16/11/2017 RAP/RCha/AUS/6(2018)

EUROPEAN SOCIAL CHARTER

6th 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 01/01/2013 - 31/12/2016

Report registered by the Secretariat on
16 November 2017

CYCLE 2018

REVISED EUROPEAN SOCIAL CHARTER

6th NATIONAL REPORT

on measures taken to give effect to
Articles 2, 4, 5, 6, 26 and 28
(for the period 1 January 2013 to 31 December 2016)

submitted by the
FEDERAL GOVERNMENT OF AUSTRIA
regarding measures to implement the
Revised European Social Charter
The ratification instrument of the Revised European Social Charter was deposited
on 20 May 2011.

In accordance with Article C of the Revised European Social Charter and Article 23 of the European Social Charter, copies of this report
have been communicated to

the Austrian Trade Union Federation (*Österreichischer Gewerkschaftsbund*)
the Austrian Federal Chamber of Labour (*Bundesarbeitskammer*)
the Austrian Federal Economic Chamber (*Wirtschaftskammer Österreich*)
the Federation of Austrian Industry (*Vereinigung der Österreichischen Industrie*)
the Presidential Conference of Austrian Chambers of Agriculture (*Präsidentenkonferenz der Landwirtschaftskammern Österreichs*)
Council of Austrian Chambers of Agricultural Labour (*Österreichischer Landarbeiterkammertag*)

CONTENTS

ARTICLE 2 3

ARTICLE 4 12

ARTICLE 5 37

ARTICLE 6 43

ARTICLE 26 57

ARTICLE 28 61

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:

There were no significant changes compared to the second report.

In response to the second question:

No specific transposition measures in the reporting period.

In response to the third question:

No statistics available.

Article 2§3

In response to the first question:

There were no significant changes compared to the second report.

In response to the second question:

No specific transposition measures in the reporting period.

In response to the third question:

No statistics available.

Article 2§4

In response to the first question:

There were no significant changes compared to the second report.

Reply to the supplementary questions on Art. 2§4 in the Conclusions 2014:

The principle of prevention is implemented in the Austrian Workers Protection Act (*ArbeitnehmerInnenschutzgesetz, ASchG*), Federal Law Gazette no. 450/1994. An example is found in Section 66 Para. 1 *ASchG*: “While considering the state-of-the-art technology, employers shall design work processes and workplaces and shall take all appropriate

measures to ensure that the level of vibration transferred to the human body is kept to a minimum." The same applies accordingly to adverse effects caused by light, warmth, odours, draughts, heat, cold, dampness and similar factors, as specified in Section 66 Para. 2 *ASchG*. Where, however, vibrations or other stress factors detrimental to health cannot be avoided or reduced to a tolerable level through other action, organisational measures are to be taken that are capable of reducing or compensating the stress factors, such as limits to working hours, breaks during work or compliance with rest periods (Section 66 Para. 3 *ASchG*).

The governing principle in risk prevention is that exposure to harmful effects is to be kept as brief as possible and the level as low as possible (cf. Section 43 *ASchG* for example). There are no ordinances based on the *ASchG* that specify the tasks with limited working hours.

The fundamental law applying to agriculture and forestry workers, the 1984 Agricultural Labour Act (*Landarbeitsgesetz, LAG*, Federal Law Gazette no. 287/1984 as amended), specifies in Section 91c Para. 3 that the implementing laws (at *Laender* level) are to provide for measures to reduce or compensate stress factors. This provision has been implemented by Burgenland in Section 91c of the Burgenland Agricultural Labour Code (*Burgenländische Landarbeitsordnung*), State Law Gazette no. 37/1977 as amended, where the following obligations applying to employers are defined: Where vibrations or other exceptional stress factors detrimental to health cannot be avoided or reduced to a tolerable level through other action, organisational measures are to be taken that are capable of reducing or compensating the stress factors, such as limits to working hours, breaks during work or compliance with rest periods. Carinthia also provides for such measures to compensate stress, specifically in Section 116n Para. 3 of the Carinthian Agricultural Labour Code 1995 (*Kärntner Landarbeitsordnung*), State Law Gazette no. 97/1995; the other Austrian *Laender* have identical or comparable implementing provisions.

The Heavy Night Work Act (*Nachtschwerarbeitsgesetz, NSchG*) 1981, Federal Law Gazette no. 354/1981 as amended, lays down compensating measures for employees who exclusively perform heavy work for least six hours nightly between 10 pm and 6 am.

No ordinance has to date been issued based on Section 21 of the Working Hours Act (*Arbeitszeitgesetz, AZG*), Federal Law Gazette no. 461/1969 as amended, as existing preventive measures related to technical employee protection have made such an ordinance unnecessary up to now.

On one occasion during the reporting period, the Labour Inspectorate exercised the option, defined in Section 11 Para. 6 *AZG*, of issuing an administrative decision to order longer rest periods than specified in Section 11 Para. 1 *AZG*.

<u>As regards the alleged violation of Art. 2§4 concerning the public sector/federal employees:</u>

Austria has a comprehensive legal framework for the protection of federal employees, with the following pieces of legislation currently applicable:

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 following ordinances based on the B-BSG have been issued for the protection of federal employees:

- Ordinance of the Federal Government on the protection of public employees from exposure to electromagnetic fields (*Verordnung elektromagnetische Felder Bund, B-VEMF*), Federal Law Gazette II no. 384/2016
- Ordinance of the Federal Government on the protection of workers against injuries due to sharp medical instruments (*Nadelstichverordnung Bund, B-NastV*), Federal Law Gazette II no. 50/2015
- Ordinance of the Federal Government on workers' protection from explosive atmospheres (*B-VEXAT*), Federal Law Gazette II no. 156/2005
- Ordinance of the Federal Government on the assignment of administrative offices and departments to hazard classes (Hazard Class Ordinance), Federal Law Gazette II no. 239/2002
- Ordinance of the Federal Government of 22 November 1983 on the protection of federal employees in federal administrative offices in tropical countries (*Tropentauglichkeitsverordnung*), Federal Law Gazette no. 630/1983
- Ordinance of the Federal Government on safety representatives (*BSVP-VO*), Federal Law Gazette II no. 14/2000
- Ordinance of the Federal Government on safety and health labelling (*B-KennV*), Federal Law Gazette II no. 414/1999
- Ordinance of the Federal Government on the protection of federal public employees against danger from biological agents (*B-VbA*), Federal Law Gazette II no. 415/1999
- Ordinance of the Federal Government on safety and health documents (*B-DOK-VO*), Federal Law Gazette II no. 452/1999
- Ordinance of the Federal Government on the protection of federal public employees when working at display screen equipment (*B-BS-V*), Federal Law Gazette II no. 453/1999
- Ordinance of the Federal Government on health surveillance at work (*B-VGÜ*), Federal Law Gazette II no. 15/2000
- Ordinance of the Federal Government on workers' protection from noise and vibrations (*B-VOLV*), Federal Law Gazette II no. 90/2006
- Ordinance of the Federal Government defining the requirements for workplaces at federal administrative offices (*Bundes-Arbeitsstättenverordnung, B-AStV*), Federal Law Gazette II no. 352/2002
- Ordinance of the Federal Government on the protection of federal public employees when using work equipment (*Bundes-Arbeitsmittelverordnung, B-AM-VO*), Federal Law Gazette II no. 392/2002
- Ordinance of the Federal Government on exposure limits for working substances and on carcinogenic substances (*Bundes-Grenzwerteverordnung, B-GKV*), Federal Law Gazette II no. 393/2002
- Ordinance of the Federal Government on the health and safety protection of federal employees from electricity hazards *(B-ESV*), Federal Law Gazette II no. 228/2007

- Ordinance of the Federal Government on the documentation of skills (*B-FK-V*), Federal Law Gazette II no. 229/2007
- Ordinance of the Federal Government on the protection of public employees from exposure to optical radiation (*Verordnung optische Strahlung Bund, BVOPST*), Federal Law Gazette II no. 291/2011

With reference to the specific concerns of the ECSR relating to the Conclusions 2014, it should be added that public employees in a public or contractual employment relationship with the Federal Government are not (or no longer) employed in the activities listed by way of example – that is, mining, quarrying, steel manufacturing, shipbuilding and activities where workers are exposed to extreme temperatures and noise – since such operations have been outsourced to independent companies.

Federal employees are, however, still employed in fields of work where they are exposed to ionising radiation.

The number of federal employees employed in such areas of activity is between 30 and 50, so that we are referring to a very small group of individuals.

The federal employees in this group are, however, not directly exposed to ionising radiation. Their activities instead involve tasks such as operating x-ray equipment as part of medical examinations.

Corresponding protection regulations and limit values are defined in the Federal Act on measures for the protection of life or health of humans including their offspring against damage caused by ionising radiation (Strahlenschutzgesetz, StrSchG), Federal Law Gazette no. 227/1969, and on ordinances based on that Act; these are specifically: the Ordinance of the Federal Minister of Agriculture, Forestry, Environment and Water Management, the Federal Minister of Economy and Labour, the Federal Minister of Education, Science and Culture, and the Federal Minister of Health and Women's Affairs on general measures for the protection of persons against damage caused by ionising radiation (Allgemeine Strahlenschutzverordnung, AllgStrSchV), Federal Law Gazette II no. 191/2006, and the Ordinance of the Federal Minister of Health and Women's Affairs on the protection of persons against damage caused by using ionising radiation in medicine (Medizinische Strahlenschutzverordnung, MedStrSchV), Federal Law Gazette II no. 409/2004.

When they comply with all of the above-mentioned protection regulations, the federal employees referred to are not exposed to any – significant – ionising radiation when operating x-ray equipment.

By specifying limit values and protection regulations for public employees, it is ensured that any risks are prevented and eliminated or reduced to a minimal level, in this way complying with the requirements of Art. 3 RESC.

The work activities of such federal employees cannot be regarded per se as consistently exposing them to ionising radiation (above the limits defined by law). Rather, this kind of activity entails intrinsic hazards that cannot be entirely eliminated, such as the risk of radiation leaking from damaged equipment.

The residual, latent danger, resulting for example from ionising radiation escaping from technically defective equipment, is compensated through an appropriate hazard allowance.

Yet, any additional holidays or reduction of working hours granted based on Article 2§4 RESC would have to be for the purpose of allowing the affected public employees time to recover from the stress associated with their type of activity and thus to maintain their attentiveness.

Seeing that technical defects can never be ruled out entirely, even granting additional holidays or reducing working hours would not eliminate any potential hazard (in cases of damaged equipment).

Thus, in the specified cases where public employees are exposed to a risk arising from defective equipment, granting additional holidays or reducing working hours would not achieve the real purpose behind the provision of Article 2§4 RESC – which is to protect workers' health – since additional holidays or shortening working time could not help meet the goal of better protecting workers' health or reducing risks.

The protection of federal employees is thus ensured to the highest possible standards. Austria is to be considered as meeting the prime obligation arising from Art. 3 RESC to eliminate or sufficiently reduce risks, so that the obligation defined in Art. 2§4 does not apply.

A risk of health damage due to ionising radiation arising from defective equipment exists for a small group of about 30 to 50 public employees. Granting additional holidays or reducing working hours does not constitute an appropriate response for addressing that risk, since such measures are not suited to contributing to further reducing the risks or improving health protection – which has already been ensured to the greatest possible extent.

In response to the second question:

No specific transposition measures in the reporting period.

In response to the third question:

Over the past decade (starting from 2005) the number of occupational accidents has constantly decreased by a total of 15.3% over all sectors (123,143 cases in 2005, 104,312 in 2015). Fatal accidents dropped by 32.1 % (218 in 2005 compared to 148 in 2016. (Source: Statistic Austria).

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 authorities and accident insurance institutions;

- enforcement of regulations by the Labour Inspectorate as well as the active role it takes in industrial licensing procedures.

Article 2§5

In response to the first question:

Previous reporting has been modified inasmuch as exceptions for an unlimited period as specified in Section 12a of the Rest Periods Act (*Arbeitsruhegesetz, ARG*), Federal Law Gazette no. 144/1983, were additionally defined during the reporting period for the industries and businesses listed below:

Collective agreements pursuant to Section 12a *ARG*

Industry/business	Activity	In force since
Federal Real Estate Company (*Bundesimmobiliengesellschaft*)	Repairs and troubleshooting in cases requiring uninterrupted work, in buildings used for education, research, defence against risks, refugee and asylum-related matters, or administering prison sentences. For completion of work, where unconditionally required, at a site at some distance from the employee's normal place of work, where additional travel to that site would cause disproportionate expense. Troubleshooting, where urgently required, during periods when employees are on call.	10 December 2014
Doctors' employees at group practices in Vienna		1 January 2016
Ambulance, rescue, emergency and health care workers (*BARS*)	Work occasioned by disasters, epidemics or other unforeseeable events threatening the life and health of individuals as well as related exercises (a maximum of two per calendar year), as long as required to resolve the particular emergency situation.	1 January 2016

In response to the second question:

No specific transposition measures in the reporting period.

In response to the third question:

In 2012 the Labour Inspectorate identified 239 infringements of the Rest Periods Act (*Arbeitsruhegesetz, ARG*), Federal Law Gazette no. 144/1983, excluding checks of drivers. Of the breaches, 20 were in construction, 25 in accommodation and food service activities, and 96 in the sector of wholesale and retail trade, maintenance and repair of motor vehicles and motorcycles. The Labour Inspectorate conducted 22,704 checks of working time and rest periods in 2012. With verification in 2012 focused especially on working time and rest periods, a greater number of checks were carried out in these areas.

In 2013 the Labour Inspectorate recorded 307 infringements of the *ARG (*excluding checks of drivers), 33 of which were in the construction sector, 73 in accommodation and food service activities, and 121 in the sector of wholesale and retail trade, maintenance and repair of motor vehicles and motorcycles. The Labour Inspectorate conducted 12,033 checks of working time and rest periods in 2013.

In 2014 the Labour Inspectorate identified 276 infringements of the *ARG*, excluding checks of drivers. Of the breaches, 38 were in manufacturing, 51 in construction, 95 in the sector of wholesale and retail trade, maintenance and repair of motor vehicles and motorcycles, and 51 in accommodation and food service activities. The Labour Inspectorate conducted 12,008 checks of working time and rest periods in 2014.

In 2015 the Labour Inspectorate identified 1,047 infringements of the *ARG*, excluding checks of drivers. It should be noted that in 2015 the data on verification of working time and rest periods were reported separately. The infringements were identified during 9,310 checks of rest periods (for comparison, 28,803 checks of working time were carried out in 2015). Thus, with a total of 38,113 checks of working time and rest periods, substantially more verification was carried out in 2015 than in previous years.

Breaches of the Homeworking Act (*Heimarbeitsgesetz; HAG*) continued at a low level. While only few breaches were recorded in 2012 and 2013 (10 and 14 respectively), the number dropped to two in 2014 and only one case was identified in 2015. This trend is attributed to a general decline in working at home, resulting from declining orders, shutdowns of businesses and outsourcing of jobs to other countries.

Apart from the statistics kept by the Labour Inspectorate on infringements 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 dropped slightly from 1.730 million to 1.707 million during the period under review, with the percentage relative to the total number of dependently employed workers decreasing from 42% to 40%. The number of persons working regularly on Saturdays also declined slightly, from 1.232 million to 1.199 million (29.9% and 28.0% respectively of the total dependently employed population).

The number of those employed on Sundays actually fell, from 1.010 million to 0.988 million (i.e. from 25.3% to 23.0%), while the number employed regularly on Sundays decreased considerably, from 671,500 to 647,600 (i.e. from 16.3% to 15.1%).

Article 2§6

In response to the first question:

There were no significant changes compared to the second report.

Reply to the supplementary question on Art. 2§6 in the Conclusions 2014:

As specified in Section 4 Para. 2 no. 8 of the Contractual Employees Act (*Vertragsbedienstetengesetz, VBG*), Federal Law Gazette no. 86/1948 as amended, the employment contract of a contractual public employee always refers to the most recent version of the *VBG* and of any implementing ordinances issued. Thus, it is mandatory for such contracts to include provisions of law such as those relating to termination and notice periods and to compensation for any annual leave not taken.

With regard to the legal conformity of employment contracts, we wish to point out that such contracts stipulate contractual relationships based on private law, which fall under the jurisdiction of the ordinary courts (Labour and Social Court jurisdiction). The courts, and not the Labour Inspectorates, are thus responsible for examining the legal conformity of such contracts.

In response to the second question:

No specific transposition measures in the reporting period.

In response to the third question:

No specific data available.

Article 2§7

In response to the first question:

There were no significant changes compared to the second report.

Reply to the supplementary questions on Art. 2§7 in the Conclusions 2014):

Pursuant to the Labour Constitution Act (*Arbeitsverfassungsgesetz, ArbVG*) 1974, Federal Law Gazette no. 22/1974 as amended, the business owner is obliged to inform the works council of all matters affecting the economic, social, health or cultural interests of the business's employees, and to consult with the works council at least four times a year. The works council is required to be heard well enough in advance in particular on all matters relating to safety and health protection. Pursuant to Section 97 *ArbVG*, a works agreement can be concluded on measures to prevent, eliminate, ameliorate or compensate stress to workers that arises from the work activities defined in Article VII of the Heavy Night Work Act (*Nachtschwerarbeitsgesetz, NSchG*), including measures to avoid accidents and occupational diseases.

Public service:

In the case of federal public employees, the Federal Staff Representation Act (*Bundes-Personalvertretungsgesetz, PVG*), Federal Law Gazette II no. 133/1967, specifies comprehensive provisions relating to the rights and duties of staff representatives. According to Section 2 Para. 1 *PVG*, the staff representation body is mandated with

safeguarding and promoting the professional, economic, social, cultural and health interests of public employees. Thus, staff representatives are for public employees the immediate contact persons at employee level in all significant matters.

Specifically, Section 9 Para. 1 lit. a *PVG* 1967 confers upon the administrative offices' committee (*Dienststellenausschuss*), as a staff representation body, the responsibility to participate in the enforcement and supervision of compliance with regulations and orders related to employee protection and to social security. Such matters can be submitted to the competent supervisory authority where necessary.

Section 9 Para. 2 lit. 2 *PVG* additionally requires approval to be obtained from the administrative offices' committee when drawing up or modifying the work schedule, including the scheduling of rest periods and working hours of individual employees, where the schedule relates to an extended period or to more than one public employee.

Mention should nonetheless be made in this context of the recognised right of the trade unions of public employees to represent workers above company level; this right is not prejudiced by the arrangements described above.

In response to the second question:

No specific transposition measures in the reporting period.

In response to the third question:

Night is generally considered the time between 10 pm and 5 am. In the case of drivers, Section 14 of the Working Hours Act (*Arbeitszeitgesetz, AZG*) defines night as the period between midnight and 4 am. No breaches of Section 14 *AZG* were identified in the reporting period.

Among cases falling within the scope of the Hospital Working Hours Act (*Krankenanstalten-Arbeitszeitgesetz*), 71 breaches were identified in 2012, 99 in 2013, 87 in 2014 and 73 in 2015. It should be noted here that these figures represent all identified cases of non-compliance with the Hospital Working Hours Act and not merely infringements of night work provisions.

ARTICLE 4

THE RIGHT TO A FAIR REMUNERATION

Article 4§1

In response to the first question:

Reference is made to previous reporting. Meanwhile, the Anti-Wage and Social Dumping Act (*Lohn- und Sozialdumping-Bekämpfungsgesetz, LSD-BG*; Federal Law Gazette I no. 44/2016) entered into force on 1 January 2017. The *LSD-BG* is, formally, a new law, which combines previous wage protection provisions and structures them in a transparently structured, codified form. This harmonised Act is intended, on the one hand, to help those affected by the provisions to more easily grasp this complex legal material, with the *LSD-BG* providing a clearly structured presentation of substantive law pertaining to the entitlements of employees posted or hired out to Austria on a cross-border basis, specifically claims relating to remuneration, annual leave and working hours. On the other hand, codification of the law has brought forth detailed definitions and clarifications which both facilitate the activities of inspection authorities in official verification of pay levels as well as support employers based in another EU Member State in 'managing' and complying with the regulations relating to giving notice of employees posted to Austria. The most prominent examples of simplification concern notification regulations and the provisions requiring pay and notification documents to be kept available, which are specified in Sections 19 to 22 *LSD-BG*. The *LSD-BG* at the same time implemented the Directive to enforce the Posting of Workers Directive. For more details, we refer here to the posting of workers platform, which can be viewed at www.entsendeplattform.at.

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.

In its 2016 annual report the association lists the reasons for discrimination according to frequency as follows: ethnic origin 55%, disability 31%, religion 4%, gender 4%, sexual orientation 3%, age 3%. The *Klagsverband* received grants of EUR 50,000 per year from funding for women's projects in the period from 2013 to 2016. Another grant of EUR 5,000 was made in 2014 to support the professional conference held on the occasion of the tenth anniversaries of the new Equal Treatment Act (*Gleichbehandlungsgesetz*) and the *Klagsverband.* A main topic of the conference was the need for improvement, with regard to legal deficiencies as well as to the question as to how anti-discrimination laws can help fulfil

human rights obligations. A total of 19 new court actions were brought in the period of 2013 to 2016.

In response to the third question:

Reference is made to the information given in the 4th report.

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.

In Austria, 98% 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 falls under a collective agreement among businesses not belonging to the Economic Chamber (e.g. liberal professions and 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' 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 1,200.

As regards the alleged violation of Art. 4§1:

As of February 2017, the lowest minimum wages stipulated in collective agreements were between EUR 1,200 and EUR 1,400. It should be noted, however, that the number of collective agreements stipulating minimum remuneration in the EUR 1,200 range is continually falling. Minimum remuneration in the range of EUR 1,300 and above is specified in the majority of collective agreements.

Trade-sector employees, for example, have a minimum wage of EUR 1,402 in their collective agreement. The corresponding agreement for employees in the crafts and trades, service, and information and consulting sectors provides for minimum remuneration of EUR 1,276.24. These collective agreements, which cover a large group of employees, specify wage levels tending towards the low-income range.

These wage figures represent gross income. The corresponding net amounts are given below, as determined using the calculator provided by the Federal Ministry of Finance (https://www.bmf.gv.at/services/berechnungsprogramme/berechnungsprogramme.html); please note that any tax deduction options were not taken into account:

Gross: EUR 1,200.00 Net: EUR 1,018.56

Gross: EUR 1,300.00 Net: EUR 1,094.08

Gross: EUR 1,400.00 Net: EUR 1,147.24

Gross: EUR 1,402.00 Net: EUR 1,148.50

Gross: EUR 1,276.24 Net: EUR 1,078.95

For the net monthly income of dependently employed persons, we additionally refer to a survey by Statistics Austria:


Nettomonatseinkommen_2015.pdf

The results have been compiled from data obtained in the Labour Force Survey (*Arbeitskräfteerhebung*) micro-census and from payroll tax data collected by the Main Association of Austrian Social Security Institutions. The survey found a monthly net income level of EUR 2,386 for 2015 when averaged over the year, whereby the statutory thirteenth and fourteenth months' pay are included here. Converting this figure into actual monthly pay (i.e. multiplied by 12 and then divided by 14) results in monthly net income of EUR 2,045.

For the lowest income decile group, the survey referred to above gives a monthly net income figure of EUR 1,288 (including the thirteenth and fourteenth months' pay). This converts to actual monthly net income of EUR 1,104.

Austria's tax reform became effective as of 1 January 2016. This has reduced the overall tax burden by a EUR 5.2 billion. For more than six million of persons subject to wage and income tax in Austria, the reform has eased the tax burden on average by EUR 1,000 per person.

At the heart of the reform is a modified system of tax rates which significantly reduces the tax load on the Austrian population. As previously, the tax rates apply in proportion to an individual's income and not to total taxable annual income.

The tax rate for the lowest tax bracket, which applies to annual income of between EUR 11,000 and EUR 18,000, was lowered to 25%. The rate for the highest tax bracket, which continues to be 50%, now applies to annual income of EUR 90,000 and more instead of previously EUR 60,000.

The modified tax rates

Below EUR 11,000	0%
EUR 11,000 to EUR 18,000	25%
EUR 18,000 to EUR 31,000	35%
EUR 31,000 to EUR 60,000	42%
EUR 60,000 to EUR 90,000	48%
EUR 90,000 to EUR 1 million	50%
Above EUR 1 million	55% (applicable until 2020)

By way of illustration, individuals with an income of EUR 30,000, for example, pay no tax on the first EUR 11,000, 25% tax on the next EUR 7,000 and 35% on the final EUR 12,000.

Any tax credits can subsequently be deducted from the resulting amount, thereby further reducing the total income tax payable. An example of one such deduction is the tax credit for dependent employees (*Arbeitnehmerabsetzbetrag*). In 2016 this tax credit was combined

with the tax credit for personal transport (*Verkehrsabsetzbetrag*), which was simultaneously increased to EUR 400. For low-income commuters, a higher amount of credit for personal transport was introduced. The tax assessment base is reduced even further by any tax-exempt amounts taxpayers are able to claim.

Beginning with the assessment year 2016, the tax-exempt amount for children (*Kinderfreibetrag*) is EUR 440, which is double the previous amount, thereby easing the financial burden on families (https://www.bmf.gv.at/aktuelles/StRallg.html in German).

Excerpt from the statement by the Federal Chamber of Labour and the Austrian Trade Union Federation:

In early 2017, the minimum-wage stipulations contained in the collective agreements for several industries were amended to provide for significant increases in minimum wages to reach EUR 1,500 gross over the next few years, taking until 2020 in some cases; these include the agreements for the hotel and restaurant industry (minimum wage of EUR 1,500 to be reached by mid-2018) and for hairdressers (skilled workers by April 2019 and for semi-skilled workers by early 2020).

A monthly gross income of EUR 1,500 corresponds to roughly EUR 1,200 net. This figure is well above the poverty threshold, currently defined as EUR 1,000 per month (14 times a year – 60% of the weighted total household income, according to the EU-SILC definition).

The EU's 'low income' indicator is defined as less than two-thirds of the average income. For Austria, the level of this indicator is EUR 1,460 gross, according to the Austrian Institute of Economic Research (WIFO). When compared EU-wide with respect to the share of low-income earners, Austria ranks within the mid-range among EU countries overall.

To compensate low levels of employment income, support measures or transfer payments have been enshrined in laws on benefit entitlements, with examples including the combined wage and means-tested minimum income.

On a positive note, mention is made here of measures aimed at 'positive discrimination', in other words an active policy within labour market policy to promote the equality of women, which additionally seeks to overcome the segmentation of the Austrian labour market along gender lines (with 50% of labour market funding dedicated to jobless women). The goal here is to support women in gaining a foothold in traditionally male-dominated industries with an attractive collective wage agreement, thereby helping to 'close the gap' between women's and men's income levels.

The 2016 tax reform with its lower marginal tax rates has additionally lightened the burden on low-income earners.

Compulsory education up to the age of 18 was introduced in 2016 to ensure that young people will complete training beyond the level of compulsory schooling. The result is, on the one hand, decreasing numbers of youth affected by unemployment, and at the same time enhanced job prospects for these young people, with their vocational training giving way to better employment opportunities.

Excerpt from the statement by the Austrian Federal Economic Chamber:

The national average net wage is calculated based on the figures for a full-time employee and relative to the total labour market. It should be noted that the value used for comparison needs to reflect both full-time and year-round employment. Employment is

classified as full-time when a worker is employed full-time most of the year (*Schwerpunktprinzip*). Yet, episodes of part-time employment also find their way into the data collection, resulting in reduced indicated levels of annual income. This effect is more frequently seen for low annual incomes than for higher wage groups. For this reason, the group of low-income earners indicated is inappropriately large in general.

Excerpt from the statement by the Federation of Austrian Industries:

Regarding Section 1152 of the General Civil Code (*Allgemeines Bürgerliches Gesetzbuch, ABGB*), it should be recognised that, when assessing the 'market value' of work performed, reference has to be made to local remuneration standards, which generally are reflected in the remuneration levels stipulated in collective agreements.

Excerpt from the statement by the Austrian Chamber of Agriculture:

All agricultural businesses fall without exception under a collective agreement, since each business is a compulsory member of the Chamber Of Agriculture of that particular *Land*. Wage levels are adjusted during the negotiations over collective agreements held each year.

Anlage zu Stellungn Landwirtschaftskamm

The statistics above, provided by the Main Association of Austrian Social Security Institutions, indicate the length of periods of employment among agricultural and forestry workers. Here it can be recognised that a large percentage of workers are employed for only a very brief period in part. What is more, the employment relationships are part-time in many cases. This can be attributed to the seasonal nature of employment in this sector and by the small-scale structure of agricultural businesses in Austria. The workers employed in agriculture are frequently individuals pursuing additional income – alongside other (main) employment. It also needs to be recognised that many workers commute on a daily basis (some of them to part-time jobs) from neighbouring Eastern European countries. The minimum wages stipulated in the collective agreements for unskilled agricultural workers largely correspond to the statutory minimum wage in Germany (when taking into account special payments). No negative outliers exist.

Article 4§2

In response to the first question:

There were no significant changes compared to the second report.

Reply to the supplementary question on Art. 4§2 in the Conclusions 2014):

Senior public-service employees:

As explained in response to previous supplementary questions, within 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 unit heads in federal ministries, department heads, general-directorate heads) as these employees' fixed salary or an additional salary

supplement is regarded as compensation for the additional time worked and the additional workload.

Additional evidence that these provisions are applied only to senior public-service employees is seen not least in the fact that, at 3.61%, only a relatively small percentage of all federal public employees fell under these rules as of the reference date of 31 December 2016. Specifically, 0.3% received compensation for the additional time and workload in the form of a fixed salary (this group included directors general, heads of directorates and heads of major subordinated administrative offices) and 3.3% in the form of a salary supplement (this group included department heads, unit heads and also heads of major subordinated administrative offices).

Managing executives as defined in the *AZG:*

In Austria, managing executives generally fall within the scope of the Working Hours Act (*Arbeitszeitgesetz, AZG*). Managing executives are exempt from this Act only when, as specified in Section 1 Para. 2 no. 8 *AZG*, they have been entrusted with autonomously fulfilling key management responsibilities. This is the only category of employees that is considered to act more in the role of the employer, allowing them to advocate and assert their own interests to an appropriate extent independently.

Whether an individual is to be regarded as a managing executive as defined in the *AZG* can be determined based on the criteria below, specified in the report by the Austrian Committee for Social Administration (*Ausschuss für soziale Verwaltung*) (1463 to the stenographic records of the National Council in legislative period XI) on the original version of the *AZG* (published as Federal Law Gazette no. 461/1969):

- Those employees who, due to their influential position, stand out from the staff as a whole shall be excluded from the scope of *AZG*.
- When determining whether employees meet the criteria to be regarded as 'managing executives', more weight should be given to their actual influence and roles.
- Accordingly, positions such as commercial directors not having any legal liability outside the company should also be classified as employees in a leadership position and thus as 'managing executives', and not only members of the management board.
- Notwithstanding the above, when interpreting this exemption, the principle of protection underlying this Act must not under any circumstances be neglected.
- The category of employees thus not to be considered as 'managing executives', and consequently coming under the protection of this Act, includes: department heads subordinate to a main department head, and foremen and officials with powers as co-signatories (*Mitprokurist*), who have not been given any key responsibilities for managing technical, commercial or administrative affairs.

The details of the individual case will always determine whether an employee is indeed to be regarded as a managing executive as defined in Section 1 Para. 2 no. 8 *AZG* and is thus exempt from the Act. A corresponding wealth of rulings by the Austrian Administrative Court (*VwGH*) and the Supreme Court of Justice (*OGH*) exists on this matter:

- Whether a person is classified as a managing executive depends not only on the details of the individual's employment contract and the employment category the person is assigned to but also on the employee's actual activities (*OGH*, 22 February 1983, 4 Ob 94/82).

- Being immediately subordinate to the management board does not automatically make an employee a managing executive who is exempt from the *AZG* (*OGH*, 24 September 2004, 8 Ob A 34/04i).
- According to rulings handed down by the *VwGH* (and here in particular *VwGH* 97/11/0188 of 24 February 1998), the conditions for an exemption as specified in Section 1 Para. 2 no. 8 *AZG* are met where an employee manages major areas of a business, under his or her own responsibility and in such a manner as to have an influence on the continued existence and development of the entire company, so that the particular individual stands out from the staff as a whole due to this influential position. The employee concerned represents in effect the company executive responsible for that major area of the business, empowered to give to all subordinate employees in that area both specific and general instructions concerning the details and the organisation of their activities.
- The underlying condition here is that the individual manages under his or her own responsibility major areas of a business and thereby has an influence on the continued existence and development of the entire company (*VwGH* 2013/11/0116, 26 September 2013).
- Where employees not only have a management role but are additionally involved in activities not directly related to that role, the activity constituting the predominant part of their work will determine whether they are classified as managing executives as defined in Section 1 Para. 2 no. 8 *AZG* (*VwGH* 92/18/0354, 22 October 1992; *VwGH* 90/19/0318, 22 October 1990).
- To be exempt from the *AZG*, a managing executive has to be entrusted with 'key management responsibilities'. This is the case not only where the employee is given the role of a line manager but also where a person is responsible for commercial or technical or business decisions (*VwGH* 97/11/0188, 24 February 1998).
- An important feature characterising managing executives who are exempt from the *AZG* is the fact that other employees are subordinate to the person concerned (*VwGH* 91/19/0286, 25 November 1991), whereas merely having to supervise more than one staff member is not by itself significantly influential for the company as to qualify as a 'key management responsibility' (*VwGH* 92/18/0354, 22 October 1992).
- It is not necessary for the person to have the power to decide on hiring and dismissing other employees (*VwGH* 97/11/0188, 24 February 1998); nonetheless, the fact that the employee concerned can give notice of termination or dismiss employees only after consulting with other company officials is taken as indicating only limited direct decision-making responsibilities within the 'staff hierarchy' and that the employee falls under the *AZG* (*VwGH* 92/18/0354, 22 October 1992).
- Another factor in classifying the status of employees is to what extent they are restricted in scheduling their working hours and to what extent they are subject to corresponding checking. Tight restrictions in this regard are always taken as an indication of the applicability of the *AZG* (*VwGH* 97/11/0188, 24 February 1998).
- Branch managers can, but must not necessarily, be considered 'managing executives'. With companies having numerous branches, an individual branch manager, having only minor influence on the continued existence and development of the entire company, is not considered a 'managing executive'. This is especially the case where branch managers have only a narrowly defined scope of action and are not allowed to take all major decisions relating to the running of their branch (*VwGH* 91/19/0134,

28 October 1993). The key point is to what extent the employee is obliged to follow instructions: The mere fact that branch managers are obliged to follow instructions does not exclude them from classification as managing executives (*VwGH* 90/19/0318, 22 October 1990).

In summary, it needs to be assumed for Austria as well that only high-level managing executives are exempt from the *AZG* and thus from the overtime provisions specified in that Act.

Caretakers:

Due to the special conditions applying to their employment relationships, for caretakers, there are no explicit overtime provisions comparable to other employee categories.

Such employment relationships are based on agreements specifying certain precisely designated tasks, such as the cleaning and maintenance of building and property areas, to be completed and paid by task.

Compulsory presence is consequently limited to the time during which concierges provide services, so that they usually have a lot of freedom in deciding their schedules.

Remuneration is paid based on each completed task, while a distinction is made between normal jobs to be completed regularly and exceptional jobs, which are paid at a higher rate and have to be agreed separately (cf. Section 4 of the Austrian Caretakers' Act, *Hausbesorgergesetz, HBG*). When caretakers complete such exceptional, infrequently required jobs as agreed (for example cleaning the building after refurbishment) they also receive higher pay – largely corresponding to overtime as paid to other employment categories.

To avoid an excessive workload, Section 4 Para. 5 of the *HBG* limits the amount of work resulting from the caretaker's duties to the magnitude of work able to be regularly accomplished by a full-time worker when complying with the normal weekly working hours that apply to the large majority of employees (subject to the *AZG*).

Section 19 *AZG* similarly states that the work duties stipulated for employment relationships involving the cleaning, maintenance and surveillance of residential buildings must not exceed the amount able to be regularly accomplished by a full-time worker when complying with normal weekly working hours.

Teaching and educational staff at private teaching and education institutions:

Employees in this category are exempt from the Working Hours Act. However, employees working at the following categories of institution fall under a separate minimum wage scheme:

- Private educational institutions providing instruction in the subjects referred to in Section 3 Para. 2 no. 1 of the School Organisation Act (*Schulorganisationsgesetz, SchOG*);
- Institutions of political, social studies and business studies education;
- Institutions of continuing vocational training;
- Institutions for later completion of schooling and continued and extended schooling;
- Institutions for basic and advanced training of adult education personnel;
- Institutions providing education in life coping skills;
- Language institutes.

In the case of the above, the minimum wage scheme referred to as M 21/2016/XXIII/97/1 (Federal Law Gazette III no. 327/2016) applies. Pursuant to Section 3 Para. 2 of this minimum wage scheme, overtime work is the case where the conditions listed in Section 6 *AZG* are met. Overtime remuneration is composed of the base hourly rate and a 50% supplement.

However, employees of businesses, companies and associations belonging to the professional association of employers of private educational institutions (*BABE*) fall under the collective agreement for employees of private educational institutions (S 5/2016/XXIII/97/1). The scope of applicability of this collective agreement was broadened as a result of Federal Law Gazette II no. 187/2016: consequently, it now additionally applies to institutions that have non-company adult education as their main purpose and are recognised as an institution of non-company adult education based on provisions of labour market law or on federal or *Laender* funding provisions. This collective agreement (including its amended, i.e. broadened scope of application) specifies a 50% overtime supplement in addition to base hourly compensation, whereby overtime work is defined as work beyond normal working hours (cf. the detailed regulations in Sections 11 and 20 of this collective agreement). The agreement also defines a ceiling on the number of admissible working hours.

In response to the second question:

No specific transposition measures in the period under review.

In response to the third question:

No statistics available.

Article 4§3

In response to the first question:

Reference is made to previous reporting. Beyond this, the obligation to state the minimum salary in job advertisements was among the provisions improved by the 2013 amendment of the Equal Treatment Act (*Gleichbehandlungsgesetz, GlBG*), Federal Law Gazette I no. 107/2013. Previously in job advertisements, details had only been required relating to minimum remuneration as specified in the relevant collective agreement, statutory provisions or other standards of collective law. The scope of the obligation to provide details of minimum remuneration in job advertisements was subsequently broadened to include all employers of employees working in those sectors of the economy for which no minimum level of remuneration has been defined in a collective agreement, in statutory provisions or other standards of collective law. The new provision does not apply to job ads where quasi-subordinate employees or employees in top executive positions are to be recruited.

Reply to the supplementary questions on Art. 4§3 in the Conclusions 2014:

The legal consequences of violating the equal treatment principle through discrimination based on gender are laid down under the heading of 'Equal treatment of women and men in the world of work' in Part I, and specifically in Section 12, of the Equal Treatment Act (*Gleichbehandlungsgesetz, GlBG*), Federal Law Gazette I no. 66/2004. With the amendment

entering into force on 1 August 2013, Section 12 of that Act was supplemented with Para. 14, specifying that the amount of indemnity for any personal detriment suffered is to be determined so as to truly and effectively compensate for the detriment, be appropriate for the injury suffered and be suitable to prevent further discrimination.

When determining indemnity for any discrimination suffered, specific consideration is to be given to how substantial the detriment is and how long it continued; according to Section 12 Para. 14 of the *GlBG,* the amount of indemnity for the psychological detriment suffered is to be determined so as to truly and effectively compensate for the detriment, be appropriate for the detriment suffered and be suitable to prevent further discrimination (*OGH*, 26 June 2014, 8 ObA 23/14m, JusGuide 2014/40/12705).

In response to the second question:

The National Action Plan (NAP) on Gender Equality in the Labour Market was a comprehensive programme of measures aiming at equal pay to be implemented in the period from 2010 to 2013. Encompassing a total of 55 measures, the NAP demonstrated on the one hand the many and diverse challenges facing the Austrian labour market in achieving gender equality. Beyond this, by bundling the measures in one package, the plan paved the way for implementation in coordinated fashion aligned with strategic goals, with the result that 38 measures or 69% of the total were able to be fully implemented. Another 16 measures (or 29%) are in the process of implementation or have been partially implemented.

The continuation of the NAP was adopted in the new government programme for the period of 2013 to 2018, demonstrating the renewed intention of policymakers at the highest level to truly achieve gender equality in the labour market. Continued effort is concentrated on areas including part-time employment and the advancement of women at company level.

The 2013–2018 government programme included plans to evaluate the requirements, specified in the Equal Treatment Act, to provide details of minimum remuneration in job advertisements and to prepare income reports. The findings were published in 2015: http://www.bmgf.gv.at/home/Einkommenstransparenz (in German) The evaluation clearly identified the effectiveness of these measures in enhancing pay transparency. At the same time potential for improvement was brought to light. The study findings, published in 2015, provide the basis for discussions over further steps towards expanding the legal framework to encourage pay transparency. Since being made available, the online wage calculator (www.gehaltsrechner.gv.at, in German) has been used and the accompanying detailed information viewed by over two million site visitors.

According to Eurostat, the gender pay gap as based on gross hourly earnings is 21.7% in the private sector (2015). A practical guide for preparing income reports, now in an updated edition, has been published (in German) by the Federal Ministry of Health and Women's Affairs in cooperation with the Chamber of Labour and the Women's Affairs Department of the Austrian Trade Union Federation (*ÖGB-Bundesfrauenabteilung*): http://www.bmgf.gv.at/cms/home/attachments/4/5/7/CH1553/CMS1465832947892/einkommensbericht_praxisleit_26575.pdf.

Within the framework of an impact-based approach, gender budgeting has been required to be implemented in all areas of the Federal Government since 1 January 2013. The actual

equality of women and men is expressly considered at every stage of administrative activity, from the definition and subsequent implementation of objectives to the later evaluation of the objectives achieved. According to the Federal Government's budgeting rules, a maximum of five impact objectives are required to be defined by each of the federal ministries as well as by the supreme bodies (Office of the Federal President, Administrative Court, Constitutional Court, Court of Audit and the Austrian Ombudsman Board). One of the objectives must be related to gender equality. Measures – including gender equality measures – for implementing the objectives are required to be defined, along with indicators suitable for verifying achievement of the goals.

This process is to be distinguished from regulatory impact assessment of legislation and major projects, which has been compulsory since 1 January 2013. With all planned regulatory activities (e.g. statutes, ordinances and Art. 15a agreements) as well as other projects of extraordinary budgetary significance (e.g. large-scale purchases, infrastructure projects), the impacts for the equality of women and men have to be analysed in detail. Other subjects of analysis include: financial and environmental impacts, impacts in the field of consumer protection policy and on the overall economy, impacts on small and medium-sized enterprises, impacts on administrative costs for citizens and enterprises, social impacts, and impacts on children and youth. Every piece of legislation and every project is to be analysed with a view to such impacts using online tools which allow legislators and budgetary experts to assess the outcomes
(WFA-IT-Tool; refer also to
https://www.oeffentlicherdienst.gv.at/wirkungsorientierte_verwaltung/folgenabschaetzung/index.html (in German).
The inter-ministerial working group for gender mainstreaming and gender budgeting (IMAG GMB; www.imag-gmb.at) has been serving since 2000 to support and consult with the federal administration in activities aimed at implementing gender mainstreaming and gender budgeting.

The *Frauen-Rechtsschutz* association, devoted to providing legal protection to women, has been supported since 1998 and received from funding for women's projects grants of EUR 45,000 per year in the period from 2013 to 2015. The association received a pro-rated annual share of EUR 41,250 in 2016, due to aligning the funding period with the calendar year. A total of 27 funding requests to support law cases were accepted and fulfilled by the association's committees in 2016. Ten law cases could be successfully settled (i.e. in favour of the individuals receiving funding and in line with the envisaged goal) in 2016. 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.

Additional specialised counselling services in the context of educational programmes received EUR 0.5 million on average in funding each year between 2013 and 2016. Such services target women, to strengthen their social skills and enhance their vocational

qualifications, as well as girls, providing them with vocational guidance to broaden their awareness of vocational options (e.g. non-traditional occupations). Examples include:

- Nationwide online counselling for girls (MonA-Net);
- The Vienna-based Association for Advancing the Employment, Education and Future of Women (abz*austria);
- Neway Forum for women starting businesses and the START:KLAR project run by VFQ Gesellschaft für Frauen und Qualifikation mbH, in Linz;
- Learning centre and Nowa Women's Academy, offered by the private association Nowa Training, Beratung, Projektmanagement, in Graz;
- Roberta and Robina workshops offered by the Centre for Interactive Media and Diversity to arouse early enthusiasm for technical subjects among girls at elementary and lower secondary level, in Vienna and Lower Austria.

The current government programme for 2013-2018 includes action to increase the percentage of women in MINT careers as well as plans to set up a web platform for girls and women in technical careers. Made available online in April 2015, the new internet platform www.meine-technik.at (in German) can contribute towards increasing the number of women in technical fields and raising industries' awareness of women's potential in these areas, while also helping to utilise synergy effects, exchange knowledge and experience, establish contacts among stakeholder groups, and pioneer new career fields. Schools, businesses, associations and counselling centres can find out about best practice examples and gather inspiration, and can also add to the wide variety of offerings by contributing information on their projects and initiatives for advancing women and girls.

From September 2013 to April 2015, the Ministry of Women's Affairs acted as coordinator of 'Women are top! To the top by innovative corporate cultures', a PROGRESS project with the goal of further increasing the proportion of women sitting on advisory boards and in executive positions; the EU-co-funded project was conducted in cooperation with the Vienna University of Economics and Business Administration and with FORBA, an employment research and counselling centre. Businesses and management personnel were closely involved to enable sharing of experiences and model initiatives, an online simulation for nominating advisory board members was developed and roughly 50 exemplary measures, aimed at nurturing a corporate culture of gender equality, were assembled and made available online. This provides companies and decision-makers with inspiration and experience to support them in further steps towards increasing the share of women in management and decision-making roles in business. Further details and a summary of project outcomes are available (in German) at: www.frauenfuehren.at

In passing the Federal Act on the Elimination of Discrimination Against Women (Federal Law Gazette no. 837/1992), the Federal Government has entered a commitment to substantially reduce discrimination in society, the family and economic matters. This federal act needs to be seen in the context of the federal constitutional act on the varying retirement ages of women and men. The varying age limits have been declared admissible until 2018, after which the age limits are to be adjusted in increments every six months until equal. It is planned to accompany this procedure with a gradual reduction of discrimination in society, the family and economic matters.

A report is to be submitted to the National Council every two years on the action taken by the Federal Government in this regard. These records are for the purpose of enabling the National Council to identify the current status in eliminating discrimination against women.

A focus topic has been selected and separately presented for every reporting period since 2007–2008. Past focus topics were:

- 2007–2008 Girls and young women
- 2009–2010 Labour market
- 2011–2012 Gender budgeting
- 2013–2014 Women's socio-economic situation

The Federal Government adopted a detailed women's quota in March 2011, applying to the supervisory boards of state-owned and state-affiliated businesses in which the Federal Government holds a share of 50% or more. The plan provides for a gradually increasing percentage of women among the supervisory board members delegated by the Federal Government, specifically 25% by end-2013 and 35% by end-2018. To reinforce the impact of the Federal Government's exemplary policy and to increase awareness of the benefits of involving more women, the Council of Ministers adopted a resolution on 15 March 2011 committing the Federal Government to an annual review of the quota system and to presenting a joint progress report to the Council of Ministers. Among businesses in which the Federal Government holds a share of 50% or more, the average share of women delegated by the Federal Government was 40,3% in 2016 (2011: 26%; 2012: 33%; 2013: 36%, 2014: 37%, 2015: 38%). Most recently, more than half of these businesses (31 companies) had already achieved the 35% quota set for 2018.

Public service employees have the option of taking unpaid parental leave following the birth of a child already in the time during which the mother is prohibited from working. This option, referred to as early parental leave or the 'baby month', is open to employees married to a child's mother, the mother's registered partner, and the mother's cohabiting partner, provided they live in the same household with the mother and child. As of 31 December 2016, 1927 federal public-service employees had made use of this baby month option. A similar arrangement has since been introduced by many of Austria's *Laender* as well as in a number of companies and collective agreements. Those claiming such parental leave for children born since 1 March 2017 can also receive a 'family time bonus' of EUR 22.60 per day.

To better reconcile work and family life, steps have been and continue to be taken to encourage fathers' involvement in rearing their children. Men and Reconciliation of Work and Family: Supporting the Path to Gender Equal Distribution of Parental Leave and Working Time' is an EU-co-financed project launched in December 2015 as a cooperative effort of the federal ministries for social affairs and women's affairs, social research institutes L&R Sozialforschung and FORBA, and social partners Chamber of Labour, Austrian Trade Union Federation and Federation of Austrian Industries. As part of the project, strategies are being laid out aimed at improving in the working world the general conditions for fathers' involvement in their families, specifically by supporting at household level the equal distribution of childcare and by evoking more awareness of the positive impact of shared childcare responsibility. Another aspect has been to develop an online calculator that allows couples to quickly and easily determine what impact equally distributing periods of gainful employment and childcare has on the total family income. The tool has been available at www.gleich-berechnet.gv.at since November 2016, free of charge and in German. It provides additional information about family benefits and legal aspects of parental leave and part-time employment, as well as key contact information for expecting parents.

In response to the third question:

Comprehensive income data for Austria are contained in the General Income Report (*Allgemeiner Einkommensbericht*), published every two years by the Austrian Court of Audit, and in the Structure of Earnings Survey (SES), conducted every four years.

Some of the items detailed in the General Income Report of the Austrian Court of Audit for 2016 (http://www.rechnungshof.gv.at/berichte/ansicht/detail/allgemeiner-einkommensbericht-20161.html, available in German only) are presented below.

Expressed in terms of mean gross annual income (fully unadjusted), the gender pay gap was 38.4% in 2015, i.e. women earned on average this much less than men. This -40% difference has remained more or less the same over the past 15 years. This can be explained for the most part by the extremely large, increasing percentage of women working part-time. The median income in 2015 was EUR 20,334 among women and EUR 33,012 for men. Since the onset of the financial and economic crisis in 2008, the difference has decreased slightly by 2.5 percentage points (refer to Table 1). The gender income gap is smaller among higher incomes than in the lower income range, specifically 31.7% in the third quartile versus 48.2% in the first quartile. The consistently substantial income gap in the lower income range has decreased by 7.9% 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 57% for blue-collar workers and 49% for white-collar workers in 2015, it was significantly smaller in the public-employment sector (23% for contractual public employees and 5% 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 17.3%.

One noteworthy fact is that income differences among year-round full-time employees are significantly smaller in the public sector (contractual public employees 7%; female civil servants actually earn 3% more than their male colleagues) than in the private sector (blue-collar workers 30%, white collar-workers 33%).

The Austrian Structure of Earnings Survey (SES) examines companies in industry (sections B-F of ÖNACE 2008) and in services (sections G-N and P-S) with ten or more employees. It does not include entities under 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 2014) reveal a gender difference in median gross hourly earnings of 19.0% to the disadvantage of women (excluding extra hours and overtime; excluding apprentices). The median hourly earnings of women working part-time are 10.9% lower than those of women working full-time (difference among men: 25.3%). The gross hourly earnings of women working part-time are 25.2% 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

accommodation and food service activities (women: EUR 8.53, men: EUR 9.00) and other service activities (women: EUR 9.21, men: EUR 12.27). High wages and salaries are paid to women working in energy supply businesses (women: EUR 19.57, men EUR 23.41) and in financial and insurance activities (women: EUR 18.37, men: EUR 23.99). In all sectors surveyed, the gross hourly earnings of women are lower than those of men (see Table 3).

The largest pay gaps are found in these sectors: professional, scientific and technical activities – 25.70%; administrative and support service activities – 24.94%; other service activities – 23.50%; and financial and insurance activities – 23.43%.

The following sectors show the smallest pay gaps: human health and social work activities 4.69%; accommodation and food service activities – 5.22%; transportation and storage – 5.25%; and water supply, sewage and waste management, and remediation activities – 6.28%.

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 that goes back to 2006.

The structural indicator reveals for Austria in 2015 a gross hourly earnings difference between genders of 21.7% (arithmetic mean of gross hourly earnings, including extra hours and overtime, including apprentices); this level represents an improvement of 3.4 percentage points over 2008 (25.1%).

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 2016) are based on data collected by the Main Association of Austrian Social Security Institutions (*Hauptverband der österreichischen Sozialversicherungsträger*).

It can be seen that 24.9% of the employees in the sector with the highest employee numbers, namely "Manufacturing" (with a total of 581,633 employees), are female. An above-average share of female employees at 60.1% is found in the second largest sector ("Public administration and defence, compulsory social security") and at 54,4% in the third largest ("Wholesale and retail trade and repair of motor vehicles and motorcycles"). When retail trade alone is considered, women account for 73.0% of the 287,572 employees in total.

The share of female employees is particularly large in the sections "Activities of households as employers" (83.7%, with a total of only 3,391 employees) and "Human health and social work activities" (75.9%). The share of women is particularly small in construction (12.4%), mining (13.1%) and energy supply (17.6%).

The most important economic sections for the employment of women are: "Public administration"; "Trade and repair"; "Human health and social work"; "'Manufacturing"; and "Accommodation and food service activities". All totalled, 51.0%, i.e. half of all dependently employed women work in these areas.

Table 1: Gross annual income of dependently employed persons, 2010-2015, in total

Year	Quartile/median	Women	Men	Difference (%)
2015 (in EUR)	First quartile (20%)	5,842	11,435	48.9
	Second quintile (25 %)	8,654	16,692	48.2
	Median (50%)	20,334	33,012	38.4
	Third quartile (75 %)	33,113	48,471	31.7
	Fourth quintile (80 %)	36,729	53,744	31.7
	Average	23,877	37,745	36.7
2014 (in EUR)	First quartile (20%)	5,744	11,666	50.8
	Second quintile (25 %)	8,477	16,866	49.7
	Median (50%)	19,895	32,563	38.9
	Third quartile (75 %)	32,391	47,696	32.1
	Fourth quintile (80 %)	35,956	52,912	32.0
	Average	23,345	37,229	37.3
2013 (in EUR)	First quartile (20%)	5,624	11,568	51.4
	Second quintile (25 %)	8,300	16,717	50.3
	Median (50%)	19,460	31,961	39.1
	Third quartile (75 %)	31,761	46,921	32.3
	Fourth quintile (80 %)	35,305	52,058	32.2
	Average	22,931	36,654	37.4
2012 (in EUR)	First quartile (20%)	5,535	11,760	52.9
	Second quintile (25 %)	8,174	16,800	51.3
	Median (50%)	19,052	31,396	39.3
	Third quartile (75 %)	31,156	46,094	32.4
	Fourth quintile (80 %)	34,698	51,163	32.2
	Average	22,512	36,193	37.8
2011 (in EUR)	First quartile (20%)	5,469	11,804	53.7
	Second quintile (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 quartile (20%)	5,498	12,374	55.6
	Second quintile (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

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, EStG*).
Source: Statistics Austria, People & Society, Social Statistics, Personal Income, Annual Personal Income

Table 2 - Gross hourly earnings of full-time and part-time employees in 2014 (SES)

Quartile/average	Women (in EUR)	Men (in EUR)	Difference (in EUR)
Full-time employees			
First quartile (25%)	10.10	12.44	18.81
Median (50%)	12.98	15.46	16.04
Third quartile (75%)	17.00	20.62	17.56
Average	14.67	18.20	19.40
Number of dependently employed	*475,170*	*1,227,867*	
Part-time employees			
First quartile (25%)	9.10	8.95	-1.68
Median (50%)	11.56	11.55	-0.09
Third quartile (75%)	15.10	16.50	8.48
Average	13.12	15.06	12.88
Number of dependently employed	*533,564*	*172,556*	
Full-time and part-time employees			
First quartile (25%)	9.52	11.94	20.27
Median (50%)	12.23	15.09	18.95
Third quartile (75%)	15.94	20.23	21.21
Average	13.85	17.81	22.23
Number of dependently employed	*1,008,734*	*1,400,423*	

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. 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.
Dependently employed persons in private-sector companies with ten or more employees (economic sections B–N and P–S of ÖNACE 2008). Excluding apprentices. -1) Gross hourly earnings excluding extra hours and overtime (including, however, supplements for night work, shift work and work on Sundays and public holidays). -2) Excluding 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.

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

Table 3 - Gross hourly earnings without extra hours and overtime[1)] by economic activity (October 2014)

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		1,008,734	12.23	1,400,423	15.09	18.95
B	Mining and quarrying	802	13.56	6,089	15.02	9.72
C	Manufacturing	123,079	12.63	386,788	16.28	22.42
D	Electricity, gas and water supply	3,616	19.57	17,943	23.41	16.40
E	Water supply, sewerage, waste management and remediation activities	2,929	12.09	10,837	12.90	6.28
F	Construction	20,777	13.34	175,341	14.60	8.63
G	Wholesale and retail trade, repair of motor vehicles and motorcycles	251,791	11.25	193,986	14.07	20.04
H	Transportation and storage	32,997	12.82	132,084	13.53	5.25
I	Accommodation and food service activities	79,625	8.53	59,247	9.00	5.22
J	Information and communication	23,914	16.57	51,433	20.85	20.53
K	Financial and insurance activities	53,301	18.37	51,871	23.99	23.43
L	Real estate activities	11,912	13.81	9,731	16.86	18.09
M	Professional, scientific and technical activities	62,991	14.66	70,186	19.73	25.70
N	Administrative and support service activities	84,456	9.21	103,404	12.27	24.94
P	Education	60,597	14.01	46,028	17.94	21.91
Q	Human health and social work activities	143,771	14.01	46,056	14.70	4.69
R	Arts, entertainment and recreation	17,689	11.02	18,951	12.58	12.40
S	Other service activities	34,485	11.72	20,450	15.32	23.50
B-F	Industry and construction	151,202	12.82	596,998	15.72	18.45
G-N, P-S	Services	857,531	12.11	803,425	14.40	15.90

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).

Source: Statistik Austria: Structure of Earnings Survey 2014 – dependently employed persons in private-sector companies with ten or more employees (economic sections B–N and P–S of ÖNACE 2008).

Table 4 - Dependently employed persons by economic section (ÖNACE 2008; annual average values 2016)

Economic activity by ÖNACE 2008 section	Dependently employed persons (absolute numbers)			*Share of women in %*
	Total	*Women*	*Men*	
Agriculture, forestry and fishing	23,212	8,199	15,013	35.32
Mining and quarrying	5,592	735	4,856	13.14
Manufacturing	581,633	144,888	436,745	24.91
Electricity, gas and water supply	26,800	4,725	22,075	17.63
Water supply, sewage and waste management, and remediation activities	15,603	3,318	12,285	21.27
Construction	248,584	30,766	217,818	12.38
Wholesale and retail trade, repair of motor vehicles and motorcycles	538,297	293,280	245,017	54.48
Transportation and storage	188,806	38,100	150,705	20.18
Accommodation and food service activities	208,144	119,418	88,726	57.37
Information and communication	88,861	29,490	59,371	33.19
Financial and insurance activities	115,779	58,212	57,567	50.28
Real estate activities	41,001	23,924	17,078	58.35
Professional, scientific and technical activities	167,169	87,797	79,373	52.52
Administrative and support service activities	198,471	84,892	113,579	42.77
Öffentliche Verwaltung, Verteidigung, Sozialversicherung	558,636	335,670	222,966	60.09
Education	104,277	59,316	44,961	56.88
Human health and social work activities	256,851	194,829	62,022	75.85
Arts, entertainment and recreation	36,544	16,752	19,792	45.84
Other service activities	92,908	63,860	29,048	68.73
Activities of households as employers; undifferentiated goods- and services-producing activities of households for own use	3,391	2,839	552	83.72
Activities of extraterritorial organisations and bodies	769	428	341	55.66
Other	1,103	464	639	42.07
National training service (conscripts)	5,519	21	5,498	0.38
Parental leave while still employed	78,921	75,924	2,997	96.20
Total (excluding conscripts)	3,581,352	1,677,826	1,903,526	46.85

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. In the table above, “Others” and “Individuals on leave while still employed” are included in the total number of dependently employed individuals.

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 20 March 2017. http://www.dnet.at/bali

Employees at federal level

Income differences in federal public service

There were no significant changes compared to the second report. Details of income differences by gender among federal employees can be found in the Income Report as specified in Section 6a of the Federal Equal Treatment Act (*Bundes-Gleichbehandlungsgesetz, B-GlBG*):

https://www.oeffentlicherdienst.gv.at/fakten/publikationen/Einkommensbericht_2016.pdf?5te1bj (in German).

Income report pursuant to Section 6a B-GlBG for the federal public service (Data basis: 2014 calendar year)

	Employees		Gross annual income		Average age		Media income	Average age
Occupational group	Men	Women	Men	Women	Men	Women	of women is ...% or years below that of men	
General administration	23,471	26,758	44,750	34,934	48.8	45.8	21.9%	3.0
A1, v1	4,022	3,050	73,653	60,222	48.4	43.9	18.2%	4.6
A2, v2	7,378	6,195	55,656	47,114	49.5	45.8	15.4%	3.7
A3, v3, h1	6,337	10,660	37,016	33,560	49.2	46.3	9.3%	2.9
A4-7, v4-7, h2-5	4,403	6,170	27,811	25,398	46.3	45.0	8.7%	1.3
DKL	811	587	76,515	62,276	56.7	55.1	18.6%	1.6
ADV-SV	520	96	59,629	54,898	46.1	47.7	7.9%	-1.6
Police and prison staff	26,904	4,789	50,893	40,500	45.0	34.4	20.4%	10.6
E1	651	39	80,404	62,130	51.6	44.1	22.7%	7.5
E2a	9,795	887	57,482	46,156	50.1	39.7	19.7%	10.4
E2b, Border control	15,167	3,370	47,704	40,279	42.9	34.2	15.6%	8.7
E2c, Asp	1,247	493	18,160	17,683	26.4	24.9	2.6%	1.5
DKL	44	0	51,406	-	53.8	-	-	-
Judges, public prosecutors	1,478	1,717	90,018	78,296	48.0	43.3	13.0%	4.7
R3, III	97	35	142,179	117,504	55.2	50.7	17.4%	4.6
R2, II	105	84	106,517	103,607	53.3	51.4	2.7%	1.9
R1a, R1b, I	747	994	85,289	79,112	48.0	44.2	7.2%	3.9
Judges of the Federal Administrative Court or of the Bundesfinanzgericht	209	183	95,115	92,527	52.5	51.0	2.7%	1.5
Judge candidates	73	144	33,669	33,669	29.4	28.4	0.0%	1.0
St3, Procurator General	12	4	126,818	136,997	51.7	53.3	-8.0%	-1.6
St2, STII	51	26	89,585	87,019	46.1	45.4	2.9%	0.7
St1, STI	184	247	79,496	68,623	43.5	38.7	13.7%	4.8
Military service	14,565	375	40,851	28,943	42.2	31.2	29.2%	11.0
MBO1, MZO1	690	37	88,745	72,235	48.0	44.7	18.6%	3.3
MBO2, MZO2	2,173	22	54,164	39,659	44.5	32.6	26.8%	11.8
MBUO1, MZUO1	6,646	58	42,756	32,577	48.8	36.7	23.8%	12.1

MBUO2, MZUO2	2,342	97	33,008	30,564	32.6	30.8	7.4%	1.8
MZCh	654	134	26,860	22,290	24.7	26.2	17.0%	-1.4
DKL	616	0	40,316	-	54.1	-	-	-
International Operations Forces (KIOP)	1,428	26	27,170	30,824	24.0	25.5	-13.5%	-1.5
Teachers	19,241	29,582	59,797	51,732	48.0	45.3	13.5%	2.7
L1, l1	14,663	23,097	64,440	54,571	49.0	46.0	15.3%	3.0
L2, l2	4,183	5,849	46,452	41,980	46.0	44.3	9.6%	1.7
L3, l3	123	121	23,735	23,681	45.0	47.0	0.2%	-2.0
Assistant	272	515	17,034	16,881	25.2	24.8	0.9%	0.5
Teachers at teacher education colleges (LPH, Iph)	679	865	68,333	63,553	52.1	50.2	7.0%	1.9
School supervision	175	144	84,246	81,829	56.3	55.6	2.9%	0.7
Nursing	81	175	43,456	39,957	48.0	48.0	8.1%	0.0
K2, k2	25	30	47,950	41,262	47.7	44.7	14.0%	3.0
K3, k3	6	13	55,319	54,189	55.0	56.5	2.0%	-1.5
K4, k4	35	94	41,909	40,155	48.1	46.6	4.2%	1.5
K5, k5	0	6	-	42,461	-	53.0	-	-
K6, k6	15	32	31,084	33,317	45.4	50.5	-7.2%	-5.1
Other	201	476	105,296	105,296	53.7	51.1	0.0%	2.6
Doctors (school doctors, HV-doctors or A1 doctors)	185	432	105,296	105,296	55.7	51.6	0.0%	4.1
Other	16	44	29,844	21,661	30.1	46.0	27.4%	-15.9

Article 4§4

Not ratified by Austria.

Article 4§5

In response to the first question:

There were no significant changes compared to the second report.

In response to the second question:

There were no significant changes compared to the second report.

Reply to the supplementary questions on Art. 4§5 in the Conclusions 2014:

The Enforcement Code (*Exekutionsordnung, EO*) specifies in rather general terms the proceedings for the enforcement of claims eligible to be enforced. The proceedings pursuant to the *EO* concern a case of enforcement of a financial claim on a financial claim held by the obligor against a third party (e.g. claim to remuneration). The *EO* does not, however, cover all types of wage garnishment. There are also proceedings, defined in the Austrian Revenue Enforcement Code (*Abgabenexekutionsordnung, AbgEO*), which allow finance authorities to collect, by way of enforcement on moveable goods or receivables, outstanding taxes and public fees owed to the Federal Government or a *Laender* government.

The *EO* does not specify the extent to which pay deductions can be made in cases other than wage execution, while, according to Section 293 *EO,* any agreement between the obligor and the creditor cannot be applied to either preclude or restrict the application of the limitations on attachment. Any disposal conflicting with the provision referred to the above, be it through assignment, transfer, pledging or through any other legal transaction, does not have any legal effect. Apart from the cases where previously existing provisions allow unlimited deductions to be made from the part of the claim subject to execution, it is permitted to set off a claim against the part of the claim withheld from execution only where this is for the purpose of collecting an advance deposit, or a counter-claim held within a legal context, or a claim to damages if the damage/loss was caused intentionally. Any agreement is considered legally void that establishes or later modifies a claim to thereby assign it properties that would allow it to be fully or partially withheld from execution or from being included in the calculation of the portion of total income which is subject to execution.

The General Social Insurance Act (*Allgemeines Sozialversicherungsgesetz, ASVG*) contains other special provisions relating to setting off claims.

The *EO* does not specifically require the issuing of a payslip (*Lohnzettel*). Section 292l Para. 2 of the *EO* does, however, provide the obligor with a means of verification. Specifically, the creditor recovering the claim is required within four weeks of the obligor's written request to issue to the obligor a receipt showing the payments received and the balance of the claim outstanding. Where the creditor recovering the claim fails to comply with that request, the court of execution is required at the request of the obligor to suspend the execution proceedings.

Public service:

Section 127 of the Civil Service Act (*Beamten-Dienstrechtsgesetz, BDG*) 1979 requires consideration to be given to the personal circumstances and the economic capacity of a public service employee when collecting a major or minor fine from that person. The disciplinary commission is allowed to approve a maximum of 36 monthly instalments for paying off a major or minor fine. It is specified that fines are to be collected from public-service employees in active service where necessary through deductions from the monthly salary or, in the case of retired public service employees, from the monthly pension payment. Fines collected in such cases are to be used for charities benefiting public service employees.

Section 13a of the Salary Act (*Gehaltsgesetz (GehG*) sets forth the general principle that unjustified payments (*Übergenüsse* or excess benefits) not received in good faith are to be refunded to the Federal Government.

The refundable payments are to be collected from the payment claims arising from the federal public service employment relationship. In this case instalments can be stipulated, whereby consideration is to be given to the economic circumstances of the individual obliged to refund the sum.

ARTICLE 5

RIGHT TO ORGANISE

In response to the first question:

Reference is made to previous reporting, whereas the previous system of filing administrative appeals was abolished as of 1 January 2014. Within the new system of appeals, cases are referred from the administrative authority to the competent administrative court (*Verwaltungsgericht*) and subsequently to one or both of the high courts – the Administrative Court (*Verwaltungsgerichtshof*) and the Constitutional Court (*Verfassungsgerichtshof*).

Summary of previous reporting:

In Austria, the right to organise as defined in Article 5 of the European Social Charta is constitutionally guaranteed by Article 12 of the Basic Law on the General Rights of Nationals (Staatsgrundgesetz über die allgemeinen Rechte der Staatsbürger) of 21 December 1867, Imperial Law Gazette no. 142/1867, and by Article 11 of the European Convention on Human Rights (ECHR), Federal Law Gazette No. 210/1958, the latter having constitutional standing. Article 12 of the Basic Law referred to above lays down: "Austrian nationals have the right of assembly and to constitute associations. The exercise of these rights will be prescribed in special laws."

Details on exercising the right to organise are specified in the 2002 Austrian Association Act (Vereinsgesetz, VerG), Federal Law Gazette I no. 66/2002 as amended in Federal Law Gazette I no. 22/2015. The Constitutional Court has ruled that each and every breach of the Association Act constitutes direct interference with the right to organise guaranteed by Article 12 of the Basic Law. The Association Act 2002 applies to all (not-for-profit) associations in Austria. The professional associations of employers and of employees, based on voluntary membership, also fall under the provisions of the Association Act 2002, which are guided by the principle of the right to associate. Consequently, the conditions for establishing and maintaining such associations do not differ from those applying to other not-for-profit associations. The Association Act 2002 contains no provision that would prohibit certain categories of employees from forming or joining associations or trade unions. The right to establish and be a member of professional associations applies equally to Austrian citizens and non-nationals.

In the legislation applying to associations, no restrictions exist for employee or employer organisations when joining similar national or international organisations.

Pursuant to Section 3 of the Association Act 2002, the articles of association are required to include: the name of the association and its place of establishment, a clear and comprehensive description of the purpose of the association, the activities planned for achieving that purpose and the manner of procuring funding, provisions defining how membership is acquired and terminated, the rights and duties of association members, the association's bodies and their responsibilities, in particular clear and comprehensive details of the persons/officers who manage the association's business affairs and represent it externally, the procedures for appointing the association's bodies/officers as well as their terms of office, the conditions needing to be met in order for the bodies to pass valid resolutions, procedures for resolving disputes within the association, as well as provisions

governing voluntary dissolution of the association and the use of association assets in such an event.

Within four weeks of receiving notice of the formation of the association and provided that the conditions stipulated in Article 11 (2) of the ECHR have been met, the authority responsible for associations has the duty to issue an administrative decision (Bescheid) declaring that it is not permitted to establish an association that would be illegal with regard to its purpose, name or structure. If an initial examination of the articles of association submitted reveals that the association might be illegal with regard to its purpose, name or structure, the authority responsible for associations can extend the period referred to above to six weeks in total, where such an extension is required for a proper investigation to examine the unresolved issues. There are no other statutory grounds for prohibiting associations in Austrian law. If by the end of that period no declaration is issued prohibiting establishment of an association, the authority's tacit approval is considered as an invitation to the association to take up activities. The authority responsible for associations can, however, issue even before the end of that period a decision inviting the association to take up activities, as soon as the authority recognises the lack of any grounds for a declaration prohibiting establishment. Generally, the district administration authority (Bezirksverwaltungsbehörde) is the competent body for matters related to associations at municipal level; in municipalities where the police are simultaneously the first-level security authority, this responsibility rests with the police administration of the particular Land (Landespolizeidirektion). The administrative court of the particular Land (Landesverwaltungsgericht) decides on appeals against administrative decisions by the authority responsible for associations.

The association is subsequently required to notify the authority within four weeks of appointing all representing officers, providing details of each individual's role as defined in the articles of association, name, date and place of birth, address for serving notices and information, and the date as of which the officer is authorised to represent the association. Also within a four-week period, the association is required to notify the authority responsible for associations of any change of address at which official notices or information are to be served.

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 if the prerequisites specified in Article 11 (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.

The main piece of legislation on the right to assemble is the Assembly Act (Versammlungsgesetz) 1953, Federal Law Gazette no. 98 as amended in Federal Law Gazette I no. 161/2013. That Act generally permits assemblies. Assemblies held by associations fall under the Assembly Act 1953, Federal Law Gazette no. 98, with the proviso that association members are to be regarded as invited guests. Thus, any assembly limited to association members does not have to be reported to the authorities in advance. Anyone planning to hold an assembly that is open to the public and not restricted to invited guests is required to provide written notice to the authorities at the latest 24 hours in advance, including the purpose of the event, and the place and time. The authorities have the duty to prohibit assemblies with a purpose violating criminal law or that, if held, would jeopardise

public safety or well-being. The administrative court of the particular Land (Landesverwaltungsgericht) decides on appeals against administrative decisions based on the Assembly Act.

Article 7 Para. 4 of the Federal Constitutional Law (Bundesverfassungsgesetz, B-VG) guarantees the right of public employees, including members of the armed forces and the police force, to exercise their political rights without limitation. This provision of constitutional standing unequivocally lays down the same political rights for employees in public service as for all other citizens while additionally prohibiting any differentiation of the scope of the specified right based on individual areas of sovereign competence within the public service. The right to organise also applies therefore to members of the armed forces and the police force.

The right of employees to organise as well as the protection of employee organisations against interference from employers are matters defined in a statute published on 7 April 1870 in Imperial Law Gazette no. 43 (referred to as the Coalition Act or Koalitionsgesetz). That Act abolished the previous state of affairs, in which meetings, both of employers to effect a change in working and pay terms and of employees to achieve more favourable working conditions, had been punishable as a criminal offence.

A federal act to defend against enforced ideology and organisation was issued on 5 April 1930 in Federal Law Gazette no. 113 (referred to as the Anti-Terror Act or Antiterrorgesetz), which was intended to protect the right to work and assemble.

Special mention should be made of Section 4 of the Anti-Terror Act, which contains special provisions aimed at preventing the use of intimidation or force to coerce employees into joining or leaving a professional or other voluntary association. Pursuant to the provision, coercion is subject to sanction, whether exercised by employers or by employees of the same business or by third parties. The provision also makes it punishable to use intimidation or force in an attempt to exclude employees from a specific business due to their membership or non-membership in a professional or other voluntary association.

In the Works Council Act (Betriebsrätegesetz), State Law Gazette no. 283/1919, trade unions were legally recognised as key factors in shaping working conditions in Austria, specifically in their role as parties to collective agreements. The entitlement of trade unions to enter into collective agreements was subsequently defined in more detail in the Act of 18 December 1919, State Law Gazette no. 16/1920, on the establishment of official settlement offices and collective labour agreements. The current legal framework is enshrined in the Labour Constitution Act (Arbeitsverfassungsgesetz, ArBVG), Federal Law Gazette no. 22/1974 as amended.

https://www.ris.bka.gv.at/GeltendeFassung.wxe?Abfrage=Bundesnormen&Gesetzesnummer=10008329(in German)

Austria ratified the Freedom of Association and Protection of the Right to Organise Convention (No. 87) of the International Labour Organization, through Federal Law Gazette no. 228/1950.

Representativity

Austria, unlike other States, has a relatively centralistic trade union system. There are no “representative” trade unions in Austria that enjoy special privileges, but instead there is the

Austrian Trade Union Federation (ÖGB), with its 7 craft unions, which covers all branches of the economy.

The ÖGB is an association based on voluntary membership within the meaning of the Associations Act and is thus – like all such associations – a juristic person with legal capacity. Capacity to conclude collective agreements was officially awarded to the ÖGB in 1947, as it was by far the most important voluntary occupational organisation on the workers' side.

Under the Austrian collective bargaining system, the competent statutory bodies representing workers' and employers' interests have capacity to conclude collective agreements by virtue of the law, while the voluntary workers' and employers' occupational organisations have such capacity if it has been officially awarded to them. If a voluntary occupational organisation concludes a collective agreement, the statutory representative bodies lose their capacity to conclude collective agreements in respect of the members of that voluntary organisation for the duration of the agreement.

Since only a small number of voluntary occupational organisations on the employers' side have capacity to conclude collective agreements, and since the ÖGB with its craft unions, as a voluntary occupational organisation, has achieved a dominating position on the workers' side, the result in practice is that the vast majority of collective agreements are concluded between statutory bodies representing the employers' interests (Economic Chamber), on the one hand, and the ÖGB with its craft unions, on the other hand. In addition to the ÖGB, whose sphere of activity covers all economic branches, workers' organisations independent of the ÖGB exist in only a few subsectors of the economy.

Capacity to conclude collective agreements is conferred by a public law body, the Federal Arbitration Board (Bundeseinigungsamt) pursuant to Section 5 of the Works Constitution Act (ArbVG). It is pointed out that the Federal Arbitration Board has no discretionary powers with regard to awarding capacity to conclude collective agreements; its decision can be challenged in the courts competent in public law.

After the facts have been established, a decision on awarding capacity to conclude collective agreements may be made only if it is certain that the statutory requirements that are clearly set forth in Section 4 (2) of the Works Constitution Act are met. These requirements are met by occupational organisations which:

- Indicate in their by-laws that one of their objectives is to determine the conditions of employment within their sphere of activity; that means that the purpose of the organisation as set forth in its by-laws must be the legal formulation of the conditions of employment of its members, which is the case, for example, if the objective of the joint conclusion of collective agreements is stated in the organisation's by-laws
- Cover a relatively wide occupational and territorial sphere of activity in the representation of the employers' or workers' interest; a relatively wide occupational and territorial sphere of activity is as a rule taken to mean a branch of industry or the econom;
- Are of major economic importance by reason of the number of their members and the range of their activities: in determining the economic importance of an organisation, it is necessary to take into account not only the absolute number of its members but also the ratio of its membership to the number of persons employed in the relevant occupation who do not belong to the organisation; the major economic importance of organisations must also be demonstrated by the range of their activities

- Are independent of the other party in their representation of employers' or workers' interests: a workers' occupational organisation is independent of the other party only if the following requirements, in particular, are met:
  - The organisation must have been established exclusively by the workers, freely and without influence from the entrepreneurial party
  - Management and policy-making decisions must be made only by the competent organs
  - The financial outlay must be met out of members' contributions.

Trade union activities and works councils; access to work places

Workplace representation is through the works councils. Workers in Austria have a clear legal right to representation in all but the smallest workplaces. Provided there are at least five employees in a workplace, the employees can set up a works council (Betriebsrat), which represents all employees (ArbVG Sections 33-170). The works council is not directly a trade union body. It is elected by all employees and non-trade unionists can also stand. But in most cases the unions play a crucial part in its effective operation and the majority of works council members are union members.

Pursuant to Section 39 (2) of the Works Constitution Act (ArbVG), the bodies set up by the workers in an establishment shall, when carrying out their duties in representation of the workers' interests, act in agreement with the appropriate workers' organisations having capacity to conclude collective agreements. Those organisations are primarily the occupational organisations based on voluntary membership, that is to say, the trade unions.

Pursuant to Section 39 (4) ArbVG, the bodies set up by the workers in an establishment may call upon the appropriate voluntary occupational organisation or the statutory body representing the workers' interests to advise them in any matter. Subject to prior notice to the occupier of the establishment or his agent, the representatives of the competent voluntary occupational organisation and of the statutory representative body shall be granted access to the establishment in all cases or as may otherwise be necessary for the exercise of the powers conferred upon them by law.

In such cases, the trade union representatives shall as far as possible engage in their activities without any disruption of the establishment's work and shall not have power to intervene in the management and operation of the establishment by issuing independent instructions. Furthermore, they are subject to the requirement of secrecy.

Where there is no works council or where the works council is temporarily incapable of acting, the competent voluntary occupational organisation or the statutory body representing the workers' interests can convene works meetings (meetings of all workers) in establishments where at least 20 workers are permanently employed, subject to certain requirements (Section 45 (2) 2. ArbVG). This right of convocation by the trade unions applies especially where no initiative has been taken by the workers in the establishment to create the preconditions for the election of a works council. Since the convocation of works

meetings is one of the powers of the workers' representative bodies, those bodies are also entitled to have access to the establishment for that purpose.

Protection against reprisals on grounds of trade union activities

Pursuant to Section 105 (3) ArbVG, notice of dismissal in establishments required to have a works council (five employees or more) can be challenged in court if it is pronounced for certain motives set forth in the Act, for example, because of the worker's being or becoming a member of a trade union or on account of trade union activity. In addition, Section 115 (3) ArbVG prohibits the imposition of restrictions or discrimination against members of the works council. On the one hand, the members of the works council shall not be hampered in their activities and on the other hand they shall not be suffer any prejudice in working conditions on account of their activity as workers' representatives.

Outside the scope of ArbVG Section 879 of the General Civil Code (ABGB) applies protection against dismissal on grounds which offend against "morals" (Sittenwidrigkeit). In enterprises with less than five employees dismissal on grounds of trade union activities would be considered as offending under Section 879 ABGB.

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

No specific transposition measures in the period under review.

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

Statistics on associations in Austria from 2013 to 2016 (in German) are provided below for information purposes.

Vereinsstatistik 2013.pdf

Vereinsstatistik 2014.pdf

Vereinsstatistik 2015.pdf

Vereinsstatistik_2016 .pdf

ARTICLE 6

THE RIGHT TO BARGAIN COLLECTIVELY

Article 6§1

In response to the first question:

There were no significant changes compared to the second report.

Summary of previous reporting:

Austria has a large number of committees and organs for consultation between employers' and workers' representatives on questions of joint interest, with or without the participation of the Government. Some of these bodies are listed below, as an illustration (the Federal Law Gazette numbers refer to the original versions):

- The Administrative Board of the Austrian Public Employment Service (313/1994)
- The pharmacopoeia commission (86/1960)
- The advisory committee for the equalisation charges fund under the Disabled Persons Employment Act 1969 (22/1970)
- The advisory committee on foreign trade (692/1991)
- The federal timber industry council (182/1946)
- The Food Act code commission (239/1959)
- The advisory committee on electrical appliances (57/1965)
- The advisory committee on export promotion (200/1964)
- The advisory committee on family policy in the Federal Ministry of Social Affairs and Generations (112/1967):
- The administrative board of the Austrian agricultural goods market (AMA), with its steering committee and technical advisory committees for: cattle and meat; milk and milk products; eggs and poultry; cereals, oilseeds, sugar and starch; and fruit, vegetables and other plant products (376/1992, with amendments)
- Disability boards in the Federal Offices of Social Affairs (22/1970)
- The Federal advisory committee under the Federal Disabled Persons Act (283/1990)
- The joint committee on cartel matters (460/1972)
- The advisory committee for promotion of the arts (131/ 1950)
- The advisory committee on pension adjustments (189/1955)
- The Federal committee for safeguarding relief payments (282/1980)
- The Central Statistical Commission and its advisory committees (91/ 1965)
- The Federal steering committee under the Foodstuffs Control Act 1997 (788/1996)
- The State economic commission in the Federal Ministry of Transport, Innovation and Technology (22/1974 and 357/1974)

- The joint commission on price and wage questions with its three sub-committees on: wages; prices; and economic and social questions
- The advisory committee on worker protection in the Federal Ministry for Economic Affairs and Labour (450/1994)
- The arbitration commission on disputes under the Army Relief Act (27/1964)
- The general assemblies, boards of management, supervisory and pension committees in the social insurance institutions
- The general assembly, general committee, supervisory committee and section committees in the General Association of Austrian Social Insurance Institutions
- The working committee of the technical committee on medicinal drugs in the General Association of Austrian Social Insurance Institutions
- The arbitration commissions for health insurance matters
- The committees and advisory committees of the vacation fund for building workers under the Building Workers Vacations and Termination Payments Act (414/1972)
- The Federal advisory committee on vocational training, with a Provincial advisory committee on vocational training in each Federal Province (Vocational Training Act, 142/1969)
- The Equal Treatment Committee in the Federal Chancellery established pursuant to Article 2 of the Equal Treatment Act (108/1979)
- Equal Treatment Committees for agricultural and forestry in the Offices of the Provincial Governments pursuant to the relevant provisions of the Provincial agricultural labour orders and of the Vienna Equal Treatment Act for agriculture and forestry

Finally, reference is made to the bodies set up by workers' organs on the basis of the Works Constitution Act (ArbVG), Federal Law Gazette no. 22/1974, and of the Agricultural Labour Act 1984, Federal Law Gazette no. 287, and set up by civil service staff representatives under the Federal Staff Councils Act, Federal Law Gazette no. 133/1967, in the most recent version in each case. These bodies have rights of participation in the management of the enterprises or offices on the basis of the above-mentioned regulations.

The joint commission for price and wage questions, which was set up in 1957 by the Federal Government on the basis of a proposal by the Austrian Trade Union Federation, consists of the Federal Chancellor and three other members of the Government as well as two representatives each of the Austrian Trade Union Federation and the Federal Chamber of Labour, on the employees' side, and two representatives each of the Federal Economic Chamber and the Conference of Presidents of the Chambers of Agriculture, on the employers' side.

Since unanimity is required for decisions by this Commission, it constitutes an instrument of voluntary co-operation between the social partners, despite the participation of Government representatives - which have waived their voting rights since 1966.

The joint commission was established as the result of efforts to contain sharp price increases caused chiefly by rising costs. The leading associations of the employers undertook to induce their members to submit proposed price increases to a price subcommission, for examination of the necessity and extent of any increase before it took effect, while the trade

unions, on the other hand, submitted new wage claims to the commission for examination of their justification.

In 1962, a wages subcommittee was set up within the Commission. It consists of the following members: two representatives each of the Austrian Trade Union Federation and the Federal Economic Chamber, as well as one representative each of the Conference of Presidents of the Chambers of Agriculture and the Federal Chamber of Labour. Representatives of the associations affected testify as experts. The wages subcommittee does not make any decisions on the extent of wage claims but instead considers in each case whether it is appropriate to conclude a new collective agreement. Always assuming unanimity, the subcommittee can give clearance for negotiations or preliminary contacts between the employers' and the workers' representatives – which is what usually happens in practice. A report must be submitted on the result of such contacts so that new consultations can begin. The wages subcommittee can defer its consideration of proposals, for the purpose of clarification, or can reject them; alternatively, if there is no agreement, it can refer them to the joint commission.

The leading associations have agreed on the following procedure to cover the eventuality that agreement on a proposal cannot be reached in the wages subcommittee. If no agreement is reached in the subcommittee within six weeks, the proposal must be referred for decision to the joint commission, which the latter must make within five weeks, failing which the proposal is taken to be authorised. This five-week time limit also applies to proposals that are submitted to the joint commission for decision on other grounds, for example, because of their fundamental importance.

It is generally agreed that the joint commission, as the most important instrument of social partnership at national level, has made a decisive contribution to the development of the Austrian economy in a climate free of social conflict.

Austrian collective agreement law does not provide for the mechanism of so-called "company collective agreements", that is to say, collective agreements that are concluded between the occupiers of establishments and the bodies representing workers' interests and are valid for only one establishment or one enterprise.

Austrian collective agreement law recognises in principle only the capacity of associations to conclude collective agreements. Essentially, collective agreements at company level are concluded only if an employers' association concludes a collective agreement with the trade union regarding one of its enterprises. This is relatively rare and is usually due to the special structure of the enterprise in question (for example, a monopoly). For these reasons, collective negotiations by joint committees at company level seem to be unnecessary in Austria.

The instrument for determining collective legal relations at company level is the works agreement. This is a written agreement that is concluded between the occupier of the establishment on the one hand and a works council (works committee, central works council, or representative body for employees of a group of companies), on the other hand, concerning matters reserved by law or collective agreement for settlement by works agreement (§§ 29-32 and 96-97 ArbVG and §§ 52-55 and §§201-202 of the Agricultural Labour Act 1984).

The ArbVG provides for periodic joint consultations between the works council and the occupier of the establishment on current affairs, the general principles of business

management applied to matters of social, personnel, economic and technical policy and the formulation of industrial relations. The works council and the occupier of the establishment have the right to request their respective organisations having capacity to conclude collective agreements to send one representative each to take part in such consultations in matters of particular importance.

Although this form of joint consultation does not involve formal joint committees, it nevertheless seems to be of great significance – *inter alia* with regard to consultation on the conclusion of works agreements.

Council Directive 94/45/EC on the establishment of a European Works Council or a procedure in Community-scale undertakings and Community-scale groups of undertakings for the purposes of informing and consulting employees was integrated into national law in the autumn of 1996.

The purpose is to improve the right to information and consultation of employees on decisions and developments in Community-scale undertakings and Community-scale groups of undertakings. To that end, a European Works Council or a procedure for informing and consulting employees is to be established in undertakings with at least 1,000 employees within the Member States and with more than 150 employees in each of at least two Member States.

The Directive was implemented through an amendment to the Works Constitution Act (Federal Law Gazette no. 601/1996), and the employees' representative organs provided for in the Directive were established as staff organs in the framework of Austrian labour relations law.

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.

The public service:

Questions related to the public service in general are discussed in consultations between the negotiating committee of the national and regional authorities, on the employers' side, and the public service trade unions, on the employees' side. The public service trade unions are: the trade union of local authority employees; the trade union for the arts, media and liberal professions; the trade union of Post Office and telecommunications workers - these three trade unions have formed a so-called "negotiating committee"; and the civil servants trade union. The negotiating committee of the national and regional authorities consists of representatives of the federation, the provinces, the associations of communes and the communes.

Internally, that is to say, within the various ministries or departments, the interests of the employees are represented by the "staff councils". The tasks of these councils, created under the Federal Staff Councils Act, Federal Law Gazette no. 133/1967, are comparable to those of the works councils in enterprises.

In response to the second question:

No specific transposition measures in the period under review.

In response to the third question:

No statistics available.

Article 6§2

In response to the first question:

There were no significant changes compared to the second report.

Summary of previous reporting:

The legal basis for collective negotiations and the conclusion of collective agreements in by far the greatest part of the Austrian economy is Part I (Formulation of collective law) of the Works Constitution Act (ArbVG), Federal Law Gazette no. 22/1974, as amended, whose provisions apply in principle to any kind of employment that is based on a contract in private law.

Exceptions are: Employment contracts with the Federal authorities, the Provinces, the associations of municipalities and communes and with the establishments, enterprises, institutions, foundations and funds administered by those authorities, which are subject under a statute to provisions that positively determine the essential content of the employment contract; Employment contracts of agricultural and forestry workers, which are subject to Article 1, Division 3 of the Agricultural Labour Act 1984, Federal Law Gazette no. 287, as amended; and Employment contracts that are subject to the Home Work Act 1960, Federal Law Gazette no. 105/1961, as amended. Both the Agricultural Labour Act and the Home Work Act provide for equivalent instruments for the establishment of collective agreements.

Collective agreements are concluded in writing between the bodies of the employers, on the one hand, and the workers, on the other hand, that are capacitated for that purpose. Primarily, they regulate the mutual rights and duties of the employers and the workers arising out of the employment contract, including in particular the amount of remuneration (§ 2 ArbVG).

By law, the capacity to conclude collective agreements is enjoyed by such statutory bodies representing employers' and workers' interests as have the direct or indirect object of contributing to the determination of conditions of employment and as are independent of the other party in formulating their policies for the representation of such interests (§ 4 ArbVG). These bodies are the Chambers of Labour, the Federal Chamber of Labour, the Chambers of Commerce, the Austrian Federal Economic Chamber, the guilds, occupational groups, occupational associations and bodies of the Chambers of Commerce organisations, the Chambers representing lawyers, notaries, veterinary surgeons, physicians, dentists, pharmacists, engineers, chartered accountants, auditors and licensed bookkeepers, and, in agriculture and forestry, the Agricultural Chambers and the Chambers of Agricultural Labour.

The employers' and workers' occupational associations (Berufsvereinigungen) based on voluntary membership (trade unions, employers' professional associations) have capacity to conclude collective agreements (collective agreement capacity) if such capacity has been awarded to them by the Federal Arbitration Board. That must be done on application if certain requirements are met (see the remarks on Article 5).

In Austria, collective agreements are not concluded by individual employers as a rule.

Only for legal persons under public law and for associations does the ArbVG specify an exception to the Austrian rule of not providing for 'company collective agreements', that is, an agreement between a group representing employees' interest and the employer.

Pursuant to Section 7 ArbVG, legal persons under public law are entitled by law to enter into collective agreements, provided they do not belong to another body possessing such entitlement. Section 4 Para. 3 ArbVG specifies associations as being entitled to enter into collective agreements after recognition by the Federal Arbitration Board (Bundeseinigungsamt), where such associations have major significance in terms of number

of members and employees and do not themselves belong to a body possessing such entitlement.

Both of the cases above relate to entitlement on the part of employers to enter into collective agreements, applying to the employment relationships that have been agreed with the individual employer.

The decision of the Federal Arbitration Board on the recognition of capacity to conclude collective agreements must be published in the "Amtsblatt der Wiener Zeitung". As at 31 December 2016, 58 such institutions had capacity to conclude collective agreements on the basis of findings by the Federal Arbitration Board.

In some cases, entitlement to enter into collective agreements is awarded through a dedicated statute, for example to the Austrian Broadcasting Corporation (*Österreichischer Rundfunk*) through the Broadcasting Act (*Rundfunkgesetz*) or to the Public Employment Service Austria through the Labour Market Service Act (*Arbeitsmarktservicegesetz*).

Although the Works Constitution Act does not contain any explicit provision requiring that a body with capacity to conclude collective agreements should commence collective negotiations and should conclude such agreements with the competent body of the other party having such capacity, it follows from the reasons set forth below, which are based on the nature of the associations and the system underlying Part I of the Works Constitution Act, that collective agreements are almost always concluded.

The parties to collective agreements can be either the statutory representative bodies or the voluntary occupational associations. As already mentioned, the bodies in the first group have capacity to conclude collective agreements by virtue of the law, but lose such capacity with respect to the members of an occupational association for the duration of the validity of any collective agreement concluded by that occupational association. The purpose is that the capacity of the statutory representative bodies to conclude collective agreements should apply only in the area in which no occupational organisation based on voluntary membership is active. Since there are hardly any voluntary occupational associations on the employers' side, but since the Austrian Federation of Trade Unions and its craft unions with their high degree of organisation has achieved a dominating position as a voluntary occupational association on the workers' side, the practical result is that by far the majority of collective agreements are concluded between the statutory representative bodies of the employers (Chambers of Commerce or their subordinate associations such as guilds and trade associations), on the one hand, and the voluntary occupational association of the workers (the Austrian Trade Union Federation), on the other hand.

Since all employers of the branch in question belong to the statutory representative body and since, under the provisions of Part I of the Works Constitution Act, a collective agreement is also legally effective for workers who are not members of a body with capacity to conclude collective agreements but whose employer is a member of such a body, all workers are covered by collective agreements in most branches of the economy.

In the few branches of the economy in which voluntary occupational associations on the employers' side conclude collective agreements, these arrangements are given the status of "determinations" extending the scope of such agreements to all workers in that branch of the economy by decision of the Federal Arbitration Board, on application by the competent trade union.

Overall, therefore, about 98% of all persons not employed in the public service (that is to say, some 2.4 million workers) are subject to regulations established under collective agreements.

Application of collective agreements to enterprises that change from one economic branch to another:

Pursuant to § 8 (1) of the Works Constitution Act, the group of persons covered by collective agreements includes the employers and workers who were members of the collective agreement parties at the time of conclusion of the agreement or became members after its conclusion. If an employer's membership of a collective agreement party changes when he moves from one branch to another, the valid collective agreement is that of the collective agreement party to which the employer now in fact belongs, without consideration of relative benefits. This conclusion follows from the Act and is not subject to decisions of the employer or the parties to the employment contract.

As a result, the wages or other employment conditions of the workers affected might deteriorate if they were based exclusively on the previous collective agreement. If they are agreed upon in the individual employment contracts, they are still valid, provided that they are not less favourable than under the collective agreement that is now to be applied.

If the change in an employer's membership of an occupational group (branch) is accompanied by an alteration to the establishment within the meaning of § 109 of the Works Constitution Act (for example, changes in the purpose of the establishment or its plant and changes in the organisation of work and operations), the participation rights of the works council that are envisaged for that purpose come into play.

In particular, a social plan can be agreed upon in such a case and can be enforced through the Arbitration Board if the legal requirements are met. A social plan could include inter alia the retention of the more favourable regulations existing under the previous collective agreement for the workers.

This form of organisation, and in this context particularly the dominant position of the Austrian Trade Union Federation in representing the workers, explains not only the almost complete coverage of all workers by regulations under collective agreements but also the fact that agreements are concluded in all branches of the economy.

The Works Constitution Act contains procedural provisions regarding the conclusion of collective agreements only in respect of their deposit and publication. Pursuant to § 14 (1) ArbVG, after the conclusion of every collective agreement, two identical official copies – or three identical official copies in the case of collective agreements for agriculture and forestry workers, where this Federal Act applies to them – must be immediately deposited with the Federal Ministry of Labour, Social Affairs and Consumer Protection. The official copies must be duly signed by the contracting parties, simultaneously stating their addresses.

Pursuant to § 14 (3) ArbVG, the Federal Ministry of Labour, Social Affairs and Consumer Protection must give instructions within one week after deposit for publication of the conclusion of the agreement by an announcement in the "Amtsblatt der Wiener Zeitung". The costs of such announcement must be borne in equal shares by the contracting parties. Detailed formal regulations in § 14 (4) ArbVG cover the further notification of the announcement to the depositor and to the authorities that are required to be informed.

Thus the Act in principle leaves it to the bodies that are defined by the individual organisational provisions (for example, the Chamber Acts, Association by-laws, etc) and that are authorised under the Works Constitution Act and other legislative provisions to decide on the manner in which they bring about the conclusion of collective agreements for their members in individual cases.

The result in practice is that it is primarily the workers' associations that are interested in the conclusion of collective agreements. For that purpose, they can use all means for bringing about an agreement between the contracting parties that are declared admissible by law. Though not explicitly stipulated, this also includes industrial action, which is used to only a very small extent in Austria.

With regard to existing collective agreements, the Works Constitution Act provides that, where a collective agreement contains no stipulation as to its period of validity, it may be terminated with effect from the last day of a calendar month after the expiry of one year, subject to at least three months' notice. The notice of termination must be sent by registered letter (§ 17 (1) ArbVG).

Frequently, collective agreements already contain provisions regarding procedure for the alteration of existing agreements. For example, it is frequently stipulated, in addition to a provision regarding termination, that in such a case negotiations must be commenced for the conclusion of a new agreement.

In the context of statutory collective agreement arbitration proceedings, which are based on the voluntary principle in Austria, the participation of the Federal Arbitration Board is envisaged in the case of disputes. The Arbitration Board can begin its assistance only if one of the contracting parties involved so requests. However, a valid award can be given only if both parties to the dispute issue a written statement beforehand that they submit to the award.

Collective labour relations in agriculture and forestry are regulated in §§ 40-51 of the Agricultural Labour Act. These provisions correspond to those of the Works Constitution Act.

The "system-wide" interests of public service employees are represented by the public service trade unions. These occupational associations, which are based on voluntary membership, have established a "negotiating committee" which consults with the negotiating committee of the national, regional and local authorities (consisting of representatives of the Federal, Provincial and Communal authorities) and deals with basic questions of service conditions and salaries before these are established by statute. Problems that affect only individual groups of employees are discussed between the competent representatives of the employer and the competent trade union representatives before being regulated in the form of statutes or orders.

The percentage of public employees under collective agreements in proportion to the total number of federal employees was 0% as of 31 December 2016; such an arrangement existed only in isolated cases.

The service and salary regulations of the other Federal employees are established by statute.

Regulation of service conditions by statute instead of by collective agreement does not entail any disadvantages for employees, since detailed negotiations between the representative bodies take place before a decision is made by the National Assembly, and these statutes constitute compromises in the same way as collective agreements.

The same regulations apply to the conduct of collective agreement negotiations as in the private sector.

International Labour Organisation Convention No. 98 concerning the Application of the Principles of the Right to Organise and to Bargain Collectively was ratified by Austria and promulgated in Federal Law Gazette no. 20/1952.

Wages policy in Austria is in the autonomous sphere of responsibility of the workers' and employers' representative bodies. Intervention by the State in collective agreement negotiations would constitute interference with the system of collective agreement autonomy, which has stood the test of time in Austria.

Information on 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 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 transposition measures in the period under review.

In response to the third question:

Between 450 and 500 collective agreements are concluded each year during negotiations for specific sectors between employer and employee representation associations.

Article 6§3

In response to the first question:

There were no significant changes compared to the second report.

Summary of previous reporting:

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 shall 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 alternately 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 - they can be used in 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.).

The agriculture and forestry sector falls under the provisions in Sections 226–234 of the Agricultural Labour Act (Landarbeitsgesetz, LAG) and in the agricultural labour regulations.

Pursuant to Sections 226–228 LAG and the agricultural labour regulations, the conciliation boards have the duty of striving for a settlement and, where required, of deciding the dispute, specifically in those cases for which the provisions governing works representation confer on the conciliation boards the responsibility to decide disputes.

Pursuant to Section 229 Para. 1 LAG and the agricultural labour regulations, a superior conciliation board (Obereinigungskommission) is to be established with the Office of each Land Government.

Section 230 LAG and the agricultural labour regulations specify the responsibilities of the superior conciliation boards as including:

- participation in negotiations over the conclusion or the modification of collective agreements, where requested by one of the parties to the agreement or by an authority;
- in overriding disputes relating to the conclusion, amendment or interpretation of a collective agreement, initiation of conciliation procedures and passing a decision on the dispute, where requested by one of the parties to the dispute or by an authority.

In the matters indicated above, the superior conciliation boards have the task of mediating between the parties to the dispute and of working towards a settlement agreement between the parties. Such boards can only decide the dispute if the two parties to the dispute declare in advance and in writing their willingness to recognise the decision. Such written agreements and decisions are construed as collective agreements.

To decide disputes relating to the conclusion, the amendment or the cancellation of certain works agreements, on the request of one of the parties to the dispute, an agricultural and forestry arbitration board is to be established with the superior conciliation board (or, in Vorarlberg, the conciliation board) of the Land in which the business is situated (Section 231 LAG). The arbitration board is mandated with mediating between the parties to the dispute, making proposals for resolving the issues under dispute and working towards an agreement between the parties; where required, the board is also responsible for deciding the dispute (Section 233 LAG).

The agricultural labour regulations of the Laender (with the exception of Vienna and Vorarlberg) additionally stipulate for the conciliation boards to be given the responsibility of acting as arbitration boards to enable the amicable settlement of legal disputes relating to employment relationships falling under those regulations.

Further information on works agreements with "compulsory arbitration":

The Works Constitution Act (ArbVG) provides in its Part II (Representation of workers in establishments) for enforceable and replaceable works agreements:

- Enforceable works agreements (§ 97 (1) 1. to 6a. ArbVG)

These relate to the following matters:

- General rules of employment governing the workers' conduct in the establishment;
- Principles for the employment in the establishment of workers under labour supply arrangements;
- The general limits for the beginning and end of the working day, the length and times of breaks and the distribution of the hours of work over the various days of the week;
- The procedure for the settling of wage accounts and, more particularly, the time and place of payment.
- Measures to prevent, eliminate or alleviate the consequences of any alteration to the establishment, as provided in § 109 (1) 1.-6., in so far as it involves substantial

disadvantages for the workers generally or a considerable number of the workers (the so-called social plan);

- The nature and extent of participation by the works council in the administration of training and welfare institutions belonging to the establishment or undertaking;
- Measures for the appropriate use of installations and plant within the establishment;
- Measures to prevent, eliminate, alleviate or compensate for strain in the case of workers employed on night work or heavy night work.

Where agreement is not reached in the above-mentioned matters between the occupier of the establishment and the works council on the conclusion, amendment or revocation of such a works agreement and no arrangements for a settlement have been made by collective agreement or "determination", the arbitration body takes a decision if either of the parties so requests (§ 97 (2) ArbVG). In such matters, the works agreement can therefore be enforced against the will of the other party if either of the two parties applies to the arbitration body.

The arbitration body is set up in each case only for a specific question, and only on application by one of the two parties to the dispute (works council or occupier of the establishment). It is located at the seat of the court of first instance in labour and social matters in whose area of jurisdiction the establishment is situated.

The arbitration body consists of a chairman and four assessors. The chairman is appointed from among professional judges on the joint proposal of the two parties to the dispute or, in the event of failure to agree, by the President of the court. Two assessors each must be nominated by the works council and the occupier of the establishment, including one each from a nationwide list of assessors to be prepared from time to time.

The decision of the arbitration body – against which there is no legal remedy – has the status of a works agreement.

- Replaceable works agreements (§ 96a ArbVG)

In the event of the planned introduction of systems

- for the computerised determination, processing and transmission of personal data of workers, which go beyond the determination of general information regarding the person and technical qualifications (personnel information systems), and
- for the assessment of workers of the establishment, if data are thereby collected that are not justified by the nature of employment in the establishment,

the occupier of the establishment is required to negotiate with the works council before the introduction of such measures and, if appropriate, to conclude a works agreement. If agreement is not reached, the occupier of the establishment can apply to the arbitration body, whose decision – which in turn has the status of a works agreement – can take the place of the consent not given by the works council. In other respects, the remarks made in connection with enforceable works agreements also apply to the arbitration body.

The relationship of collective agreements with the same regulatory content to works agreements with "compulsory arbitration":

The enforceability of a works agreement in the form of compulsory arbitration comes into play in the above-mentioned matters only if there is no settlement by collective agreement

(or “determination”). However, settlement by collective agreement does not preclude the conclusion of a works agreement on the same subject, but merely precludes enforceability. Such a works agreement should therefore be considered as an optional works agreement. It must also be borne in mind that enforceability will also exist if the collective agreement merely contains general regulations.

In response to the second question:

No specific transposition measures in the period under review.

In response to the third question:

The labour and social courts complete conciliation procedures on average in 10 cases each year. 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. From practice in implementing the Agricultural Labour Act (*Landarbeitsgesetz*), for the reporting period no cases are known where works agreements were reached under compulsion.

ARTICLE 6§4

Not ratified by Austria.

ARTICLE 26

THE RIGHT TO DIGNITY AT WORK

Article 26§1

In response to the first question:

Reference is made to previous reporting.

Claims enforcement:

In cases of sexual harassment as defined in Section 6 of the Equal Treatment Act (*GIeichbehandlungsgesetz, GIBG*) or gender-related harassment as defined in Section 7 *GIBG*, pursuant to Section 12 Para. 11 *GIBG*, the person concerned is entitled to compensation for the harm suffered from the person committing the harassment and, in the cases defined in Section 6 Para. 1 no. 2 and Section 7 Para. 1 no. 2 *GIBG*, from the employer as well. 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 *GIBG* have to be brought before court within one year.

With the amendment entering into force on 1 August 2013 (Federal Law Gazette I no. 107/2013), Section 12 of the *GIBG* was supplemented with Para. 14, specifying that the amount of indemnity for any personal detriment suffered is to be determined so as to truly and effectively compensate for the detriment, be appropriate for the detriment suffered and be suitable to prevent further discrimination (see also the response to the supplementary question to the first question on Article 4§3 RESC).

Reply to the supplementary questions in the Conclusions 2014:

Responses to (complaints against) harassment are required to be addressed in a manner commensurate with the prohibition of discrimination specified in Section 13 of the *GIBG*. Thus, apart from indemnity for the harassment suffered, other legal consequences can follow, for example in cases of discriminatory termination of employment.

Public service employees:

The obligation to act respectfully (prohibition of bullying and mobbing) is specified in general terms in Section 43a of the Civil Service Act (*Beamten-Dienstrechtsgesetz, BDG*) 1979, Federal Law Gazette no. 333/1979, and in the reference made in Section 5 Para. 1 of the Contractual Employees Act (*Vertragsbedienstetengesetz, VBG*) 1948, Federal Law Gazette no. 86/1948.

Accordingly, superiors are required to act respectfully towards their employees, employees towards their superiors and employees and superiors towards one other, and to contribute to the healthy functioning of cooperation at work. In dealing with their superiors, colleagues and employees they shall refrain from exhibiting behaviour or creating working conditions that violate their human dignity or intend to do so or that are otherwise discriminatory."

In addition, 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.

Protection against sexual harassment under criminal law:

Individuals are protected against sexual harassment also under criminal law. The definition of "*Sexual harassment and public sexual acts"* under § 218 of the Austrian Criminal Code (*Strafgesetzbuch, StGB*) has been extended as of 1 January 2016 and currently comprises:

- a situation in which a person commits a sexual act against or in front of another person such that the latter feels harassed – provided circumstances warrant the reasonableness of this response;
- a situation in which an individual purposefully touches a person on an intimate area of the body (for example the buttocks or thigh) such that the victim feels violated;
- a situation in which a person engages in public sexual activity in a way that creates a reasonable sense of offence.

These criminal acts are punishable by a prison sentence of up to six months or a fine up to 360 times the daily rate. With the exception of public sexual activity, the perpetrator may only be prosecuted if the victim presses charges.

In response to the second question:

Reply to the supplementary questions in the Conclusions 2014:

Both the groups representing the interests of employees and those representing employers report their commitment to heightening awareness, for example by offering in-house workshops to combat discrimination.

Preventive action in public service:

In its role of providing basic and advanced training to employees in federal public service, the Federal Academy of Public Administration (*Verwaltungsakademie*) has been offering practice-oriented training and education programmes for several years. It offers a series of special workshops on the topic of gender and gender equality. The relevant legal basis, examples from practice as well options for legal action are presented in the basic course and can be subsequently discussed in follow-up workshops or courses.

In this context we refer again to Section 36 of the Federal Equal Treatment Act (*Bundes-Gleichbehandlungsgesetz, B-GlBG*), Federal Law Gazette no. 100/1993, which provides for the appointment of contact women (Frauenbeauftragte or women's officers) in public-service departments, with the responsibility of handling queries, suggestions and complaints in addition to advising female employees on issues related to gender equality and the advancement of women.

In response to the third question:

Equal Treatment Commission:

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 from 2014 to 2015:

Senate I of the Equal Treatment Commission:

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

Senate III of the Equal Treatment Commission:

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

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 are available from the website of the Federal Ministry of Health and Women's Affairs:

http://www.bmgf.gv.at/home/Frauen_Gleichstellung/Gleichbehandlung/Gleichbehandlungsberichte/Gleichbehandlungsberichte_fuer_die_Privatwirtschaft (in German)

Public service employees:

Federal Equal Treatment Commission:

Also established within the Federal Ministry of Health and Women's Affairs, the Federal Equal Treatment Commission 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 evaluations issued by the Federal Equal Treatment Commission are published on the website of the Federal Ministry of Health and Women's Affairs.

http://www.bmgf.gv.at/home/Frauen_Gleichstellung/Gleichbehandlung/Gleichbehandlungsberichte/Gleichbehandlungsberichte_des_Bundes (in German)

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.

In the period from 2014 to 2015, two requests were received to examine gender-based discrimination through sexual harassment.

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 are available from the website of the Federal Ministry of Health and Women's Affairs:

http://www.bmgf.gv.at/home/Frauen_Gleichstellung/Gleichbehandlung/Gleichbehandlungsberichte/Gleichbehandlungsberichte_des_Bundes (in German)

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:

Reference is made to previous reporting.

As regards the alleged violation of Art. 28:

The consent to termination of employment as referred to in Section 120 of the Labour Constitution Act (*Arbeitsverfassungsgesetz,ArbVG*) is given by way of a constitutive judgement by a civil court. The ruling can be challenged by appeal. Pursuant to Section 61 Para. 1 no. 5 of the Labour and Social Courts Act (*Arbeits- und Sozialgerichtsgesetz, ASGG*), this judgement enters into force without delay, even though it may be challenged and hence does not yet have final legal effect. The preliminary termination applies temporarily. If the appeal is granted and the judgement is set aside, this ruling becomes effective retroactively as of the date when the appeal was filed, with the employment relationship being regarded as retrospectively maintained. In this case, the employee is accordingly entitled to remuneration retroactively for the entire period: since expiry of the notice period and/or employment was effectively discontinued.

However, as specified in Section 105 Para. 3 no. 1 lit. e *ArbVG*, where notice of termination is given after expiry of that period and the employee is dismissed due to previous participation in the works council, the termination can be challenged in court. Such grounds for termination are considered objectionable. Regardless of how long after relinquishing membership in the works council the employee is dismissed, termination on such grounds can always be challenged. Thus, this option for challenging termination is preserved indefinitely after the mandate expires.

The termination can be challenged by the works council or by the employee directly, in the latter case where the works council does not comply with the employee's request or explicitly consented to the intention to dismiss that employee. During the court proceedings, the onus is on the plaintiff to demonstrate the plausibility of the grounds for challenging the termination. The challenge is only to be dismissed where after weighing all circumstances it appears more likely that another reason made credible by the employer was the major factor in the termination.

Section 106 of the *ArbVG* specifies that the provisions described above apply accordingly when challenging a dismissal without notice.

In response to the second question:

No specific transposition measures in the period under review.

In response to the third question:

No specific data available.