVG*: Works council members are entitled to release from work for relevant training for a maximum of three weeks per term of office (four years). The entitlement is established only for the purpose of participating in training and educational events that are either hosted by interest groups of employers or employees entitled to enter into collective agreements, or third parties with a corresponding declaration of suitability; these training and educational events are required to serve the transfer of knowledge useful for exercising the works council mandate. In companies with 20 employees or more, continued remuneration has to be paid.
- Pursuant to Section 119 *ArbVG*, the works council is entitled to an additional, specific type of release from work for a particular purpose and to an extent of a maximum of one year per term of office if the business has 201 employees or more. For this function released from work there is no entitlement to continued remuneration.

Furthermore, the business owner's authority to give instructions is restricted: According to Section 115 Para. 2, works council members are not bound by instructions when carrying out their job. This provision equally applies to both employers and employees.

According to Section 115 Para. 3 *ArbVG*, the business owner must not restrict works council members in exercising their mandate. Instructions given to or individual agreements entered into with the works council member are generally void; should this principle be ignored and any such or other restrictive behaviour occur, the employee may embark on steps to stop or remove such behaviour.

Due to the fact that works council members are regularly faced with facts requiring special secrecy (e. g. business secrets or personal circumstances concerning employees), the duty of confidentiality arising from the duty of the employee to represent the interests of the employer as laid down by employment contract law is of key significance. However, the general responsibility to represent the employees' interests is even more important than the specific duty of confidentiality, i.e. a works council member may in fact be forced to violate the duty of confidentiality when exercising his/her mandate. In such cases, interests have to be weighed carefully and the most moderate approach has to be taken. The particular duty of confidentiality is subject to penal sanctions laid down in Section 160 *ArbVG*.

For activities of the works council, Section 39 Para. 3 *ArbVG* is also relevant. It stipulates that company and representation interests have to be weighed carefully against each other.

Arrangement concerning travel expenses (general question in the Conclusions 2010)

The business owner has to provide and maintain certain material requirements, such as rooms, offices and other operational requirements, the extent of which is to be determined by carefully balancing the interests. If applicable, secretarial help may have to be provided.

Depending on the works council members' traveling activities, a company car may have to bemade available temporarily or permanently (carefully weighing the interests). If the traveling expenses are not entirely covered this way, the costs have to be borne by the works council fund (Section 74 *ArbVG*).

The workforce can impose a works council levy *(Betriebsratsumlage)* which is used for the purpose of covering the costs for the management of the works council and group works council, as well as for the establishment and maintenance of welfare institutions or the implementation of welfare measures. The amount of the levy is limited to a maximum of 0.5% of the remuneration. The levy has to be paid by the employees, with the employer being responsible for collection.

According to Section 115 Para. 1 *ArbVG*, cash expenditures arising from the individual works council member's activities have to be borne by the works council fund and refunded to the works council member, unless to be borne by the business owner or reimbursed by the latter on a voluntary basis.

Regarding employees in agriculture and forestry, it has to be noted that the provisions of Sections 218 to 225 of the Agricultural Labour Act (*LAG)* governing the principles of exercising the works council mandate largely correspond to Sections 115 to 122 *ArbVG*.

This ranges from not being bound by instructions and the prohibition of restriction and discrimination to the duty of the employer to grant works council members the time off required for meeting their obligations, with payment of remunerations being continued. Analogously, works council members under the *LAG* have a right to being released from work as soon as a specified company size is exceeded, as well as a right to educational leave.

Moreover, the *LAG* also stipulates protection against termination of employment and dismissal of works council members; contrary to the *ArbVG*, however, the approval for such a measure has to be obtained from the conciliation commission rather than the court.

Mapping table:

| ***ArbVG*** | **Headline** | ***LAG*** |
|---|---|---|
| Section 115. | Principles of a mandate, duty of confidentiality | Section 218. |
| Section 116. | Granting time off | Section 219. |
| Section 117. | Release from work | Section 220. |
| Section 118. | Educational leave | Section 221. |
| Section 119. | Extended educational leave | Section 222. |
| Section 120. | Protection against termination of employment and dismissal | Section 223. |
| Section 121. | Protection against termination of employment | Section 224. |
| Section 122. | Protection against dismissal | Section 225. |

Section 218 Para. 1 *LAG* stipulates (analogously to Section 115 *ArbVG*) that the mandate of a works council member is an honorary office which has to be exercised in addition to the individual's professional duties.

For cash expenditures incurred, the works council members have to be reimbursed from the works council fund.

**Employees at federal level**[5]

For the domain of employment at federal level, the Federal Staff Representation Act (*Bundes-Personalvertretungsgesetz, BPersVG*), Federal Law Gazette no. 133/1967, governs the rights and duties of staff representatives.

a. During his/her term of office, a staff representative cannot be transferred or assigned to a different administrative office against his/her will. The statutory provisions on a transfer in the framework of disciplinary proceedings remain unaffected. Furthermore, a staff representative with a (terminable) provisional employment relationship under public law or a contractual employment relationship can only be terminated or be dismissed upon prior approval given by the committee to which he/she belongs. In addition, staff representative can be held accountable for statements or actions, and (disciplinary) action under public-sector employment law be taken, only upon prior approval given by the committee to which he/she belongs. If the committee reaches the conclusion that the statements or actions were not made or taken by the staff representative in connection with performing his/her functions, approval has to be granted.

b. In exercising their mandate, staff representatives are not bound by any instructions. As a result, the heads of the respective administrative office must neither restrict staff representatives in their activities nor place them at a disadvantage. Conversely, staff representatives have to exercise their mandate without impairing the operation of the entity. As long as the administrative office of the staff representative is taking immediate action - especially in case of imminent danger or cases of disaster - he/she has to perform his/her functions only to an extent that does not impair him/her when fulfilling his/her professional duties. Activities of staff representation carried out by a staff representative beyond his/her working hours is to be regarded as working time if it exceeds the usual care provided by the staff representation body and - also in terms of its timing - is performed on the employer's initiative.

In principle, staff representatives hold an honorary office, with their activities being carried out in addition to their professional duties. However, staff representatives are entitled to the amount of time off required for fulfilling their obligations, while being guaranteed continued payment of remunerations; the staff representative's superior has to be informed about the time used. In each Federal Ministry, at least one staff representative has to be fully released from work, with payment of remunerations being continued. This number increases depending on the total number of employees represented and entitled to vote.

Where and to the degree possible from the viewpoint of professional requirements, the head of the respective administrative office has to provide staff representatives with the opportunity to participate in training measures of the employer in the following areas:

- staff representation law,

[5] For employees at state *(Laender)* level, corresponding provisions exist in local law.

- public-sector employment law and remuneration (including disciplinary proceedings) and
- conducting talks and negotiations.

Furthermore, the head of the respective administrative office has to permit each member of a responsible staff representation body to inspect and copy records and files, or components thereof, or employee data recorded by EDP-systems, the knowledge of which is required for the staff representation body in order to fulfil their tasks allocated to them by law. The right to inspect records and files does not include those components which, if inspected by the staff representative, would cause damage to legitimate interests of an employee or a third party, or put at risk the authority's performance of its duties, or compromise the purpose of the procedure. The inspection of personal files and EDP-recorded employee data going beyond the data contained in the staff directory is only permissible with the consent of the employees concerned.

**In response to the second question:**

No specific transposition measures in the reporting period.

**In response to the third question:**

No specific data available.

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## Europarat; rev ESC; 2. Bericht Österreichs über die Umsetzung der Revidierten Europäischen Sozialcharta (Artikel 2, 4, 5, 6, 26 und 28)

Die Bundesarbeitskammer (BAK) dankt für die Übermittlung von Unterlagen und der Anfrage zum 2. Bericht zur Revidierten Europäischen Sozialcharta (RESC) und nimmt dazu Stellung wie folgt.

**Artikel 2 – Recht auf gerechte Arbeitsbedingungen**

**Artikel 2.1 – angemessene tägliche und wöchentliche Arbeitszeit und schrittweise Verkürzung der Arbeitswoche, soweit Produktivitätssteigerung und andere mitwirkende Faktoren dies gestatten**

Österreich hat alle Absätze von Art 2 RESC für bindend erklärt, mit Ausnahme von Art 2 Abs 1 in der seit 1961 unveränderten Fassung.

Wir sind der Auffassung, dass die Zielsetzung „angemessene tägliche und wöchentliche Arbeitszeit und schrittweise Verkürzung“ vor dem Hintergrund einerseits der sehr hohen Zahl an Überstunden und andrerseits der (krisenbedingt) steigenden Zahl der Arbeitslosen und der Vielzahl prekärer Arbeitsformen von hoher Bedeutung ist.

Gerechtere Verteilung und Verkürzung der Arbeitszeit könnten ganz wesentlich dazu beitragen, die Arbeitslosigkeit zu reduzieren und damit vielen Menschen bessere Perspektiven zu eröffnen. Auch für die öffentlichen Haushalte könnten damit nachhaltig positive Impulse gesetzt werden.

In internationalen Analysen der Krisenbewältigungsstrategien in den EU-Ländern wurde wiederholt auf die positiven Effekte des sozialpartnerschaftlich ausgehandelten österreichischen Kurzarbeitsregimes hingewiesen.

Problematische Arbeitsmarktwirkungen können demgegenüber sehr lange – laufend zur Anwendung kommende – Durchrechnungszeiträume unregelmäßiger Arbeitszeit entfalten. Arbeitnehmerinnen und Arbeitnehmer sind in solchen Modellen einerseits immer wieder sehr hoch belastet und andrerseits häufig mit Unübersichtlichkeit bzw fehlender Transparenz konfrontiert. Die Zielvorgabe der RESC von maximal sechs Monaten Durchrechnungszeitraum erscheint als sachliche Diskussionsgrundlage für eine Ratifizierung von Art 2 Abs 1 RESC von Interesse.

Neue Gefahren der Entgrenzung der Arbeitszeit entstehen durch die Durchdringung der Arbeitswelt mit neuer Informations- und Kommunikationstechnologie (Smartphones, Laptops, Konferenzschaltungen der Telekommunikationssysteme, Facebook, etc) und durch Vertragsgestaltungen am Rande der Legalität (Vertrauensarbeitszeit, bestimmte Formen der All-In-Verträge, progressive Leistungslohnmodelle, etc).

Ein besonderes Problemfeld in diesem Zusammenhang ist die **24-Stunden-Betreuung von pflegebedürftigen Personen in privaten Haushalten**. Die diesbezüglichen Regelungen finden sich im Hausbetreuungsgesetz (HBeG).

Die Arbeitsleistung kann sowohl unselbständig als auch selbständig erbracht werden, wobei die selbständige Ausübung – vermutlich aus Kostengründen – weit überwiegt. Die Betreuungsleistungen werden zum überwiegenden Teil von Frauen aus Mitgliedsstaaten der Europäischen Union geleistet. In der Praxis unterscheidet sich die Arbeitssituation der „selbständigen“ 24-Stunden-BetreuerInnen in aller Regel kaum von der Arbeitssituation der Unselbständigen. Allerdings kommt für „selbständige“ 24-Stunden-BetreuerInnen das Arbeitsrecht nicht zur Anwendung, demnach gibt es für sie keinerlei Arbeitszeitbeschränkungen.

Für die unselbständigen 24-Stunden-BetreuerInnen ist die Arbeitszeit im HBeG geregelt, die Arbeitszeitbestimmungen des § 5 Hausgehilfen- und Hausangestelltengesetz (HausgG) sind auf sie nicht anzuwenden. Außergewöhnlich ist vor allem die Regelung in § 3 Abs 2 HBeG, wonach die Arbeitszeit in zwei aufeinanderfolgenden Wochen einschließlich der Zeit der Arbeitsbereitschaft „128 Stunden nicht überschreiten“. „Allfällige über diese Höchstgrenze hinausgehende Zeiten der Arbeitsbereitschaft, die die Betreuungskraft vereinbarungsgemäß in ihrem Wohnraum oder in näherer häuslicher Umgebung verbringt und während der sie im Übrigen frei über ihre Zeit verfügen kann, gelten nicht als Arbeitszeit im Sinne dieses Bundesgesetzes.“

**Artikel 2.2 – bezahlte öffentliche Feiertage**

Die BAK begrüßt die Aufrechterhaltung der Punkte 2-7 des Artikels 2.

Zu Art 2.2 teilen wir die Einschätzung wie im kompilierten Bericht ausgeführt, dass die österreichische Rechtslage weitgehend die Einhaltung von Feiertagen durch Entgeltfortzahlungsbestimmungen ermöglicht. Das Ziel für Personen, die an Feiertagen Arbeit leisten, eine doppelte Entlohnung zu erzielen ist allerdings noch nicht vollständig umgesetzt. Es gibt Kollektivverträge, die für Feiertage einen geringeren Zuschlag als 100 % vorsehen (zB Kollektivvertrag für die Arbeiter der Bauindustrie und des Baugewerbes vom 1.5.2012 – siehe § 3 Z 6 und § 4 Z 3).

Für **PersonenbetreuerInnen** sind bezahlte Feiertage eher die Ausnahme denn die Regel. Das HausgG ist hinsichtlich der Gewährung von Freizeit zur Erfüllung der religiösen Pflichten grundsätzlich anwendbar.  Freizeit ist allerdings nur für die Teilnahme an Sonn-und Feiertagsgottesdiensten (christliche Feiertage) zu gewähren, wobei die Zeiten im Einvernehmen festzulegen sind. Theoretisch müsste der Arbeitgeber für die Zeit der Inanspruchnahme von Freizeit zur Erfüllung religiöser Pflichten das Entgelt in jener Höhe fortzahlen, die gebührt hätte, wenn die Arbeitsleistung erbracht worden wäre. Real kommt es nach unseren Erfahrungen sehr häufig nicht zur Einhaltung von Feiertagen, vielmehr ist von einer durchgehenden Arbeitsleistung auszugehen, die lediglich durch Zeiten des Schlafes unterbrochen wird. Wiederum theoretisch haben solche ArbeitnehmerInnen Anspruch auf die doppelte Entlohnung der geleisteten Arbeitsstunden an Feiertagen. Fälle, in denen eine solche doppelte Feiertagsentlohnung gezahlt wird, dürften in der Praxis sehr selten sein.

Zum im kompilierten Bericht zu Artikel 2.2 enthaltenen Hinweis auf die Kollektivverträge für das Bordpersonal der AUA sowie Tyrolean Airways bezüglich Sonderbestimmungen in Bezug auf den Urlaubsanspruch ist anzumerken, dass diese Kollektivverträge zwischenzeitlich gekündigt worden sind.

**Artikel 2.3 – bezahlter Jahresurlaub von mindestens vier Wochen**

Zu S 14 des kompilierten Berichts zu Artikel 2.3, ist darauf hinzuweisen, dass mit der Novelle zum Mutterschutzgesetz (MSchG) und zum Väter-Karenzgesetz (VKG) BGBl I Nr 11/2010 das Urlaubsgesetz betreffend die Verjährung des Urlaubsanspruches im Zusammenhang mit der Inanspruchnahme von Karenzzeiten nach diesen Gesetzen geändert wurde: Nach § 4 (5) UrlG verjährt der Urlaubsanspruch nach Ablauf von zwei Jahren ab dem Ende des Urlaubsjahres, in dem er entstanden ist. Diese Frist verlängert sich bei Inanspruchnahme einer Karenz nach dem VKG, BGBl Nr 651/1989, oder gemäß dem Mutterschutzgesetz 1979 (MSchG), BGBl Nr 221/1979, nunmehr nach der aktualisierten Fassung der oa Bestimmung um den Zeitraum der Karenz (und nicht mehr um nur 10 Monate).

Zum kompilierten Bericht zu Artikel 2.3, S 38

Gemäß § 7 MSchG dürfen werdende und stillende Mütter an Sonntagen und gesetzlichen Feiertagen nicht beschäftigt werden. Jedoch gelten im § 7 MSchG eine Reihe von Ausnahmen, etwa bei Theatervorstellung und Musikaufführungen, Filmaufnahmen sowie für Gastgewerbebetriebe, in denen im Schichtwechsel gearbeitet wird (§ 7 Abs 2 Z 1 bis 3). Gemäß § 7 Abs 4 MSchG kann auf Antrag des Arbeitgebers die Sonn- und Feiertagsarbeit für wer-

dende und stillende Mütter vom Arbeitsinspektorat auf Antrag des Arbeitgebers genehmigt werden. Von den zuständigen Stellen wurde die Zahl der Anträge mit 3 pro Jahr angegeben.

Wurde regelmäßig an Sonn-und Feiertagen gearbeitet und macht die Schutzbestimmung des § 7 eine Änderung der Beschäftigung erforderlich, ist der Arbeitgeber für die ausfallenden Dienste an Sonn- und Feiertagen nicht zur Entgeltfortzahlung verpflichtet, da § 14 MSchG (Weiterzahlung des Arbeitsentgelts) in solchen Fällen nicht greift.

**Artikel 2.5 – wöchentliche Ruhezeit**

Wir begrüßen die Aufrechterhaltung dieser Bestimmung. Allerdings gibt es insbesondere im **Handel** die Neigung Ladenöffnungszeiten über die gesetzlich zulässigen Grenzen hinaus auszudehnen und ArbeitnehmerInnen auch zu Zeiten zu beschäftigen, an denen sie eigentlich eine wöchentliche Ruhezeit (insbesondere Sonntag) haben sollten.

Probleme gibt es auch immer wieder mit den Sonderregelungen in § 18 Arbeitsruhegesetz. Für Verkaufsstellen z.B. in Bahnhöfen ist dort vorgesehen, dass für den Verkauf von Lebensmitteln, Reiseandenken und notwendigem Reisebedarf (Reiselektüre, Schreibmaterialien, Blumen, Reise-, Toiletteartikel, Filme und dergleichen) und Artikeln des Trafiksortiments Arbeitnehmer auch während der Wochenend- und Feiertagsruhe beschäftigt werden dürfen. Die dem Verkauf dieser Waren gewidmete Fläche darf pro Verkaufsstelle 80 Quadratmeter nicht übersteigen, soweit nicht aufgrund einer Verordnung gemäß § 7 Z 1 des Öffnungszeitengesetzes 2003 oder auf Grund § 12 Abs 3 letzter Satz des Öffnungszeitengesetzes 2003 ein größeres Ausmaß zulässig ist. Als Verkaufsstelle im Sinne dieser Bestimmung ist eine Verkaufsstelle nur dann anzusehen, wenn sie ausschließlich durch die betreffende Verkehrseinrichtung zugänglich ist. In einigen Hauptstädten der Bundesländer gibt es immer wieder Ausweitungen der Verkaufstätigkeiten über den eng definierten Rahmen der Notwendigkeit für die Versorgung mit Reisebedarf hinaus. Manche Bahnhöfe sind geradezu zu Einkaufszentren geworden. Teilweise wurden auch Zugänge von außerhalb des Bahnhofs geöffnet. Die Sanktionen bei Verletzung der Bestimmungen scheinen nicht ausreichend wirksam.

Ein ähnliches Problem besteht hinsichtlich der Einhaltung der Arbeitsruhebestimmungen bei der Erbringung von Dienstleistungen an Orten der Freizeitindustrie (Wellnessbetriebe) sowie in Handelsbetrieben in Verbindung mit Gastgewerbekonzessionen sowie an Tankstellen und in ähnlichen Kombinationen.

Die Sanktionen des § 27 ARG wurden zwar 2010 novelliert und erhöht, bewegen sich aber in einem Rahmen von 72 bis 3.600 € und haben keine ausreichend abschreckende Wirkung.

Für **Hausgehilfen und Hausangestellte** ist gemäß § 6 des Hausgehilfen-und Hausangestelltengesetzes BGBl Nr 235/1962 idgF (HausgG) Arbeit auch an Sonntagen und an gesetzlichen Feiertagen bis zu 6 Stunden möglich.

Die Bezahlung sowie die Freizeitgewährung bei Sonn- und Feiertagsarbeit sind im Mindestlohntarif und im HausgG durch gesonderte Zuschläge (100 %) und durch ersatzweise Freizeiten geregelt. Darüber hinaus enthält das HausgG gemäß § 6 Regelungen über die gesonderte Abgeltung von Sonntagsarbeit sowie für Sonn- und Feiertage, die prinzipiell arbeitsfrei zu sein hätten. Darüber hinaus sind auch Strafbestimmungen im § 23 HausgG vorgesehen, die allerdings ebenfalls kaum abschreckende Wirkung haben.

Wünschenswert wäre eine Regelung über einen grundsätzlichen Anspruch auf eine zusammenhängende Wochenruhezeit im Ausmaß von 36 Stunden, in die der Sonntag zu fallen hat. Damit könnte eine Gleichstellung mit dem überwiegenden Teil der Beschäftigten in anderen Bereichen erreicht werden. Die ArbeitnehmerInnen in privaten Haushalten hätten dadurch die Möglichkeit zu mehr gesellschaftlicher Teilhabe, auch an Sonn- und Feiertagen.

Die Arbeitszeiten gemäß § 5 Abs 1 Z 1 Hausgehilfen- und Hausangestelltengesetz für in den Haushalt aufgenommene ArbeitnehmerInnen, die Überstundenbestimmungen und die Regelungen über die wöchentliche Ruhezeit entsprechen weder dem ILO Übereinkommen Nr 189 über menschenwürdige Arbeit von Hausangestellten noch der Richtlinie 94/33/EG des Rates vom 22. Juni 1994 über den Jugendarbeitsschutz. Derzeit finden im BMASK Besprechungen über eine Anpassung der Gesetzeslage statt, um das ILO-Übereinkommen ratifizieren zu können. Seitens des BMASK wurde darauf hingewiesen, dass eine Anpassung des HausgG an die gegenständliche RL erforderlich ist. Widerstand gibt es von Seiten der Arbeitgebervertretung, wenngleich die von ihr vertretenen Betriebe von der in Frage stehenden Rechtsänderung nicht betroffen wären.

**Artikel 4 – Recht auf ein gerechtes Arbeitsentgelt**

Die BAK begrüßt das Aufrechterhalten der Ratifizierung im bisherigen Ausmaß

**Artikel 4.1 – Recht auf ein Arbeitsentgelt, welches ausreicht, um ArbeitnehmerInnen und ihren Familien einen angemessenen Lebensstandard zu sichern.**

Die BAK weist darauf hin, dass sie die Methodik des Ausschusses für soziale Rechte bei der Beurteilung eines fairen Entgelts (Ermittlung des relevanten Nettodurchschnittseinkommens) kritisch betrachtet. Insbesondere gelten – auch unter Berücksichtigung der Differenz von Median und arithmetischem Mittel – Einkommen unter 60 % des Medians nach international anerkannten Maßstäben bereits als armutsgefährdend. Wir halten daher die mit dem Wert „60 %“ verbundene Symbolik im Kontext für sehr problematisch, wenn – nach der diesem Ansatz folgenden Auslegungspraxis – ein Einkommen, das knapp über der Armutsgrenze liegt, bereits als „fair“ bzw als „gerecht“ und ausreichend angesehen wird, um den angemessenen Lebensstandard von ArbeitnehmerInnen zu sichern.

Seit dem Jahr 2003 werden auf Basis von EU-SILC Indikatoren zu Armut und sozialer Eingliederung berechnet.

2011 waren 12,6 % der Bevölkerung armutsgefährdet. Hochgerechnet auf die Gesamtbevölkerung Österreichs liegt dieser Wert mit 95 % Vertrauenswahrscheinlichkeit zwischen 11,5 % und 13,8 %, bzw müssen zwischen 957.000 und 1.146.000 Personen als armutsgefährdet bezeichnet werden. 4 % der Gesamtbevölkerung sind erheblich materiell depriviert und 8 % (nur Personen unter 60 Jahren) leben in Haushalten mit keiner oder sehr niedriger Erwerbsintensität. Insgesamt ist in Österreich somit von rund 1,4 Millionen Armuts- oder Ausgrenzungsgefährdeten nach Definition der Europa 2020-Strategie auszugehen, das entspricht 17 % der Gesamtbevölkerung.

https://www.statistik.at/web_de/statistiken/soziales/armut_und_soziale_eingliederung/index.html

Am 2.7.2007 wurde eine Grundsatzvereinbarung der Sozialpartner zur Erreichung eines monatlichen Mindestlohns von € 1.000 beschlossen. 2010 wurde eine weitgehende Umsetzung dieses Vorhabens konstatiert (*Stefan Bauer*, Die kollektivvertragliche Deckungsrate in Österreich, Diplomarbeit, August 2010). Es wurden aber auch die Lücken in der Kollektivvertragsdeckung erhoben, zB ca 30.000 in der Sparte Information und Consulting. Derzeit verfolgen die Arbeitnehmerinteressenvertretungen einen Mindestlohn von € 1.300.-.

In Bereichen, in denen keine entsprechenden Entgeltbestimmungen zur Anwendung kommen, herrscht grundsätzlich Vertragsfreiheit. Falls im Vertrag kein Entgelt bestimmt ist, steht gemäß § 1152 ABGB „angemessenes“ Entgelt zu. In der Praxis gestaltet sich die Recherche nach entsprechenden Bemessungskriterien als schwierig. Im Lichte dieser Gegebenheiten sollte unserer Meinung nach der erforderliche Lückenschluss bei den Mindestlöhnen entweder über einen Ausbau der Instrumente Satzung und Mindestlohntarif erfolgen oder durch Umformulierung des § 1152 ABGB in der Weise, dass bei Nichtvorhandensein einer kollektivrechtlichen Mindestlohnregelung jedenfalls „angemessenes“ Entgelt gebührt und diese Angemessenheit sich an vergleichbaren kollektiven Lohnregelungen zu orientieren hat.

Schwierigkeiten gibt es in der Praxis nach unserer Wahrnehmung zB in Fitnessstudios. Hier wurde für FitnessbetreuerInnen eine Lehrlingsentschädigung festgesetzt, allerdings gibt es nach wie vor keinen Kollektivvertrag.

Im Bereich der FußpflegerInnen, KosmetikerInnen und MasseurInnen besteht zwar grundsätzlich ein Kollektivertrag, das entsprechende Lohnabkommen wurde jedoch 1995 gekündigt und kein weiteres abgeschlossen.

Dass ArbeitnehmerInnen in diesen „entgeltregelungslosen“ Branchen – gerade im Bereich der Fußpflege und Kosmetik sind idR Frauen als Arbeitskräfte betroffen – tatsächlich über ein (überprüfbares!), einen angemessenen Lebensstandard sicherndes Arbeitsentgelt verfügen, ist in Frage zu stellen.

Auch die Entwicklung in Richtung Atypisierung und damit häufig einhergehender Prekarisierung der Beschäftigungsverhältnisse trägt wesentlich dazu bei, dass immer mehr Menschen mit ihrem Arbeitseinkommen nicht mehr auskommen.

| **Atypische Beschäftigungsverhältnisse (in 1.000)** | | | | | | |
|---|---|---|---|---|---|---|
| | 2000 | 2005 | 2010 | 2011 | Anstieg 00-11 | Anstieg in % |
| Geringfügige Beschäftigungs-verhältnisse | 196,8 | 229,7 | 295,9 | 307,7 | 110,9 | 56,4 % |
| davon Frauen | 141,7 | 161,6 | 192,5 | 198,6 | 56,9 | 40,2 % |
| in % | 72,0 % | 70,4 % | 65,0 % | 64,5 % | 51,3 % | |
| Teilzeit-Beschäftigte[1] | 603,7 | 807,5 | 1030,4 | 1.042,80 | 439,1 | 72,7 % |
| davon Frauen | 520,0 | 679,3 | 832,2 | 843,4 | 323,4 | 62,2 % |
| in % | 86,1 % | 84,1 % | 80,8 % | 80,9 % | 73,7 % | |
| freie Dienstverträge | 22,2 | 26,6 | 21,8 | 19,9 | -2,3 | -10,4 % |
| davon Frauen | 10,5 | 12,5 | 11,5 | 10,3 | -0,2 | -2,2 % |
| in % | 47,4 % | 46,8 % | 53,0 % | 51,8 % | 10,0 % | |
| geringfügige freie Dienstverträge | - | 45,4 | 37,4 | 35,4 | - | - |
| davon Frauen | - | 26,9 | 22,7 | 21,7 | - | - |
| in % | - | 59,2 % | 60,5 % | 60,5 % | - | |
| neue Selbstständige[2] | 15,1 | 24,6 | 45,8 | 49,7 | 34,6 | 229,6 % |
| neue FreiberuflerInnen[3] | 13,0 | 23,7 | 27,7 | 28,2 | 15,2 | 116,2 % |
| | | | | | | |
| Überlassene Arbeitskräfte | 30,1 | 46,7 | 66,1 | 74,8 | 44,7 | 148,3 % |
| davon Frauen | - | 8,4 | 15,0 | 16,9 | - | - |
| in % | - | 18,0 % | 22,7 % | 22,6 % | - | |
| befristet Beschäftigte | - | 302,3 | 329,8 | 341,4 | - | - |
| davon Frauen | - | 136,1 | 149,0 | 160,7 | - | - |
| in % | - | 45,0 % | 45,2 % | 47,1 % | - | |
| *Quelle: Statistik Austria 1) inkl selbstständig Beschäftigte, 2) Schätzung: zwei Drittel des Gesamtzuwachs, 3) Schätzung (exkl WirtschaftstreuhänderInnen, DentistInnen, JournalistInnen, KünstlerInnen und TierärztInnen)* | | | | | | |

Auch die Entwicklung der Teilzeitbeschäftigung beinhaltet Problemstellungen, obwohl Teilzeitbeschäftigte arbeitsrechtlich den Vollzeitbeschäftigten grundsätzlich gleichgestellt sind. Erstens ist Teilzeit in vielen Fällen nicht freiwillig gewählt und vorwiegend sind Frauen betroffen (Teilzeitquote 2011 war 44 %).

Die Beschäftigungszuwächse der Krisenjahre bestanden hauptsächlich aus Teilzeitbeschäftigung, während gleichzeitig Vollzeitbeschäftigung abgebaut wurde. 2008 gab es 3,135,200

Vollzeitbeschäftigte (VZB) und 954.800 Teilzeitbeschäftigte (TZB). Im Jahr 2009 sank die Zahl der VZB auf 3,074.800, die der TZB ist auf 1,002.800 angestiegen. 2011 war die Zahl der VZB mit 3,101.100 noch immer nicht auf den Stand von 2008 zurückgekehrt, die Zahl der TZB betrug 1,042.800.

Insbesondere in Branchen, in denen die kollektivvertraglichen Mindestlöhne ohnehin gering sind, ergeben sich aus der – oft nicht freiwillig gewählten Teilzeitbeschäftigung – prekäre Einkommenssituationen. Eine Gegensteuerung ist geboten.

**Artikel 4.2 – erhöhte Lohnsätze für Überstundenarbeit**

Die BAK weist in diesem Zusammenhang auf die vielen von ArbeitnehmerInnen geleisteten und **unbezahlt bleibenden Überstunden** hin.

2011 wurden in Österreich 303 Millionen Überstunden geleistet, ein Fünftel davon unbezahlt. Für 22 Prozent der von ihnen geleisteten Mehrarbeit haben die Arbeitnehmer also weder einen Geldzuschlag noch einen Zeitausgleich erhalten. In Summe wurden von den Arbeitgebern 66,9 Mio Mehr- bzw. Überstunden nicht abgegolten.

Der Anteil der nichtbezahlten Überstunden ist bei Frauen deutlich höher als bei Männern. Während bei Männern 2011 19,65 % der Mehrarbeit nicht bezahlt wurden, waren es bei Frauen 28,25 %. Diese Zahlen belegen den dringenden Bedarf nach Verbesserung der Instrumentarien zur Rechtsdurchsetzung.

Die hohe Zahl an geleisteten Überstunden auf der einen und die hohen Arbeitslosenzahlen auf der anderen Seite zeigen die Notwendigkeit einer gerechteren Verteilung und Verkürzung der Arbeitszeit. Weitere Forderungen sind zB ein fairer Zugang zur sechsten Urlaubswoche und ein gesetzlicher Urlaubsanspruch auch für freie DienstnehmerInnen.

Die von uns geforderte Verteuerung der Überstunden für die Arbeitgeber würde dazu beitragen würde, überlange Arbeitszeiten zu reduzieren.

In diesem Zusammenhang wird weiters darauf hingewiesen, dass die Nichtbezahlung von Überstunden bzw die Nichtgewährung von Freizeitausgleich nicht automatisch unter Strafsanktion stehen. ArbeitnehmerInnen müssen ihre Forderungen beim Arbeitsgericht geltend machen. Bei Überschreitung der Arbeitszeitgrenzen durch ungesetzliche Überstunden sind im Arbeitsgesetz Verwaltungsstrafen von 72 bis 3.600 Euro vorgesehen. Auf die nicht abschreckende Wirkung dieser Strafsätze wurde bereits oben hingewiesen. Die Einhaltung der Höchstgrenzen der Arbeitszeit (Tagesarbeitszeiten bis zu 10 und Wochenarbeitszeiten bis zu 50 bzw 48 Stunden) ist vom Arbeitsinspektorat zu kontrollieren.

Im Vorjahr wurden bei Schwerpunktkontrollen 1.231 mangelhaft geführte und 2.144 fehlende Arbeitszeitaufzeichnungen beanstandet. 2010 waren es 1.431 und 2009 1.513 Beanstandungen.

Gefälschte Arbeitszeitaufzeichnungen können nur sehr schwer und meist nicht ohne Zeugenaussage von ArbeitnehmerInnen nachgewiesen werden, wobei dies wegen der negativen Auswirkungen auf das Arbeitsverhältnis von den Arbeitsinspektoren möglichst vermieden wird. Bei bisher erfolgten Anzeigen an die Staatsanwaltschaft wegen Fälschung von Beweismitteln sind die Verfahren eingestellt worden.

Die Nichtführung bzw mangelhafte Führung von Arbeitszeitaufzeichnungen unterliegt einer eigenen Strafbestimmung. Es kann auch eine Strafe pro Arbeitnehmer beantragt werden, wenn durch das Fehlen der Aufzeichnungen die Feststellung der tatsächlich geleisteten Arbeitszeit unmöglich oder unzumutbar wird.

In diesem Zusammenhang weist die BAK auch auf „Sonderfälle“ der Überstundenabgeltung hin. Vor allem bei den sog **All-In-Vereinbarungen** treten in der Praxis häufig Probleme auf bei der Feststellung der Abgrenzung zwischen Normalarbeitszeit und Überstunden. Damit stellt sich auch die Frage, ob bei derartigen Arbeitszeitmodellen die von der Charta geforderte „Zahlung erhöhter Lohnsätze für Überstundenarbeit“ entsprechend erreicht wird.

**Artikel 4.3 – Recht auf ein gerechtes Arbeitsentgelt**

Das Recht männlicher und weiblicher Arbeitnehmer auf gleiches Entgelt für gleichwertige Arbeit ist im Grunde durch das Gleichbehandlungsgesetz – Verbot der Entgeltdiskriminierung geschützt.

Nach wie vor gibt es jedoch einen erheblichen Unterschied beim Einkommen zwischen Männern und Frauen.

Frauen verdienen laut Lohnsteuerstatistik immer noch um 40 % (Quelle Statistik Austria) weniger als Männer. Die Ursachen dafür sind vielfältig: angefangen vom hohen Anteil an Teilzeit, die Segregation des Arbeitsmarktes und die Geschlechterverteilung, die sog „Frauenberufe“ sind meist im Niedriglohnbereich angesiedelt, die Probleme der Vereinbarkeit, die geringe Repräsentanz in Entscheidungspositionen bis hin zur Entgeltdiskriminierung. Es gibt einen Rest an unterschiedlicher Bezahlung, der weder mit Teilzeit noch sonstigen Sachargumenten zu erklären ist – dabei ist von immer noch rund 19 % (Quelle Statistik Austria) auszugehen.

Vor Einleitung eines Gerichtsverfahrens wird häufig die **Gleichbehandlungskommission** (GBK) befasst, wobei die Gerichte nicht an die Prüfungsergebnisse der Gleichbehandlungskommission gebunden sind. Die Gerichte müssen allerdings begründen, wenn sie das Prüfungsergebnis der Kommission als nicht bindend ansehen.

Die Senate der Gleichbehandlungskommission haben sich gemäß § 8 GBK/GAW-Gesetz allgemein oder in Einzelfällen in ihrem Zuständigkeitsbereich mit allen die Diskriminierung berührenden Fragen und mit Verstößen gegen die Beachtung des Gleichbehandlungsgesetzes (GlBG) zu befassen. Die Entscheidungen der Gleichbehandlungskommission als Soft-Law-Einrichtung haben für die Gerichte jedoch nur Grundlagencharakter.

Die nach wie vor lange Dauer der Verfahren – im Durchschnitt über ein Jahr – und Nichtbindung der Gerichte an die Prüfergebnisse der GBK führen in der Praxis dazu, dass zum einen in einem allfällig daran anschließenden Gerichtsverfahren die Vorfälle lange Zeit zurückliegen und nur mehr schwer erinnerlich sind, zum anderen ist es für Betroffene von Diskriminierungen nur schwer erklärlich, wenn ein Gerichtsurteil zu einem anderen Ergebnis kommt als die GBK.

Die Tätigkeit der/des Vorsitzenden aller Gleichbehandlungssenate – insbesondere Senat I – sollte hauptamtlich sein.

Es wurden in der letzten Zeit einige wichtige Maßnahmen gesetzt, die bei der Lohntransparenz ansetzen, und die mögliche Diskriminierungen sichtbar machen und der Rechtsdurchsetzung dienlich sei sollen – dies wurde durch die Verpflichtung im Gleichbehandlungsrecht erreicht, mit der die Betriebe zu **Einkommensberichten** verpflichtet werden. Dies ist jedenfalls ein frauenpolitischer Schritt zur Verringerung der Lohnschere.

Darüber hinaus wurde durch den Wegfall der Verschwiegenheit im **Verfahren** bei der Gleichbehandlungskommission eine verbesserte Verwertbarkeit der Prüfungsergebnisse im Gerichtsverfahren erreicht.

Es wurden aber auch Maßnahmen zur Beschleunigung der Verfahren bei der Gleichbehandlungskommission gesetzt, etwa durch die Einführung von Ausschüssen mit geringerer personeller Besetzung, die in kürzeren Zeitabständen zusammentreffen.

Zur Verringerung der Schere zwischen männlichen und weiblichen Einkommen wurden seitens der BAK mehrere **Maßnahmen** vorgeschlagen. Um gegen Entgeltdiskriminierung vorzugehen, bedarf es einer besseren Ausstattung der Gleichbehandlungsanwaltschaften und einen verbesserten Zugang der Diskriminierten zum Recht durch eine weitere Regionalisierung, damit in jedem Bundesland eine derartige Ansprechstelle vorhanden ist.

Darüber hinaus ist ein Mix an Maßnahmen notwendig, wie zB der flächendeckende Ausbau von Kinderbetreuungseinrichtungen, eine stärkere Väterbeteiligung an der Karenz und an der Kinderbetreuung, Bildungsmaßnahmen und die Förderung von Frauen in nicht traditionellen Berufen.

Auch konkrete Maßnahmen zur verbindlichen Implementierung von Frauenförderplänen in den Betrieben wären eine Maßnahme zur Herstellung vom mehr Lohngleichheit.

Das KBG wurde durch die Einführung von zwei weiteren Kurzmodellen mit höheren Tagesbeträgen ab 1.1.2008 und ab 1.1.2010 durch die Einführung eines Einkommensersatzmodells und eines weiteren Pauschalmodells flexibilisiert bzw. ergänzt. Das Einkommensersatzmodell ersetzt 80 % des vorherigen Entgeltes (maximal € 2.000) und ist nicht zuletzt ein wirksamer Anreiz, damit sich mehr Väter an der Kinderbetreuung beteiligen.

Jedoch sind mehr Maßnahmen in Hinblick auf die **Väterbeteiligung** notwendig. Derzeit ist auf Initiative der BAK eine Gesetzesnovelle in Begutachtung, mit welcher verhindert werden soll, dass Gehälter, die vor oder nach einer Karenz zustehen, in die Zuverdienstermittlung einbezogen werden und zu Zuverdienstüberschreitungen und damit zu Rückforderungen führen. Väter sind von Rückforderungen stärker gefährdet, da sie das einkommensabhängige Kinderbetreuungsgeld meist nur für die Mindestbezugsdauer in Anspruch nehmen und KurzbezieherInnen durch die bisherige Berechnungsmethode benachteiligt sind.

Für **Teilzeitbeschäftigte** enthält § 19d Abs 6 Arbeitszeitgesetz (AZG) ein Diskriminierungsverbot. Allerdings erhalten Teilzeitbeschäftigte nicht nur eine geringere Entlohnung aufgrund der geringeren Arbeitszeit, sondern häufig ist auch der Stundenlohn niedriger im Vergleich zu vollzeitbeschäftigten Frauen bei gleicher Tätigkeit.

Wird die gleiche oder eine gleichwertige Tätigkeit von Männern ausgeübt, ergibt sich vielfach nochmals eine Differenz zu Lasten auch der vollzeitbeschäftigten Frauen. Es zeigt sich, dass gesetzliche Normen alleine nicht ausreichen, um diese Formen der Entgeltdiskriminierung zu verhindern. Es muss auch das entsprechende Bewusstsein in die Betriebe getragen werden.

Teilzeitbeschäftigung hat mittlerweile die Vollzeit als dominierende Beschäftigungsform von Frauen mit Kindern unter 15 Jahren verdrängt: Während 1995 rund 4 von 10 Frauen im Haupterwerbsalter (25-49 Jahre) mit Kindern unter 15 Jahren Teilzeit arbeiteten sind es 2010 rund 7 von 10 Frauen (69 %).

Bei Männern steht Teilzeitbeschäftigung in keinem Zusammenhang mit anfallenden familiären Pflichten. Im Gegenteil: Bei Männern mit Kindern sinkt die Teilzeitquote. So beträgt die Teilzeitquote bei Männern im Haupterwerbsalter (25-49) ohne betreuungsbedürftige Kinder 8 %, jene der Väter mit Kindern unter 15 Jahren lediglich 5 %.

Die BAK erachtet folgende Maßnahmen als aussichtsreich hinsichtlich der Umsetzung des durch die RESC angestrebten Zieles männlichen und weiblichen ArbeitnehmerInnen gleiches Entgelt für gleichwertige Arbeit zu gewährleisten

- Erleichterung des Wechsels in Vollzeit bzw in eine Beschäftigung mit mehr Stunden: Vorrang von Teilzeitbeschäftigten und geringfügig Beschäftigten, wenn im Betrieb eine vergleichbare Position mit einem höheren Stundeausmaß ausgeschrieben wird.
- Informationspflicht der ArbeitgeberInnen gegenüber Teilzeitbeschäftigten bei Vollzeitausschreibung.
- Erhöhung des Mehrarbeitszuschlags für Teilzeitbeschäftigte von 25 % auf 50 %.
- Betriebliche Ermöglichung der Teilzeitbeschäftigung auch von gut qualifizierten Beschäftigten, Führungskräften und Männern.
- Eltern(teil)zeitanspruch für alle Beschäftigten (auch in Kleinbetrieben und bei nur kürzerer Beschäftigungsdauer) und auch parallel zur Karenz des anderen Elternteils.
- Förderung der Umverteilung der Arbeitszeit: Verkürzung der Arbeitszeit für Vollzeitbeschäftigte, Verteuerung der Überstunden für Arbeitgeber in Form einer Arbeitgeberab-

gabe (1 Euro pro geleisteter Überstunde), Einschränkung der Zulässigkeit von All-in-Klauseln
- Keine Benachteiligung von Teilzeitbeschäftigten und geringfügig Beschäftigten – gleicher Zugang zu Weiterbildungsmaßnahmen und Karrierechancen für Teilzeitbeschäftigte;
- Recht auf Vermittlung in Vollzeit bzw höhere Teilzeit bei Arbeitslosigkeit.
- Beseitigung von Anreizsystemen, die (schlecht bezahlte) Teilzeit fördern und Barrieren für eine Aufstockung der Arbeitszeit sein können wie zB Alleinverdienerabsetzbetrag.
- Information über die nachteiligen Auswirkungen der Teilzeit auf die Alterssicherung.
- Erfassung der Arbeitszeitdaten durch den Hauptverband der österreichischen Sozialversicherungsträger.

Aus der Beratungspraxis sind der BAK etliche Fälle bekannt, in denen sich bei Teilzeitarbeit zum Zweck der Kinderbetreuung (Elternteilzeit) Probleme ergeben. Hier können im Sinne eines weiten Entgeltbegriffs insbesondere bei Sachbezügen (zB in Verbindung mit Dienstwagen), All-In-Vereinbarungen und Überstundenpauschalen Schwierigkeiten beim „Umstieg“ von einer zunächst bestehenden Vollzeit auf eine später wegen der Kindesbetreuung in Anspruch genommenen Teilzeit beobachtet werden, die letztendlich zu einer (mittelbaren) Diskriminierung von Frauen führen.

Positiv zu vermerken sind die Änderungen der letzten Novelle zum GlBG (März 2011) und die damit verbundenen Änderungen (insb Mindestschadenersatzansprüche).

Schritte in die richtige Richtung zur Verbesserung der Einkommenstransparenz sind insbesondere die verpflichtenden Einkommensberichte ab einer bestimmten Unternehmensgröße mit Stufenplan sowie die Pflicht zur Angabe des zu erwartenden Mindesteinkommens in Stelleninseraten und - in weiterer Folge – auch die Verknüpfung mit einer Strafbestimmung.

Dies sollte auch für Stellenausschreibungen von Bund, Ländern und Gemeinden gelten. In diesem Zusammenhang sollte es eine Anzeige- und Rechtsvertretungsmöglichkeit für die Interessensvertretungen der ArbeitnehmerInnen geben (Verbandsklage). Darüber hinaus müsste der Schadenersatz angepasst werden, um dem Erfordernis einer effektiven und abschreckenden Sanktion bei Regelverstoß gerecht zu werden.

Alle Benachteiligungen, die auf Teilzeitbeschäftigte zutreffen sind auch bei geringfügig Beschäftigten zu beobachten. Dazu kommt, dass Ansprüche auf Urlaub und Urlaubsersatzleistungen sowie auf kollektivvertragliche Ansprüche (Sonderzahlungen etc) bei dieser Gruppe von Beschäftigten in der Praxis immer wieder in Frage gestellt werden.

**Artikel 4.4 – Recht auf angemessene Kündigungsfristen**

Keine Berichtspflicht (da von Österreich nicht ratifiziert)

Die BAK hält eine Diskussion für wünschenswert, insbesondere ob allenfalls eine Ratifizierung in Hinblick auf eine (diskriminierungsfreie) **Angleichung der Rechte der ArbeiterIn-**

**nen und der Angestellten** möglich erscheint (ua besteht das Problem, dass in etlichen ArbeiterInnen-Kollektivverträgen keine oder nur sehr kurze Kündigungsfristen enthalten sind, was wohl nicht den Anforderungen einer „angemessenen Kündigungsfrist" entspricht).

Anzumerken ist, dass das Kündigungsrecht in Österreich insgesamt sehr wirtschaftsfreundlich gestaltet ist.

Zu beachten ist in diesem Zusammenhang auch, dass das Beendigungsrecht von Arbeitsverhältnissen krisenrelevant ist (vgl Pkt 14 Abs 2 des 2009 auf der 98. Internationalen Arbeitskonferenz angenommenen Globalen Beschäftigungspaktes, vgl weiters hier 24 RESC).

Nach wie vor sind **geringfügig Beschäftigte** von den Kündigungsbestimmungen des § 20 des Angestelltengesetzes ausgenommen, obwohl diese Grenze keine arbeitsrechtliche sondern eine SV-rechtliche Einkommensgrenze ist, ab der Vollversicherungspflicht vorliegt.

Gemäß § 20 Abs 1 AngG gelten diese Kündigungsbestimmungen erst, wenn die vereinbarte oder tatsächlich geleistete Arbeitszeit bezogen auf den Monat mindestens ein Fünftel des 4,3fachen der durch Gesetz oder Kollektivvertrag vorgesehenen wöchentlichen Normalarbeitszeit beträgt. Auch diese materielle Benachteiligung wirkt sich insbesondere auf Frauen aus, die sehr viel häufiger als Männer nur einer geringfügigen Beschäftigung nachgehen können. 15 % aller teilzeitbeschäftigten Frauen, das sind 127 000 arbeiten nur geringfügig. Aber nur rund 44.000 Männer sind geringfügig beschäftigt. Das heißt, dass rund drei Viertel aller geringfügig Beschäftigten Frauen sind. Es ist daher auch von einer Diskriminierung aufgrund des Geschlechts auszugehen.

**Artikel 4.5 – Gewährleistung der wirksamen Ausübung des Rechtes auf ein gerechtes Arbeitsentgelt**

Die BAK weist hier auf die Verpflichtung der ArbeitgeberInnen hin, gemäß § 78 Abs 5 Einkommensteuergesetz (EStG), ArbeitnehmerInnen spätestens mit der Lohnzahlung für den Lohnzahlungszeitraum eine Abrechnung hinsichtlich des für den Kalendermonat ausbezahlten Arbeitslohns auszuhändigen. In der Praxis scheitert die Durchsetzung des Rechtsanspruches allerdings leider immer wieder an der Weigerung der ArbeitgeberInnen ihren ArbeitnehmerInnen eine solche Lohnabrechnung zur Verfügung zu stellen. Das Einkommenssteuergesetz bietet keine Rechtsgrundlage für einen klagbaren Anspruch auf eine Lohnabrechnung.

Ein zivilrechtlich klagbarer Rechtsanspruch auf eine übersichtliche Brutto-Netto-Abrechnung erscheint allerdings in etlichen Fällen als Voraussetzung dafür, wirksam das Recht auf gerechtes Arbeitsentgelt in Anspruch nehmen zu können.

**Artikel 5 – Vereinigungsrecht**

Die BAK begrüßt das Beibehalten der Ratifizierung dieses Kernartikels.

**Artikel 6 – Recht auf Kollektivverhandlungen**

Wir begrüßen das Aufrechterhalten der Ratifizierung im bisherigen Ausmaß.

**Artikel 6.1 – Förderung gemeinsamer Beratungen zwischen Arbeitnehmern und Arbeitgebern**

Dieser Artikel muss in Zusammenhang mit Artikel 4.1 Recht auf ein Arbeitsentgelt, das einen angemessenen Lebensstandard sichert, gesehen werden. In Österreich sind zwar grundsätzlich die Rahmenbedingungen für Kollektivvertragsverhandlungen gegeben. Allerdings gibt es Bereiche, in denen Arbeitgeber zu keinen Verhandlungen bereit sind, bzw in welchen nur Abschlüsse unter dem Niveau eines den angemessenen Lebensstandard sichernden Arbeitsentgelts zu erzielen sind (zB Fußpflege).

Ein anderes Phänomen der Unterminierung des ansonsten gut funktionierenden Kollektivvertragssystems ist im Zusammenhang mit Betriebsübergängen zu beobachten. Nicht selten nehmen ArbeitgeberInnen gezielt Umorganisationen vor um für sie kostengünstigere Kollektivverträge zur Geltung zu bringen. Die häufigsten Beispiele sind in der Praxis Umstrukturierungen von der Industrie in den Handel, vom Bau in die Stein-und Keramikbranche, dann zum Schotter- und schließlich ins Steinarbeitergewerbe oder vom Handel ins Gastgewerbe.

Was die weiterhin nicht beabsichtigte Ratifizierung des **Art 6.4** betrifft, halten wir zunächst fest, dass uns die **Erläuterungen** zu dieser Bestimmung in wesentlichen Teilen problematisch erscheinen.

Es ist zwar richtig, dass in Österreich – im Gegensatz zu anderen Staaten – das Recht des Arbeitskampfes weder durch Gesetze noch durch Kollektivverträge systematisch verrechtlicht ist, und die österreichische Rechtsordnung insbesondere keine diesbezügliche generelle arbeitsrechtliche Regelung enthält (auf damit verbundene Rechtsunsicherheiten kann hier nur generell hingewiesen werden). Die Erläuterungen sind zunächst insofern widersprüchlich, als das Streikrecht zwar gleichsam naturrechtlich begründet wird („Teil der natürlichen Handlungsfreiheit des Menschen"), andererseits die Grenzen dieses „naturrechtlichen Streikrechts" sehr wohl im positiven Recht, und zwar im geltenden Zivil- und Strafrecht gesehen werden.

Hingegen sind die Erläuterungen unseres Erachtens hinsichtlich des positiven Verfassungsrechts unvollständig. Die EMRK und somit auch deren Art 11, der das Recht auf Vereinigungs- und Versammlungsfreiheit statuiert, ist mit dem Tag ihres In-Kraft-Tretens für Österreich (3.9.1958) zweifelsfrei Bestandteil des österreichischen Verfassungsrechts geworden (Art II Z 7 B-VGNov 1964 iVm BGBl 1958/210). Die **Koalitionsfreiheit (Art 11 EMRK)** gilt somit als verfassungsrechtlich gewährleistetes Recht (Art 144 B-VG), findet jedoch in den Erläuterungen keine Erwähnung. Zugleich sind die Urteile des Europäischen Gerichtshofs für Menschenrechte (EGMR) für die Mitgliedstaaten der EMRK verbindlich, und es steht zweifelsfrei auch bei konservativer Betrachtung fest, dass für die österreichische Gesetzge-

bung und Vollziehung die Orientierung an der Rechtsprechung des EGMR insgesamt - nicht nur hinsichtlich österreichischer Beschwerdefälle - praxisrelevant ist (Art 41, 46 EMRK). Die Bundesarbeitskammer weist in diesem Sinn auf die jüngste Rechtsprechung des EGMR zu Art 11 EMRK hin (Urteil 21.4.2009, Enerji Yapi-Yol Sen gg Türkei; Urteil 21.11.2006, Demir und Baykara gg Türkei, Bsw 34503/97 – Art 11, 14 EMRK). Demnach verletzen nicht nur unverhältnismäßige gesetzliche Einschränkungen des Rechts auf Betriebsversammlungen sowie des Streiks zur Durchsetzung des Rechts auf Kollektivverhandlungen Art 11 EMRK (auch gegenüber einem öffentlichen Arbeitgeber). Der EGMR beurteilte in den genannten Entscheidungen das Streikrecht auch als dem Koalitionsrecht immanent; letzteres begründet er insbesondere mit der Praxis der Überwachungsorgane der IAO zu den – von Österreich im Übrigen ratifizierten – IAO-Übereinkommen (Nr 87) und (Nr 98).

Es ist festzuhalten, dass, wenngleich innerstaatliche Rechtsquellen (Gesetze) den Begriff des Streiks voraussetzen und insoweit implizit in der österreichischen Rechtsordnung verankern, sich die nähere Bedeutung und Tragweite eines Streikrechts nicht primär aus innerstaatlichen Rechtsquellen erschließt. An deren Stelle kommt der – von Österreich nicht zuletzt durch Ratifikation der entsprechenden Verträge mitgetragenen – internationalen Rechtsentwicklung und der Auslegungspraxis der in derartigen Rechtsquellen eingerichteten Organe besondere Bedeutung zu. Insoweit ist im Sinne einer expliziten Verankerung des Streikrechts neben entsprechenden Urteilen des EGMR auch den Interpretationen der einschlägigen Ausschüsse im Rahmen der IAO Augenmerk zu schenken.

Die Erläuterungen des Entwurfs zu Art 6 Abs 4 RESC enthalten weiters keine europarechtlichen Überlegungen, so auch keinen Hinweis auf die Grundrechtecharta des Reformvertrages von Lissabon. Es ist jedoch fraglich, ob das – offenbar auch den Erläuterungen zugrunde gelegte – Modell der „aktiven Neutralität des Staates" in Fragen des Arbeitskampfes nicht von jüngsten Entwicklungen des Europarechts bereits überholt wurde. In seinen Urteilen vom 11.12.2007, Rs C-438/05, International Transportworkers´ Federation and the Finnish Seamen´s Union, Slg 2007, I-10779 („Viking"-Fall"); vom 18.12.2007, Rs C-341/05, Laval un Partneri, Slg 2007, I-11767 („Vaxholm"-Fall") sowie vom 3.4.2008, Rs C-346/06, Rüffert, Slg 2008, I-1989, hatte sich der EuGH erstmals zum Verhältnis gewerkschaftlicher Grundrechte zu den Grund- bzw Marktfreiheiten des EG-Binnenmarktes geäußert. Wenngleich die Urteile des EuGH dem Grundsatz nach so verstanden werden können, dass sie das Streikrecht akzeptieren – vgl die Ausführungen des deutschen Bundesverfassungsgerichts (BVerfG, 2 BvE 2/08 30.6.09, Abs.-Nr. 398, http://www.bverfg.de/entscheidungen/es20090630_2bve000208.html) in einer rezenten Entscheidung –, so sind die darin festgelegten Kriterien für die Ausübung des Streikrechts auch als Einschränkung zu verstehen, die in einem Konflikt- und auch Kollisionsfall von österreichischen Organen wohl unmittelbar zu vollziehen wären (vgl zu den europa- und völkerrechtlichen Implikationen die ausführliche Stellungnahme der Bundesarbeitskammer vom 21.8.2009 zu GZ BMASK-464.102/0019-III/10a/2009 – IAO: Berichte über ratifizierte Übereinkommen 2009).

Die Ratifizierung von Art 6 Abs 4 RESC könnte gegenüber den möglichen Beschränkungen des Streikrechts im Gefolge der Rechtsprechung des EuGH ein nicht nur „naturrechtliches"

Bekenntnis der Republik zum Streikrecht darstellen. Unter dem Gesichtspunkt, dass eine Ratifizierung nicht zwingend die Durchführung durch eine geschlossene systematische Verrechtlichung auf Gesetzesebene zur Folge haben muss (vgl Art I Abs 1 lit d RESC) fordert daher die Bundesarbeitskammer die Ratifizierung von Art 6 Abs 4 RESC. (Ergänzend weisen wir darauf hin, dass im Grunde auch die Möglichkeit einer Inkorporierung des gesamten Art 6 RESC etwa in die österreichische Verfassungsrechtsordnung besteht).

**Artikel 26**

Die Bundesarbeitskammer fordert in Hinblick auf die wachsende Zahl von Mobbingopfern, die bei den Arbeiterkammern Beratung suchen, und in Hinblick auf die - vor allem hinsichtlich der Sanktionen - unzureichende Rechtslage eine Ratifizierung dieser Bestimmung. Mittelfristig ist der Gesetzgeber hier auf jeden Fall gefordert. Die Bundesarbeitskammer begrüßt jedenfalls die Ratifizierung von **Art 26 Abs 1**; die Erläuterungen zu Art **26 Abs 2** erscheinen unklar.

**Artikel 26.1**

Die Diskriminierung auf Grund des Geschlechtes im Sinne einer sexuellen Belästigung ist in § 6 GlBG geregelt. Eine Diskriminierung auf Grund des Geschlechtes liegt demnach vor, wenn eine Person

- vom/von der Arbeitgeber/in selbst sexuell belästigt wird,
- durch den/die Arbeitgeber/in dadurch diskriminiert wird, indem er/sie es schuldhaft unterlässt, im Falle einer sexuellen Belästigung durch Dritte (Z 3) eine auf Grund gesetzlicher Bestimmungen, Normen der kollektiven Rechtsgestaltung oder des Arbeitsvertrages angemessene Abhilfe zu schaffen,
- durch Dritte in Zusammenhang mit seinem/ihrem Arbeitsverhältnis belästigt wird oder
- durch Dritte außerhalb eines Arbeitsverhältnisses (§ 4) belästigt wird.

Sexuelle Belästigung liegt vor, wenn ein der sexuellen Sphäre zugehöriges Verhalten gesetzt wird, das die Würde einer Person beeinträchtigt oder dies bezweckt, für die betroffene Person unerwünscht, unangebracht oder anstößig ist und

- eine einschüchternde, feindselige oder demütigende Arbeitsumwelt für die betroffene Person schafft oder dies bezweckt oder
- der Umstand, dass die betroffene Person ein der sexuellen Sphäre zugehöriges Verhalten seitens des/der Arbeitgebers/Arbeitgeberin oder von Vorgesetzten oder Kolleg/inn/en zurückweist oder duldet, ausdrücklich oder stillschweigend zur Grundlage einer Entscheidung mit Auswirkungen auf den Zugang dieser Person zur Berufsausbildung, Beschäftigung, Weiterbeschäftigung, Beförderung oder Entlohnung oder zur Grundlage einer anderen Entscheidung in der Arbeitswelt gemacht wird.

Eine Diskriminierung liegt auch bei Anweisung zur sexuellen Belästigung einer Person vor.

Eine Diskriminierung liegt auch vor, wenn eine Person auf Grund ihres Naheverhältnisses zu einer Person wegen deren Geschlechts sexuell belästigt wird.

Bei einer sexuellen Belästigung nach § 6 GlBG hat die betroffene Person gegenüber dem/der Belästiger/in und im Fall des § 6 Abs 1 Z 2 GlBG auch gegenüber dem/der Arbeitgeber/in Anspruch auf Ersatz des erlittenen Schadens. Soweit der Nachteil nicht nur in einer Vermögenseinbuße besteht, hat die betroffene Person zum Ausgleich der erlittenen persönlichen Beeinträchtigung Anspruch auf angemessenen, mindestens jedoch auf 1 000 Euro Schadenersatz (§ 12 (11) GlBG).

Diese Ansprüche sind binnen eines Jahres gerichtlich geltend zu machen (§ 15 (1) GlBG).

Die Schadenshöhe sollte jedenfalls abschreckenden Charakter besitzen, um sexueller Belästigung in der Arbeitswelt (in hoffentlich naher Zukunft) keinen Raum mehr zu geben, wie auch der betroffenen Person – neben dem Vermögensschaden – einen angemessenen Ausgleich für die erlittene persönliche Beeinträchtigung zu verschaffen, wenn auch eine entgeltliche Abgeltung in solchen Fällen ohnehin nur ein geringer „Ersatz“ sein wird. Zu hoffen ist, dass die Gerichte solch angemessen hohe Schadenersatzansprüche (zukünftig) zusprechen, derzeit scheint dies nicht der Fall zu sein und die abschreckende Wirkung zugesprochener Schadenersatzansprüche ist zumindest zu hinterfragen.

**Artikel 26.2 – Recht auf Würde am Arbeitsplatz – Bewusstsein, Aufklärung und Vorbeugung hinsichtlich sexueller Belästigung am Arbeitsplatz**

Diese Bestimmung wurde von Österreich nicht ratifiziert, eine Berichtspflicht entfällt daher. Eine Ratifizierung wäre aber angesichts der steigenden „Mobbing-Problematik“ in der Arbeitswelt jedenfalls anzustreben.

**Artikel 28 – Recht der Arbeitnehmervertreter auf Schutz im Betrieb und Erleichterungen, die ihnen zu gewähren sind**

Die Bundesarbeitskammer begrüßt die Ratifizierung. Die Stärkung der VertreterInnen der ArbeitnehmerInnen ist im Hinblick auf deren Schutz im Betrieb sowie ihr Recht auf Unterrichtung und Anhörung in Verfahren bei Massenentlassungen vorbehaltlos zu befürworten; ergänzend wird unterstrichen, dass, wie in den Erläuterungen angegeben, in Österreich kein diesbezüglicher Anpassungsbedarf des ArbVG gegeben ist.

Ergänzend wird angemerkt, dass die BAK die Ratifizierung des ZSP über Kollektivbeschwerden aus 1995, Nr 158, befürwortet.

Die BAK ersucht um Berücksichtigung der Stellungnahme.

Rudi Kaske
Präsident
F.d.R.d.A.

Alice Kundtner
iV des Direktors
F.d.R.d.A.