



22/10/09

RAP/Cha/AU/XXVII(2009)

EUROPEAN SOCIAL CHARTER

27th National Report on the implementation of
the European Social Charter

submitted by

THE GOVERNMENT OF AUSTRIA

(Articles 2, 4, 5 and 6
for the period 01/01/2005 – 31/12/2008)

Report registered by the Secretariat on 19 October 2009

CYCLE XX-1 (2010)

27th REPORT

presented under the provisions of Article 21 of the European Social Charter,
on Articles 2, 4, 5 and 6
(reporting period: 1 January 2005 to 31 December 2008)

by the
Austrian Federal Government
regarding measures to implement the
European Social Charter
the ratification instrument of which was deposited
on 29 October 1969.

Pursuant to Article 23 of the Charter, copies of this report
were furnished to:

the Austrian Trade Union Federation,
the Austrian Federal Chamber of Labour,
the Austrian Federal Economic Chamber,
the Federation of Austrian Industry,
the Presidential Conference of Austrian Chambers of Agriculture,
and
the Council of Austrian Chambers of Agricultural Labour.

ARTICLE 2

THE RIGHT TO JUST CONDITIONS OF WORK

Para. 2 of Article 2

With a view to ensuring the effective exercise of the right to just conditions of work, the Contracting Parties undertake to provide for public holidays with pay.

No substantial changes.

Reply to the additional questions on Para. 2 of Article 2 in the Conclusions XVIII-2:

The statutory provisions governing the remuneration for work on public holidays have not changed since the most recent report.

Employees have to be paid the remuneration due for their work plus a premium (or supplement) on the base pay for work on public holidays, which is 100 % in the majority of cases.

However, some collective agreements provide for a separate supplement for work on public holidays, e.g. the Collective Agreement for the Foodstuffs, Drinks and Tobacco Industry stipulates the following payment components for work on public holidays:

For standard working hours:

Regular remuneration as defined by the ordinance governing remuneration for work on public holidays plus a 150 % supplement for the work done.

For night hours:

Regular remuneration as defined by the ordinance governing remuneration for work on public holidays plus a 200 % supplement for the work done.

The hours during which work would be performed if this day were a working day are considered as standard working hours on public holidays.

The Collective Agreement for the Construction Trade and Industry stipulates the following premiums for work carried out on public holidays: 50 % (i.e. public holiday remuneration and work remuneration with a 50 % supplement) if the public holiday is a working day on which, due to the fact that it is a public holiday, the employee would normally be eligible to rest from work while getting continued remuneration; 100 % (i.e. work remuneration with a 100 % supplement) if it is a working day on which employees usually do not work based on the weekly worktime distribution scheme.

Para. 3 of Article 2

With a view to ensuring the effective exercise of the right to just conditions of work, the Contracting Parties undertake to provide a minimum of two weeks' annual holiday with pay.

No substantial changes.

Reply to the additional questions on Para. 3 of Article 2 in the Conclusions XVIII-2:

The option of postponing annual leave is stipulated under Section 4 Para. 5 of the Paid Annual Leave Act (*Urlaubsgesetz*), Federal Law Gazette no. 390/1976 as amended, which lays down that the annual leave entitlement is subject to limitation only after two years after the end of the year during which the entitlement accrued. This limitation period is extended by the period of time the parental leave exceeds ten months if parental leave is taken as defined by the Parental Leave Act for Fathers (*Väter-Karenzgesetz; VKG*), Federal Law Gazette no. 651/1989 as amended or by the Maternity Leave Act 1979 (*Mutterschutzgesetz, MSchG*), Federal Law Gazette no. 221/1979 as amended.

Annual leave not taken can be carried over to the following years up to the end of the period of limitation; any leave taken in a new annual leave year shall be apportioned to the oldest leave accrued in the previous annual leave years which was not taken and not lost due to limitation.

Para. 4 of Article 2

With a view to ensuring the effective exercise of the right to just conditions of work, the Contracting Parties undertake to provide for additional paid holidays or reduced working hours for workers engaged in dangerous or unhealthy occupations as prescribed.

No substantial changes.

Reply to the additional questions on Para. 4 of Article 2 in the Conclusions XVIII-2:

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 Article 3) and, for employees in agriculture and forestry, in the Agricultural Labour Act 1984 (*Landarbeitsgesetz, LAG*), Federal Law Gazette no. 287.

In addition, compensational measures for particularly dangerous jobs were laid down in the Heavy Night Work Act (*Nachtschwerarbeitsgesetz, NSchG*), Federal Law Gazette no. 354/1981 as amended. Working hours are reduced by granting rest periods of at least 10 minutes that have to be counted as working time and thus reduce overall daily and weekly working hours. Additional leave is granted for these jobs.

No data are available concerning the question of whether the labour inspectorates order additional rest periods pursuant to Section 11 Para. 6 of the Working Hours Act (*Arbeitszeitgesetz, AZG*) if the heaviness of work requires so.

The authorisation to issue ordinances pursuant to Section 21 of the Working Hours Act has not been exercised to date for the reasons given in the previous reports.

The main reason is that the Heavy Night Work Act entered into force in 1981. This Act provides for comprehensive compensational measures, including working shorter hours, for groups of employees working under extremely wearing conditions. Apart from a shorter working life for these employees by granting special pension payments (*Sonderruhegeld*) and a shorter working year by granting additional days off, the amendment of the Working Hours Act also resulted in a shorter working day by granting additional rest periods (that are counted as working time). Although this measure could well have been effected by means of an ordinance according to Section 21 of the Working Hours Act, legislators at that time decided to create a comprehensive statutory framework for groups of employees working under extremely wearing conditions.

For this purpose, the health protection for groups of employees subject to the Heavy Night Work Act was continually extended through amendments of the Working Hours Act (e.g. the amendment granting additional rest periods if the daily working time of eight hours including overtime is exceeded) or by extending its scope to include other groups of employees (e.g. nurses).

After compensational measures have been laid down on statutory level for particularly wearing jobs or activities, collective agreements can provide for more favourable regulations. For example, the Collective Agreement for the Iron and Metal Manufacturing and Processing Industry does not explicitly differentiate working time regulations for employees working under particularly wearing conditions from those for employees not exposed to such conditions.

Pursuant to Article VII Para. 6 of the Heavy Night Work Act, collective agreements may put other work activities as defined by Article VII Para. 1 on the same level as heavy night work if they entail extraordinary demands or if the employees are exposed to harmful substances or radiation. The Collective Agreement for Non-University Research Institutions made use of this option and included work under exposure to ionising radiation.

Para. 5 of Article 2

With a view to ensuring the effective exercise of the right to just conditions of work, the Contracting Parties undertake to ensure a weekly rest period which shall, as far as possible, coincide with the day recognised by tradition or custom in the country or region concerned as a day of rest.

1) Please describe the general legal framework. Please specify the nature of, reasons for and extent of any reforms.

Previous reporting is updated as follows:

Exceptions from rest during weekends and public holidays pursuant to Section 12a Rest Periods Act (*Arbeitsruhegesetz, ARG*) were allowed by collective agreements without any limitation in the following industries and businesses:

Industry/business	Activity	Reg. no.:	Cad. no.:	In force since
SCA Hygiene Austria GmbH Betrieb Ortmann	Manufacturing of napkins and handkerchiefs	119/1997	IX/41/4	01/05/1997
Professional Association for Garage, Petrol Station and Service Station Undertakings - FV Garagen, Tankstellen u. Servicestationen (blue collar)	Sale, supervision, attendance and operation of automated washing systems pursuant to Section 279 Para. 2 Trade Code (<i>Gewerbeordnung, GewO</i>)	370/1998	XV/76/1	01/10/1998
Petroleum and fuel trade, petrol stations (blue collar and white collar)	Sale of certain goods pursuant to Section 279 Para. 2 <i>GewO</i>	223/2001	XV/71/14	01/01/2001
KFA of the City of Vienna (employment code B)	Physicians and dentists at health events, trade fairs, etc.	418/1998	XV/71-76/13	01/11/1998
Bäderbetriebe Wien	Solariums	69/1998	XXI/95/6	01/01/1998
Video shops (white collar)	Rentals	395/1998	XXIV/98/7	01/11/1998
General data processing and IT (white collar)	Services for company or customer-specific problems	36/2004	XIX/93/1	01/01/2001
Chemical industry: (blue collar) Semperit Techn. Produkte GesmbH., Wimpassing plant	Manufacture of moulded goods of rubber and plastic	297/2001	XI/45/12	15/05/2001
Paper industry Carl Joh. Merckens, Schwertberg	Manufacturing of cardboards and pressboards	302/2000	IX/41/10	02/04/2000
Chemical industry: Semperit Reifen AG, Traiskirchen plant (blue collar and white collar)	Manufacturing of tyres	270/1998 272/1998	XI/45/4 XI/45/6	01/08/1998
VAT refund	Office	23/2003	Ang/Gew/1	01/10/2002
Taper roller bearing	Heat treatment	152/2004	XIII/58/1	01/02/2004
Raiffeisen	Banks on shopping streets and in shopping centres	187/2004	XVIII/91/10	01/02/2004
Surface Specialities	Manufacturing of synthetic resin	60/2005	XI/45/1	11/11/2004
Schmidt GesmbH	Manufacturing of print colours	325/2005	XI/45/3	12/04/2005
Mail order business	Customer service and customer care, order acceptance	241/2006	XV/71-76/9	01/01/2006
Red Cross	Disasters, epidemics and other unforeseeable events threatening the lives and health of humans as well as no more than two related training exercises each year	436/2006	XXII/96/21	01/10/2006
Utilities (white collar)	Trading at energy exchanges and auxiliary activities	90/2007 36/2009	III/11/1 III/11/3	01/12/2006 01/09/2008
Agip GmbH (white collar)	Annual accounts preparation between 1 st and 15 th January	250/2007	III/23/3	01/01/2007
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 on Saturday afternoons	82/2007	XV/71-76/4	01/01/2007

(BABE) Private education institutions	List of activities in the field of event management for cultural events Limited period for some of these activities (seminars, courses, etc.)	141/2005	XXIII/97/2	01/05/2006 until 31/12/2009
Graphic arts (blue collar and white collar)	Works agreement or individual contract (approved by the Joint Commission - <i>Paritätische Kommission</i>)	532/2008	X/42/5	04/12/2008

2) Please indicate the measures taken (administrative arrangements, programmes, action plans, projects, etc.) to implement the legal framework.

No specific campaigns or activities concerning rest periods were carried out in the reporting period.

3) Please provide pertinent figures, statistics or any other relevant information, in particular: circumstances under which the postponement of the weekly rest period is provided.

In 2007 the Labour Inspectorate recorded 287 (2006: 260) violations of the Rest Periods Act (excluding checks of drivers), 58 of which in the construction sector, 49 in trade, maintenance and repair of cars and durables and 44 in hotels and restaurants. Compared to 2006, this means a 10 % increase in the total number of violations of the Rest Periods Act.

ARTICLE 4

THE RIGHT TO A FAIR REMUNERATION

Para. 1 of Article 4

With a view to ensuring the effective exercise of the right to a fair remuneration, the Contracting Parties undertake to recognise the right of workers to a remuneration such as will give them and their families a decent standard of living.

The exercise of these rights shall be achieved by freely concluded collective agreements, by statutory wage-fixing machinery, or by other means appropriate to national conditions.

1) Please describe the general legal framework. Please specify the nature of, reasons for and extent of any reforms.

No substantial changes.

Please note that in Austria the amount of the remuneration to be paid by the employer depends on the work performance of the employees rather than the size of their families. However, the Federal Government has implemented a number of measures to make sure that the net income of employees with children increases significantly with the number of children. Tax reliefs and measures of family burdens equalisation provide for an income redistribution towards families in order to safeguard the “decent standard of living” requirement set out in this paragraph and aiming at social justice also for employees' families.

The far-reaching and comprehensive system of transfer payments plays a major role for the actual income situation of employees and their households in Austria and is used as an instrument for positive redistribution. The key elements of his transfer system are the fields of social affairs, health, housing, transport, education and families.

All employees in Austria are protected by law or collective agreement with regard to remuneration. For the small portion where wages are not fixed by collective agreements, precautions against usurious exploitation of human labour have been provided by law.

2) Please indicate the measures taken (administrative arrangements, programmes, action plans, projects, etc.) to implement the legal framework and

3) Please provide pertinent figures on national net average wage¹ (for all sectors of economic activity and after deduction of social security contributions and taxes; this wage may be calculated on an annual, monthly, weekly, daily or hourly basis); national net minimum wage, if applicable, or the net lowest wages actually paid (after deduction of social security contributions and taxes); both net average and minimum net wages should be calculated for the standard case of a single worker; information is also requested on any additional benefits such as tax alleviation measures, or the so-called non-recurrent payments made available specifically to a single worker earning the minimum wage as well as on any other factors ensuring that the minimum wage is sufficient to give the worker a decent standard of living; the proportion of workers receiving the minimum wage or the lowest wage actually paid.

Where the above figures are not ordinarily available from statistics produced by the States party, Governments are invited to provide estimates based on *ad hoc* studies or sample surveys or other recognised methods.

According to the data of Statistics Austria ("Annual net income of dependently employed individuals in 2007"), the median annual net income of all dependently employed individuals amounted to EUR 17.376,- in 2007. This corresponds to a median monthly net income – including all special payments, i.e. 13th and 14th monthly wage or salary – of EUR 1.241,-. This, in turn, results in a reference value (60 %) of EUR 745,-.

For more information, please see:

http://www.statistik.at/web_en/static/employees_-_overview_029115.xls

and

http://www.statistik.at/web_en/statistics/social_statistics/personal_income/general_income_report/index.html

and

http://www.statistik.at/web_en/statistics/social_statistics/personal_income/index.html

In connection with the development of wages in the lowest income classes it is important to note that the Austrian social partners agreed on a minimum wage of EUR 1.000,-.

On 2 July 2007, the Austrian Trade Union Federation and the Austrian Federal Economic Chamber entered into a framework agreement on the implementation of a minimum wage of EUR 1.000,- in the industry-specific collective agreements. Taking into account that wages and salaries are paid 14 times a year in Austria and including these special payments (13th and 14th monthly pay) in the computation on a

¹ The concept of wage, for the purpose of this provision, relates to remuneration – either monetary or in kind – paid by an employer to a worker for time worked or work done. Remuneration should cover, where applicable, special bonuses and gratuities. The Committee's calculations are based on net amounts, i.e. after deduction of taxes and social security contributions. The national net average wage is that of a full-time wage earner, if possible calculated across all sectors for the whole economy, but otherwise for a representative sector such as manufacturing industry or for several sectors.

pro-rata basis, this corresponds to a net salary of EUR 958,- for white-collar employees and a net wage of EUR 957,- for blue-collar workers.

In industries where the lowest gross wage exceeds EUR 900,-, the increase to EUR 1.000,- is scheduled to be implemented by 1 January 2008 at the latest. In industries where regular wage negotiations are conducted in the first half of the year and where the latest negotiations took place in 2007, the increase to EUR 1.000,- is scheduled to be put into practice by 1 July 2008 at the latest. In industries where the lowest gross wage is less than EUR 900,-, the minimum wages are scheduled to be raised to EUR 1.000,- by 1 January 2009 at the latest. After that, wages below EUR 1.000,- are admissible for apprentices and trainees only.

This agreement applies to the realm of Austrian business where the Federal Economic Chamber or its sector-specific organisations act as parties to collective agreements on the employers' behalf.

The sectors not represented by the Federal Economic Chamber will also have to adopt these regulations by means of collective agreements or other instruments of collective law. In this respect, the social partners laid down in the agreement of July 2007 that they would advocate and support universal application of the minimum wage requirements by 2009 also beyond their immediate sphere of influence.

As far as the occupational groups of skiing instructors and newspaper deliverers referred to in the last report are concerned, it shall be noted that the monthly gross remuneration for skiing instructors was raised to EUR 1.000,- (14 times a year) as per 1 October 2008. This corresponds to a net wage of EUR 957,-. The net wage of newspaper deliverers is EUR 720,- as of 31 March and/or 2 April 2008.

Reply to the additional questions on Para. 1 of Article 4 of Conclusions XVIII-2:

The collective agreements submitted to the Federal Ministry of Labour, Social Affairs and Consumer Protection show that the minimum gross pay of EUR 1.000,- per month for a full-time job was widely implemented or even exceeded as per 1 January 2009. For example, the monthly gross remuneration for the occupational group of skiing instructors referred to in the last report was raised to EUR 1.000,- (14 times a year) as per 1 October 2008. This corresponds to a net wage of EUR 957,-.

The monthly net wage of newspaper deliverers amounts to EUR 720,- as per 31 March and/or 2 April 2008.

In addition, we would like to draw your attention to the statement of the Austrian Federal Chamber of Labour regarding the additional question on Para. 1 of Article 4 (see Annex_BAK).

Para. 2 of Article 4

With a view to ensuring the effective exercise of the right to a fair remuneration, the Contracting Parties undertake to recognise the right of workers to an increased rate of remuneration for overtime work, subject to exceptions in particular cases.

The exercise of these rights shall be achieved by freely concluded collective agreements, by statutory wage-fixing machinery, or by other means appropriate to national conditions.

1) Please describe the general legal framework. Please specify the nature of, reasons for and extent of any reforms.

No substantial changes for **private-sector** employees.

The information concerning the **public sector** is updated as follows:

Pursuant to Section 16 of the Salary Act 1956 (*Gehaltsgesetz, GehG*), Federal Law Gazette no. 54 as amended, overtime pay is to be paid to federal civil servants for hours worked in excess of the agreed working hours (*Mehrdienstleistungen*) that have not been compensated for by time off by the end of the quarter. Overtime accumulated during the day shall be compensated for with priority over nighttime (from 10 p.m. to 6 a.m.) overtime.

Depending on the instruction given, overtime accumulated on working days shall be compensated for

1. at a ratio of 1:1.5 as compensatory time or
2. on the basis of the salary provisions (overtime pay) or
3. at a ratio of 1:1 as compensatory time and, in addition, on the basis of the salary provisions.

Overtime worked on Sundays or public holidays shall not be compensated for by time off.

Overtime pay consists of the base remuneration and the overtime supplement. The base remuneration is computed by dividing the standard pay by the 4.33-fold number of standard working hours (currently 40 hours a week) defined in Section 48 of the Civil Service Act (*Beamten-Dienstrechtsgesetz, BDG*), Federal Law Gazette no. 333.

The overtime supplement is 50 % of the base remuneration for overtime worked during the day, 100 % for overtime during the night, and 100 % for overtime worked on Sundays or public holidays (remuneration for Sundays and public holidays) up to the 8th hour and 200 % of the base remuneration from the 9th hour (compensatory time for these types of overtime is not admissible).

The second Civil Service Act Amendment 2007, Federal Law Gazette I no. 96/2007 introduced the extra-hours supplement (*Mehrarbeitszuschlag*) for part-time workers. Unless they are not taken as time off by the end of the quarter and unless the part-timer thus exceeds the limit of full-time employment, such extra hours worked in excess of the contractually agreed working hours generally have to be compensated for either at a ratio of 1:1.25 as compensatory time according to the statutory salary provisions (base remuneration plus a 25 % supplement), or at a ratio of 1:1 as compensatory time and, in addition, on the basis of the salary provisions.

Ad questions 2 to 3:

No substantial changes.

Para. 3 of Article 4

With a view to ensuring the effective exercise of the right to a fair remuneration, the Contracting Parties undertake to recognise the right of men and women workers to equal pay for of equal value.

The exercise of these rights shall be achieved by freely concluded collective agreements, by statutory wage-fixing machinery, or by other means appropriate to national conditions.

1) Please describe the general legal framework. Please specify the nature of, reasons for and extent of any reforms.

Previous reporting is updated as follows:

Private sector:

Federal Law Gazette no. 98/2008 implemented Council Directive 2004/113/EC aiming at putting into practice the principle of equal treatment of men and women in the access to and supply of goods and services and amended, among others, the Austrian Equal Treatment Act (*Gleichbehandlungsgesetz, GIBG*). On the basis of the lessons learned from executing the Equal Treatment Act in the past, modifications were made beyond the scope of the Directive with regard to substantive law and procedural law.

Substantive-law improvements beyond the scope of the Directive include in particular:

- increasing the minimum claim for damages from one to two monthly remunerations in case of discrimination when filling of a vacancy;
- increasing the minimum claim for damages from EUR 400,- to EUR 720,- in case of harassment;
- stipulating that protection against discrimination also applies to the termination of employment if a fixed-term work contract is not extended or employment is terminated during the trial period ;
- providing the right of choice of either contesting the termination or claiming damages in case of discriminatory termination;
- stipulating that possible multiple discrimination has to be taken into account when assessing the amount of compensation for interference with an individual's integrity;
- adapting the definition of sexual harassment and of harassment to the requirements of Community law;
- stipulating the penalties in case of violation of the discrimination prohibition in all parts of the Equal Treatment Act;
- generally extending the period of limitation for claiming harassment from six months to one year;

- eliminating the possibility to shorten the three-year limitation period applicable to several discriminatory acts in collective agreements.

With the aim of executing the Equal Treatment Act more efficiently, also improvements in the proceedings before the Austrian Equal Treatment Commission (*Gleichbehandlungskommission*) were made including setting a deadline within which the results of the Equal Treatment Commission have to be issued and served, the requirement to publish all outcomes of the Equal Treatment Commission on the Federal Chancellery's website and the appointment of deputies for the chairpersons of the Equal Treatment Commission's Senates.

Public sector (employees at federal level):

The Federal Equal Treatment Act was last amended substantially in 2008, Federal Law Gazette I no. 97/2008, the following aspects of which are worth mentioning:

- extension of the definition of (sexual) harassment; in future, the mere intention of (sexual) harassment will be penalised.
- inclusion in the Act of the requirement of equal treatment in terms of language; thus, a concern of society is to be promoted and a statement is to be made by gender mainstreaming. The aim is to ensure that neither sex feels excluded in the first place due to use of gender-specific wording.
- modification of the constitution of Commissions and Senates responsible for human resource decisions. In order to give adequate consideration to women's specific job experience in these Commissions, employers are obliged to nominate at least one woman having a voting right. This, of course, in no way impairs the right of the chairperson of the Working Party for Equality Issues or any official named by her/him to participate in Commission meetings in an advisory capacity.
- stipulation that protection against discrimination also applies in case of termination of a fixed-term work contract or during the trial period.
- providing the right of choice to employees involved in discriminatory termination to either contest or accept the termination. If the employee accepts the termination, he/she has the right to claim damages for both the financial loss and the immaterial damage suffered.
- changes in case of multiple discrimination (e.g. a person is discriminated against because she is a woman and, additionally, belongs to an ethnic minority): in future, this has to be taken into account when assessing the amount of compensation for interference with an individual's integrity.

2) Please indicate the measures taken (administrative arrangements, programmes, action plans, projects, etc.) to implement the legal framework.

Raising awareness is also a crucial factor in putting the right to equal treatment into practice. Therefore, the Federal Ministry of Labour, Social Affairs and Consumer Protection (www.bmask.gv.at) provides an overview of the contents of the Equal Treatment Act and the Equal Treatment Commission and Equal Treatment Ombuds Office Act (*Bundesgesetz über die Gleichbehandlungskommission und die Gleichbehandlungsanwaltschaft - GBK/GAW-G*) on its website (in German).

An awareness-raising campaign launched by the EU in June 2003 is carried out throughout the European Union.

Within the framework of the European Community Programme to combat discrimination 2001-2006, a number of national projects in the field of non-discrimination carried out by NGOs were promoted. Additional activities have been and are being initiated within the framework of its successor programme PROGRESS. For example, a guideline for the use of non-discriminatory language was produced.

A number of initiatives were launched on the occasion of the European Year of Equal Opportunities for All in 2007 in order to raise public awareness. TV and radio commercials drew attention to the individual reasons for discrimination. Also, a folder was created to help promote the right to equal opportunities and raise public awareness concerning the prohibition of discrimination. A comprehensive list of references to the legal framework and a list of contacts facilitate access to information and advisory services. The Federal Government launched a website on equal opportunities which has continued to be online after the European Year of Equal Opportunities for All. It provides detailed information on the subject and contacts.

The Equal Treatment Act explicitly provides the option to initiate positive actions. This means that specific measures laid down in laws, ordinances or otherwise (e.g. in instruments of collective law) to promote gender equality and intended to prevent or compensate for discrimination on grounds of the characteristics listed in the Equal Treatment Act shall not be considered discriminatory.

Especially in the environment of work it seems to make sense to implement positive action at corporate level and above because this is where measures tailored to the specific conditions and needs can be put into practice.

3) Please supply detailed statistics or any other relevant information on pay differentials between men and women not working for the same employer by sector of the economy, and according to level of qualification or any other relevant factor.

Taking into account the additional question of the European Committee of Social Rights in the Conclusions XVIII-2 on Para. 3 of Article 4 concerning statistics on the income gap between women and men, previous reporting is updated as follows:

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/einkommensbericht-20081.html>, available in German only) suggests the following:

The gender-specific income gap of the entirely unadjusted mean gross annual income was 40.7 % to the disadvantage of women in 2007. The gap has widened slightly, i.e. by 1.3 percentage points, over the past 10 years (see Table 1). The gender-specific income gap is smaller in the top income range (3rd quartile: 33.7 %) than in the bottom range (1st quartile: 55.9 %). The income gap is largely attributable to part-time jobs, which are mainly occupied by women.

The income disadvantages of women correlate with their social position. While the pay gap of the unadjusted gross annual income amounted to 56.3 % for blue collar workers and 50.6 % for white collar workers in 2007, it was significantly lower in public service (22.4 % for contractual public employees and 8.7 % for civil servants).

If only persons employed full-time all year round are considered, the gender-specific income difference of the mean gross annual income is 21.5 % (see *Allgemeiner Einkommensbericht 2008*, Tab.13, p.41, in German).

It becomes clearly evident that income differences among full-year, full-time employees are significantly lower in the public sector (contractual public employees 8.9 %, civil servants 2.1 %) than in the private sector (blue collar workers 32.7 %, white collar workers 35.6 %).

The Austrian **Structure of Earnings Survey (SES)** examines companies with ten or more employees in "industry" (sections C-F of ÖNACE 2003) and in "services" (sections G-K and M-O). It does not include entities of section L "public administration and defence; compulsory social security". Hence, the public educational system and the public health, veterinary and social affairs sector are disregarded.

The SES is carried out every fourth year. The latest findings (SES 2006) reveal a gender-specific difference in the median gross hourly earnings of 22.8 % to the disadvantage of women (excluding extra hours and overtime; excluding apprentices). The median hourly earnings of women working part-time are 12.1 % lower than those of women working full-time (difference among men: 22.4 %). The gross hourly earnings of women working part-time are 28.5 % 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 industry. The lowest gross hourly rates are generally paid in the fields of "wholesale and retail trade; repair of motor vehicles, motorcycles and personal household goods" (women: EUR 8.89, men: EUR 11.55) and "hotels and restaurants" (women: EUR 7.19, men: EUR 7.95). High wages and salaries are paid to women working in the "financial intermediation" business (women: EUR 14.37, men EUR 19.48) and in "electricity, gas and water supply" (women: EUR 14.82, men: EUR 18.50). However, there are also big gender-specific differences in earnings in industries with generally higher earnings standards.

The gender-specific earnings differences vary considerably among the individual industries. The gap is smallest in the sections of "hotels and restaurants", "mining and quarrying" and "construction" (approximately 10 % to 11 %). There is a big earnings difference between men and women in "manufacturing" (25 %), "real estate" (25 %) and "financial intermediation" (26 %). In all industries surveyed, the gross hourly earnings of women are lower than those of men (see Table 3).

As of 2008, the SES will be used as the data source for the annual **EU structural indicator "Gender pay gap"**, which is published periodically by EUROSTAT. The SES is carried out in all EU Member States and now forms a comparable and harmonised basis for this structural indicator back to 2006. Previously, the data submitted by the Member States were based on different national sources (for Austria, the EU SILC data were used).

For 2006, the previous structural indicator for Austria shows a gender-specific difference in gross hourly earnings of 20 %. On the basis of the Structure of Earnings Survey the indicator is now 25.5 %, both for 2006 and 2007 (arithmetic mean of the gross hourly earnings including extra hours and overtime, including apprentices).

Please refer to the overview “Dependently employed persons by economic section” (Table 4) concerning the question of who works in which jobs in the individual economic sectors. The data published by the Federal Ministry of Labour, Social Affairs and Consumer Protection (annual average values for 2008) are based on data of the Main Association of Austrian Social Security Institutions (*Hauptverband der österreichischen Sozialversicherungsträger*). The table shows that 25.5 % of the employees in the industry with the highest employee numbers, namely “manufacturing” (with a total of 609,795 employees), are female. The second and third biggest industries of “public administration and defence; compulsory social security” and “wholesale and retail trade and repair of motor vehicles and motorcycles” have an above-average share of female employees of 57.5 % and 54.4 %, respectively; in retail trade specifically the share is 74.5 %. The share of female employees is particularly large in the sections “activities of households as employers...” (90 %, with a total of only 3,179 employees) and “Human health and social work activities” (78.9 %). The share of women is particularly small in construction (12.0 %), mining (11.9 %) and energy supply (16.5 %).

The most important economic sections for the employment of women are: public administration; wholesale and retail trade and repair; manufacturing; health and social work.

Please refer also to the study published by the Austrian Federal Minister for Women titled “**Geschlechtsspezifische Einkommensunterschiede. Indikatoren für ein Monitoring**“ (“Gender-specific income differences. Indicators for 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 will be used to systematically monitor the development of the gender-specific pay gap. One of the key findings of the study is that unequal pay in the first job plays a major role for the existence of the total income difference between men and women. Inequalities when climbing the career ladder and inequalities resulting from child care obligations also feature prominently.

Table 1

Gross annual income of dependently employed persons, in total

	Quartile/median	Women	Men	Difference (%)
2007 (EUR)	1 st quintile (20 %)	5,439	13,393	59.4
	1 st quartile (25 %)	7,804	17,693	55.9
	Median (50 %)	17,217	29,057	40.7
	3 rd quartile (75 %)	27,977	42,190	33.7
	4 th quintile (80 %)	31,091	46,773	33.5
	Average	20,218	33,771	40.1
2006 (EUR)	1 st quintile (20 %)	5,189	12,546	58.6
	1 st quartile (25 %)	7,507	16,734	55.1
	Median (50 %)	16,713	28,102	40.5
	3 rd quartile (75 %)	27,165	40,816	33.4
	4 th quintile (80 %)	30,184	45,262	33.3
	Average	19,572	32,479	39.7
2005 (EUR)	1 st quintile (20 %)	5,086	12,050	57.8
	1 st quartile (25 %)	7,326	16,246	54.9
	Median (50 %)	16,296	27,375	40.5
	3 rd quartile (75 %)	26,407	39,487	33.1
	4 th quintile (80 %)	29,285	43,729	33.0
	Average	19,005	31,426	39.5
2004 (EUR)	1 st quintile (20 %)	4,994	12,111	58.8
	1 st quartile (25 %)	7,189	16,203	55.6
	Median (50 %)	15,977	26,894	40.6
	3 rd quartile (75 %)	25,746	38,452	33.0
	4 th quintile (80 %)	28,508	42,561	33.0
	Average	18,501	30,713	39.8
2003 (EUR)	1 st quintile (20 %)	4,979	12,146	59.0
	1 st quartile (25 %)	7,122	16,157	55.9
	Median (50 %)	15,792	26,507	40.4
	3 rd quartile (75 %)	25,342	37,801	33.0
	4 th quintile (80 %)	28,054	41,865	33.0
	Average	18,247	30,278	39.7
2002 (EUR)	1 st quintile (20 %)	5,161	12,452	58.6
	1 st quartile (25 %)	7,238	16,322	55.7
	Median (50 %)	15,620	26,055	40.0
	3 rd quartile (75 %)	24,827	37,058	33.0
	4 th quintile (80 %)	27,458	41,049	33.1
	Average	17,939	29,850	39.9

	Quartile/median	Women	Men	Difference (%)
2001 (EUR)	1 st quintile (20 %)	5,018	12,956	61.3
	1 st quartile (25 %)	7,082	16,582	57.3
	Median (50 %)	15,304	25,592	40.2
	3 rd quartile (75 %)	24,321	36,274	33.0
	4 th quintile (80 %)	26,869	40,167	33.1
	Average	17,538	29,464	40.5
2000 (EUR)	1 st quintile (20 %)	4,874	13,261	63.2
	1 st quartile (25 %)	6,884	16,618	58.6
	Median (50 %)	14,976	25,094	40.3
	3 rd quartile (75 %)	23,759	35,595	33.3
	4 th quintile (80 %)	26,308	39,431	33.3
	Average	17,204	29,305	41.3
1999 (EUR)	1 st quintile (20 %)	4,849	13,127	63.1
	1 st quartile (25 %)	6,814	16,349	58.3
	Median (50 %)	14,773	24,614	40.0
	3 rd quartile (75 %)	23,356	34,831	33.0
	4 th quintile (80 %)	25,824	38,532	33.0
	Average	16,888	28,481	40.7
1998 (EUR)	1 st quintile (20 %)	4,847	13,236	63.4
	1 st quartile (25 %)	6,772	16,279	58.4
	Median (50 %)	14,551	24,006	39.4
	3 rd quartile (75 %)	22,745	33,839	32.8
	4 th 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: in percent of men's income.

Gross annual income: total of all gross earnings pursuant to Section 25 of the Austrian Income Tax Act (*Einkommenssteuergesetz, EKStG*).

Source: General Income Report of the Austrian Court of Audit, Vienna 2000, (p. 162 et sqq.), 2002 (p. 170 et sqq.), 2004 (p. 172 et sqq.), 2006 (p. 250 et sqq.): website of Statistics Austria. Figures for 2006 and 2007: General Income Report of the Austrian Court of Audit 2008, Statistical annex (p. 2 et sqq.).

Table 2

Gross hourly earnings 2006 by full-time and part-time employment (SES)

Quartile/average	Women (EUR)	Men (EUR)	Difference (%)
<i>Full-time employees</i>			
1 st quartile (25 %)	8.15	10.35	21.26
Median (50 %)	10.36	12.74	18.68
3 rd quartile (75 %)	13.72	17.00	19.29
Average	11.75	15.15	22.44
<i>Number of employees</i>	<i>445,646</i>	<i>1,187,592</i>	
<i>Part-time employees</i>			
1 st quartile (25 %)	7.35	7.55	2.65
Median (50 %)	9.11	9.89	7.89
3 rd quartile (75 %)	12.07	14.82	18.56
Average	10.57	13.03	18.88
<i>Number of employees</i>	<i>411,814</i>	<i>110,052</i>	
<i>Full-time and part-time employees</i>			
1 st quartile (25 %)	7.71	10.10	23.66
Median (50 %)	9.71	12.57	22.75
3 rd quartile (75 %)	12.98	16.89	23.15
Average	11.18	14.97	25.32
<i>Number of employees</i>	<i>857,459</i>	<i>1,297,644</i>	

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

Please note: The average is 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 or collective agreement.

The study examines companies with ten or more employees in "industry" (sections C-F of ÖNACE 2003) and in "services" (sections G-K and M-O of ÖNACE 2003). Sections M-O of ÖNACE 2003 were first surveyed in 2006. It does not include sections A "agriculture, hunting and forestry", B "fishing" and L "public administration and defence; compulsory social security". For lack of statistical units in section L, the public educational system and the public health, veterinary and social work sectors could not be included in the survey in sections M and N either.

Source: Structure of Earnings Survey (SES) 2006, Statistics Austria 2008,
www.statistik.at/web_en/

Table 3
Gross hourly earnings without extra hours and overtime¹⁾ by economic activity (October 2006)

Economic activities by sections of ÖNACE 2003		Women		Men		Difference
		<i>Number of employees</i>	<i>Median in EUR</i>	<i>Number of employees</i>	<i>Median in EUR</i>	<i>Gross hourly earnings in %</i>
Total		857,459	9.71	1,297,644	12.57	22.75
C	Mining and quarrying	547	11.32	5,032	12.56	9.87
D	Manufacturing	133,983	10.04	405,268	13.38	24.96
E	Electricity, gas and water supply	4,446	14.82	22,337	18.50	19.89
F	Construction	19,537	10.59	174,624	11.94	11.31
G	Wholesale and retail trade; repair of motor vehicles, motor cycles and personal household goods	225,291	8.89	177,349	11.55	23.03
H	Hotels and restaurants	51,670	7.19	36,414	7.95	9.56
I	Transport, storage and communication	44,505	10.21	154,774	11.76	13.18
J	Financial intermediation	55,121	14.37	54,169	19.48	26.23
K	Real estate, renting and business activities	124,015	8.98	151,471	12.01	25.23
M	Education	34,466	11.82	30,888	16.22	27.13
N	Health and social work	108,309	11.34	35,270	13.38	15.25
O	Other community, social and personal service activities	55,571	9.49	50,049	12.38	23.34
C-F	Industry	158,512	10.18	607,260	12.91	21.15
G-K, M-O	Services	698,947	9.61	690,384	12.11	20.64

Source: Statistics Austria: Structure of Earnings Survey 2006, - Excluding apprentices, - workplaces of statistical units in section L "public administration and defence; compulsory social security" were not included; this also applies to sections M and N.

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

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

Economic activities by sections of ÖNACE 2008	Dependently employed persons (absolute numbers)			Share of women in %
	Total	Women	Men	
Agriculture, forestry and fishing	17,355	6,236	11,119	35.9
Mining and quarrying	5,742	684	5,058	11.9
Manufacturing	609,795	155,682	454,113	25.5
Electricity, gas, steam and air conditioning supply	24,267	4,008	20,259	16.5
Water supply; sewerage, waste management and remediation activities	13,711	3,026	10,685	22.1
Construction	248,268	29,722	218,546	12.0
Wholesale and retail trade; repair of motor vehicles and motorcycles	524,791	285,741	239,050	54.4
Transportation and storage	195,916	40,739	155,177	20.8
Accommodation and food service activities	180,988	108,541	72,447	60.0
Information and communication	72,360	24,174	48,186	33.4
Financial and insurance activities	118,662	59,343	59,319	50.0
Real estate activities	42,688	27,998	14,690	65.6
Professional, scientific and technical activities	136,484	73,405	63,079	53.8
Administrative and support service activities	165,119	71,834	93,285	43.5
Public administration and defence; compulsory social security	536,805	308,830	227,975	57.5
Education	88,017	50,945	37,072	57.9
Human health and social work activities	194,732	153,580	41,152	78.9
Arts, entertainment and recreation	31,039	13,709	17,330	44.2
Other service activities	91,721	65,512	26,209	71.4
Activities of households as employers; undifferentiated goods- and services-producing activities of households for own use	3,179	2,860	319	90.0
Activities of extraterritorial organisations and bodies	662	400	262	60.4
Other	118,197	103,017	15,180	87.2

Please note: Since 2008, businesses have been classified according to ÖNACE 2008. Contracts of quasi-freelancers, quasi-freelancers working marginal part time 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: Online data retrieval system BALI (budget, labour market and unemployment benefit data), on the basis of the data published by the Main Association of Austrian Social Security Institutions. Free query of 25 March 2009. <http://www.dnet.at/bali/>

Reply to the additional questions on Para. 3 of Article 4 in the Conclusions XVIII-2:

Comparison of job and remuneration:

Basically, we would like refer to the latest reply in this matter given in response to the additional question submitted to Austria and to the comment on the negative conclusion in the 117th session of the government committee. The arguments presented there are still valid.

In this connection, we would like to reiterate that collective agreements applicable to the individual industries typically provide the regulatory framework for payment and working conditions in Austria. Taking into consideration that the equal pay requirement, of course, also applies to collective agreements (cf. Section 11 *G/BG*), this in itself implies that regulations concerning the remuneration of employees which are binding not only at corporate or trans-corporate level but for the entire industry are the basis for these employment relationships and that the principle of equal pay for equal work or work of equal value has to be complied with when assessing the jobs.

From Austria's point of view, this fully meets the ECSR's requirement because the crucial assessment of the job and the fixing of the remuneration take place at industry level rather than at corporate level.

Differences among the companies may arise only if wages/salaries higher than specified in the binding provisions of the individual industry-specific collective agreements are paid, with these differences affecting men and women alike. If a prospering company, for example, pays its employees 20 % more than required by the collective agreement (overpayment), this company is internally bound to the equal pay principle in the remuneration of its employees; however, this cannot be used as a reference for a different company in the same industry which cannot afford the same overpayment as the first company due to lack of commercial success. Hence it would be inappropriate to impose the remuneration scheme of the prospering company upon the less successful company by applying the remuneration comparison scheme required by the ECSR.

Furthermore, comparing the wages/salaries of different companies would require making the remuneration schemes public, which may produce data protection issues especially in smaller companies where wage data can easily be matched with individual employees.

Evaluation:

With reference to the Equal Treatment Act, the Austrian Equal Treatment Report (*Gleichbehandlungsbericht*) jointly issued by the Federal Chancellery/Division Women and Gender Equality and the Federal Ministry of Labour, Social Affairs and Consumer Protection is published every other year. Apart from that, the "*Bericht der Bundesregierung betreffend den Abbau von Benachteiligungen von Frauen*" (Report of the Federal Government on the reduction of discrimination against women) is issued every other year; the latest report covering 2007-2008 was submitted to the Austrian Parliament on 30 June 2009. Lastly, an amendment to the Equal Treatment Act is currently being prepared.

There are two recent studies by the Austrian Federal Minister for Women and Civil Service available on the topic of “equal pay and non-discriminatory job assessment”:

Research report “Geschlechtsspezifische Einkommensunterschiede: Indikatoren 2007“ (Gender-specific income differences: indicators 2007; available in German)

This research report on income inequalities of women and men contains up-to-date analyses using 20 indicators for the period from 1995 to 2007 and complementary findings concerning the indicators on job entry.

A set of indicators with key figures from the following four subject areas is used: job entry and entry-level jobs; childcare obligations; climbing the career ladder; general income difference and participation in the labour force. The analytical (and technical) procedure for developing these key figures is outlined in the report volume [Geschlechtsspezifische Einkommensunterschiede: Indikatoren für ein Monitoring \(2008\) \(PDF 461 kB\) \(Gender-specific income differences: indicators for monitoring 2008; available in German\)](#)

The research report points to specific measures for reducing the pay gap between women and men.

- [Geschlechtsspezifische Einkommensunterschiede: Indikatoren 2007 \(2009\) \(PDF 345 kB\)](#) (Gender-specific income differences: indicators 2007 (2009); available in German)

Research report “Geschlechtsspezifische Einkommensunterschiede: Indikatoren für ein Monitoring“ (Gender-specific income differences: indicators for monitoring; available in German)

Equal income opportunities for women and men have been a key issue of women’s politics for a long time. However, there is still a large gender-specific wage differential for various reasons. The study aims at analysing quantitatively measurable factors using indicators and points to specific political measures for reducing the income gap.

Within the framework of the European Employment Strategy the EU structural indicator “Gender pay gap“ is published annually for the Member States. It provides evidence that there is an above-average difference between average gross hourly wages of men and women in Austria. Within the scope of this study, an additional set of national indicators was drawn up that paints a differentiated picture of the gender pay gap and allows for an ongoing and systematic observation and evaluation. The performance of the indicators is shown for the period from 1995 to 2000.

In addition to the research report a comprehensive schedule of facts and figures is made available.

- [Geschlechtsspezifische Einkommensunterschiede: Indikatoren für ein Monitoring \(2008\) \(PDF 461 kB\)](#) (Gender-specific income differences: indicators for monitoring 2008; available in German)

- Geschlechtsspezifische Einkommensunterschiede: Indikatoren für ein Monitoring. Datenband (2008) (PDF 197 kB) (Gender-specific income differences: indicators for monitoring 2008. Facts and figures; available in German)

Statistics:

See reply to question 3 of Para. 3 of Article 4.

Assessment of potential cases of remuneration 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. As a result, the related rulings have become known to the Federal Ministry of Labour, Social Affairs and Consumer Protection only from the relevant literature and concern primarily landmark decisions of the Austrian Supreme Court of Justice.

In the reporting period the Supreme Court of Justice dealt once with the question of gender-related discrimination concerning the determination of remuneration.

Based on a works agreement entered into by the defendant (a bank), the plaintiff had initially been entitled to old-age pension from the bank. The occupational pension scheme, however, was changed over into a contribution-based pension fund scheme, and another works agreement was entered into for previously acquired qualifications for a company pension, without, however, providing for the establishment of an employer reserve as laid down in the savings banks collective agreement. Therefore, the plaintiff sought payment of the employer reserve into the pension fund as stipulated by the collective agreement and a ruling requiring the defendant to render the accounts. In addition, the plaintiff claimed that the involved company pension scheme entailed unequal treatment of men and women compared to the statutory social insurance scheme.

In its decision dated 17 December 2007 (case no. 8 ObA 24/07y) the Supreme Court of Justice found that all types of company pensions are within the scope of the definition of “pay” as given in Article 141 of the EC Treaty and “remuneration” in the Austrian Equal Treatment Act. Retroactive coverage claimed on the grounds of remuneration discrimination is, therefore, subject to the Equal Treatment Act. This applies also to the claim to rendering the accounts, which is subject to the same limitation period as the main claim. Pursuant to Section 12 Para. 2 of the Equal Treatment Act, an employee’s claim to non-discriminatory conditions does not only apply to the past but also to the future. A difference has to be made between the automatic contract adaptation and the claims resulting therefrom; only the latter are subject to the period of limitation specified in Section 15 Para. 1 Equal Treatment Act.

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.

The courts are not bound by the case-by-case examinations of the Equal Treatment Commission but they have to give reasons if they come to different conclusions. 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 ethnic origin, as well as for equal treatment of women and men concerning access to and supply with goods and services.

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

The following complaints were filed with the Senates and/or dealt with in the reporting period:

Senate I GBK:

2005: Number of applications requesting the examination of gender-related discrimination concerning the determination of remuneration: **8**

Outcome of the examination:

Discrimination concerning the determination of remuneration: **2**

No discrimination concerning the determination of remuneration: **3**

Withdrawal of application: **3**

2006: Number of applications requesting the examination of gender-related discrimination concerning the determination of remuneration: **5**

Outcome of the examination:

Discrimination concerning the determination of remuneration: **4**

No discrimination concerning the determination of remuneration: **1**

Withdrawal of application: **0**

2007: Number of applications requesting the examination of gender-related discrimination concerning the determination of remuneration: **10**

Outcome of the examination:

Discrimination concerning the determination of remuneration: **1**

No discrimination concerning the determination of remuneration: **0**

Withdrawal of application: **4**

Examination pending: **5**

2008: Number of applications requesting the examination of gender-related discrimination concerning the determination of remuneration: **7**

Outcome of the examination:

Discrimination concerning the determination of remuneration: **1**

No discrimination concerning the determination of remuneration: **1**

Withdrawal of application: **2**

Examination pending: **3**

Senate II GBK:

2005 – 2008: Number of applications requesting the examination of gender-related discrimination concerning the determination of remuneration: **2**

Outcome of the examination:

Discrimination concerning the determination of remuneration: **1 (woman)**

No discrimination concerning the determination of remuneration: **1 (man)**

Finally, reference is made to the Equal Treatment Reports for the private sector pursuant to Section 24 Equal Treatment Act, which are jointly published by the Federal Chancellery and the Federal Ministry of Economics and Labour (now: 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>

Claims for damages:

The Equal Treatment Act is a civil law instrument. Therefore, the rights specified therein have principally to be asserted in court. The Equal Treatment Act contains one exception from this principle, namely in connection with the legal consequences of a violation of the requirement concerning gender-neutral and non-discriminatory job advertisements. This provision is directed to employers, recruitment agencies and the Austrian Public Employment Service (*Arbeitsmarktservice*). Violations of this requirement entail administrative penalties.

The legal consequences of a violation of the equal treatment principle pursuant to the Equal Treatment Act were defined in accordance with the Austrian law of damages. The Equal Treatment Act is based on the principle of creating non-discriminatory conditions. Only if this turns out to be impossible, claims for damages can be asserted.

In its comment (see annex), the Federal Chamber of Labour refers to the final decision of the Austrian Court of Appeal of Vienna (*Oberlandesgericht Wien*), dated 13 April 2007, case no. 9 Ra 167/06s. The appellate court awarded a female employee who had been discriminated against by sexual harassment and subsequent termination not only intangible damages for sexual harassment but, for the first time, also compensation for income lost due to unemployment (altogether the

woman received EUR 12,500,- in damages and was reimbursed for the court fees of approximately EUR 900,-). The court held that – in line with the Community's objective of imposing effective penalties - the right to contest a termination in court does not rule out claims for damages pursuant to the Equal Treatment Act.

Para. 5 of Article 4

With a view to ensuring the effective exercise of the right to a fair remuneration, the Contracting Parties undertake to permit deductions from wages only under conditions and to the extent prescribed by national laws or regulations or fixed by collective agreements or arbitration awards. The exercise of these rights shall be achieved by freely concluded collective agreements, by statutory wage-fixing machinery, or by other means appropriate to national conditions.

1) Please describe the general legal framework. Please specify the nature of, reasons for and extent of any reforms.

Previous reporting is updated as follows:

Since 1 January 2002, the base amount of the minimum subsistence level has been the same as the equalisation supplement reference rate (*Ausgleichszulagenrichtsatz*) for singles pursuant to Section 293 Para. 1 lit. a of the Austrian General Social Insurance Act (*Allgemeines Sozialversicherungsgesetz, ASVG*). Since 1 November 2008, the base amount has been EUR 772.

In addition to these base amounts, persons subject to wage garnishment are entitled to receive 30 % of the amount exceeding the base amount. For each person to whom the person subject to wage garnishment pays maintenance, 10 % of this extra amount shall be added. The tax-exempt amounts calculated in this way are also taken into account concerning special payments (13th and 14th monthly wage or salary). Apart from compensation for expenses, family allowance, disbursements and reimbursements, social security payments such as childcare benefit and similar allowances as well as education-related benefits granted to pupils and students including university students cannot be garnished since the amendment to the Austrian Enforcement Code (*Exekutionsordnung*) has been passed in 1991.

On its website (www.bmj.gv.at) the Federal Ministry of Justice provides, free of charge, tables to the interested public on the minimum subsistence level drawn up on this basis as well as guidelines on how to calculate it (<http://www.justiz.gv.at/service/content.php?nav=70&recordid=85#0>, available in German only).

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

2) Please indicate the measures taken (administrative arrangements, programmes, action plans, projects, etc.) to implement the legal framework.

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

THE RIGHT TO ORGANISE

With a view to ensuring or promoting the freedom of workers and employers to form local, national or international organisations for the protection of their economic and social interests and to join those organisations, the Contracting Parties undertake that national law shall not be such as to impair, nor shall it be so applied as to impair, this freedom. The extent to which the guarantees provided for in this article shall apply to the police shall be determined by national laws or regulations. The principle governing the application to the members of the armed forces of these guarantees and the extent to which they shall apply to persons in this category shall equally be determined by national laws or regulations.

No substantial changes.

Reply to the additional questions on Article 5 in the Conclusions XVIII-1:

On the questions regarding the Public Security Directorates (*Sicherheitsdirektionen*), negative decisions, dissolution of associations and register of associations:

- The Public Security Directorate is not a judicial authority. A decision of the Public Security Directorate can be appealed at the Administrative Court and the Constitutional Court within six weeks after the administrative decision (*Bescheid*) was served.
- From 1 January 2002 to 31 December 2008, 495 newly established associations were declared inadmissible.
- Pursuant to Section 29 Para. 1 of the Austrian Association Act (*Vereinsgesetz, VerG*) 2002 as amended, any association (including trade unions established as associations) can be dissolved by administrative decision, without prejudice to the case pursuant to Section 2 Para. 3 of the above Act if the prerequisites specified in Article 11 Para. 2 of the Convention for the Protection of Human Rights and Fundamental Freedoms, Federal Law Gazette no. 210/1958, are met, and if it violates criminal law, acts beyond the scope of its by-laws or no longer meets the conditions for its legal existence altogether.

- To the extent the Central Register of Associations (*Zentrales Vereinsregister, ZVR*) is a public register (Section 17 Para. 1 *VerG*), the Federal Minister of the Interior has the authority to permit the general public the free retrieval of data concerning associations processed in the *ZVR* which are not subject to the disclosure ban pursuant to Section 17 Para. 4 *VerG* (single online query). The following data can be retrieved:
 - name of the competent association authority of first instance;
 - name of the association;
 - *ZVR* no. of the association pursuant to Section 18 Para. 2 *VerG*;
 - date the association was established;
 - place where the association is established and address for servicing documents;
 - representation of the association pursuant to the association's by-laws;
 - functions and names of the association's representatives; prior to their first announcement, the names of the association's founders;
 - commencement of the power of representation of the association's representatives and duration of their terms pursuant to the by-laws;
 - auditor's report as defined in Section 22 Para. 5 first sentence *VerG*;
 - voluntary dissolution and legally effective dissolution by the authority of the association;
 - liquidation or post-liquidation as well as name of liquidator and commencement of his/her power of representation;
 - finalisation of liquidation or post-liquidation.

Upon specific request and only if justified interest can be credibly explained (individuals need to provide proof of their identity in addition), the association authority has to provide information about

- date of birth, place of birth and servicing address of the association's representatives; prior to their first announcement, date of birth, place of birth and servicing address of the association's founders;
 - date of birth, place of birth and servicing address of the liquidator;
 - historical data.
- In this context, the Federal Minister of the Interior has the following powers:
 - to maintain an EDP-supported Central Register of Associations (*ZVR*) as a joint information system (*Informationsverbundsystem*) as defined in Section 4 no. 13 Data Protection Act (*Datenschutzgesetz, DSG*) 2000, with the Federal Minister of the Interior acting both as the operator (*Betreiber*) pursuant to Section 50 *DSG* and as processor (*Dienstleister*) as defined in Section 4 no. 5 *DSG* 2000 for this data application;
 - to provide query options in the association register to territorial corporate bodies (*Gebietskörperschaften*; authorities at federal, provincial or municipal level) upon request as well as to public authorities upon application in a way that allows them to retrieve online data of certain associations processed there, to the extent that is necessary to fulfil a statutory task;

- to permit, to the extent the Central Register of Associations (*ZVR*) is a public register, the general public the free retrieval of data concerning associations processed in the *ZVR* which are not subject to the disclosure ban (single online query);
- to determine the start of live operation of the *ZVR* and to specify details on how data are to be used with respect to the data protection measures required for the respective data usage;
- to revoke the right to a *ZVR* query granted upon application, if the requirements according to which the right to queries was granted are no longer valid, if the retrieved data is used for other purposes than for meeting a statutory obligation, if legitimate confidentiality interests of people subject to queries were violated, if data protection measures were violated or if they were expressly waived.

For information purposes, the most recent “Statistics on associations 2008” are provided in the following. In this context we would like to mention that no information is available on how many of the associations are employee associations or trade unions.

Statistics on associations 2008
As per 31 December 2008

Land (federal province)	Number of associations	Declarations of inadmissibility of newly established associations	Dissolutions by authorities pursuant to Section 2 Para. 3 Association Act due to failure to appoint representatives within one year of foundation	Dissolutions by authorities pursuant to Section 29 Para. 1 Association Act due to being inactive/incapable of action	Dissolutions by authorities pursuant to Section 29 Para. 1 Association Act for other reasons	Voluntary dissolutions
Burgenland	4,735	1	2	13	1	65
Carinthia	10,140	1	20	27	0	253
Lower Austria	20,537	5	30	57	3	367
Upper Austria	15,702	5	21	48	0	264
Salzburg	6,338	0	7	88	0	128
Styria	17,015	4	61	66	7	483
Tyrol	9,888	0	18	50	0	128
Vorarlberg	4,345	0	3	34	0	100
Vienna	24,245	63	136	117	2	256
Total	112,945	79	298	500	13	2,044

Right of non-EEA citizens from other contracting states to stand for works council elections:

The legal situation has been clarified in the meantime. Pursuant to the Federal Act no. 4 from 2006, all migrants can stand as candidates in elections to the works council. This change of law goes beyond the requirements of the ECJ ruling of September 2004. The eligibility to stand for election has not only been extended to citizens from third countries with which the EU has entered into association agreements, but all employees, irrespective of their citizenship, can now stand as candidates in elections to the works council. This change of law entered into force on 14 January 2006.

ARTICLE 6

THE RIGHT TO BARGAIN COLLECTIVELY

Para. 1 of Article 6

With a view to ensuring the effective exercise of the right to bargain collectively, the Contracting Parties undertake to promote joint consultation between workers and employers.

1) Please describe the general legal framework applicable to the private as well as the public sector. Please specify the nature of, reasons for and extent of any reforms.

Previous reporting is updated as follows:

Council Regulation (EC) No 2157/2001 lays down that companies may be set up within the territory of the Community in the form of public limited-liability companies (Societas Europaea or SE). Thus, a uniform legal framework was created within which companies from different Member States can operate at Community level.

Council Directive 2001/86/EC supplementing the Statute for a European Company (SE) with regard to the involvement of employees is closely related to it. The Directive's objective is to create a right to employee involvement in the European public limited-liability company which includes, in particular, the right to information, consultation and participation.

The Directive was transposed by means of an amendment to the Labour Constitution Act (*Arbeitsverfassungsgesetz, ArbVG*) (Federal Law Gazette I no. 82/2004). In companies which are founded or managed in the form of an SE with its registered office in Austria, an SE works council or a different procedure for the purposes of informing and consulting employees can now be established.

With Council Regulation (EC) no. 1435/2003 on the Statute for a European Cooperative Society (SCE), the societies generally recognised in all Member States were provided with adequate legal instruments capable of promoting the development of their cross-border activities either by merging cooperatives from various Member States or by establishing new SCEs at European level. This facilitates cross-border reorganisation and cooperation measures.

Employee involvement in the European Cooperative Society is regulated by Council Directive 2003/72/EC supplementing the Statute for a European Cooperative Society with regard to the involvement of employees. The Directive's objective is to create a right to employee involvement in the European Cooperative Society which includes, in particular, the right to information, consultation and participation.

The Directive was transposed by means of an amendment to the Labour Constitution Act (Federal Law Gazette I no. 104/2006). In companies which are founded or managed in the form of an SCE with its registered office in Austria, an SCE works council or a different procedure for the purposes of informing and consulting employees can now be established.

Directive 2005/56/EC on cross-border mergers of limited liability companies from different Member States regulates, among other things, the participation of employees in the event of cross-border mergers of limited liability companies. The Directive's objective is to create a right to employee involvement in the event of cross-border mergers and includes, in particular, the right to information, consultation and participation.

The Directive was transposed by means of an amendment to the Labour Constitution Act (Federal Law Gazette I no. 77/2007). The regulations are modelled on the regulations for the European public limited-liability company (SE). Basically, participation is agreed in negotiations of employees and employers. If no agreement is reached, employee participation is governed by statutory standard rules.

Ad questions 2 and 3:

No substantial changes.

Para. 2 of Article 6

With a view to ensuring the effective exercise of the right to bargain collectively, the Contracting Parties undertake to promote, where necessary and appropriate, machinery for voluntary negotiations between employers or employers' organisations and workers' organisations, with a view to the regulation of terms and conditions of employment by means of collective agreements.

1) Please describe the general legal framework applicable to the private as well as the public sector. Please specify the nature of, reasons for and extent of any reforms.

Previous reporting is updated as follows:

In addition to certain statutory bodies which are guaranteed the power to conclude collective agreements by operation of law, voluntary occupational associations (*Berufsvereinigungen*) and other associations (*Vereine*) may also conclude collective agreements if the Federal Conciliation Board has granted them the power to do so. As of 31 December 2008, 50 such associations were granted the power to enter into collective agreements.

2) Please indicate the measures taken (administrative arrangements, programmes, action plans, projects, etc.) to implement the legal framework.

No substantial changes.

3) Please provide pertinent figures, statistics or any other relevant information, in particular on collective agreements concluded in the private and public sector at national and regional or sectoral level, as appropriate.

457 collective agreements were deposited with the Federal Ministry of Labour, Social Affairs and Consumer Protection in 2005, 492 in the year 2006, 448 in 2007 and 583 in 2008.

Para. 3 of Article 6

With a view to ensuring the effective exercise of the right to bargain collectively, the Contracting Parties undertake to promote the establishment and use of appropriate machinery for conciliation and voluntary arbitration for the settlement of labour disputes.

1) Please describe the general legal framework as regards conciliation and arbitration procedures in the private as well as the public sector, including where relevant decisions by courts and other judicial bodies, if possible. Please specify the nature of, reasons for and extent of any reforms and

2) Please indicate the measures taken (administrative arrangements, programmes, action plans, projects, etc.) to implement the legal framework.

Previous reporting is updated as follows:

In actual practice, conciliation boards are used to get deadlocked negotiations going again. Usually the conciliation board does not make a decision but the works council and the company management autonomously agree on a works agreement.

As a result, 4 out of 8 conciliation procedures were settled by withdrawal of the applications in 2005, 12 out of 16 in 2006, 4 out of 10 in 2007 and 1 out of 3 in 2008. In 2006, 1 conciliation procedure was settled by the parties out of court, 3 in 2007 and 1 in 2008.

3) Please provide pertinent figures, statistics or factual information, in particular: information on the nature and duration of Parliament, Government or court interventions in collective bargaining and conflict resolution by means of, *inter alia*, compulsory arbitration.

Previous reporting is updated as follows:

Scope of compulsory conciliation in actual practice:

The Austrian labour and social courts settled 8 conciliation procedures in 2005, 16 in 2006, 10 in 2007 and 3 in 2008.

The subject of the procedures were predominantly regulations pertaining to working hours and breaks as well as “social plans”, i.e. measures to prevent, remove or mitigate the consequences of a reorganisation, provided that this entails substantial disadvantages for all or a major proportion of the employees.