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EUROPEAN SOCIAL CHARTER

4th National Report on the implementation of
the European Social Charter

submitted by

THE GOVERNMENT OF AUSTRIA

- Article 1, 9, 10, 15, 18, 20, 25 for the period 01/01/2011 – 31/12/2014
- Complementary information on Article 4§1 (Conclusions 2014)

Report registered by the Secretariat on
4 November 2015

CYCLE 2016

REVISED EUROPEAN SOCIAL CHARTER

4th NATIONAL REPORT

in accordance with Article C of the Revised European Social Charter and Article 21 of the European Social Charter on measures taken to give effect to

Articles 1, 9, 10, 15, 18, 20 and 25

for the period 01/01/2011 – 31/12/2014

and on the conclusion of non-conformity for lack of information concerning

Article 4 § 1

for the period 01/01/2013 – 31/12/2014

submitted by

THE FEDERAL GOVERNMENT OF AUSTRIA

The ratification instrument of the Revised European Social Charter was deposited on
20 May 2011

Austria has accepted the Articles of thematic group “Employment, training and equal opportunities” with the exception of Articles 15 § 2, 18 § 3 and 24.

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,

the Austrian Federal Chamber of Labour,

the Austrian Federal Economic Chamber,

the Federation of Austrian Industry,

the Presidential Conference of Austrian Chambers of Agriculture,

and

the Council of Austrian Chambers of Agricultural Labour

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ARTICLE 1 - THE RIGHT TO WORK

Paragraph 1 - Policy of full employment

Questions 1 and 2

Information regarding Labour Market Policy:

Detailed information about the Austrian Labour Market Policy (Essential features, functions and tasks) is presented on the following website website:

http://www.sozialministerium.at/siteEN/_Labour/Labour_Market/Labour_market_policy_in_Austria/

Among others this site contains information about the main goals and general objectives of Austrian labour market policy, active measures to raise the level of qualifications and of equal opportunities, increasing transparency in the labour market, developing human resources, re-activating the unemployed and combating long-term unemployment.

This site also contains the labour market policy guidelines of the Minister, the tasks of The Public Employment Service (PES) (Arbeitsmarktservice /AMS) which implements the labour market policy guidelines, handles the payment of benefits for unemployment (unemployment benefit etc.), the placement of workers (filling vacancies) and enabling material subsistence by granting unemployment benefit and unemployment assistance form a functional and organisational whole.

This website also provides the relevant legal foundations of Austrian labour market policy: The Labour Market Services Act (AMSG), the Labour Market Promotion Act (AMFG), the Labour Market Policy Financing Act (AMPFG), the Unemployment Insurance Act (ALVG), the Employment of Foreign Citizens Act (AuslBG) and the Act on Wage Compensation from the Insolvency Contingency Fund (IESG).

Reports about Labour Market Policy:

From 2008 until 2012 the Federal Ministry of Labour, Social Affairs and Consumer Protection (das "Sozialministerium") produced the **annual report**

"Labour Market Policy in Austria", which you can find on this website .

Further reports you can find there are the **"Basic Information Report, Reporting Year 2013/2014 - Labour Market Policy - Institutions, Procedures, Measures "** and the report **"Youth and Work in Austria"**

The **most important reports** of the "Sozialministerium" are the **biannual Social Reports** with **special chapters regarding the „Labour Market“** (only available in German):

http://www.sozialministerium.at/site/Soziales/Allgemeine_Sozialpolitik/Sozialberichte

The **annual reports of the Austrian Public Employment Service** (Arbeitsmarktservice) (since 2010) are to be found on the following website

<http://www.ams.at/ueber-ams/medien/geschaeftsbericht>

Detailed information about the Labour Market, the Labour Market Policy, Studies on different subjects are to be found on the following website:

[http://www.sozialministerium.at/site/Arbeit/Arbeitsmarkt/.](http://www.sozialministerium.at/site/Arbeit/Arbeitsmarkt/)

In reply to the Committee's request for information on the outcome of measures aiming at increasing labour market participation of older people, women and young people, the following information is provided:

An overview of measures and programmes for **older workers, women and young persons** can be found in the National Reform Programmes which implement the Europe 2020 strategy in Austria on the following website of the Federal Chancellery: <http://bka.gv.at/site/4915/default.aspx> (in particular points 3.2. and 4.1.)

An overview of legistik measures regarding Employment Policy in Austria called "Dokumentation legistische Änderungen in der Arbeitsmarktpolitik 1998-2015, Stand: Jänner 2015 (PDF, 1122 KB)" is to be found on the following website: <http://www.sozialministerium.at/site/Arbeit/Arbeitsmarkt/Rechtsvorschriften/>

Austrian labour market policy comprises various measures intended to actively promote **gender equality in the labour market**, as described in more detail in the reports on Articles 10 and 20. The most important measures in this area are: Women in Trades and Technology ("*Frauen in Handwerk und Technik*", *FiT*), Return to Work ("*Wiedereinstieg unterstützen*"), Competence with System ("*Kompetenz mit System*", *KmS*) and Women's Employment Centres.

In reply to the Committee's questions concerning the monitoring and evaluation of the employment policies in place, the following information is provided:

In Austria, programmes, policies, and measures of active labour market policies are monitored and evaluated on a permanent basis. This is the case for small programmes for a specific problem group (e.g. NEETS with children) as well as for large policies, e.g. for older workers in general. State of the art evaluations typically bring forward the following question: What would happen with the participants of a programme in case of not having a programme like this. A more ambitious question is a cost-benefit analysis from the perspective of the public authorities (often the state or state-financed agencies), the participants, the employers, etc.

For more detailed informations on monitoring and evaluating Austrian programmes of active labour market policies, please find more information in the following publication:

"Dokumentation aktive Arbeitsmarktpolitik in Österreich: 1994 bis 2013) and „Dokumentation aktive Arbeitsmarktpolitik in Österreich: 2014“:

http://www.sozialministerium.at/site/Arbeit/Arbeitsmarkt/Arbeitsmarktpolitik_in_Oesterreich/

Question 3

Tables with important monthly updated labour market data:

<http://www.dnet.at/elis/Default.aspx>

Main topics

- Current national and international labour market data
- Public Employment Service PES subsidies and benefits
- Data on financial management of the PES and recipients of benefits (e.g. unemployment benefit, unemployment assistance)
- Important labour market policy figures
- Foreigners on Austrian labour market

Database with current labour market data: <http://www.arbeitsmarktpolitik.at/bali/>

Available data:

- Employment
- Unemployment
- Apprenticeship market and statistics on apprentices
- Population statistics
- Public Employment Service training courses
- Eurostat unemployment rate

Pension insurance: data on insured persons and financial management

<http://www.dnet.at/opis/Default.aspx>

Open data Austria <https://www.data.gv.at/>

Statistics Austria http://www.statistik.at/web_en/ free entrance to the statistical database

http://www.statistik.at/web_de/services/datenbank_superstar/index.html

Statistics Austria data on formal education

http://www.statistik.at/web_en/statistics/education_culture/formal_education/index.html

Austrian Economic Chambers statistics

https://www.wko.at/Content.Node/Interessenvertretung/ZahlenDatenFakten/STATISTIK_von_A_bis_Z.html

Financial statistics of the central bank of the Republic of Austria (Oesterreichische Nationalbank (OeNB)) <http://www.oenb.at/en/Statistics.html>

Statistics on universities and studies <https://oravm13.noc-science.at/apex/f?p=103:36:0::NO>

Paragraph 2 - Freely undertaken work (non-discrimination, prohibition of forced labour, other aspects)

1. Prohibition of discrimination in employment

Question 1, 2 and 3

In respect of this paragraph the Government refers to its previous reports on the implementation of Article 1 § 2 of the 1961 Charter, in particular to the 25th and the 29th report.

Brief summary of previous reporting

The Austrian Equal Treatment Act (*Gleichbehandlungsgesetz, GIBG*) governing the equal treatment of women and men in working life has been in effect since 1979. New equal treatment provisions were adopted in Austria as at 1 July 2004, transposing the two anti-discrimination directives adopted by the EU pursuant to Article 13 of the Treaty into national law (Council Directive 2000/43/EC implementing the principle of equal treatment between persons irrespective of racial or ethnic origin (Anti-Racism Directive) and Council Directive 2000/78/EC establishing a general framework for equal treatment in employment and occupation (Framework Equal Treatment Directive), banning discrimination based on religion or belief, disability, age or sexual orientation).

In addition to employment and occupation, the Anti-Racism Directive covers social protection, social advantages, education and access to and supply of goods and services, whereas the

Framework Equal Treatment Directive covers employment and occupation only. All Directives apply both to the private and the public sector.

For the most part, the Directives were implemented by the Federal Act (Federal Law Gazette I no. 66/2004) adopting the Federal Act on Equal Treatment Act (*Gleichbehandlungsgesetz, GIBG*) and amending the Federal Act on the Equal Treatment of Women and Men in Working Life (Equal Treatment Act, *Gleichbehandlungsgesetz*).

The former Equal Treatment Act was renamed to become the Equal Treatment Commission and Equal Treatment Ombuds Office Act (*Bundesgesetz über die Gleichbehandlungskommission und die Gleichbehandlungsanwaltschaft, GBK/GAW-Gesetz*) and was amended to incorporate and govern both the institutions (Equal Treatment Commission and Equal Treatment Ombuds Office) and the proceedings involved. The substantive provisions of the former Equal Treatment Act are part of the new Equal Treatment Act (*GIBG*), which was expanded to include any provisions required in the Directives.

A number of aspects are not covered because regulated elsewhere: discrimination for reasons of disabilities (the provisions for this group of persons were transposed in a special compendium of laws to ensure equal opportunities for persons with disabilities), federal employment law (the relevant provisions were laid down in the Federal Equal Treatment Act (*Bundes-Gleichbehandlungsgesetz, B-GIBG*)), and matters under the jurisdiction of the *Laender*.

Principle of equal treatment

Within the scope of an employment relationship, nobody may be discriminated against, directly or indirectly, based on gender, ethnic origin, religion or belief, age or sexual orientation, especially in connection with

- establishing an employment relationship;
- determining remuneration;
- granting fringe benefits that do not constitute remuneration;
- training, further training and retraining measures;
- career opportunities, especially promotions;
- other working conditions;
- the termination of the employment relationship (this applies also in cases where an employment relationship was terminated in a discriminatory way during the trial period or where a fixed-term employment contract is not renewed for discriminatory reasons, e.g. because the employee has become pregnant);

and any other labour context, i.e.:

- vocational guidance, vocational training, further occupational training and retraining outside an employment relationship;
- participation in employees' organisations or employers' organisations;
- the establishment, setting-up or expansion of a business as well as the commencement or expansion of any other type of self-employment.

In addition to employees, homeworkers are also covered as are employee-like persons.

Additionally, nobody may be discriminated against, directly or indirectly, on grounds of ethnic origin, directly or indirectly, in other areas, specifically in connection with

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

Nobody may be discriminated against outside of work, directly or indirectly, on grounds of sex

- in connection with access to and supply of goods and services available to the public.

The following acts also constitute discrimination:

- sexual harassment,
- gender-based harassment
- and harassment for any of the aforementioned grounds of discrimination.

Discrimination also occurs if individuals are instructed to discriminate other individuals.

Protection against discrimination also includes individuals who are discriminated against due to their close relationship with a person having a protected characteristic (i.e. associative discrimination). Consequently, discrimination also occurs where individuals who would usually get access to goods and services have a close relationship with a person featuring a characteristic specified in the Equal Treatment Act and are consequently denied access (e.g. entry into a restaurant is denied due to ethnic origin) and prevented from taking advantage of a service even though they do not feature the characteristic themselves.

The requirement concerning gender-neutral and non-discriminatory job advertisements applies to employers, private recruitment agencies and the Austrian Public Employment Service (AMS). Moreover, the minimum remuneration for the job as defined in the applicable collective agreement, statutory provisions or other standards of collective law (e.g. statute, minimum wage scheme) must be indicated and the employer is required to express any potential willingness to pay more. In business sectors without collective agreements governing minimum remuneration the amount to be used as a basis for negotiating remuneration needs to be specified. Employee-like persons as well as employees in top executive positions (e.g. managing directors) are not included. Violations of the above described requirement entail administrative penalties.

Finally, the requirement of non-discriminatory advertising of housing has been set forth as a complementary measure implementing the principle of equal treatment with respect to access to and supply of goods and services available to the public, including housing. This covers property advertisements. Similar to the provisions governing non-discriminatory job advertisements, violations of this requirement also entail administrative penalties.

Enforcement of the equal treatment principle

If the principle of equal treatment is violated, compensation regulations provide for

- compensation for financial losses, i.e. actual harm caused (*positiver Schaden*) and loss of profit; or

- creating/restoring a discrimination-free situation and, in both cases, additionally
- compensation for the immaterial damage and the personal impairment suffered.

The claims arising from the Equal Treatment Act must be asserted before a court of law.

If multiple discrimination is asserted which involves discrimination on grounds of disabilities, the provisions of the Federal Disability Equal Treatment Act (*Bundes-Behindertengleichstellungsgesetz*) and/or the Disability Employment Act (*Behinderteneinstellungsgesetz*) are to be applied exclusively to the facts that satisfy multiple discrimination.

Protection from any adverse treatment or adverse consequences as a reaction to a complaint or proceedings aimed at enforcing compliance with the principle of equal treatment was introduced as a measure to enhance protection against discrimination and applies not only to persons filing a complaint but also to other persons such as, for example, employees or witnesses supporting the complaint.

Institutions

The Equal Treatment Commission established at the Federal Ministry for Education and Women's Affairs (*Bundesministerium für Bildung und Frauen, BMBF*) deals with all issues related to discrimination and can, in particular, prepare expert opinions and carry out case reviews. Claims for damages or performance, however, cannot be asserted; this lies within the exclusive jurisdiction of the courts. The decisions of the Equal Treatment Commission are not binding. The Equal Treatment Commission and the courts can be addressed independently from one other.

Opinions issued by the Equal Treatment Commission are published in full, yet in anonymised form, on the BMBF's website.

The Equal Treatment Ombuds Office established at the Federal Chancellery provides advice and support to individuals who feel they are discriminated against.

The following rules apply to the participation of non-government organisations who represent the interests of certain groups faced with discrimination in administrative proceedings before the Equal Treatment Commission:

- an individual who is discriminated against may be represented by a member of such NGO in proceedings, on the one hand, and
- the individual concerned may request that a member of such NGO be called in for the proceedings as an expert, on the other hand.

The participation of an NGO in court proceedings is ensured by way of third-party intervention (*Nebenintervention*).

Changes during the reporting period

On 1 March 2011, an amendment to the Equal Treatment Act and to the Equal Treatment Ombuds Office and Equal Treatment Commission Act entered into force.

The most important changes are:

- requirement of stating the minimum wage as defined in the collective agreement and information regarding the willingness to pay more than that, to be included in job advertisements as well as the relevant penal provisions;
- protection against associative discrimination;
- increasing compensation from EUR 720 to EUR 1,000 in case of harassment;
- introduction of a provision concerning the non-discriminatory advertising of housing;
- provisions in the law exempting members of the Equal Treatment Ombuds Office and the Equal Treatment Commission's Senates from instructions through simple statutory regulation and subjecting them to the Federal Chancellor's supervision with respect to the implementation of Article 20 Para. 2 of the Federal Constitutional Law (*Bundes-Verfassungsgesetz, B-VG*);
- abrogation of confidentiality in the proceedings before the Equal Treatment Commission.

Another amendment entered into force on 1 August 2013, Federal Law Gazette I no. 107/2013.

It clarifies that, in addition to access to self-employed activity, the principle of equal treatment applies to all areas covered in Directive 2010/41/EU on the application of the principle of equal treatment between men and women engaged in an activity in a self-employed capacity (e.g. the establishment, setting-up or expansion of a business as well as the commencement or expansion of any other type of self-employment).

It also sets forth that in the fields of vocational guidance, vocational training, further occupational training and retraining individuals are protected for the entire period of the respective measures.

Furthermore, the provisions on salary information in job advertisements were extended.

With respect to court proceedings, it was expressly defined that the compensation granted must be effective and proportionate and designed to prevent discrimination.

Finally, proceedings before the Equal Treatment Commission were optimised (e.g. fewer senate members, streamlined structure of Equal Treatment Ombuds Office, enhanced arbitration function of the Equal Treatment Commission, new questioning rules in the Equal Treatment Commission).

The most recent versions of both laws are available at the following address (in German):

<http://www.ris.bka.gv.at/GeltendeFassung.wxe?Abfrage=Bundesnormen&Gesetzesnummer=20003395>

<http://www.ris.bka.gv.at/GeltendeFassung.wxe?Abfrage=Bundesnormen&Gesetzesnummer=10008466>

Equal Treatment Report for the Private Sector (in German)

https://www.bmbf.gv.at/frauen/gleichbehandlung/gbb_privat.html

Equal Treatment Commission - Senate II (in German)

https://www.bmbf.gv.at/frauen/gleichbehandlungskommissionen/gleichbehandlungskommission/senat_ii.html

Statistics of the Equal Treatment Commission - Senate II (in German)

https://www.bmbf.gv.at/frauen/gleichbehandlungskommissionen/gleichbehandlungskommission/senat_ii_pruefungsergebnisse.html

A detailed report on **employees in public service** is included in Austria's **29th Report on the 1961 Charter**. **No substantial changes** were made during the period reviewed.

Equal Treatment Report for the Federal Civil Service 2014 (in German)

https://www.bmbf.gv.at/frauen/gleichbehandlung/gbb_bund.html

Federal Equal Treatment Commission - Senate II (in German)

https://www.bmbf.gv.at/frauen/gleichbehandlungskommissionen/bgbk/gutachten_senat_ii.html

For discrimination on grounds of disability - see reporting on Article 15.

For discrimination on grounds of sex - see reporting on Article 20.

In reply the Committee's additional question and conclusion of non-conformity during the last reference period (repeal of Section 8 § 2 of the Aliens Employment Act), the following information is provided:

Section 8 Para. 2 and Section 9 Para. 3 of the Employment of Foreigners Act (*Ausländerbeschäftigungsgesetz, AuslBG*) were repealed by the amendment of Federal Law Gazette I no. 25/2011. These provisions, pursuant to which work permits granted to foreign nationals for the first time were to be combined with the requirement - in cases of downsizing a company or prior to temporarily reducing working hours (*Kurzarbeit*) - to terminate employment relationships with foreign nationals before terminating those with nationals (Section 8 Para. 2) including the withdrawal on grounds of failure to meet this requirement (Section 9 Para. 3) were repealed because they were criticised by the Council of Europe on the one hand, and on the other hand, the aforementioned requirement conflicted with Article 11 of Council Directive 2003/109/EC of 25 November 2003 concerning the status of third-country nationals who are long-term residents, which - among other things - sets forth the express principle of equal treatment as regards conditions of employment and working conditions, including conditions regarding the termination of employment relationships.

In addition, it conflicted with Article 24 of the Free Movement of Citizens Directive as it disadvantaged skilled workers from the new EU Member States who were admitted to the labour market under the temporary provisions on the EU enlargement, i.e. the Ordinance on Exceeding the Maximum Federal Number (*Bundeshöchstzahlenüberziehungsverordnung, BHZÜV*), Federal Law Gazette II no. 350/2007.

These provisions were eliminated from legislation and became ineffective as of 30 June 2011.

II. Forced Labour

Prison work

Section 44 of the Penal Execution Act (*Strafvollzugsgesetz, StVG*) sets forth that all prisoners and all persons detained in prison who are able to work are basically obliged to work. They are not allowed to perform any life-threatening work or work involving severe health hazards.

Doing meaningful and useful work has turned out to be extremely positive towards making a lengthy prison term better bearable. Additionally, the aim is that the detained persons learn skills which help them build a proper existence after their release.

Overall, work is of high priority in Austria's penal system. From the prisoners' perspective, work is a major element that allows them to establish social contacts in a penal institution and at the same time the only way to earn money during their time in prison.

Another important aspect of prisoners working during their detention is that this way they can retain or enhance their vocational skills, and it keeps them occupied in a meaningful way. Work is a crucial prerequisite for exerting a positive influence on the inmates and also important for their re-integration into society.

Since 1 January 1994 working inmates have participated in the unemployment insurance scheme and are entitled to unemployment benefits after their release from prison.

Section 76 *StVG* sets forth that prisoners who have an accident at work that was not intentionally caused by themselves are entitled to accident insurance care in addition to the provisions on medical care specified. Other medical care of prisoners is governed by Sections 66 et seq. *StVG*. During the time of detention, all inmates are entitled to healthcare even if they intentionally cause diseases or injuries to themselves, with the federal government having to carry the costs in view of the lack of conventional health insurance. Pursuant to Section 76 *StVG*, medical services are limited to the necessary treatment by a physician or specialist, and care.

At present (as at July 2014), a total of 357 businesses are operated in 27 Austrian penal institutions. They are operated as some 50 different types of workshops and businesses (e.g. joineries, locksmiths, bookbinding businesses, print shops, production of concrete goods, agriculture, field cropping and/or livestock farming).

The workers' protection provisions applicable to private enterprises equally apply to businesses inside penal institutions.

Between 2011 and 2013, men worked an average of 2.25 working hours and women 1.62 working hours per day¹.

In 2013, inmates of court prisons recorded some 11 hours of work on average per week, fluctuating between nine and 17 hours; individuals held in pre-trial detention are not obliged to work but if work is available and they wish to work they may do so pursuant to Section 187 of the Code of Criminal Procedure (*Strafprozessordnung, StPO*). Average working hours per week in penal institutions ranged between 16 and 22 in 2013.

¹ Data provided by the Austrian Federal Computing Centre (*Bundesrechenzentrum, BRZ*) from the Integrated Administration of the Penitentiary System (*Integrierte Vollzugsverwaltung, IVV*)

The remuneration for inmates is modelled on the remuneration as specified in the collective agreement for metal workers, is based on the minimum wage index calculated by Statistics Austria and is currently (as of 1 January 2015) as follows (per hour):

for light unskilled work	EUR 5.61
for heavy unskilled work	EUR 6.31
for crafts-level services	EUR 7.02
for skilled work	EUR 7.71
for supervisor's work	EUR 8.41.

75 % of the remuneration are retained as contribution to law enforcement costs. After deduction of an unemployment insurance contribution, 50 % of the remainder of the remuneration are paid out (*Hausgeld*) and 50 % are credited as a reserve.

Inmates of Austrian penal institutions who were released in 2013 earned an average of EUR 4.85 per day in prison after deduction of law enforcement costs and insurance contributions.

The most frequent scenarios of work by inmates in penal institutions are the following:

1. The inmates work in a business (locksmith's shop, joinery, bookbinding business, etc.) integrated in the institution. To this end, the penal institution accepts an order e.g. from a company, or private-sector companies - as currently in two cases - move parts of their workshops to the premises of the institution and enter into a service procurement contract (*Dienstverschaffungsvertrag*) with the penal institution, on which the employment of inmates in this company is based.
2. In many cases prisoners work outside the penal institution. The penal institution finds a job for the inmate and enters into a temporary-agency employment contract with the business owner outside, or the previous employer requests the former employee (who is imprisoned) and enters into a temporary-agency employment contract with the penal institution. This service procurement contract for work performed outside the penal institution contains a reference to the applicable workers' protection regulations.

The number of working hours is to be modelled on what is common practice in trade and industry and/or in agriculture and forestry, where applicable. The maximum statutory working hours must not be exceeded (Section 50 Para. 1 *StVG*). Sundays and public holidays are rest periods, unless the work is necessary for the institution's regular operations or where there is an immediate demand in the institution or because that type of work cannot be interrupted. By the same token, prisoners must not be forced to work at other times that require a rest period based on their religion (Section 50 Para. 3 *StVG*).

The income (wage) generated by the prisoners' work goes to the Federal Government (Section 51 Para. 1 *StVG*); prisoners who perform satisfactory work are to receive remuneration for their work (Section 51 Para. 2 *StVG*). Section 45 Para. 2 *StVG* lays down that prisoners may also carry out work for companies in trade and industry or for other private-sector clients. Penitentiaries are allowed to enter into agreements on prisoners' work with companies in trade and industry (Section 46 Para. 3 *StVG*).

Section 49 Para. 3 *StVG*, which lays down that the general requirements for the protection of life, health and physical safety apply accordingly to the work equipment and facilities to be used by prisoners and the processes to be performed by them, applies to prisoners who work

for private-sector companies as well. Employees of the company may professionally supervise the prisoners but have no disciplinary power whatsoever over them and must by no means exercise direct or indirect coercion. This means that the company has no power of disposition over the prisoners. Law enforcement staff is in charge of monitoring them.

Prisoners may be ordered to work outside the institution without being guarded (*Freigang* - day release) for a company not belonging to the institution only if they consent to it (Section 126 Para. 3 *StVG*).

Coercion in connection with domestic work

Section 104a of the Criminal Code (*Strafgesetzbuch, StGB*) (human trafficking) specifies a prison sentence of six months to five years for anyone who, with the intent of allowing the exploitation of a person of full age, uses unfair means against that person and solicits that person, gives the person accommodation or otherwise harbours the person, transports the person, or offers or passes the person on to another party. Unfair means include use of violence or dangerous threat, misrepresentation of facts, exploitation of a position of authority, of a difficult situation, a mental disease or a condition which makes the person defenceless, as well as intimidation and granting or accepting an inducement for the handover of control about the person in question.

A term of imprisonment from one to ten years has to be imposed on anyone who, with the intent of exploitation, solicits a minor, gives that person accommodation or otherwise harbours the person, transports the person, or offers or passes the person on to another party.

Section 104a *StGB* defines five forms of exploitation: sexual exploitation, removal of organs, exploitation of labour, exploitation through forced begging and exploitation through forced commitment of punishable acts. Human trafficking for the purpose of domestic exploitation can be subsumed under the exploitation of labour.

Pursuant to Section 104 *StGB* (slavery) a sentence of ten to twenty years of imprisonment has to be imposed if someone engages in slave trade or otherwise deprives a person of his or her personal freedom by subjecting him or her to any type of slavery, or puts him or her into a position similar to slavery, or acts in a way that another person is enslaved or is put into a position similar to slavery, or puts himself or herself into a position of slavery or similar to slavery.

The main characteristic of slavery (see Article 1 Para 1 of the Slavery Convention, Article 7 lit. a of the Supplementary Convention of 1956) is the treatment of people over whom any or all of the powers attaching to the right of ownership are exercised. Among the practices similar to slavery according to Article 1 of the Supplementary Convention are debt bondage and serfdom as well as giving on payment, transfer and inheritance of wives.

Pursuant to Section 116 of the Aliens' Police Act (*Fremdenpolizeigesetz, FremdenPolG*) (exploitation of aliens) a sentence of up to three years of imprisonment shall be imposed if someone exploits an alien with the intention to procure a permanent income to himself/herself or to a third party by exploiting the particular dependency of an alien residing illegally in Austria and having no employment permit or otherwise is in a special relationship of dependence. The sentence is even higher if the offence puts an alien into distress, entails the death of the alien (imprisonment of six months to five years), or if the offender exploits a greater number of aliens (imprisonment of one to ten years).

If the offender deceives the employee as to the payment of a wage for the work performed, a

punishment on grounds of Sections 146 et seq. of the *StGB* (deception) may be considered. According to this provision, persons commit a criminal offence who, with the intent of unlawfully enriching themselves or a third person by benefiting from the conduct of the deceived person, cause harm to the assets of this person or another one's by misrepresenting facts and thereby inducing him or her to commit an act, tolerating or omitting it.

Statistics on offence reports, proceedings and convictions:

The data on offence reports and proceedings were retrieved by an evaluation of the electronic judicial registry. Only proceedings at the public prosecution offices were searched in order to avoid double counting.

The figures on the number of convictions were taken from the Criminal Court Statistics collated by Statistics Austria. In the case of convictions for multiple offences, the Criminal Court Statistics only specify the primary offence (the offence with the highest punishment). Therefore, not all the convictions are included.

104 StGB	2010	2011	2012	2013	2014
Offence reports (person-related)	8	-	-	-	3
Proceedings (case-related)	8	7	6	8	3
Convicted	0	0	0	0	0
104a StGB	2010	2011	2012	2013	2014
Offence reports (person-related)	67	-	-	-	127
Proceedings (case-related)	40	46	35	73	61
Convicted	2	1	0	2	-
§ 116 FremdenPolG	2010	2011	2012	2013	2014
Offence reports (person-related)	-	-	-	-	23
Proceedings (case-related)	7	11	20	13	10
Convicted	1	2	0	0	1

Domestic workers

On 16 June 2011, the General Conference of the International Labour Organization (ILO) adopted the Domestic Workers Convention (No. 189). This Convention obliges each ratifying member state to take measures ensuring the effective implementation of the provisions of the Convention covering all aspects of the employment of domestic workers. The Convention concerns individuals who perform domestic work in or for a household or households, excluding those who perform domestic work only occasionally or sporadically and not on an occupational basis.

The obligations in the Convention concern matters ranging from the provision of information on terms and conditions of employment and protection for migrant domestic workers to the fundamental principles and rights at work. It covers regulatory areas ranging from protection against abuse, harassment and violence to protection against discrimination. It also contains

rules on working time and provisions regarding the protection of wages, health protection and social security protection. Finally, it lays down provisions regarding employment agencies and access to dispute resolution mechanisms and includes a request for adequate means for ensuring compliance, including labour inspection measures.

An assessment of the legal situation in Austria has shown that while Austria is already largely compliant with the Convention, amendments are required in relation to the following provisions:

- Article 8 paragraph 1 (recruitment from abroad):
The Convention requires that domestic workers receive a binding offer of terms and conditions of work before crossing national borders, i.e. the terms and conditions must be enforceable in Austria before domestic workers take up work. This is not currently the case; also see the supplementary question.
- Article 8 paragraph 4 (travel costs):
Currently there are no provisions regarding payment of costs for repatriation of domestic workers to their home country following expiry or termination of the employment contract.
- Article 10 paragraphs 1 and 2 (working time):
Weekly working hours need to be reduced and the weekly rest period needs to be extended. To avoid significant reductions in wages, the intention is to reduce working time in three stages.
- Article 17 paragraphs 2 and 3 (inspection):
Ensuring adequate supervision of working conditions by establishment of measures for labour inspection, see supplementary question. While these labour inspection measures will not be as extensive as those applicable to companies, given the qualification in the Convention ("with due regard for the special characteristics of domestic work"), it is not felt that they need to be.

Over the course of a number of meetings with the social partners beginning in autumn 2012, a bill which eliminates all of the obstacles to ratification was produced in spring 2015.

There is now broad consensus among the social partners, but it has not yet been possible to resolve all disagreements. It would appear to be realistic to expect the legislation to be adopted during 2016, however.

Can the homes of private individuals who employ domestic workers be inspected? Do migrant workers receive a job offer or an enforceable contract of employment?

Section 119 Para. 1 StPO sets forth that flats and other places protected by a householder's rights may be searched if certain facts give rise to the assumption that a person suspected of a criminal offence is hiding there, or that objects or traces may be found there that need to be seized or analysed. Criminal acts relevant in this context may be in particular those specified in Section 104 StGB (slavery) and Section 104a StGB (human trafficking). Such house search

must be ordered by the public prosecutor following a court's approval (Section 120 Para. 1 StPO).

Aside from this, the law as it stands does not permit inspections relating to observance of the rights of workers to be carried out in the homes of private individuals who employ domestic workers.

Migrant workers also do not currently have the right to a job offer or enforceable contract of employment.

Due not least to the absence of provisions on both of these points, Austria does not currently satisfy the requirements of the ILO Domestic Workers Convention No. 189.

However, a bill intended to overcome all current obstacles to ratification, including these two items, is currently in preparation.

Does criminal law adequately protect domestic employees in the case of exploitation by the employer?

Section 104a *StGB* penalises inter alia human trafficking for the purpose of labour exploitation (see the compiled report regarding Article 1).

In response to the Committee's question concerning the requirement that migrant workers recruited in one State for the performance of domestic work in another State receive an offer of employment in writing or an enforceable employment contract in this last State, and whether foreign domestic workers have the right to change employer in case of abuse, the following information is provided:

Normally, workers from other EU countries can migrate to Austria only if they satisfy the criteria for issue of a "Red White Red" (*RWR*) Card. A points system is in place (criteria: qualifications, professional experience, age, language skills). Access to the Austrian labour market is essentially restricted to highly qualified skilled workers in shortage occupations and to key employees. Before an *RWR* Card is issued, the Public Employment Service (*Arbeitsmarktservice, AMS*) checks that the applicant has the required number of points and carefully examines his or her contract of employment and pay. However, *RWR* Cards cannot be issued for domestic work as this is a low-skilled occupation.

Accordingly, domestic workers employed in Austria will mostly be EU citizens, who have free access to the labour market.

Besides these, there are also au pairs, who are also covered by the Domestic Help and Domestic Employees Act (*Hausgehilfen- und Hausangestelltengesetz*). Employers of au pairs from third countries must declare such employment to the *AMS*, and must also submit a contract of employment in order to obtain a confirmation of declaration.

Enforceability of such contracts of employment is the same as for employees generally.

The Employment of Foreigners Act (*Ausländerbeschäftigungsgesetz*) also provides for an exemption for staff at diplomatic missions, which includes domestic workers. No labour permit is required for workers employed in the households of embassy employees, meaning that the *AMS* cannot perform any advance checks on the employment contracts of such workers.

Activities to prevent and combat domestic servitude of private domestic employees of persons enjoying immunity (members of diplomatic and consular missions and staff of international organizations)

The Austrian Foreign Ministry coordinates the inter-ministerial Task Force on Combating Human Trafficking. Activities aimed at preventing and combating domestic servitude of private domestic employees in diplomatic households continue to receive particular attention under the National Action Plan on Combating Human Trafficking.

As a host country to a number of international organisations and a large diplomatic community Austria puts special emphasis on this issue and has introduced a number of measures to ensure the protection of domestic staff in diplomatic households (see previous reports).

Since the previous report, Austria has organized events for domestic workers employed in diplomatic households in 2013 and 2015, informing them about their rights regarding wages, working hours and other job conditions.

Austria cooperates with other countries at a bilateral and multilateral level, for example within the OSCE, in order to raise awareness and strengthen international cooperation on this issue.

In order to address issues emanating from the employer's immunity, the Ministry of Justice issued a decree in 2012 that court proceedings in such cases should be merely discontinued (with the option of resuming them at a later stage) but not formally closed. In 2014 the Foreign Ministry has started to mediate in cases of labour exploitation in diplomatic households and negotiate out-of-court settlements.

Minimum period of service in the armed forces

Military service

Military service can be completed with the Austrian Armed Forces, either

- A. in the form of national service (*Präsenzdienst*);
- B. in the form of national training service (*Ausbildungsdienst*); or
- C. in the framework of an employment relationship.

Military service in the framework of an employment relationship or in the form of national training service can be terminated by the soldiers at any time (resignation or termination); performing a review as to whether this constitutes forced or compulsory labour pursuant to Article 4 ECHR is therefore unnecessary.

In case of active duty, however, the termination of soldiers serving their compulsory term who have filed their resignation from the employment or the national training service will become effective only upon completion of the mission (cf. Section 21 Para. 4 Civil Service Act (*BDG*) and Section 38b Para. 7 Defence Act (*WG*) 2001).

Compulsory military service is set forth in Austrian law. The following types of national service are compulsory according to the Austrian Defence Act (*Wehrgesetz, WG*) 2001, Federal Law Gazette I no. 146:

- A.1. Section 20 *WG* 2001: Basic military service (six months)
- A.2. Section 21 *WG* 2001: Militia exercises (only applies to conscript soldiers who were obligated to participate as a result of an irrevocable voluntary report or of a selection decision or by law; the duration depends on the respective function and comprises 30 to 150 days over several years)

- A.3. Section 23a Para. 1 *WG* 2001: Task-force service (duration depends on respective mission)
- A.4. Section 23a Para. 4 *WG* 2001: Extraordinary exercises (duration depends on mission preparation)
- A.5. Section 23a Para. 2 *WG* 2001: Postponed-termination service (duration depends on respective mission)

Apart from active duty, the minimum term of service may also change in the case of militia exercises if the conscript soldier is assigned to a different task force function or withdrawn from the task force organisation, i.e. he will not be called on to any further militia exercises.

Alternative civil service

As military service is compulsory, all male Austrian citizens who have reached the age of 18 and have the required physical and mental capacity to serve with the Armed Forces must do six months of basic military service.

Anyone who objects to compulsory military service on grounds of conscience and is exempted has to do nine months of alternative civil service outside of the Armed Forces.

Persons obliged to do alternative civil service are to be employed for services for the benefit of civilian national defence or common welfare and which require a similar commitment from them as the military service does from persons doing compulsory military service.

In case of a mission as defined by Section 2 Para. 1 lits. a to c of the Austrian Defence Act (*Wehrgesetz, WG*) 2001, Federal Law Gazette I no. 146, various conditions may warrant a conscription to task-force service.

Furthermore, under extraordinary circumstances political decision-makers may order postponed-termination service (*Aufschubpräsenzdienst*) delaying the discharge from basic military service, a militia exercise, a voluntary arms exercise, functional service or military service as a temporary career soldier or discharge from national training service.

Under extraordinary circumstances, the Federal Minister of Defence and Sports may - within the scope of the powers granted to him by the Federal Government - order the engagement of persons doing compulsory military service in extracurricular exercises as a preventive measure to strengthen the country's defence capability.

III. Other aspects of the right to earn one's living in an occupation freely entered upon

In a further step to effectively protect workers' rights to earn their living in an occupation freely entered upon, the Anti-Wage and Social Dumping Act (*Lohn- und Sozialdumping-Bekämpfungsgesetz, LSDB-G*), Federal Law Gazette I no. 24/2011, was adopted in Austria, allowing administrative authorities to monitor remuneration for the first time. The *LSDB-G* aims to ensure equal terms of remuneration for employees working in Austria.

Verification and monitoring is performed

- by health insurance providers in the case of workers insured with an Austrian social security institution;
- by the competence centre for combating wage and social dumping (CWSD Competence Centre) in the case of workers posted to Austria or cross-border temporary agency workers. This Centre forms part of the Vienna Regional Health Insurance Fund (*Wiener Gebietskrankenkasse*). Investigations at the workplace are carried out by the financial police.

- Underpayment in the construction industry is also monitored by the Construction Workers' Holiday and Severance Pay Fund.

If underpayment is identified, the monitoring body has to report this to the competent District Administration Authority. In certain cases no report needs to be filed provided that the employer retrospectively pays the remuneration to which the employee is entitled.

It is important to note that employers (or in the case of temporary agency work, the agency and the user undertaking) may face an administrative penalty for every incident of undercutting the remuneration to which the employee is entitled as stipulated in a law, ordinance or collective agreement as well as any case of frustrating verification of compliance and failing to keep pay documents readily available. Depending on the number of affected employees and on whether the administrative offence was committed repeatedly, the potential fines range from EUR 1,000 to EUR 50,000.

In addition, the provision of services may be prohibited in the cases of underpayment, frustration of compliance verification or failure to keep pay documents readily available. At the same time, the monitoring bodies may impose sanctions (e.g. money or seizure of objects or suspension of payments to clients or user undertakings) for enforcing administrative penalties if there is reasonable suspicion that an administrative offence was committed and potential reasons that the prosecution of the offence or execution of the penalty may be substantially impeded.

In response to the Committee's statement of interpretation on Article 1 § 2 - requirement to accept the offer of a job or training or otherwise lose unemployment benefit - the following information is provided:

Unemployment Benefit

Entitlement conditions for claiming unemployment benefit (UB) are as follows:

Unemployment: a person is considered to be out of work if his or her income falls below the marginal earnings threshold (e.g. in 2014 up to € 30.35 a day or € 395.31 a month for wage and salary earners); persons who fulfil the conditions for entitlement to benefits from old-age pension insurance or are already in receipt of such benefits are not considered to be unemployed. Students, too, are not considered to be unemployed unless they meet the minimum period of employment (periods of study not included) required for first-time claims for unemployment benefits.

Availability for work means that claimants can and may take up employment, and that they are able to work, willing to work and currently out of work.

Individuals who can and may take up employment are defined as those who

- are ready to take up and engage in the type of reasonably suitable insurance-covered employment that is normally offered on the labour market and complies with the relevant legal and collectively agreed rules,
- are authorized to take up waged or salaried employment under residence law, and
- are not subject to any final and enforceable expulsion order.

Willingness to work is defined as the readiness to take up a reasonably suitable job, including jobs brokered by the competent regional PES office. Jobs considered to be reasonably suitable include jobs in socio-economic enterprises or community (non-profit) employment projects. A job is considered reasonably suitable if it is fairly paid (in compliance with collective agreements and/or legal stipulations), matches the unemployed individual's physical

capabilities and does not jeopardise the unemployed individual's health or violate moral standards. Placement in a job which does not correspond to the beneficiary's previous employment is permissible, provided that it does not significantly impede a return to his/her previous occupation. Unemployed individuals must be ready to accept a suitable job or to enter skill enhancement or retraining programmes. A job is considered reasonably suitable if it suits the job-seeker's capabilities and corresponds to the standards defined in legislation and collective agreements. The job-seeker must be able to reach the place of work within an adequate period of commuter time or, if this is not possible, must be given appropriate accommodation near the workplace. Workplace and working hours must not conflict with statutory care duties (for children).

In the first 100 days on unemployment benefits (under newly acquired entitlements to such benefits), unemployed workers are entitled to placement in their former occupation (Berufsschutz). Vacancies offered must not significantly impede such workers' return to their previous occupations. Moreover they enjoy Entgeltsschutz, i.e. basic pay level entitlements.

In the first 120 days on unemployment benefits (under newly acquired entitlements), job-seekers are entitled to certain pay levels in any new job totalling 80 % of previous pay (up to the maximum assessment basis), and for the remaining period of benefit receipt they are entitled to pay rates that are equivalent to 75 % of this previous pay level. If job-seekers primarily had part-time jobs, pay in the new job opening may not fall below previous pay levels.

If claimants refuse or frustrate opportunities by failing to accept jobs or failing to actively participate in training programmes, their unemployment benefits will be suspended and, as a consequence, the duration of benefit entitlement will be reduced (by at least six weeks, and in repeat cases by eight weeks).

Ability to work means that unemployed individuals are neither disabled nor incapacitated as defined under pension law.

Unemployment Assistance

Unemployment Assistance (UA) which is payable on exhaustion of unemployment benefit, combines the principles of social insurance and welfare. The UA rate is calculated on the basis of the unemployment benefit previously received and is equal to no more than 92 % or 95 % of the related basic UB amount and no more than 95 % of the supplement amount paid along with the unemployment benefit plus any family supplements where applicable.

After deduction of an exemption limit (varies according to the unemployed person's age and period of UB receipt), unemployment assistance is means-tested on the income of the partner (spouse, cohabiting partner, registered partner).

Eligibility criteria: Applicants must have exhausted their claim to UB and be in need of financial support. Beneficiaries of unemployment assistance are required – just as UB claimants are – to be available for work, which means they must prove that they are willing and able to work.

See also

http://www.sozialministerium.at/cms/siteEN/attachments/7/6/9/CH2394/CMS1320223137738/lmp_in_austria_2012_vers8.10.2013.pdf (pages 42 and following pages)

Overview of the most important changes brought by the reform of administrative jurisdiction and the stages of appeals in Austria

The changes brought by the administrative reform entered into force on January 1st 2014. The most important part of the reform is the constitutionally embodied abolition of the administrative stage of appeals, which got – in almost all cases – replaced by a two-level administrative jurisdiction. A Federal Administrative Court (“Bundesverwaltungsgericht”), nine Administrative Courts of the Provinces (“Landesverwaltungsgerichte”) and a Federal Administrative Court for Finance (“Bundesfinanzgericht”) have been established as appeal instances against decisions of the Administrative Authorities.

The legal remedy against decisions of the Administrative Authorities is called complaint (“Beschwerde”).

Appeals (revisions, “Revision”) to the Supreme Administrative Court (“Verwaltungsgerichtshof”) have been restricted as the Administrative Courts now have to permit the appeal; according to the former legal regime, an appeal to the Supreme Administrative Court was generally possible. If the permission is denied by the Administrative Court, the parties can file an extraordinary appeal to the Supreme Administrative Court (“außerordentliche Revision”).

For further details please refer to the following document:



Reform of
administrative jurisdic

Privacy at work

In response to the Committee’s statement of interpretation on Article 1 § 2 - workers rights to privacy - the following information is provided:

The employer's duty of care entails the obligation to adequately take into account the employees' right to protection against interference with their privacy (in particular in light of new technologies, which allow the permanent surveillance of employees and the penetration of private lives outside of working hours).

The comments on Article 1 § 2 in Austria's 29th report on the 1961 Charter refer to the incorporation of the employer’s duty of care as well as to objective and content of the duty of care in the law in Section 18 of the Austrian Salaried Employees Act (*Angestelltengesetz, AngG*), Section 1157 of the Austrian General Civil Code (*Allgemeines bürgerliches Gesetzbuch, ABGB*) and Article 8 of the European Convention of Human Rights.

To meet the duty of care the employer must not only design the working conditions in a way that protects the life and health of employees in the best possible way but that also respects employees' other material and non-material interests and personal rights (such as protection of privacy). If the duty of care is violated, employees have a claim against the employer due to non-compliance and may seek compensation.

Employees who wish to leave the company as a result of a violation of privacy may terminate the employment relationship or announce their premature resignation provided that it is based on pertinent grounds as defined under Section 26 *AngG* (e.g. health risk if work is

continued or violation of morality vis-à-vis the employee) or under Section 82a of the Industrial Code (*Gewerbeordnung, GewO*) (health risk).

Paragraph 3 - Free placement services

Questions 1, 2 and 3

Reference is made to the following link:

<http://www.ams.at/english.html>

where all relevant information and statistics can be found.

PES data on jobseekers and vacancies can be found in the publication **Public Employment Service Austria, Annual Report 2013 “At a Glance”** on the same website.

In reply to the **Committee’s additional questions** we confirm that **all services** provided by the Public Employment Service **remain free of charge**.

As concerns **performance data**, reference is made to the following:



JOB Placement by
PES.xlsx

http://www.ams.at/docs/001_gb_2014_kurzbericht_en.pdf

<http://www.ams.at/ueber-ams/medien/geschaeftsbericht/archiv>

For the period until 2012 refer to the publication „Arbeitsmarktpolitik in Österreich“:

http://www.sozialministerium.at/cms/siteEN/attachments/7/6/9/CH2394/CMS1320223137738/lmp_in_austria_2012_vers8.10.2013.pdf.

The report contains

- Chapter 4.1. (page 21 and following pages) on performance of the Public Employment Service, including job placement
- Chapter 6.2. (page 42 and following pages) on unemployment insurance and conditions of entitlement to unemployment benefit.

Paragraph 4 - Vocational guidance, training and rehabilitation

See reporting on Articles 9, 10 and 15.

ARTICLE 9 - THE RIGHT TO VOCATIONAL GUIDANCE

Questions 1, 2 and 3

In respect of this Article the Government refers to its previous reports on the implementation of Article 9 of the 1961 Charter, in particular to the 29th report.

In addition, the following information is provided:

Vocational guidance within the education system

From the ninth year of schooling on, the Service Centre of the Ministry of Social Affairs (*Sozialministeriumservice*) also provides youth coaches within schools to support successful transition from school into working life for all students at risk of early school leaving.

Prior to graduation and transfer from one school type to another, comprehensive information, counselling and guidance is available at schools:

- Catalogue of mandatory measures concerning information, counselling and guidance for grades seven and eight (see <http://www.bmbf.gv.at/ibobb>) – in German);
- Initiative "18plus – Work and Study Checker" ("*18plus – Berufs- und Studienchecker*") for the transition from secondary to tertiary education (see <http://www.18plus.at/> - in German)

In response to the Committee's request for information on the total number of staff providing guidance within the education system as well as the total number of beneficiaries, the following information is provided:

Since information, counselling and guidance for education and work are deemed to be an important matter that needs to be integrated into overall instruction, all students are generally included in the relevant measures. This, at the same time, makes it difficult to measure the expenses.

Austria's Report on the OECD Career Guidance Policy Review for 2001 contained a cost estimation. Since then, a few investments have been made in specific schemes and initiatives.

The basic structure of the guidance system is unchanged; the only difference lies in the addition of support from youth coaches, financed from funds provided by the Ministry of Labour, Social Affairs and Consumer Protection .

The number of educational and vocational guidance counsellors in the Austrian education system remained largely constant between 2011 and 2014. The following summary relates to 2014 but the information given under "number of persons" also applies to the previous years.

The cost estimate given concerns the proportion of the staff costs for these persons which were spent on educational and vocational guidance activities. Expenditure on youth coaches and teaching activities are not included.

Guidance counsellors	No. of persons	FTE on educational and vocational guidance	staff costs estimated	No. of beneficiaries
				(partly estimated)
School psychologists	149	27	EUR 2.16 million	5,789

School and educational counsellors (teachers with additional training)	2,815	104	EUR 5.75 million	40,000
TOTAL			EUR 7.91 million	45,789

Vocational guidance in the labour market

a. Functions, organisation and mode of operation

Highly qualitative, early and comprehensive education counselling and vocational guidance is an important preventive measure in order to reduce school or training drop-out rates. Vocational guidance has to be gender-sensitive in order to spark girls' interest in technical and scientific careers and to extend the range of choices available to girls and boys. Vocational information and guidance and the resulting career choice are the first levers for breaking up segregation in the labour market.

Alongside personal guidance, there are also collections of documents in the form of videos and brochures. An extensive online offering, including a careers test, information on current labour market trends, an apprenticeship vacancies site and a continuing vocational training database, is available 24 hours a day.

Alongside their purely informative activities, the Vocational Information Centres (*Berufsinformationszentren, BIZ*) also focus on providing guidance counselling and improving the employability of workers. The BIZ advisors provide research support, organise events and workshops, provide educational and vocational guidance for people of all ages and respond to queries by telephone and in writing. All services are provided impartially, free of charge and where desired anonymously – and, as confirmed by the award in 2014 of the IBOBB certificate (quality audit procedure for educational and vocational guidance services in Austria), to a high quality standard. Half a million people have made use of these services over the last year.

Target group: young people

Since the BIZs were founded, the focus of their work has been on management of the school-to-work transition. Their objectives are twofold: firstly, to help pupils embark on the vocational and training pathway that is suitable for them and gives them a sense of purpose and identity, and secondly, to combat unemployment. Over the last five years, the BIZs have worked more intensively with schools at lower secondary level and developed support formats specifically for pupils in the seventh and eighth grades. In doing so, the BIZ advisors not only make a significant contribution to achievement of the educational objectives embedded into the curriculum, but also help strengthen pupils' information literacy by introducing them to the information tools available and their potential uses and helping them evaluate the information obtained.

Target group: adults

Over recent years, increasing numbers of adults about to embark on a new career or change career direction have sought the help of our BIZ advisors. They now make up the largest group of individual visitors. In some cases, these users have great difficulty designing their individual career paths independently or choosing the right training programme for them from among the many options available. Providing these users with factual information alone would be overwhelming for them. Rather, they need specific support services which equip them to make sound decisions regarding (further) education or training. Separately from their daily

work of helping users into employment, BIZ advisors can provide suitable educational and vocational guidance for these users.

Overall, satisfaction with the services provided by the BIZs is very high. Three-quarters of those who visited a BIZ in 2014 were very happy with it.

The Public Employment Service (*Arbeitsmarktservice, AMS*) provides services to help users prepare for finding work or to facilitate the process by providing information about the labour market and occupations in particular. The website www.ams.at/karrierekompass (in German) contains a wealth of clearly presented information on careers/occupations, education and training opportunities and labour market trends, data and research.

The website www.ams.at/beruflexikon (in German) provides the sort of clear information needed to make a well-informed career choice: detailed profiles of almost 1800 occupations contain information on jobs activities, employment prospects and education and training options for these occupations. The "Careers Lexicon" (*Beruflexikon*) allows users to search by profession, training course and required skills. Text and images are supplemented by over 300 online videos giving a good insight into everyday working life in a whole range of jobs. One quarter of young people in Austria and just under one fifth of the population as a whole know and use the AMS's Careers Lexicon.

Clients who would like to know which qualifications have a good future and which professions provide particularly good prospects can use the AMS's "Qualification Barometer" (*AMS-Qualifikationsbarometer*). This shows where there are the most job vacancies and how employment is predicted to develop in the various fields of work. Alongside detailed information and a handy "top 5" function, the Qualification Barometer also provides a quick overview of trends in each field of work. The Qualification Barometer is the only Austria-wide online system providing comprehensive information on qualification trends.

Almost 30% of jobseekers are familiar with the resources available at www.ams.at/qualifikationsbarometer (in German).

For users seeking guidance when selecting a career, the AMS's "Job Compass" (*AMS-Berufskompass*) is the place to look. In an online test, users answer personal and work-related questions which are important when choosing a career. The result is a list of suggested careers and a personalised assessment of the results. At the joint home page www.ams.at/berufskompass (in German) the AMS now provides tests aimed at various target groups: The "Youth Compass" (*AMS-Jugendkompass*) is aimed specifically at young people under the age of 16, while the "Career Change Compass" (*Neuorientierungskompass*) is suitable for those who already have professional experience.

The AMS's "Career Information System" (*AMS-Berufsinformationssystem*) contains profiles of approximately 560 occupations divided into 24 main groups, almost 12,000 job titles, 10,000 skill definitions, and information on training, pay, qualifications and more.

The AMS's "Further Training Database" (*AMS-Weiterbildungsdatenbank*) gives an overview of further training options in Austria. It contains information on almost 70,000 current further training courses in over 3,000 adult education institutions. The further training database is particularly helpful for jobseekers, and 34 % of people in this group are familiar with and use it.

The "Application Portal" (*Bewerbungsportal*) contains tutorials, exercises and tips on every stage of the application process. It also provides practical resources in the form of check lists and many sample letters and CVs for various areas of work. The "Application Coach"

(*Bewerbungscoach*) tool provides support for every step of the process of writing an application letter and CV. 35 % of jobseekers are familiar with this useful tool, which is available at www.ams.at/bewerbung (in German).

The AMS's "Youth Platform" (*Jugendplattform*) www.arbeitszimmer.cc has become an important source of information for pupils, apprentices and students on all aspects of choosing a school, career or university course. There was particular demand in 2014 for the "Jobs Board" (*Jobfenster*) (company apprenticeship vacancies) and the job reports written by young people for young people as part of the "Job Reporter" campaign.

b. Expenditure, staffing levels and number of participants (beneficiaries)

During the 2013/14 academic year, support was provided to over 86,000 seventh and eighth-grade students throughout Austria, an increase of 18 % over the 2012/13 academic year. In 2014, a total of around 500,000 young people and adults used the information available in the AMS's 68 Vocational Information Centres. Around 140 permanent positions are allocated to provision of these services at the AMS's Vocational Information Centres.

Due to the high degree of integration between the services provided by the Public Employment Service, and despite the fact that services were primarily expanded in the area of career choice support (e.g. Vocational Information Centres), a reliable assessment of the total costs and capacities spent in this area is very difficult.

Equal treatment of nationals of the other States Parties

Guidance services within the **education system** are available to all pupils equally, regardless of nationality and origin.

In reply to the Committee's question whether nationals of other States Parties have to satisfy a length-of-residence requirement or special employment conditions to be entitled to labour market policy services, the following information is provided:

Vocational information and guidance in Austria is available from the Vocational Information Centres (*Berufsinfozentren, BIZ*) provided by the **Public Employment Service** at 68 locations across the country. There, anyone interested – independently of nationality, length of residence or employment conditions – can obtain information and advice on occupations, job prospects, labour market trends and education and further training from specially trained counsellors.

Anyone interested – independently of nationality, length of residence or employment conditions – can also obtain **extensive information on occupations, employment prospects and education and further training in individual professions from the internet resources provided by the Public Employment Service**, specifically the "Careers Compass" (*Karrierekompass*) (www.ams.at/karrierekompass), Careers Lexicon (www.ams.at/berufslexikon) and Qualification Barometer (www.ams.at/qualifikationsbarometer) websites (all in German).

ARTICLE 10 – THE RIGHT TO VOCATIONAL TRAINING

Paragraph 1 – Promotion of technical and vocational training; access to higher technical and university education

Questions 1 and 2

In respect of this paragraph the Government refers to its previous reports on the implementation of Article 10 § 1 of the 1961 Charter, in particular to the 29th report.

In addition, the following information is provided:

Secondary Technical and Vocational Education

Technical and vocational schools and colleges pave the way for the transition from compulsory education to the world of work.

The flexible and highly practice-oriented Austrian apprenticeship training system is permanently adapted to the needs and requirements of the industry.

Apprentices are to be trained for skilled workers, they have certain rights and duties, enjoy full social security and are entitled to a remuneration.

The Austrian apprenticeship training is unique throughout the countries of Europe and thanks to their sound training and their good qualifications Austrian skilled workers are highly esteemed all over the world.

Education in part-time vocational schools for apprentices provides for the theoretical background necessary for company-based work while at the same time making up for educational deficits of smaller or highly specialized companies.

Moreover, part-time vocational schools for apprentices are required to provide apprentices with general education in order to pave the way for acquiring further qualifications.

Reforms of the dual system are leading to an increased integration of economic and technological innovations. Moreover, they aim at motivating companies to invest in existing and to create new vacancies for apprentices. And last but not least they also want to foster the young people's willingness to develop new concepts of studying and working.

Secondary technical and vocational schools and colleges enjoy quite some popularity. By means of not just offering basic vocational training but also more sound and specialized courses, technical and vocational schools and colleges provide for training in various fields and for various occupations.

From skilled work to scientific research - schools and colleges for engineering train for a variety of jobs.

The schools and colleges for occupations in the service industries management have been turned into modern high-quality schools offering future-oriented training.

Apart from imparting sound technical know-how as well as instructing students about the legal framework, secondary schools for occupations in the social services sector also foster the development of the individual student's personality as well as his social skills and his understanding of organizational structures.

Mediating between men and nature - it is a rather demanding job for which students at colleges for agriculture and forestry are trained. Providing young people working in the agriculture and forestry sector with access to new technologies as well as with management,

marketing and sales strategies proves to be of special importance for it opens up new prospects.

Apart from apprenticeship training, colleges for agriculture and forestry are the only institutions which provide for education and training in the field of agriculture and forestry.

Post-secondary and Tertiary Education

Post-secondary courses provide short study programmes for people holding standard entry qualifications for university. These courses run for four or eight (for people under employment) semesters, impart technical and practical qualifications to be acquired at technical and vocational colleges and end with a diploma exam.

Post-secondary colleges offer high-quality training for occupations in the social and services sector.

In-service teacher training colleges provide for further training of teachers offering courses on general, theoretical, pedagogical, practical and methodological matters. Moreover, these colleges also engage in research activities and impart key qualifications; they initiate and coordinate projects as part of the further education and training of teachers and in the field of school development and provide for various other services.

Access to advanced vocational education is conditional upon standard entry qualifications for university. Successful completion of "Fachhochschul"-courses gives access to doctoral programmes at university.

Universities

The Austrian universities can basically be broken down into three types of post-secondary educational institutions:

The Austrian universities, universities of applied sciences (Fachhochschulen) and private universities.

Currently, there are 22 Austrian universities, 21 universities of applied sciences and 12 private universities (February 2014).

The public universities are the backbone of post-secondary education in Austria: first and foremost among them the University of Vienna, the oldest university in the German-speaking region, founded in 1365. With 91,358 students, it is one of the largest universities in Central Europe.

The Universities of Graz, Linz, Salzburg, Innsbruck and Klagenfurt, as well as the medical universities and the universities of art, complete the Austrian higher education landscape. Altogether, 298,126 students (winter semester 2013) are enrolled at public universities in Austria.

Compared with the universities of applied sciences (43,593 students) and private universities (7,316 students), public universities account for the major part of post-secondary education in Austria.

Question 3

In the academic year 2012/2013, 322,468 students attended compulsory vocational schools, intermediate vocational schools and higher-level vocational schools.

In the academic year 2013/2014 43.593 students of 399 degree programmes were attending a University of Applied Sciences (*Fachhochschule*).

Detailed statistical information is available under

<https://www.bmbf.gv.at/enfr/school/index.html> - Statistical Guide 2013



statisticalguide_2013
_27013.pdf

and



BM_WFW_Wissensch
aft_2014_web.pdf

To found on:

<http://wissenschaft.bmwf.gv.at/bmwf/ministerium/veranstaltungenpublikationen/publikationen/wissenschaft/>

and under

http://www.statistik.at/web_en/statistics/PeopleSociety/education_culture/formal_education/educational_expenditure/index.html

Austria allocated 5,8 % of its GDP in 2010 for education at all levels (see attached document, Science in Austria/Statistics, page 8):

Expenditure on educational institutions as a percentage of GDP¹, 2010

Pre-elementary education (for children 3 years and older)	0.6
Primary and lower secondary education	2.3
Upper secondary education	1.3
Post-secondary non-tertiary education	n
All tertiary education	1.5
All levels of education combined ²	5.8 ³

1 Expenditure from public and private sources, 2010. Source: OECD, Education at a Glance 2011: OECD indicators, OECD publishing, tab. B2.2.

2 Including non-allocated expenditure

n Magnitude is either negligible or zero

3 Roundings difference

Expenditure on public universities and Fachhochschulen in Austria (billion EUR)¹, 2013

Expenditure on public universities and Fachhochschulen	3.786
Total federal expenditure	75.567
Expenditure on public universities and Fachhochschulen as a percentage of total federal expenditure	5.01
Gross Domestic Product, March 2014	313,197

*1 Closing of Federal accounts****In reply the Committee's additional question and conclusion of non-conformity concerning access to university education the following information is provided:***

The senate of a respective university may set criteria for limited admission of third country nationals, but this **provision has never been executed so far and it will not be executed in future as well - because of the new regulations in place for all applicants irrespective of nationality.**

From winter semester 2013/2014 a new study place limitation and admission process for all students independent of nationality has been implemented in some fields of studies.

All applicants for a university place have to fulfil the general and the study related admission requirements prescribed by law, for instance the possession of a special university entrance qualification required for the degree program selected, a sufficient knowledge of German, and - where entrance examinations are stipulated - all students of course will have to pass these qualifying examinations.

This system guarantees equality of treatment with respect to access to university education to every applicant, including nationals of State Parties who are not nationals of the European Economic Area.

A quota system applies in the field of medical studies: 75 % of all study places are reserved to holders of an Austrian school leaving exam, 20 % go to EU citizen and 5 % to third country citizen. The quota system is continuously revised by the European Commission. The quota system has been put in place in 2006 in order to avoid shortage in medics and to preserve a high quality level in the Austrian health care system.

It can be concluded that discrimination against nationals of other States Parties is no longer possible because it has been ruled out by the new admission system.

Paragraph 2 - Apprenticeship

In respect of this paragraph the Government refers to its previous reports on the implementation of Article 10 § 2 of the 1961 Charter, in particular to the 29th report.

Question 1

One of the Federal Government's priorities is to optimise the labour market prospects for young people. Therefore, the Austrian Government has taken comprehensive measures to fight youth unemployment. Some of the key approaches relate to the apprenticeship system, including the introduction of training assistance for apprentices, integrated vocational training programmes, modularisation of apprenticeship training, as well as the modernisation of apprenticed trades, cost reductions and financial incentives for companies training apprentices.

The Dual System

The Austrian dual system of vocational education and training (VET) is characterised by the combination of practice-oriented training provided at the enterprise and the teaching of

subject-related theoretical know-how, general education and key skills at the part-time vocational school. The enterprise-based part of dual vocational training makes up approximately 80 % of the apprenticeship-period. Training in an apprenticeship lasts between two and four years. About 40 % of young people per year undergo an apprenticeship training. Approximately 35.000 enterprises are open as training sites.

Training in an apprenticeship is open to all young people who have completed their nine years of compulsory schooling, no specific school certificate is required for access to an apprenticeship. The “Vocational Training Act” is non discriminatory in the respect of sex and citizenship. However, the provisions for the occupation of foreigners are relevant for VET.

Smaller enterprises which are not able to offer the full vocational training programme may offer complementary practical training by forming a training alliance with other enterprises. In some sectors of industry, supra-company training centres (e.g. the so-called training construction sites) have been established.

The principles of VET are mainly laid down in the “Vocational Training Act” (BGBl. Nr.142/1969 i.d.F. BGBl. I Nr. 129/2013). This act covers Vocational Training for the most professions regulated in the “Crafts, Trade, Service and Industry Act 1994” and for a number of other professions like, for instance, pharmaceutical trade assistance or lawyer office assistance.

Every year there takes place the “day of apprenticeship” (extended to two days due to demand since 2014) enhancing the apprenticeship’s image and raising the youths’awareness of the wide range of apprenticeship occupations.

2015 there’s awarded the next biannual state prize “Best training companies - Fit for future”. The award distinguishes Austrian training companies for their outstanding activities in the field of apprenticeship training and sets a clear signal for quality in apprenticeship.

Vocational training is held under real-life working conditions. The apprentice acquires the required knowledge and skills on state-of-the-art machinery and equipment. Immediately upon completion of the training, he or she is able to take up a job as a skilled worker. Most of the training can be provided through productive work. This reduces costs and increases the apprentice's motivation to learn.

The Austrian vocational training system responds swiftly to changes in the business sphere and the labour market by continuous adaptations. The apprenticeship training is a solid foundation for an entrepreneurial career. Nearly 50 % of all Austrian entrepreneurs have completed their vocational training with an apprenticeship diploma.

All apprenticeships are laid down in the list of apprenticeships issued by the Minister of Science, Research and Economy. This list also specifies the apprenticeship periods and relationships to other apprenticeship modules including credits awarded for already completed apprenticeship periods.

The modularisation enables designing apprenticeship training in an even more flexible form.

There are 199 regulations for single and modul apprenticeship trades

- 2 years: 12
- 2½ years: 1
- 3 years: 131
- 3 ½ years: 40
- 4 years: 6

modul apprenticeships: 9

(Source: Lehrberufsliste: Stand: 31. Dezember 2014)

The apprenticeship period is reduced for people who have already completed jobspecific training periods in related apprenticeships or acquired relevant school qualifications. Credits may be obtained for relevant training periods completed abroad.

Each training regulation defines the specific description of occupational skills of the respective apprenticeship trade, giving exact details of when and in what order the minimum professional skills and knowledge are to be imparted during the vocational training period by the training master or training enterprise. Furtheron, since the late nineties apprenticeship regulations are issued comprising an occupational profile which summarises in a concise enumeration the occupational performance requirements.

Modernisation of training regulations (Lehrberufspakete 2011, 2012, 2013 und 2014):

– 2010: establishment of the following modul apprenticeships:

- electrical engineering
- clothing design
- glass building technology

modernization of training regulation in the following apprenticeships to adapt to new technologies and changes in working methods (partial restructuring of apprenticeship programs):

- bakery
- blacksmith
- foundry technology
- metal founder
- retail trade services specialising in the sale of delicatessen food
- saddlery - specialising in vehicle saddlery, in riding saddlery, leatherwear-maker and bag-making
- stonemason

– 2011: establishment of the following modul apprenticeships:

- electronic engineering
- metal technology

modernization of training regulation in the following apprenticeships:

- event technology
- non-dispensing chemist
- paper-hanger and decorator
- professional photographer
- retail trade services specialising in garden centre trading
- road servicing specialist

establishment of the new apprenticeship:

- tax assistance

– 2012: modernization of training regulation in the following apprenticeships

- finance and accounting assistant
- metal treatment
- painter and coating technician specialising in decoration painting technique, functional coatings, historic painting technique, corrosion protection,
- paper technology

- establishment of the new apprenticeship:
 - rail track construction technology
- 2013: modernization of training regulation in the following apprenticeships:
 - coatings technology
 - freight forwarding clerk
 - freight forwarding logistics
 - textile chemistry
 - textile technology
 - watchmaker and clockmaker – time measurement technician
- establishment of the new apprenticeship:
 - New training module for electric vehicles established in apprenticeship "automotive technology".
- 2014: modernization of training regulation in the following apprenticeships:
 - hairdresser and wigmaker (stylist)
 - pharmaceutical trade assistance

The initiative for a new regulation is generally taken by the social partners (Austrian Chamber of Commerce, Chamber of Labour) also supported by surveys and research projects carried out mainly by two institutes for research on qualification and training (ibw – Institute for Research on Qualification and Training of the Austrian Economy and öibf – Austrian Institute for Research on Vocational Training), which are also active in formulating new curricula and objectives of apprenticeship training programmes.

The apprenticeship contract is entered into between the authorised apprenticeship trainer and the apprentice. It must be concluded in writing and has to be registered by the Apprenticeship Office in case it is correlating with the Vocational Training Act. Only during the first three months, either the training company or the apprentice may terminate the contract. Later on, termination of the contract is extremely seldom and only possible for a number of reasons explicitly enumerated in the Vocational Training Act (e.g. criminal acts or gross neglect of duties either of the trainer or the apprentice, the apprentice's terminating to pursue his profession or his becoming unable to pursue his profession if it is likely he will not be able to pursue it until the end of the apprenticeship period).

Since 2008, the training company and the apprentice may terminate the training contract on the basis of § 15a Vocational Training Act, whereas a mediation procedure according to Austrian law is obligatory. The apprentice is put upon availability into a new training place (via the mediation of the Public Employment Service).

The final apprenticeship examination is taken with qualified practitioners. Prior learning and informal learning are recognised in a number of ways: Candidates may be admitted to the final apprenticeship exam if they have passed a related apprenticeship or authenticate that they have acquired the knowledge and skills required for the respective apprenticeship, e.g. by exercising a relevant semi-skilled or other practical activity of appropriate length or by attending relevant tuition at school. Credits are awarded for school-based education or those who are not obliged to complete any apprenticeship period after having completed such an education. Qualifications acquired abroad may be recognised as equivalent to a specific apprenticeship by the Ministry of Science, Research and Economy.

Upon termination of the training, the training company is not obliged to continue the work relationship with the skilled worker, and the qualified apprentice is not obliged to stay.

However, it is stipulated by law that apprentices must be employed by the training enterprise for three months after completion of the training (minimum employment period).

Enterprises are approved as training enterprises only if they have suitable technical equipment and training programmes and a sufficient number of trainers. Frequently, the authorised apprenticeship trainer (e.g. the company owner) at the same time acts as the apprentices' trainer. He or she may, however, entrust another competent employee with this task. Trainers require not only the relevant qualifications but also proof of knowledge and skills related to vocational pedagogy and law and therefore have to take an examination, which also is one module of the new master craftsperson examination. This examination is waived upon successful completion of a forty-hour trainer course. Some qualifications or exams are considered to be equivalent to the trainer examination or trainer course. The majority of trainers train their apprentices on a part-time basis alongside their regular work. But there are also full-time trainers and full-time training supervisors, particularly in large enterprises. The apprenticeship trainer's main duty is providing the training according to the training ordinance. He may call on the apprentice only to occupations consistent with the training ordinance and has to take care that the apprentice performs his duties properly and behaves in a responsible way and make him aware of the hazards of the profession. Furtheron, he has to take care that the apprentice attends part-time vocational school which takes place during working hours. The apprentice on the other hand has to endeavour after learning the knowledge and skills required in his profession and to fulfill his duties properly and show the testimonials of part-time vocational school to the apprenticeship trainer. If either the apprenticeship trainer or the apprentice blink their duties grossly, the contract may be dissolved. The focus of education at part-time vocational schools is on job-oriented tuition (about 75 %), general subjects make up one quarter of the curriculum. Specific job curricula also include practical training in workshops or laboratories. The part-time vocational schools are special schools set up for selected apprenticeships. The apprentice is obliged to attend part-time vocational school. Classes are held either in full-time blocks, where part-time vocational school interrupts enterprise-based training for some weeks, usually for between eight and twelve weeks (blockform/seasonal part-time vocational schools), or every week on one or two days (allyear part-time vocational school).

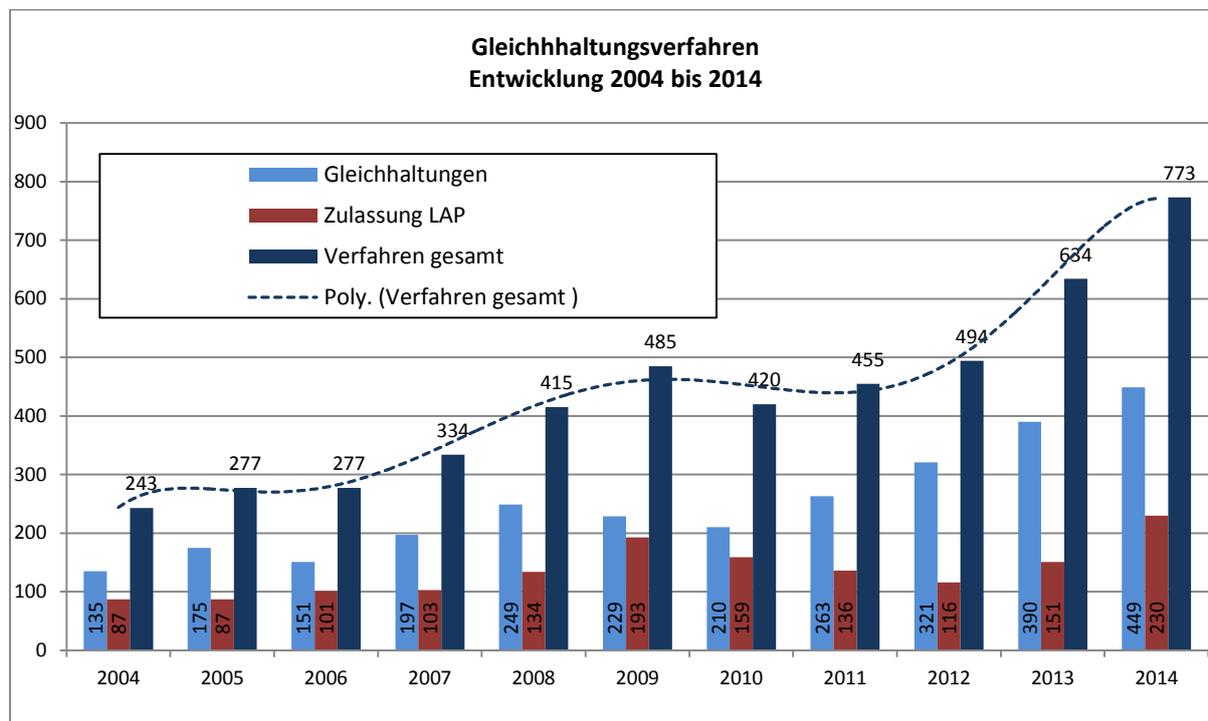
In 1990, and in a more general form in 2005, the Federal Republic of Germany and Austria signed an agreement on co-operation in the field of vocational education and training and on the mutual recognition of certificates and qualifications. In 1994 and in 2005, Austria and Hungary signed similar agreements. A regulation on the mutual recognition of final apprenticeship examinations between the Autonomous Province of Bolzano and Austria entered into force in 1999.

Regarding the policies of the EU in the field of vocational training, the Federal Ministry of Science, Research and Economy aims at including the European dimension in vocational education, so for instance at ensuring mobility and transparency and also the recognition of qualifications acquired by Austrian citizens abroad, at fostering participation in European exchange programmes for apprentices, young skilled workers and trainers (Erasmus+).

Recognition of vocational qualifications

Upon application Federal Ministry of Science, Research and Economy (BMWFW) may declare vocational training credentials obtained abroad to be equivalent to the related final apprenticeship examination taken under the Austrian system.

Furthermore the Ministry may declare the admission to a "restricted" practical examination to achieve full equivalence with the final apprenticeship examination.



Trends

At the moment (31.12.2014) there are about 115,000 apprentices, of which approximately 9,000 are doing a supra-company apprenticeship. There exist a wide range of subsidies to company-based apprenticeships. The youngsters usually search for an apprenticeship positions themselves or with the help of the PES (Arbeitsmarktservice AMS) and apply directly to the company.

The focus on recent reforms is on increasing the quality of apprenticeship, promoting the possibilities to continue a higher education and reducing drop-outs. Also the flexibility of the apprenticeship trades has been increased. These reforms are for example a modularisation of the dual system (basic training within the initial training and a specialisation in the following years), a coaching and counselling system for apprentices and employers, the establishment of a quality seal or the promotion of apprenticeship with matriculation examination.

Challenges

The Dual System is faced with many challenges, due to changes in working life, structural changes and many more:

The structural change of the Austrian population and decrease of the number of young people will decline the supply of young people wanting to do an apprenticeship. At the moment, in particular in some sectors, as e.g. tourism, there is already a shortage of apprentices, while in sum more people are looking for an apprenticeship than positions are offered. Also economic crisis has had an effect on the provision of apprenticeship positions.

The change in the skills that are demanded is challenging the traditional dual system. The focus is changing to more adaptability and skills that are easier to impart in schools. PIAAC has e.g. shown that graduates from general upper education and higher vocational school

have better foundation skills than VET graduates. There is also a trend towards a higher qualification and education. Students are choosing further education - general or vocational schools - which allow directly entering into university, while only 2.2 % of all apprentices continue with a higher education.

However, the apprenticeship system offers also an education for those, who don't want to go to school anymore and start to work and is thus providing opportunity to receive a formal qualification to weaker students. Especially for those persons more supportive offers would be needed.

An apprenticeship degree is facilitating the transition from school to work and finding a job. But instability of jobs and apprenticeship positions is increasing. Also the continuance in a company after completion has been decreasing. Thus, too much specialisation poses also the risk that it is harder for the young people to change their jobs or occupations.

Transition from school to employment

Transition from school to employment involves many challenges for young people and is rarely straightforward. Therefore, young people are offered a wide variety of measures and projects designed to meet their different requirements and capabilities. They revolve around schemes giving young participants sufficient time to mature at their own pace and acquire the necessary skills, as well as on counselling and assistance services (see also Article 15). They are intended to offer guidance and support to help young people steer through the often confusing maze of occupation and education landscapes.

In recent years these programmes have been enhanced and put on a systematic basis. The various types of programmes available to young people increasingly dovetail to pave the way towards the ultimate goal of a mandatory education and formation (*Ausbildung bis 18*). The centrepiece of this training strategy includes Youth Coaching and a number of new projects such as Production Schools.

Mandatory education and formation

Core for early intervention, activation and enhancing skills will be the strategy of "mandatory education and formation" which will be implemented in 2016. It is a reform of the education and formation system in Austria:

Every young person shall be supported in his or her decision on the (vocational) education pathway, with the aim that every young person up to the age of 18 attends and completes a formal education or formation. Those who are in danger of dropping out should be supported individually to reach the highest possible educational attainment.

Stepping stones on the way to a "mandatory education and formation" are/will be the Training Guarantee, Production Schools, Youth Coaching, targeted subsidies and quality-related measures in the apprenticeship system, Ready for Education and Training, subsidised employment projects and the promotion of catching-up an apprenticeship degree during full-time work.

Due to the fact that the Austrian Federal Government has anchored the strategy of mandatory education and formation in the current government program, the reform process has been started already and is still in progress. In 2015/16 a comprehensive offer shall be established.

Question 2

New measures to support the "dual training":

- 2012 "apprentice coaching" was launched. It is available for both apprentices and companies. Due to the positive evaluation at the end of 2013 the program is enlarged - since 2014 it's available in all Austrian regions. The purpose of this professional external monitoring is to reduce the dropout rate and to increase the success rate for the final exam.
- Existing subsidies will be continued:
 - Basic support for companies (wage subsidies depending on year of apprenticeship)
 - Training Alliances for additional qualifications, preparation courses for the final apprenticeship examination
 - preparation courses for the "Berufsreifeprüfung" (Apprenticeship diploma plus certificate of secondary education)
 - Training of trainers
 - Measures to encourage young women in non-traditional occupations
 - Girls in technical professions

Since July 2014 there's an adapted directive (involving the social partners):

- nationwide rollout of the program "[Coaching and counselling for apprentices and training enterprises](#)" (see above)
 - three specific areas: young people with a migration background, young women in non-traditional jobs and training in SMEs
 - establishment of a coordination center with the task to supervise the program (synergies with other support structures - esp. Vocational school, AMS, regional projects, other types of support as preparatory courses for the final examination) and to propose further developments, developing guidelines for trainers,
 - evaluation of the apprenticeship funding
- New support for apprenticeships for adults (aged 18 plus) were implemented as wage subsidies for companies. This is to facilitate later acquisition of an apprenticeship as adults.

In July 2010, an important amendment of the Vocational Training Act was put in force. It includes administrative simplifications when a person wants to change into an Integrative IVET (Initial Vocational Education and Training) and enables Integrative IVET with a reduced number of daily/weekly hours for persons with health disadvantages. This represents a contribution to inclusion and access to vocational training.

Recently an additional amendment to the Federal Law on Education was passed, in which the Integrated Vocational Training has been revised. The programme has been renamed to Vocational Training due to the discriminating meaning of "integrated". It is planned to implement an independent commission which decides if the participation in a Vocational Training is necessary, or if the Teenager is able to attend a regular apprenticeship program. This assessment requires the four-eye-principle to ensure high quality standards. Furthermore this commission should ensure that every teenager is educated to the best of his or her abilities. Another novelty is the upcoming standardization of partial qualifications within the training programs. This will contribute to more transparency regarding the obtainable degrees and is supposed to facilitate the integration of the graduates into the labour market.

Moreover, a legal representation of interest (the "Confidence Committee") has been established for those apprentices who are trained in an institution (and not in a company) and shall act like a works council in the training institution.

Last, but not least, relevant periods abroad of up to 6 months per apprenticeship year can now be accredited to the apprenticeship.

6,475 of all 115,068 apprentices were in Integrated Vocational Training at year-end 2014. Of these 6,475 apprentices, 4,905 were enrolled in apprenticeships with extended periods of training (3,287 being trained in companies and 1,618 by special providers) and 1,570 in apprenticeships for acquiring partial skills (591 being trained in companies and 979 by special providers).

Question 3

The number of apprentices with date 31 December 2014 was in total 115,068 (105,861 in companies and 9,207 in supra institutional - "Überbetriebliche Ausbildungseinrichtung").

A total of 180,798 young people (15 to 24 years of age) were affected by unemployment in 2014. Compared with 2013, this is an increase of 1,795, or 1 %.

In total, 46,671 young people (15 to 24 years of age) were registered as seeking an apprenticeship, of whom the vast majority (43,277) were under the age of 19. 11,299 young people found a regular apprenticeship in a company with the support of the AMS. Apprenticeship promotion funding was paid to companies in respect of 9,751 apprenticeships, for a total expenditure of EUR 27.9 million.

Due to the current labour market situation, active labour market policy measures for those seeking apprenticeships continued at a high level.

In 2014, the Public Employment Service spent around EUR 125 million apprenticeships above company level (provided in training facilities or in training facilities in cooperation with a company apprentice workshop) for young people. This figure includes subsistence allowances and apprenticeship pay.

Young people in intercompany training facilities

Ausbildungsjahr	Gesamt	davon:		
		Lehrgänge	Vorbereitung	Unterstützung
2007/08	8.479	7.191	1.039	387
2008/09	8.598	7.223	1.063	425
2009/10	11.067	8.897	1.658	599
2010/11	11.472	9.539	1.245	871
2011/12	10.510	9.114	722	1.000
2012/13	9.520	8.463	600	604
2013/14	9.294	8.247	551	667
2014/15	9.483	8.790	547	154

Another option is vocational training under Section 8b of the Federal Vocational Training Act (*Bundesausbildungsgesetz, BAG*) (formerly known as "integrative vocational training"). It aims to improve the integration of disadvantaged people with personal placement obstacles into

the labour market. For the purpose of achieving a completed apprenticeship training it is possible, at the beginning or during the apprenticeship, to

- agree on an extended term of apprenticeship (by a maximum for 1 year, in special cases by 2 years) or

in order to improve integration the training contract may stipulate that

- a partial qualification is achieved by limiting the job profile of an apprenticeship to selected elements (possibly supplemented by skills and know-how of other job profiles).

Only persons who could not be placed in a regular apprenticeship and who meet one of the following pre-conditions qualify for participation:

1. persons with special educational needs who have at least partially been educated according to the curriculum of special needs schools,
2. persons without or without a successful leaving certificate from lower secondary school,
3. persons with disabilities in accordance with the Disability Employment Act (*Behinderteneinstellungsgesetz, BEinstG*) or State Disability Act (*Landesbehindertengesetz*), or
4. persons who in the context of a vocational guiding measure or due to a lack of placement in a regular apprenticeship are considered unfit to be placed in a regular apprenticeship within a reasonable period of time, due to reasons based solely on their person.

As described previously in response to question 2, the Federal Vocational Training Act was amended to provide for the establishment of an independent body to evaluate whether vocational training leading to a partial qualification is necessary. Also new here is the principle of control by a second person:

"Persons considered unable to enter into an apprenticeship contract in accordance with Section 1 on the basis of the results of a counselling, support or guidance measure commissioned by the Public Employment Service or the Service Centre of the Ministry of Social Affairs for reasons based solely on their person established by means of an expert assessment confirmed by a second person in a manner to be specified in the relevant Public Employment Service or Service Centre of the Ministry of Social Affairs guidelines."

The Vocational Training Assistance (*Berufsausbildungsassistenz*) body provides support for apprentices.

The tasks of the vocational training assistance are to discuss special educational, psychological and didactic problems of the person concerned with the apprenticeship enterprises, independent training institutions and vocational schools in order to contribute to a solution of the problems.

Before starting vocational training, the vocational training assistance has to define the objectives together with

- eligible participants as well as their parents/guardians,
- authorised teachers (training managers or training institutions),
- and in cooperation with the local education authority and the education provider.

It also plays a part in the final examination.

Occupational training may take place at training institutions or companies.

A particularly successful programme – especially for early school leavers and apprenticeship dropouts as well as young people with particular difficulties and special needs for support – is provided by so-called production schools (*Produktionsschulen*). This concept combines workshop activities, creativity methods and social worker care. The combination of work and learning is aimed at (re)assuming school attendance, integration into a vocational training programme or into the labour market, due to a stabilisation of the personality.

In 2014 there were approximately 30 production schools part-financed by the Public Employment Service. These facilities are available to around 3,000 young people from disadvantaged backgrounds annually and are intended to prepare them for continuing training. The Service Centre of the Ministry of Social Affairs (SMS) also co-finances a further 40 or so production schools, which provided training for approximately 1,100 young people during 2014. These two types of facility are quite similar and the intention is to merge them during 2015, after which both will be operated under the same name ("production schools").

It should be noted in this regard that since 2013 the SMS has been developing the "Getting Ready for Education and Training" ("*AusbildungsFIT*") scheme as a follow-on for the youth coaching service. "Getting Ready for Education and Training" offers a service very similar to the production schools. A key objective of this scheme is to provide young people with a barrier-free support structure for a period of up to one year and, taking a strengthening approach based on hands-on learning and individual coaching, equip them to enter work or enter or return to training. As well as giving young people the opportunity to retake basic qualifications that they have not previously completed, the scheme also aims to improve their social skills. "Getting Ready for Education and Training" is based on four pillars: the "knowledge workshop", training, coaching and sport.

Total number of apprentices

	Apprentices								Apprentices	%
	1980	1990	2000	2005	2010	2011	2012	2013	2014	
Federal states										
Burgenland	5.215	4.044	3.119	2.854	3.039	2.926	2.798	2.650	2.690	2,3
Carinthia	15.288	11.430	9.686	9.004	9.170	8.967	8.798	8.395	7.958	6,9
Lower Austria	31.428	23.379	20.183	18.477	19.814	19.407	19.171	18.638	17.693	15,4
Upper Austria	35.514	27.793	26.855	26.520	27.591	27.361	26.703	25.696	24.644	21,4
Salzburg	13.819	10.814	10.003	9.777	10.308	10.062	9.787	9.396	8.908	7,7
Styria	35.606	25.363	20.172	18.743	19.298	18.911	18.264	17.580	16.737	14,5
Tyrol	17.094	13.116	12.377	13.286	13.359	12.937	12.525	12.084	11.490	10,0
Vorarlberg	9.045	7.722	7.106	7.515	8.133	8.240	8.104	7.914	7.542	6,6
Vienna	31.080	21.855	17.099	16.202	19.187	19.267	19.078	18.226	17.406	15,1
Austria	194.089	145.516	126.600	122.378	129.899	128.078	125.228	120.579	115.068	100,0

Apprentices in Austria by sector and federal states 1980 - 2014 ²										
	Apprentices								Appren	%

Sector	1980	1990	2000	2005	2010	2011	2012	2013	tices	
									2014	
Crafts, trades and services	102.051	76.120	67.309	59.268	57.328	56.077	54.392	52.019	49.183	42,7
Industry	28.668	21.815	14.557	15.355	16.352	16.273	16.056	16.173	16.044	13,9
Commerce	40.536	26.352	19.517	18.490	18.688	18.914	18.804	18.028	16.745	14,6
Banking and insurance sector	524	687	900	942	1.250	1.307	1.333	1.327	1.255	1,1
Transport	3.001	2.689	2.269	2.042	2.724	2.791	2.801	2.750	2.404	2,1
Tourism and leisure industries	16.232	13.941	13.233	14.441	12.552	11.840	11.304	10.351	9.646	8,4
Information and Consulting	-	-	-	2.545	2.868	2.809	2.745	2.640	2.422	2,1
All sectors	191.012	141.604	117.785	113.083	111.762	110.011	107.435	103.288	97.699	84,9
Other ³	3.077	3.912	8.815	9.295	18.137	18.067	17.793	17.291	17.369	15,1
Total	194.089	145.516	126.600	122.378	129.899	128.078	125.228	120.579	115.068	100,0

The ten currently most popular apprenticeships (2014)

Females			
	Apprenticeship Trade	Number	Percentage
1.	Retail trade	10.079	25,7 %
2.	Office assistant	4.652	11,9 %
3.	Hairdresser and wigmaker (stylist)	3.866	9,8 %
4.	Restaurant specialist	1.489	3,8 %
5.	Cook	1.436	3,7 %
6.	Pharmaceutical trade assistance	1.134	2,9 %
7.	Administration assistant	1.093	2,8 %
8.	Hotel- and restaurant-trade commercial assistance	1.058	2,7 %
9.	Gastronomy expert	881	2,2 %
10.	Metal technology	864	2,2 %
	Total "TOP-10"	26.552	67,7 %
	Total Apprentices	39.249	100,0 %

Males			
	Apprenticeship Trade	Number	Percentage
1.	Metal technology	11.352	15,0 %
2.	Electrical engineering	8.725	11,5 %
3.	Motor vehicle engineering	7.236	9,5 %
4.	Retail trade	4.786	6,3 %
5.	Installations and building technology	4.359	5,7 %
6.	Bricklayer	3.237	4,3 %
7.	Joinery	3.165	4,2 %

8.	Cook	2.608	3,4 %
9.	mechatronics	1.789	2,4 %
10.	vehicle body construction	1.518	2,0 %
	Total "TOP-10"	48.775	64,3 %
	Total Apprentices	75.819	100,0 %

SECTOR	Training enterprises Total (2014)	in %	Apprentices Total (2014)	in %
Crafts, trades and services	17.891	56,1	49.183	42,7
Industry	1.320	4,1	16.044	13,9
Commerce	4.595	14,4	16.745	14,6
Banking and insurance sector	263	0,8	1.255	1,1
Transport	403	1,3	2.404	2,1
Tourism and leisure industries	3.486	10,9	9.646	8,4
IT and Consulting	1.341	4,2	2.422	2,1
Non-chamber	2.474	7,8	8.162	7,1
Non-chamber §§ 29 u.30	105	0,3	9.207	8
TOTAL ⁴	31.878	100,0	115.068	100,0

Paragraph 3 - Vocational training and retraining of adult workers

Questions 1, 2 and 3

Focus of training at the Public Employment Service (AMS)

A total of 319,357 individuals were unemployed on average in 2014, and of these 148,742 persons (46.6 %) had completed compulsory school as the highest level of education. 33.1 % had completed apprenticeship training at most. Thus, the qualification schemes offered by the Public Employment Service play a significant role in Austria's labour market policy. Against this background, the role of AMS's training programmes continues to be particularly important.

Skills development programmes for the unemployed available via the AMS include courses on active job seeking, careers guidance, education and further training and other training courses. 251,552 unemployed persons took advantage of these training measures and external courses. Spending, excluding incidental course costs, subsistence allowances, etc., totalled EUR 497 million.

The AMS's "New Skills" programme

For the Public Employment Service's "New Skills" programme, industry professionals from innovative leading companies and labour market and education experts designed model curricula in selected fields of work for the purpose of enabling unemployed persons to acquire practical skills in line with their needs. **11,460 jobseekers** participated in skills training

activities in various fields of work under the "New Skills" programme in 2014, slightly less than in 2013. EUR 11 million were spent on this training.

Caring and health care professions

Since 1 January 2014, funding has been available to permit for those in work to complete training courses in the health and social care professions and nursery school teaching. The funding chiefly serves to enable young nursing assistants and kindergarten workers to improve their skills while continuing to work.

The purpose is to facilitate upskilling in the health and social care sector and in nursery school teaching, professions where skilled staff are required, in order to avert shortages of such staff.

In accordance with specifications laid down by the Ministry of Social Affairs, therefore, the AMS has developed a training funding scheme for workers in the healthcare, social care and nursery school teaching fields. The national funding provided for this scheme also absorbed the impact of expiry of the special arrangements for health and social care professions under the ESF "Training for Employees" ("*Qualifizierung für Beschäftigte*", *QfB*) scheme.

Funding is provided to employers (excluding federal government, Laender governments, municipalities and associations of local authorities), other public entities and employees looking to undertake training in the areas specified who, during that training, will be employed in a position subject to full mandatory social security contributions or on a leave of absence from employment. Funding is also available to quasi-freelancers.

Finally, the AMS has for a number of years focussed on skills development in the caring and health care professions, a field which will be increasingly important in the labour market of the future; around 7,200 people underwent training in this area in 2014.

Reconciliation of work and family life

Reconciliation of work and family life has been designated as a particular priority in the targets for labour market policy laid down by the Federal Minister. The AMS is explicitly called upon to assist women re-entering the labour market and to support part-time employees in their efforts to move into full-time positions.

Funding for 34,733 persons re-entering the labour market was approved in 2014. In the majority of cases (26,805), funding provided went to finance skills training programmes, and support for re-entry into working life was provided in 7,783 cases. Total spending on women re-entering the labour market came to EUR 93 million in 2014.

The following specific measures and labour market programmes are in place:

➤ Budget

Austria is committed to gender-sensitive labour market policies and gender-responsive budgeting, and the Public Employment Service (AMS) is explicitly required to ensure that at least 50 % of active labour market policy funding is spent on women. At 49 %, spending in 2014 fell just short of this target. This was due to the significantly higher rate of unemployment among men (on average men accounted for approximately 57.5 % of those registered as unemployed). In total, around EUR 536 million of active labour market policy spending was on women.

➤ "Return to Work" ("*Wiedereinstieg unterstützen*")

Support specifically targeted at women (and men) re-entering the labour market is provided under the "Return to Work" programme. The programme comprises a comprehensive, target-

group-specific range of support services aimed at preparing participants to return to the labour market. Services are provided by specially trained advisors and via special information sessions which can be accessed at all regional AMS offices.

The AMS offers an additional course, "Re-entry with a Future" (*"Wiedereinstieg mit Zukunft"*), aimed specifically at women. This course goes beyond vocational guidance and addresses the specific conditions and problems experienced by the target group. Around 4,500 women per year take part in the AMS's "Re-entry with a Future" course.

➤ Childcare allowance

Access to professional childcare is essential for a successful return to the labour market, particularly for women returning to work following maternity leave. With the childcare allowance (contribution towards the cost of childcare to facilitate participation in the labour market) the AMS can make it financially possible for women in particular to access employment or training or to stay in work. Low-income families or single parents who need childcare on a full-day, half-day or hourly basis in order to enter work or participate in labour market measures can receive the childcare allowance for a maximum of 52 weeks in total. The amount paid is dependent on the beneficiary's gross income and the cost, type and duration of childcare used.

➤ "Competence with System" (*"Kompetenz mit System"*, KmS)

The Competence with System (*"Kompetenz mit System"*) qualification scheme fits skills training offered by the AMS into a context for completing a formal apprenticeship. Specifically, the scheme allows women with childcare responsibilities, who are not able to continuously participate in training, to acquire skills in stages and ultimately complete an apprenticeship. KmS is characterised in particular by its flexible structure. Participants complete three modules, which may be taken at any time, to complete an apprenticeship. As such, successive periods of unemployment can be used to improve qualifications. A disproportionate number of participants are women – around 950 women from all over Austria took part in 2014. KmS was launched in 2009, has been available nationwide since 2012, and has enjoyed such popularity that new apprenticeship trades are being added continuously.

Adult education under the responsibility of the Federal Ministry for Education and Women's Affairs (BMBWF)

Adult education in Austria is provided by a **variety of educational institutions** pursuing a range of objectives and offering various education programmes. A **range of programmes** are available, from general and basic education courses, "second-chance" courses aimed at achieving formal qualifications and vocational education and training programmes, via management and personal development courses, right through to university courses. To ensure participation in and successful completion of such courses, it is essential that programmes offered are suitable for adult learners and appropriate for the relevant target groups and that high-quality educational and vocational guidance is available.

At **federal level**, the responsibility for general adult education lies with the **Federal Ministry for Education and Women's Affairs**, but other ministries also have specific adult education agendas of their own. At **association level**, adult education is organised by the Austrian Conference of Adult Education Institutions (*Konferenz der Erwachsenenbildung Österreichs, KEBÖ*), which comprises the ten largest continuing education associations. University and non-university **research institutions** constitute a further category. Finally, a large number of **NGOs and associations** are also active in the non-profit and commercial adult education sectors.

The **Federal Institute for Adult Education** (*Bundesinstitut für Erwachsenenbildung, BIFEB*) in St. Wolfgang is an agency of the Federal Ministry for Education and Women's Affairs and a centre of excellence for professionalisation, quality development and expert debate. The BIFEB is an innovative participant in national and international networks and projects and a training centre for everyone working in the adult education field.

The Federal Ministry for Education and Women provides funding for **associations and institutions in the field of adult education**. Conditions and criteria for the award of subsidies are laid down in the Federal Funding for Adult Education and Public Libraries Act (*Bundesgesetz über die Förderung der Erwachsenenbildung und des Volksbüchereiwesens aus Bundesmitteln*).

The European Social Fund (ESF) is a structural fund of the European Union and subsidises projects in the adult education field aimed at sustainable integration of disadvantaged adults into society, education and the labour market, dismantling of barriers and securing of equal opportunities, and professionalisation and quality development. The Federal Ministry for Education and Women's Affairs provides co-financing for **projects funded by the ESF**.

A **comprehensive overview** of adult education in Austria is available online at

www.erwachsenenbildung.at (*available in German*).

Objectives and priorities

A central aim of adult education is to improve access to lifelong learning for all. To ensure participation in and successful completion of such courses, it is essential that programmes offered are suitable for adult learners and appropriate for the relevant target group and that high-quality educational and vocational guidance is available. Adult education is a vehicle for both personal development and vocational further training, and so helps to achieve greater equality of opportunity and to address educational disadvantages and contributes to societal development in general. The priorities are therefore as follows:

- To provide opportunities for lifelong learning with particular emphasis on disadvantaged groups
- To facilitate access to adult education for all
- To increase permeability within the education system, from the basic level through to university
- To expand educational information and guidance provision independently of course providers
- To improve quality and professional skills in adult education (Ö-Cert quality certification programme, Academy of Continuing Education (*Weiterbildungsakademie, WBA*))
- To ensure that the basic structures supporting adult education are in place (KEBÖ performance agreements)

One priority in adult education is to facilitate access to education programmes and measures for disadvantaged individuals and so counter the risk of permanent exclusion. **Basic education** is an essential requirement for active participation in society, democracy and the working world. Only with a basic education is any form of further education possible.

Programmes aimed at providing basic education and fundamental skills are therefore supported under the ESF (see also the "Adult Education Initiative" (*Initiative Erwachsenenbildung*), <https://www.initiative-erwachsenenbildung.at/> - in German).

Basic education is a foundation which opens up prospects for higher general and vocational

education, for acquiring advanced skills, for improving career prospects and for ensuring a stable pattern of employment in the long term.

To raise awareness of the importance of education and further training, among disadvantaged individuals in particular, and to motivate and facilitate access to education for these individuals, the services offered by the **Education Advice Networks** (*Bildungsberatungsnetzwerke*), which are independent of course providers, are being expanded and developed in eight *Laender*.

The **women's education programmes** focus on disadvantaged women and inexperienced women learners (in the regions), while the target group for the **development projects in the migration field** are migrant women and second generation migrants. These programmes are concerned with the development and implementation of strategies for reaching target groups and increasing participation in continuing education, securing channels from compulsory schooling into higher education via the "second chance" path of the university entrance qualification examination (*Berufsaufstiegsprüfung, BRP*) and university admission examination (*Studienberechtigungsprüfung, SBP*), developing individual training courses, and awareness-raising, transfers and openness between cultures.

The objectives are to remove barriers and structural disadvantages, increase permeability within the education system, upgrade skills, and improve access to higher education. The **Academy of Continuing Education** (*Weiterbildungsakademie, WBA: <http://wba.or.at>* - in German) tests and validates the skills of adult educators against defined standards, awards certificates and diplomas in a two-tier qualification system, and supports permeability between adult education and university education and further training.

Number of participants in ESF-funded programmes:

Year	Participants in further education measures	Participants in educational counselling
2011	7,524	45,749
2012	3,133	47,871
2013	2,513	53,417
2014	2,468	53,827

Between 57.66 % (2011) and 69.84 % (2013) of participants were women.

Total funding of more than EUR 60 million is being made available within the framework of the ESF OP employment 2007-2013 (54 % national funding and 46 % ESF funding).

EUR 80 million of ESF funding will be made available under the ESF OP Employment 2014-2020.

Funding of training for employees (*Qualifizierungsförderung für Beschäftigte, QBN*)

The AMS's federal guidelines for the period between 1 January 2013 and 31 December 2014, "Funding of training for employees and employees with temporarily reduced working hours under the European Social Fund", objective employment (priority 1) and phasing out (priority 1.1.), specify rules for funding of training measures provided for one or more employees within individual companies, training measures carried out within training networks, and training measures carried out in connection with temporarily reduced working hours. ESF funding expired at the end of 2014. A successor instrument, the purely national instrument "Funding of training for employees" (*Qualifizierungsförderung für Beschäftigte, QBN*), is now available instead. This programme lays down rules for the funding of companies which carry

out skills training measures for one or more employees. QBN is also intended to help improve the professional position of women and so contribute to a reduction in income disparities between women and men.

The grants provided are intended to finance the costs incurred by companies in implementing training measures for employees; health promotion measures are only funded in conjunction with further vocational training. The funding makes it easier for employers to provide training, on the one hand, while securing employment and preserving jobs by improving skills, on the other.

Provided that the training is directed towards one of the AMS's predefined labour policy objectives, funding may be provided in respect of the following groups of persons: Employees under the age of 45 who have no qualifications beyond compulsory schooling or a completed apprenticeship and employees aged 45 and over.

Stimulus Advice for Companies (*Impulsberatung für Betriebe, IBB*)

The ESF programmes "Flexibility Advice for Companies" ("*Flexibilitätsberatung für Betriebe*") and "Skills Training Advice for Companies" ("*Qualifizierungsberatung für Betriebe*") expired at the end of the 2007-2013 funding period. The successor instrument, provided by the AMS and funded entirely from national resources, is "Stimulus Advice for Companies". Together with the "Promotion of Skills Training for Employees" ("*Qualifizierungsförderung für Beschäftigte*", QBN) programme and the "Stimulus Training Network" ("*Impuls-Qualifizierungsverbund*", IQV), this programme goes to make up the AMS Company Stimulus Programme 2015-2017 ("*Betriebliches Impulsprogramm 2015-2017 des AMS*").

Stimulus Advice for Companies (*Impulsberatung*) is a component of a preventive and proactive labour market policy which helps

- increase participation in further vocational training,
- address the needs of an ageing workforce,
- ensure equal opportunities at work for women and men,
- safeguard jobs in case of capacity fluctuations,
- ensure diversity in the workplace/integration of groups targeted by labour market policy measures,
- win new customers and improve customer retention and
- increase take-up of AMS services.

The Stimulus Advice for Companies programme supports adaptation processes in defined thematic areas with the primary objectives of improving the skills of employees and safeguarding jobs. It uses experience gained in the previous "Flexibility Advice for Companies" (FBB) programme and also incorporates the former "Skills Training Advice for Companies" (QBB) programme, which was aimed at SMEs. The result is a tiered advisory process which provides in-depth advice in specific thematic areas which varies according to the size of the company and AMS client type.

In coordination with "Company Services", ("*Service für Unternehmen*", SfU) companies can access stimulus advice a maximum of once per year. It uses the experience gained in the previous "Flexibility Advice for Companies" (FBB) programme and also incorporates the former "Skills Training Advice for Companies" (QBB), which was aimed at SMEs. The result is a tiered advisory process which provides in-depth advice in specific thematic areas and varies according to the size of the company and AMS client type. A maximum of 15 days' consultancy can be provided.

Depending on regional labour market requirements, stimulus advice in the following thematic areas can be provided:

- Further vocational training

- Accommodation of older people in the workplace
- Equal opportunities for women and men
- Safeguarding jobs in case of capacity fluctuations
- Ensuring diversity in the workplace/integration of groups targeted by labour market policy measures

Total funding expenditure

Total spending by the AMS on labour market funding measures in 2014, including payments from the unemployment insurance fund in respect of reductions of working hours, was EUR 1,124.90 million.

In addition, financial security is provided during participation in support measures through payment of unemployment benefit or unemployment assistance or of a subsistence allowance. With the exception of the latter, these financial benefits are paid from the unemployment insurance fund.

In total, 380,807 individuals were newly included in labour market promotion schemes. This is 5,187, or 1.3 %, less than in 2013. As individuals may receive several types of funding, the number of cases processed totalled nearly 1.1 million and the total spending was EUR 1,124.19 million.

Women constituted around 49 % of all new entrants, and the proportion of all gender-allocable expenditure going to women was likewise around 49 %.

The proportion of all affected unemployed persons included in a support programme was 38.2 %. Funding was provided for 43.2 % of women affected by unemployment and 34.4 % of affected men. Typical groups targeted by the AMS are young people experiencing difficulty entering the labour market, individuals without qualifications or with qualifications which are non-marketable or outdated, women returning to the labour market, individuals with health-related impediments to employment, older people and workers affected by structural change and at risk of job loss.

Paragraph 4 – Special measures to promote retraining and reintegration of the long-term unemployed

Question 1

The current strategy of the Public Employment Service (AMS) in relation to the long-term unemployed centres on prevention: Timely action to explore and identify career prospects is taken to prevent lengthy absences from the labour market, so that separation from the labour market is not allowed to become firmly established and reintegration into the workforce is less adversely affected by problems arising after long periods of unemployment (such as debt, depression, lack of daily structure). Permanent exclusion from employment is thus avoided.

Question 2

➤ Instruments to promote employment

Integration subsidies (*Eingliederungsbeihilfe, EB*) – are funding provided for a limited period to cover a proportion of the wage and non-wage labour costs of employing staff in roles subject to full social security contributions. To ensure that funds are used efficiently and targeted accurately, the duration and rate of funding can be adjusted at the *Land* level – subject to national ceilings – to suit the requirements of regional labour market policy.

The **combined wage subsidy** (*Kombilohnbeihilfe, KOM*) – is an additional incentive to jobseekers to accept low-paid or part-time work. If their income from such work is lower than their previous unemployment benefit or unemployment assistance plus 30%, the AMS will, for a certain period, pay the employees the difference between their wage and this individual threshold.

Non-profit employment projects (GBP) (*Gemeinnützige Beschäftigungsprojekte, GBP*) – are non-profit organisations providing temporary project jobs in non-profit employment fields. The objective is to integrate participants into the labour market and provide support in the form of an offer of at least temporary employment in a job subject to full social security contributions and appropriate socio-pedagogical and skills-development assistance during participation in the project.

Socio-economic companies (*Sozialökonomische Betriebe, SÖB*) – are production and service companies operated under close-to-market conditions by non-profit or public bodies, which offer temporary jobs to the unemployed, particularly those with productivity limitations. As well as providing these "transit workers" with employment subject to full social security contributions, they also offer socio-pedagogical assistance and targeted support aimed at improving skills and enhancing employability. Socio-economic companies cover at least 20% of total current expenditure from the proceeds of their economic activity. The "non-profit temporary work agency" is a special form of socio-economic company.

Participants in the **non-profit temporary agency work scheme** (*Gemeinnützige Arbeitskräfteüberlassung, SÖBÜ*) are given protected employment and the opportunity to access education and further training programmes both in preparation for and alongside subsidised employment. Over an eight-week preparation period, participants develop a career plan and update application documents. They can also obtain basic qualifications, complete short in-plant training periods and gradually increase their weekly working hours. After this preparation period, these "transit workers" are hired out to private companies, where they work in a subsidised job which may result in permanent employment.

➤ **Support**

Advice and support facilities (*Beratungs- und Betreuungseinrichtungen, BBEs*) – For the long-term unemployed in particular, careers guidance and exploration of personal professional potential and interests can be key to a return to the job market. The BBEs offer personalised support during this phase and in the initial period after starting work.

➤ **Promotion of skills training**

The **Centres for Vocational Education and Rehabilitation** (*Beruflichen Bildungs- und Rehabilitationszentren, BBRZ*) are a particularly important partner to the AMS. They work with jobseekers to design an individual rehabilitation plan and identify additional training or retraining needs. Many centres also offer training themselves.

Question 3

14,358 long-term unemployed persons found employment in the labour market with the support of integration subsidies during 2014, up 16.0 % on the previous year.

The combined wage subsidy was paid to 6,192 long-term unemployed persons in 2014, which corresponds to 62.6 % of all beneficiaries of the combined wage subsidy during the year.

8,872 long-term unemployed persons engaged in funded employment in a socio-integrative enterprise (socio-economic company or non-profit employment project) in 2014, 14.7 % more than in 2013.

17,147 long-term unemployed persons worked under the non-profit temporary agency work scheme in 2014 (12.8 % more than in 2013).

AMS-financed advice and support facilities provided target group-oriented advisory services to 34,525 long-term unemployed persons in 2014, 36.9 % more than in 2013.

The activities of the Laender are presented using the example of measures implemented by the Land of Vienna:

The subject of integration into employment of social assistance recipients (from 1 September 2010 recipients of the means-tested minimum income (*Bedarfsorientierte Mindestsicherung*, BMS) was on the agenda in **Vienna** as far back as the early 1990s.

In light of a steady increase in case numbers and the realisation that the labour market had become inaccessible to a significant proportion of benefit recipients due to lack of qualifications and enormous deficits in the attributes required to secure employment, measures were developed to help individuals (re-) enter the labour market.

Over the entire term of the Job Opportunity Project ("*Project Jobchance*"), which from 1998 to 2010 was financed exclusively by funds provided by Vienna Municipal Department 40 (Social Affairs, Social and Health Law: MA 40), intensive personalised jobseeking support was provided to over 9,000 individuals, and around 3,000 individuals secured employment, mainly in the primary labour market. This measure was discontinued on 31 December 2010, as a new portfolio of client services was by then available.

The idea for a new service offering for recipients of the means-tested minimum income (BMS) had been developed and implemented in cooperation with the Vienna Public Employment Service (AMS) as far back as 2009, in the course of negotiations and preparations in advance of the introduction of the BMS.

The pilot project "Step2Job" (which ran from 1 September 2009 to 31 May 2011 and was funded by the AMS and the European Social Fund (ESF)) was aimed at BMS recipients between the ages of 21 and 64 living in Vienna's 21st or 22nd district. As part of this project, which took a "case management" approach, 802 individuals who were fit to work and not in receipt of AMS benefits (i.e. a group characterised by separation from the labour market, multiple barriers to employment and a long history of drawing social assistance benefits) were offered intensive advice and support and access to skills training measures offered by the AMS and were guided towards and helped to re-enter the labour market. Participation was limited to a period of 12 months and was mandatory.

The first of the project's two very ambitious objectives was almost achieved; the other was actually exceeded:

- 26 % of participants spent at least 90 days in employment during the first year (indicator: 30 %);
- 81 % of allotted participants made use of the advisory services offered and received support for at least three months (indicator 75 %).

Sustainability assessments also showed that around 18 % of participants were integrated into the labour market permanently and are no longer reliant on the means-tested minimum income scheme.

As the success of the pilot project became apparent, Step2Job was rolled out across Vienna on 1 September 2010, at the same time as the BMS was introduced (it ran until 30 June 2012).

Still financed by the Vienna AMS and the ESF, nine minimum income advice and support centres (*Mindestsicherungsberatungs- und Betreuungseinrichtungen, MBBE*) were established and operated by various different bodies under the Step2Job name. Eight MBBEs had a regional focus, and one other – similar to the Vienna regional AMS office – focussed on people between the ages of 18 to 21.

The target group for this project was almost identical to that for the pilot project: recipients of the full BMS, recipients of supplementary BMS who were not in receipt of any benefits under the AIVG (Unemployment Insurance Act) and working on no more than a marginal part-time basis, and long-term unemployed people with specific problems whose primary or habitual place of residence was in Vienna, who were fit and available for work and who were between the ages of 18 and 64.

The intention during the project, which ran from 1 September 2010 to 31 December 2012, was to provide support for a maximum period of twelve months to 7,247 individuals, again by taking a wide-ranging "case management" approach, and to equip them to enter long-term employment or to help them towards this goal (the success criteria were the same as in the pilot project).

In the run-up to the introduction of the BMS, electronic networking and exchange of data between AMS Vienna and the Land of Vienna ensured that the target group was reached as effectively as possible. The introduction of Step2Job also marked the beginning of a new collaboration between the partners at strategic and regional/operational level.

The coordination between the AMS and the Land of Vienna led to a new level of quality in cooperation which benefited the project participants above all.

Ongoing evaluation of the rollout showed that not only was the structure of the target group very similar to that of the pilot project, but that the outcome achieved was also similar:

- 7,123 individuals (98.3 % of the planned quota) entered the project;
- over 2,900 (41 %) started work and
- around 1,800 individuals (26 %) spent at least 90 days in employment in the first year (indicator: 30 %).
- Further, almost 3,900 individuals (54%) received training (target indicator 30 %).

The AMS assumed full responsibility for financing the project on 1 July 2013, and two further funding periods (1 July 2012 to 31 December 2013 and 1 January 2014 to 30 June 2015) were secured. The target group was expanded to include individuals far from the labour market, both in receipt of AMS benefits and not, and the focus was placed on securing employment in the primary labour market. The client quota was increased to over 10,000.

The success of the Step2Job mentoring approach was further confirmed in ongoing evaluation for the period to 31 December 2013, and it has now proven its value over several years.

From 2007 to 2013, the City of Vienna (Municipal Department 40), working in close cooperation with the AMS, also participated strategically, operationally and financially in a number of ESF-funded employment integration programmes.

The objective of the four NGO-run non-profit employment projects JE_TZT, h1kle, markt_platz and Job-TransFair TRAIN, which together formed the "LEA platform", was to work with young social assistance and minimum income recipients who were isolated from the labour market and affected by various barriers to employment and in some cases had a migrant background, and, via employment (trainee placement and/or temporary agency work), return them to or guide them towards the primary labour market.

Project participants received a salary based on the number of hours worked and support in the form of job coaching and skills training. The intention was that participants would be taken on by the companies they worked for or move on to follow-on activities or skills training. Thanks to their years of experience working with the target group, continual fine-tuning and excellent networking with relevant labour-market bodies and commercial enterprises, these projects had significant expertise and achieved excellent job placement rates in excess of targets (consistently over 50 %).

Between 1 November 2007 and 31 December 2013, the LEA projects helped over 1,500 social assistance/minimum income recipients to enter or re-enter the labour market.

Following the loss of the 46 % funding contribution of the ESF, it was not possible to continue funding the projects to the same extent from purely national resources in 2014.

The experience gathered and outcomes achieved in previous funding periods and the evaluation of the Step2Job project revealed a significant requirement for support programmes for BMS recipients, particularly in the easily accessible secondary labour market, to ensure that they do not become stuck on benefits and to counter long-term unemployment.

In response, the non-profit employment project "ArbeitsRaum", co-financed by the AMS and Municipal Department 40, was launched on 1 January 2014. Its highly ambitious objectives are to reach a particularly difficult target group with multiple issues, keep them within the project, stabilise and motivate them, and move them progressively towards the secondary labour market, employment in a "socio-economic company" (*Sozialökonomischer Betrieb, SÖB*), or engage them in skills training or rehabilitation measures.

In addition to receiving support from an interdisciplinary team, participating in (basic) skills training programmes and working in suitable fields (working variable hours in modules appropriate to ability), participants had access to medical, psychological and physical-therapy support services for a maximum period of one year.

The "ArbeitsRaum" project has been extended to 2015 after initial interim results for 2014 far exceeded performance indicators set, in relation to stabilisation and securing of employment in the secondary labour market in particular:

- 98 % of all participants remained in their role after the probationary month (target: 85 %);
- 90 % of all participants remained in the role for longer than 62 days (target: 75 %);
- 95 % of all participants subsequently entered employment in the secondary labour market (target: 40 %).

Between 2006 and 2013, social assistance/BMS recipients presumed to be unfit for work were assessed by the Austrian Centre for Vocational Education and Rehabilitation (*Berufliches Bildungs- und Rehabilitationszentrum Österreich, BBRZ*). The purpose of these assessments was not only to clarify the subjects' capacity for work, but also to support them in obtaining the expert opinions (case management) and to provide a comprehensive assessment of their capability for work and employability ("occupational diagnostic statement"), which includes a recommendation. Determining work capability was not the only objective; another important aspect was development of an action plan. Between 1,000 and 1,200 individuals annually were assessed by the BBRZ between 2011 and 2013. Following a tendering process, the private Sigmund Freud University has carried out the hardly changed tasks since 1 January 2014. The assessment quota has now been increased from 1,400 clients to 2,000.

Paragraph 5 - Encouragement for the full utilization of available facilities

In respect of this paragraph the Government refers to its previous reports on the implementation of Article 10 § 4 of the 1961 Charter, in particular to the 29th report.

Questions 1, 2 and 3

No relevant changes.

Statistical information can be found under

http://www.statistik.at/web_en/statistics/PeopleSociety/education_culture/index.html

and

<https://www.bmbf.gv.at/enfr/school/index.html> - Statistical Guide 2013



statisticalguide_2013
_27013.pdf

and



BM_WFW_Wissensch
aft_2014_web.pdf

To be found on:

<http://wissenschaft.bmwf.gv.at/bmwf/ministerium/veranstaltungenpublikationen/publikationen/wissenschaft/>

Equal treatment of nationals of other States Parties

Benefits and grants for schoolchildren

In accordance with the School Grants Act 1983 (*Schülerbeihilfengesetz*), third-country nationals are entitled to educational grants insofar as they are so entitled as a result of the Agreement on the European Economic Area (EEA) and the Treaty establishing the European Community.

Directive 2003/109/EC concerning the status of third-country nationals who are long-term residents, OJ 2004 L 16 of 23 January 2004, p. 44, provides that third-country nationals who are long-term residents are entitled to equal treatment as regards study grants. Under this

Directive, the status of long-term resident is normally acquired after five years' residence in the territory of an EU Member State.

Ruling on 2 December 2014 on the entitlement to equal treatment of an EU citizen, the Federal Administrative Court held inter alia that the mere reference "insofar as they are so entitled as a result of the aforementioned agreements" in the Study Grants Act 1992 (the provision relating to the entitlement of EU citizens is unchanged from that in the School Grants Act 1983) cannot be understood as transposing Directive 2004/38/EC (Free Movement Directive) and thus that the possibility provided for in that Directive of making the five-year residence requirement subject to conditions in respect of citizens of the Union cannot be invoked.

Consequently, as regards the entitlement to equal treatment of third-country nationals, in the first instance it is likewise the case that the mere reference ("insofar as they are so entitled as a result of the aforementioned agreements") is not a correct transposition of Directive 2003/109/EC. However, it can be assumed that the relevant provision, Article 11 (1) (b) of Directive 2003/109/EC ("Long-term residents shall enjoy equal treatment with nationals as regards: education and vocational training, including study grants in accordance with national law") has direct effect, as the criteria laid down by the ECJ in this regard are satisfied (the Directive was not correctly transposed before the deadline, the relevant provisions are unconditional and sufficiently clear and precise as to make requirements and legal consequence immediately apparent, and the Directive confers a right vested in the individual).

In practice at any event, Directive 2003/109/EC is taken to be applicable.

This effectively grants third-country nationals an entitlement to educational grants as laid down in the Directive and there is thus no discrimination.

It should also be noted that Directive 2003/109/EC is only applicable subject to more favourable provisions.

Therefore, it must also be examined whether the European Social Charter of 18 October 1961 contains such favourable provisions.

Article 10§5b of the Revised European Social Charter stipulates that to ensure the effective exercise of the right to vocational training, the Parties undertake to encourage the full utilisation of the facilities provided by appropriate measures such as granting financial assistance in appropriate cases. As in accordance with the Appendix to the Revised Social Charter this provision presupposes that foreigners are lawfully resident or working regularly within the territory of the Party, without any five-year residence requirement or requirement to acquire the permanent right of residence, the European Social Charter does contain more favourable provisions than Directive 2003/109/EC.

However, as the European Social Charter is not directly applicable in Austria (as defined in Article 50 Para. 2 of the Federal Constitutional Act (*Bundes-Verfassungsgesetz*), compliance with the Charter must be by enactment of laws) and thus is not a more favourable provision for the purpose of the Directive if not transposed into national law.

Then again, however, because it uses the word "encourage", the provision of the European Social Charter cited imposes no clear international obligation on the Republic of Austria to bring about a corresponding legal situation in Austria, meaning that there cannot immediately be assumed to be a breach of the European Social Charter.

Moreover, it should be noted that, regarding enforcement of the School Grants Act, the number of applicants who are not equated to Austrian citizens is very low. This is illustrated by the following figures:

2014/20115 academic year:

Number of applicants who are not Austrian citizens/equated to Austria citizens: 32

Denied: 19

Accepted: 10

Pending: 3

(Note: Successful applicants were granted "special assistance" in accordance with Section 20a of the School Grants Act 1983.

The special assistance application process was handled via the SHB-Online platform for the first time for the 2014/2015 academic year, and providing statistics for earlier years would involve considerable expense. For those earlier years, therefore, it is only possible to specify the number of applicants.)

2013/2014 academic year

Number of applicants who are not Austrian citizens/equated to Austria citizens: 27

2012/2013 academic year

Number of applicants who are not Austrian citizens/equated to Austria citizens: 16

As mentioned above, Section 20a of the School Grants Act 1983 permits special assistance to be granted in cases of social hardship within the scope of private sector administration.

This provision also applies to applications submitted by third-country nationals who are not equated to Austrian citizens:

In accordance with Section 20a of the School Grants Act 1983, special assistance may be granted within the scope of private sector administration to offset the social hardship occasioned by school attendance. This special support should not be less than EUR 84.00 per school year, but not more than the basic amount of the school grant or school boarding grant.

Special assistance in accordance with Section 20a of the Act may only be awarded if no grant can be awarded under any other provision of the School Grants Act AND denial of assistance would result in social hardship.

Special assistance is normally awarded in the following cases:

1. Pupils with special educational needs attending school as special- needs pupils usually receive special assistance *in the full amount of the grant calculated*. This applies to agricultural schools only. In all other schools, pupils with disabilities are generally to be categorised as regular pupils.
2. If all other conditions are satisfied, foreign pupils who are not equated to Austrian citizens in accordance with Section 1a nos. 2-4 of the Act receive special assistance *of half the grant calculated*.
3. School boarding grant is denied because attendance at a similar public school involving acceptable outward and return travel was possible.

Tuition fees and financial support for students

As regards **tuition fees** for higher education the current situation is as follows:

Students with Austrian citizenship or who are EU or EEA or Swiss citizens are not required to pay tuition fees, if they do not exceed the statutory duration of studies per period of study by more than two semesters.

If they exceed this duration they have to pay tuition fees in an amount of € 363 per semester.

Students from third countries who have not themselves been living in Austria for at least 5 years or who do not have at least one parent being resident in Austria for at least 5 years have to pay tuition fees in an amount of € 726 per semester.

Third country nationals are exempted from tuition fees, if the university last attended in their home country has concluded a partnership agreement with the Austrian university that also provides for tuition fees to be mutually waived.

Regular students from a country which is among the least developed countries do not pay tuition fees. Regular students from developing countries can receive a refund of the tuition fees from the particular university.

This regulation is based on the assumption that third country nationals who have been living in Austria for less than five years presumably will not actively contribute to the Austrian tax revenue system after completing their studies, because they will return to their home countries.

Given this rationale and the need to assure the financing of the universities, there are – at present - no amendments under discussion in this respect.

As regards **financial support to students** the legal situation is the following:

Federal aid for students in Austria was introduced in the 1960s as an accompanying measure towards the opening of the universities to make it possible for children from low-income families to start an academic career. Since 1992 the study financing has been more and more linked to other indirect support measures and the conditions of entitlement have been harmonised step by step.

The support measures can systematically be divided into two sections: transfer payments, which students receive directly, and expenses which students benefit from either by transfer payments to the students' parents or non-cash benefits.

Direct measures are for instance need-based grants, tuition fee refunds, transportation cost allowances, insurance cost subsidies, grants for studying abroad etc.

Indirect measures are for instance family allowances, tax privileges and support for student housing and food services. Third-country nationals benefit from these indirect measures without any residence requirement.

As concerns direct measures, Section 4 of the Student Support Act of 1992 stipulates that citizens of contracting parties to the EEA- or EU-Agreement as well as third country nationals enjoy the same legal position as Austrian citizens to the extent ensuing from these agreements.

The 5-year residence requirement for third country nationals is in compliance with EU-Law and it is only applicable in the case of direct support measures.

In the study year 2011/2012 almost 46.000 students (out of a total of more than 360.000 students) received study grants, approximately 2.5 % of the recipients were nationals of EEA

countries and another 2.5 % of the recipients were nationals of other countries, including nationals of other States Parties.”

ARTICLE 15 - THE RIGHT OF PERSONS WITH DISABILITIES TO INDEPENDENCE; SOCIAL INTEGRATION AND PARTICIPATION IN THE LIFE OF THE COMMUNITY

Paragraph 1 – Measures to provide persons with disabilities with guidance, education and vocational training

In respect of this paragraph the Government refers to its previous reports on the implementation of Article 15 § 1 of the 1961 Charter, in particular to the 29th report.

In addition and in response to the Committee's additional questions, the following information is provided:

Question 1, 2 and 3

Anti-discrimination legislation on the ground of disability in education

The integration of children with a need for special paedagogical support was adopted for the primary level of the regular school system in 1993. Pilot projects for integration continue to take place at lower secondary schools (*Hauptschule*), at the lower level of academic secondary schools and at pre-vocational schools (*Polytechnische Schule*).

Amendments to legislation governing schools were passed in 1996, legally establishing continued co-education of pupils with and without special needs for lower secondary schools and at the lower level of academic secondary schools as well.

With the 1998-99 school year, vocational orientation was introduced as a compulsory exercise in the seventh and eighth grades (pupils aged 13 to 15) in order to better aid young people in their search for a vocation or profession. The aim of participating in this compulsory exercise is to develop the skills needed for choosing an occupation and to lay the groundwork for the decision.

An amendment was adopted in 1998 which allows job preparation courses to be instituted at special needs schools as required. In 2012 this provision changed. Accordingly, the vocational preparation year became the 9th grade (pupils aged 14 to 15) of special needs schools. The objective of this "vocational preparation year" is to help these young people intensify and expand existing personal, theoretical and practical skills, and in this way to facilitate their access to the labour market and to improve their chances of finding suitable employment and succeeding in fulfilling the related requirements.

Another amendment was adopted in 2012, establishing legal provisions for integration at pre-vocational schools and one-year home economics schools (*Haushaltungsschulen*). Students participating in these pilot programmes can receive instruction entirely or partially in accordance with the curriculum of the vocational preparation year.

The curriculum of the vocational preparation year was adapted to the curriculum applied at pre-vocational schools as of 2014.

For a child to receive special paedagogical support, it is required that the child's special paedagogical needs are determined.

The child's parents/legal guardians are responsible for deciding on the type of school to be attended. They have the option of choosing to have their child receive integrative education or to have the child attend a dedicated special needs school.

Pupils and students with a physical disability or sensory impairment are integrated at the intermediate and upper levels of all vocational schools for the technical, business and social services sectors, wherever these young people are able to meet curriculum requirements, while the statutory terms specifying special consideration are being applied. One example is the School Centre (*Schulzentrum*) Ungargasse 69, 1030 Vienna, which is the largest campus for the education of students with physical disabilities and sensory impairments in business

and technical vocations.

Students of the Federal Institute for Education of Persons with Hearing Impairment in Vienna (*Bundesinstitut für Gehörlosenbildung*) have the opportunity of attending integrative classes at vocational schools to specialise in fashion design, business or painting and coating or at a technical school.

At the Federal Institute for the Blind (*Bundes-Blindenerziehungsinstitut*) students can choose among training or education in these specialised areas: business school (*Handelsschule*), telephone operator training, apprenticeship in broom and brush making, apprenticeship in basket and furniture weaving and training as a medical massage therapist or licensed massage therapist.

Scope of anti-discrimination legislation

The Federal Disability Equal Treatment Act (*Bundesbehindertengleichstellungsgesetz, BGStG*) applies to all areas of federal administration, thus also covering most areas of school education.

Only the external organisation of compulsory schools (particularly concerning the maintenance of school buildings) is within the competence of the *Laender*.

Tertiary education (universities, universities of applied sciences) is generally a federal matter and is thus subject to protection against discrimination under the *BGStG*.

Education programmes outside schools and universities are either subject to protection against discrimination under the *BGStG* (goods and services that are available to the public) or, if they are related to the working world, under the Disability Employment Act (*Behinderteneinstellungsgesetz, BEinstG*).

Protection against discrimination applies to public and private schools, universities, universities of applied sciences and education programmes offered by other providers.

Guidance and vocational training for persons with disabilities

Service Centre of the Ministry of Social Affairs (*Sozialministeriumsservice*)

With its nine *Laender* offices, the Service Centre of the Ministry of Social Affairs (former Federal Social Welfare Office, *Bundessozialamt*) is a subordinate administrative body of the Ministry of Social Affairs and serves as a central contact point for people with disabilities concerning matters in the fields of work and equal treatment. The primary tasks of the Service Centre of the Ministry of Social Affairs include the implementation of measures to ensure access to reasonable jobs for people with special handicaps which enable them to sustain themselves, and to preserve jobs for people with disabilities. As unemployment has become a massive threat for disadvantaged people, the Service Centre of the Ministry of Social Affairs increasingly also serves as a contact point for an increasing number of people with unfavourable employment and education opportunities.

The *Laender* offices of the Service Centre of the Ministry of Social Affairs act as regional stakeholders in the Austrian *Laender* and fulfil their tasks taking into consideration the regional characteristics. Customer proximity and service orientation are major priorities of the offices. The different specialised departments at the regional offices offer initial consultation on the services of the Service Centre of the Ministry of Social Affairs; all applications may be filed with these *Laender* offices.

The central tasks of the Service Centre of the Ministry of Social Affairs include cooperating with all stakeholders to coordinate labour market policy measures, transferring knowledge

and information and facilitating the exchange of experience concerning disabilities and work. This coordination function is to be extended and defined in greater detail.

The Service Centre of the Ministry of Social Affairs has been entrusted with the coordination of vocational rehabilitation and promotes a broad range of associated services in this field. The Service Centre may promote measures for people with disabilities from their 15th year of age and for businesses in accordance with the *BEinstG*, both by individual and project support. In recent years, the Service Centre has reacted to changes on the labour market by adjusting the strategic focus of its offers. The scope of individuals eligible for support was successively extended, with eligibility depending on the personal need for support of people with disabilities. In accordance with disability mainstreaming, people with disabilities generally have access to all measures of general labour market policy and to adequate support. Some handicaps, however, entail specific needs for support at the workplace or on the path into the labour market. The Service Centre of the Ministry of Social Affairs and the Public Employment Service (*Arbeitsmarktservice, AMS*) cooperate to support people with disabilities on their path into the primary labour market.

Among other things, the Service Centre focuses on the transition from school to employment. In this context, it coordinates, in cooperation with the project members of the Youth Coaching project, teachers, the social environment and stakeholders in the labour market as well as businesses to ensure an optimal path for young people into an apprenticeship, an occupational qualification programme or directly into the primary labour market, or to develop guidance for finding solutions to individual problems. The Production School programme (*Produktionsschule*, which was called "Getting Ready for Education and Training" (*AusbildungsFit*) in its pilot phase) was developed as an essential element of youth labour market policies to keep young people in the training and education system for a longer period of time and make their training and education more successful. The Production School programme is a low-threshold, standardised service for disadvantaged young people that systematically aims at integrating young people into the further training and education system by offering individual support.

National labour market programme for people with disabilities

The central national labour market policy programme for persons with disabilities is the "Employment initiative for the integration of people with disabilities" (*"Beschäftigungsoffensive zur Beruflichen Integration von Menschen mit Behinderung"*), the central objectives of which are to secure new jobs and safeguard existing jobs. This programme is part of the BABE – Austria 2014 – 2017; DISABILITY – TRAINING – EMPLOYMENT programme, and constitutes a stable framework for labour market policy concerning persons with disabilities until 2017 on the basis of mandatory strategies developed in a participatory process.

The BABE 2014-2017 programme constitutes the link between Austria's long-term disability policy strategy laid down in the National Action Plan for people with disabilities (*NAP-Behinderung*) and implementing the UN Convention on the Rights of Persons with Disabilities, and labour market policy measures for people with disabilities required by the Disability Employment Act (*Behinderteneinstellungsgesetz, BEinstG*). It also references the national and European objectives set by cohesion policy, which also determine work undertaken on the basis of the Disability Employment Act. Bringing together all relevant aspects relating to the field of work and disability, and developed in a participatory process involving both external and internal experts, BABE 2014-2017 is the central policy document of the Ministry of Social Affairs and the Service Centre of the Ministry of Social Affairs regarding the particular

challenges encountered by persons with disabilities and persons facing disadvantages on the labour market.

Labour market policies to support persons with disabilities and persons with health-related impediments to employment

The financial and economic crisis, the effects of which are still being felt, continues to pose enormous challenges for Austrian labour market policy. However, it must not be overlooked, in times of high unemployment especially, that it is even harder for some groups of people, such as those with disabilities, to find suitable work. Many structural elements complicate access to the labour market for these people, with the result that they are disproportionately affected by unemployment.

Firstly, since it took over responsibility for integration assistance for people with disabilities from the Service Centre of the Ministry of Social Affairs at the start of 2012, the Public Employment Service (PES) has provided additional funding for employment promotion, particularly integration subsidies, for persons with disabilities. Secondly, more statistical information relating to jobseekers with disabilities is collected; this concerns disability pass holders in particular.

The Ministry of Social Affairs is well aware of the issues and has developed diverse programmes for integrating people with disabilities into the labour market more sustainably. By aligning measures with the needs of target groups and personalising support programmes to the maximum extent possible, it has been possible to improve the personal situation of many individuals. The PES has previously focussed on measures to enable it to ensure an optimum level of activity for this target group and step up funding, and will continue to do so.

Following the transfer of responsibility for integration assistance from the Service Centre of the Ministry of Social Affairs to the PES, target group-specific spending in this area (integration subsidies and apprenticeship funding) was stepped up considerably: During the period from 2011 to 2014, the number of individuals with health-related impediments to employment who received support for the first time almost doubled, and funding was increased by around EUR 27 million.

As regards employment promotion, utilisation of ancillary support services provided by the Service Centre of the Ministry of Social Affairs to supplement the wage cost subsidies and apprenticeship funding provided to companies by the PES was promoted.

Alongside employment promotion measures, a greater number of **skills training programmes** specifically aligned with the needs of this target group (such as those provided by the Centres for Vocational Education and Rehabilitation (*BBRZs*)) are now available.

People with disabilities in accordance with the Disability Employment Act (Behinderteneinstellungsgesetz, BEinstG) and/or Victims Assistance Act (Opferfürsorgegesetz, OFG) and/or the Disability Act of the relevant Land (Landesbehindertengesetz, LBehG), Disability Pass holders⁵

Employment rates of persons with disabilities three months after completing an PES course in 2014

⁵ AnaylsisAMS DWH query of 10 June 2015

	Total persons leaving	in PES skills training 3 months after completion	in supported/unsupported employment 3 months after completion
PES course⁶	5,338	486	1,333
Of these, professionally-oriented AMS courses	3,434	624	766
Skills training in the external education market	680	108	432

People with other health-related impediments to employment: according to the PES coding scheme⁷

	Employment rates of persons with other health-related impediments to employment three months after completing an AMS course in 2014		
	Total persons leaving	in PES skills training 3 months after completion	in supported/unsupported employment 3 months after completion
PES course⁸	26,960	4,426	4,799
Of these, professionally-oriented AMS courses	16,279	2,867	3,331
Skills training in the external education market	5,542	364	1,570

Employment initiative for people with disabilities – cases of aid granted	2011	2012	2013	2014
Wage subsidies	15,200	12,876	9,631	8,275
Start-up assistance	90	84	96	51
Job	518	376	377	374
Mobility, ind. funding	17	18	25	5
Individual funding Total	15,825	13,354	10,129	8,705
Vocational Training Assistance	5,318	5,584	5,963	6,482
Getting Ready for Education and Training				1,264
Skills training project	4,112	4,342	4,100	3,478

⁶ Courses commissioned by the AMS and funded by the organiser: Measures to support active job seeking, careers guidance courses, skills development or training courses.

⁷ Analysis: AMS DWH query of 10 June 2015

⁸ Courses commissioned by the AMS and funded by the organiser: Measures to support active job seeking, careers guidance courses, skills development or training courses.

Employment project	1,074	882	840	786
Employment project, not co-financed				
Help to work, general	8,875	8,582	8,738	8,989
Help to work for the visually impaired	276	264	289	333
Help to work for people with intellectual disabilities	548	506	464	480
Help to work for people with physical disabilities	352	371	388	411
Help to work for people with mental health difficulties	2,080	2,205	2,391	2,574
Help to work for the hearing impaired	549	585	575	555
Personal assistance – self-determined living	369	442	432	502
Job coaching	688	889	805	1,133
Other support structures with clients, direct integration	3,061	1,839	1,889	1,865
"Clearing"	8,056	4,973	204	
Youth coaching		6,226	23,017	30,913
Support coaching				565
Other support structures with clients, indirect integration	370	210	240	298
Counselling via self-help facilities, client project	595	588	611	6
Client projects, total	36,323	38,488	50,946	60,634
Training & employment	844	814	709	725
Mobility, other	9,011	9,039	9,216	9,471
Other allowances, total	9,855	9,853	9,925	10,196
Advisory services for businesses	2	1	2	2
Investments to improve accessibility	49	24	18	12
Public relations and awareness raising	8	22	25	24
Technical assistance	16	5	1	1
Project preparation	1	7	3	1

Accessible technology for the disabled, non-client project	2	2	2	2
Counselling via self-help facilities, non-client project	16	15	14	12
Other support structures, non-client project	24	20	22	20
Preparatory facility, not co-financed				
All measures, total	62,121	61,791	71,087	79,609

Expenditure: 2011 2012 2013 2014	2011	2012	2013	2014
in million EUR for the Service Centre of the Ministry of Social Affairs	EUR 149.17	EUR 159.14	EUR 163.44	EUR 179.85
Women as % of assistance cases	2011	2012	2013	2014
of total number of assistance cases	39.98 %	40.46 %	41.41 %	41.80 %

Youth Coaching

To facilitate the direct transition of young people from school (at the end of compulsory education) to vocational training, a new service - Youth Coaching (*Jugendcoaching*) - which is provided throughout Austria and particularly aims at young people who are socially excluded or at risk of social exclusion was created by the Service Centre of the Ministry of Social Affairs in 2013.

Youth Coaching is intended to reduce school and training drop-out rates and keep young people in the education and training system for as long as possible.

It is also intended to re-integrate young drop-outs into the education system. Youth Coaching wants to offer counselling and support to young people at risk of dropping out of school or of social exclusion, to facilitate their long-term inclusion and use a case management approach to support them in solving personal and social problems.

In 2014, a total of almost 30,000 young people benefitted from this service. 45 % of participants are female and 62 % of them speak German, 12% Turkish or Kurdish, 10 % Bosnian, Croatian or Serbian and 16 % another language as their first language.

Depending on whether or not they are still attending school, young people are recommended different subsequent measures or steps in the framework of Youth Coaching. 46 % of young people who are no longer attending school are recommended to start an apprenticeship, while 41 % are recommended other measures. 58 % of young people who are still attending school are recommended to continue doing so, while 31 % are recommended to commence an apprenticeship.

Youth Coaching obviously is a positive contribution; after having participated in the programme, young people generally think that their motivation and their self-perception have

improved. After having completed the programme, 98 % of the participants are confident that they will find a job that suits their skills and interests and that they will enjoy.

50 % of those who participated in the Youth Coach programme know better which job they would like to have in the future.

In more detail:

Generally, a wide range of measures is offered to young people with disabilities within the framework of the employment initiative to support them in getting and retaining work. However, special emphasis is put on providing young people, in particular disadvantaged young people, with a perspective for the future and to promote and support them in a way that they have the opportunity of social and vocational integration. The objective is to get a workplace in the primary labour market.

The Youth Coaching programme, which was developed based on the “*Clearing*” service, has been offered to young people who are socially excluded or at risk of exclusion to support them at the transition point between school and entry into the labour market. Youth Coaching is a service provided on the basis of close cooperation with schools, aiming at presenting young people with perspectives using counselling, support and case management measures. Jointly with the participants, their strengths and skills are determined and an appropriate education and training plan is developed based thereon. The programme’s objective is to enable young people to successfully enter the labour market.

Another aim of Youth Coaching consists in reducing school and training drop-out rates, keeping young people in the education and training system for as long as possible. This measure is also intended to re-integrate those into the education system who have dropped out. Youth Coaching wants to offer counselling and support to young people at risk of dropping out of school or of social exclusion, to facilitate their long-term inclusion and use a case management approach to support them in solving personal and social problems. Youth Coaching is intended as a contribution to stabilising young people both at personal and social levels.

Youth Coaching/It is an offer for young people as of their 9th year of school. The programme particularly supports young people at risk of dropping out of school and/or needing support in their vocational orientation. Young persons may use this offer until they have completed their 19th year of age. Young persons in need of special support (with this need having been determined at the school they are attending) can use the coaching service until they reach the age of 25. Youth Coaching is intended to enable particularly young persons with a migration background who do not know the Austrian labour market and education and training options that well and young people with learning difficulties to better realise their potentials.

Youth Coaching is based on the same concept throughout Austria, which means that the same standards are applied in all the *Laender*. It is based on an inter-ministerial cooperation agreement between the Ministries of Education and Social Affairs. Youth Coaching is still designed flexibly and tailored to the individual qualifications and demand as well as to the needs of the young people concerned. The programme is offered in all the Austrian *Laender* as an individual measure or a whole set of measures including job coaching, youth work assistance or vocational training assistance.

Production School (*Produktionsschule*, used to be called “*AusbildungsFit*” (Getting Ready for Education and Training) in its pilot phase)

The Production School programme's objective is to offer targeted and individual learning and development opportunities to young people who have completed compulsory education without having acquired a sufficiently high level of social and/or life skills to start a qualifying vocational training.

In the medium run, Production School is generally aimed at all young people who lack pre-defined basic skills and are thus not admitted to or not able to successfully participate in further vocational training (such as apprenticeship training, vocational training at schools, integrative vocational training). In production schools, individual skills are taught to enable young people to take the next step in their training.

The Production School programme is a complementary offer which, for the first time, applies the same basic standards throughout Austria. The programme is intended as a low-threshold, standardised service provided throughout Austria to disadvantaged young people who are not yet fit for training and education that systematically aims at integrating young people into the vocational education system or the labour market without wasting any precious time (or taking any detours) by offering individual support.

In the pilot phase, more than 1,200 young persons benefitted from this service.

Vocational training assistance (*Berufsausbildungsassistenz*)

The offer of "integrative vocational training" has been established for young people with special needs who are not able to undergo traditional apprenticeship training.

With the help of this new type of vocational training it becomes possible to specifically address the needs of young people with disabilities. For instance, their training may take place in the form of an apprenticeship training extended by up to two years, or by acquiring only selected elements of a job profile within the scope of what is referred to as "partial qualification".

Integrative vocational training (*Integrative Berufsausbildung (IBA)* pursuant to Section 8b Vocational Training Act (*Berufsausbildungsgesetz, BAG*):

Target groups:

- Leavers of special needs schools
- Youth who did not successfully acquire qualification at lower secondary level
- People with disabilities
- People who are not suitable to be placed into a regular apprenticeship relation for "reasons related to the person himself/herself"

The ibw Austria - Research & Development in VET (*Institut für Bildungsforschung der Wirtschaft*) has prepared a study on the entry into the labour market of graduates of integrative vocational training. The German version of this study is available at:

http://www.bmwf.w.gv.at/Berufsausbildung/LehrlingsUndBerufsausbildung/Documents/659E_ndbericht_IBA-Berufseinmündung_neu.pdf

Data were collected as at 31 December 2012; additional current figures of persons in integrative vocational training are also available.

Integrative VET has been well established since its introduction in 2003:

	Austria total	Section 8b Para. 1 total (prolongation of the apprenticeship)	in companies	in supra- company institutions	Section 8b Par a. 2 total (partial qualification)	in companies	in supra- company institution s
2010	5,173	3,680	2,610	1,070	1,493	662	831
2011	5,507	4,000	2,766	1,234	1,507	615	892
2012	5,741	4,237	2,902	1,335	1,504	619	885
2013	6,152	4,670	3,131	1,539	1,482	616	866
2014	6,475	4,905	3,287	1,618	1,570	591	979

(apprenticeship statistics of the Austrian Federal Economic Chamber - WKÖ)

The objective of integrative vocational training is to enable young people with personal placement obstacles to enter the labour market even if they are not able to complete a regular apprenticeship training.

In order to guarantee the success of the training measures, integrative vocational training is to be supported and accompanied by qualified vocational training assistants.

The objective of vocational training assistance is to improve the integration of disadvantaged young people with personal placement obstacles into the labour market. Vocational training assistance, a programme centred on integrative vocational training on the job, supports young people during their training, accompanying them both in their companies and at school, thus ensuring successful completion of the training. Appropriate preparation, support and assistance measures are aimed at enabling young persons to successfully complete the training they have chosen, thus laying the foundation for their long-term integration into the regular labour market.

Supported employment (*Arbeitsassistenz*) for young people

The sponsored supported employment service helps young persons with disabilities in finding and retaining jobs. This service is provided by experts specifically qualified for working with young people with disabilities.

Supported employment entails a range of services including: evaluating jointly with the client their current individual situation and assessing their individual vocational options; counselling during the job search; and support in the initial period of employment. Another vital function of supported employment is crisis intervention in order to prevent the loss of a job at risk.

Job Coaching

Job Coaching accompanies young people with disabilities and provides individual on-the-job training programmes within companies. The programme's objective is to achieve long-term vocational integration of the supported young persons with disabilities and to enable them to retain a gainful occupation which allows them to sustain themselves.

This kind of support is intended to promote the professional and social skills of people with disabilities, enabling them to meet the demands of employers on their own. At the same time, awareness regarding the needs of people with disabilities is to be raised among employers and co-workers.

<u>CR - Clearing and JU - Youth Coaching - combined figures - personal data only</u>	Male	Female	Total	Costs
2011	4,851	3,205	8,056	
2012	6,632	4,567	11,199	
2013	13,246	9,975	23,221	
2014	17,466	13,447	30,913	Million EUR 24.5

<u>Vocational training assistance (BA)</u>	Male	Female	Total	Costs
2011	3,627	1,691	5,318	
2012	3,812	1,772	5,584	
2013	4,090	1,873	5,963	
2014	4,418	2,064	6,482	Million EUR 14

Source IV/A/6 DWH 17 March 2015

Number of persons with disabilities aged 0-18 years

Permanent impairments are very much **dependent on age**. The number of individuals reporting a permanent impairment increases with age. The percentage of the population below 20 years of age with an impairment is 6.2% among males and 4.5 % among females (2008 Disability Report, page 9) .

Number of individuals with disabilities in the regular school system and in the special needs school system as well as in regular vocational education and in special needs vocational training, including higher education

Due to the high level of acceptance which has been achieved by joint lessons of pupils with and without disabilities in primary school and at secondary schools, **more than fifty percent of all pupils with special educational needs have been taught in integrated classes for some years now**. This means that currently more than half of all primary schools and three quarters of all secondary modern schools have integrated classes. In order to also ensure continuous support for children with physical or sensory disabilities in vocational secondary schools and the upper years of general secondary schools (AHS), special legal provisions have been established which enable appropriate deviations from the curriculum and extended special instruction.

Pupils with physical and sensory disabilities are principally integrated into all vocational technical, commercial, business, social, tourism and arts schools provided that they can fulfil the requirements of the curriculum, although a certain amount of leeway is granted here by the law. For example, the **School Centre in Ungargasse in the third district of Vienna** is the largest location for pupils with hearing disabilities at commercial schools – and offers numerous special support measures.

Pupils who received special needs education during compulsory schooling are already being integrated into one-year business schools and domestic science schools in school pilot projects specially developed for this purpose. These **integrated-cooperative lessons for disabled pupils at one-year business and domestic science schools** include the extension of the curriculum to two years, whereby pupils with disabilities cover what is usually a one-year course over a total of two years in two classes. Both years taken together are equivalent to the 9th school year.

In addition, after the 9th school year there is the option of integrated vocational training (IBA), a form of initial vocational training which corresponds to the needs for suitable training of young people with disabilities or disadvantages and to the requirements of companies for suitably qualified young workers.

For further details, refer to (partially available only in German)



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School children with a need for special paedagogical support, 2013/2014 school year

School children at general compulsory schools (APS) and new middle schools (NMS)	
School type	
Primary school (<i>Volkschule</i>)	327,772
Lower secondary school (<i>Hauptschule</i>)	94,452
Special needs school (<i>Sonderschule</i>)	14,170
Pre-vocational school (<i>Polytechnische Schule</i>)	16,367
New middle school (<i>NMS</i>)	115,396
APS and NMS total	568,157
School children with a need for special paedagogical support	
School type	
Primary school (<i>Volkschule</i>)	6,160
Lower secondary school (<i>Hauptschule</i>)	3,404
Special needs school (<i>Sonderschule</i>)	14,170
Pre-vocational school (<i>Polytechnische Schule</i>)	901
New middle school (<i>NMS</i>)	5,367
APS and NMS total	30,002
Percentage of school children with a need for special paedagogical support	
Primary school (<i>Volkschule</i>)	1.9%
Lower secondary school (<i>Hauptschule</i>)	3.6%
Special needs school (<i>Sonderschule</i>)	100.0%
Pre-vocational school (<i>Polytechnische Schule</i>)	5.5%
New middle school (<i>NMS</i>)	4.7%
APS and NMS total	5.3%

Paragraph 3 - Full social integration and participation in the life of the community

Question 1

Anti-discrimination legislation

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

“Nobody may be discriminated due to their disability. The Austrian Republic (federal, Laender and municipality levels) professes to guaranteeing equal treatment of people with and without disabilities in all spheres of everyday life.”

The ban on discrimination commits federal, state and local governments not to discriminate against physically or mentally disabled people in their spheres of influence, and thus creates a constitutional right which, contrary to the previous Paragraph 1 of Article 7, applies not just to nationals but to all individuals. This clause is designed not to modify but to reinforce the equality principle according to which (only) objectively justified differentiation is permitted.

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

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

The Federal Disability Equal Treatment Act (*Bundes-Behindertengleichstellungsgesetz, BGStG*) stipulates a prohibition of discrimination in “everyday life”, particularly with regard to access to and the supply of goods and services available to the public. Protection against discrimination thus also covers the areas of communication, mobility, access to means of transport, housing, leisure and cultural activities.

In 2006, the legislative basis for the position of an ombudsperson for persons with disabilities was created. The ombudsperson advises and supports individuals who feel discriminated against as defined by the *BGStG* or Sections 7a to 7q of the Disability Employment Act (*Behinderteneinstellungsgesetz, BEinstG*), and is also authorised to carry out investigations regarding the discrimination of persons with disabilities, publish reports and develop recommendations on all issues that concern the discrimination of people with disabilities. The ombudsperson is not authorised to act as legal counsel in court proceedings.

He or she can hold consultation hours and days throughout Austria and is independent, autonomous and not bound by any instructions in carrying out these responsibilities.

The ombudsperson is also a member of the Federal Disability Advisory Board, the body that advises the Federal Minister of Social Affairs on all important issues that concern people with disabilities.

The high standard in discrimination protection has been further enhanced by a number of amendments to the relevant laws.

An amendment to the Federal Disability Equal Treatment Act, Federal Law Gazette I no. 7/2011, that entered into force on 1 March 2011 extended the protection against discrimination to people that are discriminated against due to their close relationship with a person with some disability, and increased the minimum claim for damages in case of harassment to EUR 1,000.

The Insurance Law Amendment Act (*Versicherungsrecht-Änderungsgesetz*), Federal Law Gazette I no. 12/2013, introduced special protection against discrimination for people with disabilities into the Insurance Contract Act (*Versicherungsvertragsgesetz*). Pursuant to this amendment, an insurance contract must not be rejected or terminated because of an insurable risk or tied to higher premiums just because the insurance holder or the insured party is a person with disability. A higher premium is only permissible if health is a determining factor for the risk calculation for the respective type of insurance (such as complementary health insurance or life assurance) and the insured person's individual state of health significantly increases risks. Simultaneously with the Insurance Law Amendment Act, a specific type of collective action (*Verbandsklage*) for stopping discrimination due to a disability pursuant to the Insurance Contract Act was introduced in the *BGStG*. In addition to the Austrian National Council of Disabled Persons (*Österreichische Arbeitsgemeinschaft für Rehabilitation, ÖAR*), the ombudsperson for persons with disabilities and the Litigation Association of NGOs against Discrimination (*Klagsverband zur Durchsetzung der Rechte von Diskriminierungsopfern*) are entitled to bring in a *Verbandsklage*.

Since removing barriers may entail high costs, there is a 10 year transition period for eliminating physical barriers and barriers in public transport which had already been in place before 1 January 2006, so that in these cases the entire *BGStG* will fully enter into force only as of 1 January 2016. It may, however, still be reasonably expected for - annually increasing - investments to be made already within this transition period to eliminate barriers.

The Federal Government and transport service operators are obliged to prepare plans for the gradual elimination of barriers, thus guaranteeing complete accessibility by the end of the transition period. In the individual parts of its plans, the Federal Government has to list the measures intended to achieve accessibility without physical barriers in the buildings it uses. Transport service operators are obliged to list appropriate measures relating to their respective fields of service.

The fact that the Federal Government uses a large number of buildings and has committed itself to implementing gradual accessibility despite austerity budget schemes, has led to an amendment of the *BGStG* in Federal Law Gazette I no. 111/2010 (Budget Accompanying Act 2011 – *Budgetbegleitgesetz, BBG*), stipulating an extension of the transition period concerning federal buildings to the year 2019.

The legislation pertaining to equal treatment of people with disabilities was evaluated in a study commissioned by the Ministry of Social Affairs, both in socio-scientific and judicial respects. The study's results were very positive; the arbitration tool was considered particularly effective. The evaluation results will serve as a basis for further developing legislation concerning equal treatment of people with disabilities.

Definition of terms

The Federal Constitutional Law (*Bundes-Verfassungsgesetz, BV-G*) does not include disability affairs as a separate subject-matter competence. Disability legislation thus belongs to what is referred to as cross-sectional matters. A great number of laws at the federal and *Laender* levels include provisions that are significant for individuals with disabilities. As these laws have been enacted with differing objectives, they contain many varying definitions of what constitutes disability.

The intention of disability equality legislation, for example, is to provide the most comprehensive degree of protection against discrimination, on the one hand within the federal administration but also with regard to the supply of goods and services available to the public.

The Public Employment Service (PES) is to provide special support to individuals who, due to their disability, face particular difficulties in finding their place in the labour market.

Other institutions, on the other hand, try to compensate for the disadvantages arising from a disability through financial support, for example. Considering these diverse approaches, the differences among definitions of disability are justified.

To individuals with physical, mental or emotional disabilities or sensory impairments, the following laws ensure effective exercise of the right to vocational training and occupational and social integration or reintegration: Apart from the *BEinstG*, the General Social Insurance Act (*Allgemeines Sozialversicherungsgesetz, ASVG*) and other social insurance regulations at federal level, these are specifically at *Laender* level the Disability Acts (*Landesbehindertengesetze* of Salzburg, Styria), the Equal Opportunity Acts (*Chancengleichheitsgesetze* of Carinthia, Upper Austria, Vienna) and the Vorarlberg Opportunities Act (*Chancengesetz*), the Tyrolean Rehabilitation Act (*Rehabilitationsgesetz*) and Chapter 4 (assistance to persons with disabilities) of the Lower Austrian Social Assistance Act (*Sozialhilfegesetz*) and Chapter 4 (assistance to persons with disabilities) of the Burgenland Social Assistance Act (*Sozialhilfegesetz*).

The Public Employment Service Act (*Arbeitsmarktservicegesetz*), the *ASVG* with its supplementary statutes as well as the above mentioned laws at *Laender* level provide for measures of integration for persons with disabilities, e.g. occupational integration in the form of vocational training, work training, retraining and follow-up training at schools, businesses, integrative businesses (*Integrative Betriebe*, i.e. companies employing mostly people with disabilities) or similar institutions, getting a job and, if necessary, trial employment.

Austria-wide labour market programme for persons with disabilities

The employment initiative for the vocational integration of people with disabilities, which aims at creating new jobs and securing existing jobs, is the key national programme within Austria's labour market policy targeting people with disabilities. This programme is part of the Austrian support strategy DISABILITY - EDUCATION - EMPLOYMENT for the years 2014 to 2017 (*BABE - Österreich 2014-2017, BEHINDERUNG - AUSBILDUNG - BESCHÄFTIGUNG*) and provides a stable framework for labour market policies targeting people with disabilities until 2017 based on compulsory strategies which were developed in the course of a participatory process.

BABE 2014-2017 establishes a link between the Austrian long-term policy strategy targeting people with disabilities, which is laid down in the NAP Disability and intended to implement the UN Convention on the Rights of Persons with Disabilities, and labour market policy measures for people with disabilities provided for by the *BEinstG*. The strategy also refers to

national and European aims which are established by cohesion policy and also determine work carried out on the basis of the *BEinstG. BABE 2014-2017* constitutes the key policy paper of the Ministry of Social Affairs and its Service Centre for dealing with the challenges people with disabilities and disadvantaged people are faced with on the labour market.

The Service Centre of the Ministry of Social Affairs has been entrusted with the coordination of vocational rehabilitation and promotes a broad range of associated services in this field. The Service Centre may promote measures for people with disabilities from their 15th year of age and for businesses in accordance with the *BEinstG*, both by individual and project support. In recent years, the Service Centre has reacted to changes on the labour market by adjusting the strategic focus of its offers. The scope of individuals eligible for support was successively extended, with eligibility depending on the personal need for support of people with disabilities. In accordance with disability mainstreaming, people with disabilities generally have access to all measures of general labour market policy and to adequate support. Some handicaps, however, entail specific needs for support at the workplace or on the path into the labour market. The Service Centre of the Ministry of Social Affairs and the Public Employment Service (PES) cooperate to support people with disabilities on their path into the primary labour market.

Question 2

In 2012, the National Action Plan Disability (NAP Disability 2012-2020) was adopted. The Action Plan includes the main principles underlying Austria's policy for persons with disabilities and serve as a basis for implementing the UN Convention on the Rights of Persons with Disabilities. In eight chapters, the NAP lists 190 aims and 250 specific measures. Its content focuses on equal treatment of people with disabilities, protection against discrimination and complete accessibility. Specific aims and measures in connection with accessibility are defined for the fields of transport, culture, sports, media, information society, construction and tourism.

With respect to accessibility, these aims include among others:

- creating an inclusive transport system for all user groups by providing innovative products and services (Design for All, Two Senses Principle)
- providing complete accessibility to federal cultural institutions
- making sports for people with disabilities part of general sports offers and creating more offers for groups of people with specific disabilities
- ensuring an objective and balanced representation of the lives of people with disabilities in the media
- supporting people with disabilities in leading independent lives by further developing and promoting ICT
- adopting building regulations which are harmonised in view of matters of accessibility
- information on and raising awareness of the topics "accessibility and tourism for all members of all generations" in the fields of tourism and leisure

For further details, refer to (available only in German)

http://www.sozialministerium.at//site/Soziales/Menschen_mit_Behinderungen/Nationaler_Aktionsplan_Behinderung_2012_2020/ (NAP Disability)

In order to create and secure jobs and training positions, particularly to promote gainful employment which enables people with disabilities to earn their own subsistence, usually with full social insurance, and to allow people with disabilities to commence or continue education at school or vocational training, grants for

- technical aids
- orientation and mobility trainings
- purchasing guide dogs for the blind
- mobility grants
- obtaining a driver's license
- purchasing a motor vehicle
- the costs of disability-adapted outfitting or adaptations to the needs of people with disabilities of motor vehicles

are provided to achieve complete integration and overcome communication and mobility obstacles.

It is possible to bear the costs incurred by persons with disabilities for expenses that they incur due to their disabilities in connection with driving to and from work or that are directly linked to their employment or expenses that they incur for compensating for their disabilities and for trainings in using the above aids.

To eliminate linguistic communication barriers, expenses incurred for qualified sign language interpreters may be paid if this kind of support serves the purpose of achieving or securing gainful employment or is required for training and education measures.

Question 3

Referring to pages 7 et seq. of the 2008 federal government report on the situation of people with disabilities in Austria (German version at www.sozialministerium.at), people with disabilities need to be differentiated with respect to a great number of criteria, and thus represent a highly heterogeneous group.

In view of the country's past alone, collecting data on individuals with a disability is a highly sensitive and difficult challenge in Austria. Data privacy laws allow such data to be collected only where a legal basis exists and only provided that collecting such data is indispensable for complying with statutory requirements.

Accurate figures exist only for various individual groups of persons with disabilities. As individuals may belong to several categories at the same time, simply adding up the numbers of people in the individual groups does not yield the total number of persons with disabilities in Austria.

Overview of individual groups of people with disabilities

	2011	2012	2013	2014
Eligible persons with disabilities pursuant to the Disability Employment Act (<i>Behinderteneinstellungsgesetz, BEinstG</i>) (Date: 31 December)	94,753	95,247	96,428	97,658
Registered job seekers with disabilities (AMS definition, annual average)	36,439	39,978	47,364	57,594
Pension insurance: Invalidity pensions excluding public service (Date: 31 December)*	211,144	208,339	204,096	187,657

Accident insurance: Disability benefits including public service (Date: 31 December)*	86,963	86,375	85,918	85,154
Injured persons pursuant to the Victims' Benefits Act (<i>Kriegsopferversorgungsgesetz, KOVG</i>) (Date: 31 December)	9,150	7,764	6,507	5,492
Injured persons pursuant to the Army Benefits Act (<i>Heeresversorgungsgesetz, HVG</i>) (Date: 31 December)	1,755	1,750	1,746	1,737
Increased family allowance (annual average)	75,202	76,250	80,000	78,508
Recipients of long-term care benefits pursuant to the Federal Long-Term Care Act (<i>Bundespflegegeldgesetz, BPGG</i>)	368,196	435,008	437,626	451,628
Recipients of long-term care benefits pursuant to <i>Laender</i> long-term care acts		Subject to federal competence since 1 January 2012.		

* Since 2011, statistics have been counting recipients of an invalidity pension as old-age pensioners as soon as they have reached the standard retirement age.

Types of disability

	Figures	
	Absolute*	Percentage of the population
Persons having:		
Mobility problems	1,000,000	13.0
<i>Share of wheel chair users (incl. elderly) among the above</i>	<i>50,000</i>	
Problems with multiple impairments	580,000	7.0
Problems with chronic impairments	579,000	7.0
Vision problems	318,000	3.9
Nervous and psychological disorders	205,000	2.5
Hearing problems	202,000	2.5
Mental or learning problems	85,000	1.0
Speech problems	63,000	0.8
Problems with a permanent impairment	1,700,000	20.5

Source: Statistics Austria, *Microcensus – additional questions 4/2007*

* Figures based on extrapolations by Statistics Austria referring to individuals in private households

Based on the micro-census survey carried out from October 2007 to 2008, an estimated 1.7 million residents of private households in Austria report having a permanent impairment. These people report that they are most frequently confronted with problems in their free time, 21.2 % of them stating that they were constantly confronted with problems due to their impairments (answer “yes, always”). 16.1 % state that they always encounter problems due to their impairments in public transport; 12.6 % report being faced with constant problems in their apartments or houses. 11.1 % of persons in employment with permanent impairments report being constantly confronted with problems due to their impairments at their workplaces. Least frequently reported were constant problems in connection with communicating with other people (5.3 %), linked to other people’s attitudes towards people

with impairments (4.3 %), in ongoing (professional) training (3.1 %) and education (3.0 %). The 2006 EU-SILC survey revealed that about 1.6 million people in Austria between the ages of 16 and 64 are considered to have a disability in the narrower or wider sense of the term.

The micro-census survey and the EU-SILC survey concerning people with disabilities are planned to be updated in 2016.

Disability equality

Regarding the above mentioned option of claiming damages in court and the system of dispute settlement, which is quoted as best practice model, the recent figures for the period from 2006 to February 2015 are reported as follows:

To be precise, as at 28 February 2015, there had been 1,738 arbitration proceedings since the legislative package entered into force on 1 January 2006. 1,682 (96.7 %) had been settled by the effective date. Of all the applications 841 (48.4 %) cases were related to the Disability Employment Act (*Behinderteneinstellungsgesetz, BEinstG*) and 897 (51.6 %) to the Disability Equal Treatment Act (*Behindertengleichstellungsgesetz, BGStG*).

Throughout the individual years the applications were as follows:

Year	Total applications	BEinstG		BGStG	
2006	130	89	68.5%	41	31.5%
2007	129	74	57.4%	55	42.6%
2008	181	96	53%	85	47%
2009	186	102	54.8%	84	45.2%
2010	196	85	43.4%	111	56.6%
2011	204	66	32.3%	138	67.7%
2012	250	97	38.8%	153	61.2%
2013	218	112	51.4%	106	48.6%
2014	222	110	49.5%	112	50.5%
2015 (Date: 28 February 2015)	21	9	42.9%	12	57.1%

A total of 746 cases of the cases settled (44.35 % of cases settled) were concluded with an agreement, while 724 cases (43.04 %) were concluded without an agreement. In 212 cases (12.60 %) the application for arbitration had been withdrawn, such withdrawals being, according to the experience of the past, most commonly due to a pre-procedural agreement.

56 proceedings (3.2 % of all cases) were pending at the effective date.

In 25 cases (1.4 % of all cases), external mediators were used.

BGStG 2011: absolute figures and settlement/no settlement as a percentage of the total (green); barriers/physical barriers etc. as a percentage of the total (red)

<i>BGStG</i>	Total	Settlement	No settlement	Application withdrawn
Total number	138 100 % (100 %)	64	62	10
Barriers	55 100 % (39.85 %)	31	21	2
Physical barriers	25 100 % (18.12 %)	20	4	1

BGStG 2012: absolute figures and settlement/no settlement as a percentage of the total (green); barriers/physical barriers etc. as a percentage of the total (red)

BGStG	Total	Settlement	No settlement	Application withdrawn
Total number	153 100 % (100 %)	92	48	12
Barriers	66 100 % (43.14 %)	48	12	5
Physical barriers	45 100 % (29.41 %)	36	7	2

BGStG 2013: absolute figures and settlement/no settlement as a percentage of the total (green); barriers/physical barriers etc. as a percentage of the total (red)

BGStG	Total	Settlement	No settlement	Application withdrawn
Total number	106 100 % (100 %)	47	45	12
Barriers	37 100 % (34.91 %)	23	14	0
Physical barriers	26 100 % (24.53 %)	21	5	0

BGStG 2014: absolute figures and settlement/no settlement as a percentage of the total (green); barriers/physical barriers etc. as a percentage of the total (red)

BGStG	Total	Settlement	No settlement	Application withdrawn
Total number	112 100 % (100 %)	23	61	16
Barriers	34 100 % (30.36 %)	11	19	0
Physical barriers	23 100 % (20.54 %)	5	16	0

The statement of the *Land of Salzburg* is quoted as an example for the implementation of matters governed by Article 15 at *Laender* level (provided they fall under the *Laender's* legislative competence)

Article 15 § 1

1) Legal framework

In principle, schooling of persons with disabilities must be made available in the framework of the ordinary school system. The Disability Act of the *Land* of Salzburg provides for assistance

in education and schooling (Section 8) and vocational integration (Section 9). The *Land* of Salzburg pays for additional costs incurred due to disabilities in the field of education and schooling, costs of vocational trainings, work trainings and trial employments in the field of training. Section 15 (social services for persons with disabilities) serves as a basis for the provision of nursing care services at schools for people with disabilities.

2) Measures for implementation

Please refer to statistical information

3) Statistical information:

For statistical data, please refer to the competent school and education authorities, as assistance for people with disabilities in the field of schooling only covers additional costs incurred due to disabilities (as explained above under 1)) but not the costs of schooling as such.

Services provided in the framework of assistance for people with disabilities include the following:

Education and schooling: Offers in the field of education and schooling include places in integrative nursery schools of *Lebenshilfe* (private welfare organisation), places in schools and day homes (*Horte*) in special schools with specific offers (*Paracelsusschule*), places in the student home of *Lebenshilfe* and in the *St. Anton* village of *Caritas* (for students living in a home). Number of persons supported in 2013: 88

Other services provided in the fields of education and schooling: In addition to basic services provided in the fields of education and schooling, the *Land* of Salzburg also offers additional services to children and young persons. These additional services include, among other things, caregivers at nursery schools and home schooling. Figures in this field are also stable (55 cases in 2013). A great part of the individual benefits provided covers school transport costs. In 2013, school transport costs of 443 persons were covered.

Care-related services at schools: In recent years, there was an increasing need of nursing care hours for students at public compulsory schools and private compulsory schools having public-law status. In the 2012/13 school year, a total of 343 students at 47 schools in the *Land* of Salzburg benefitted from 2,897 hours of care per week. These 343 students attended 18 centres for special paedagogical needs and 29 integrative schools.

Vocational training: Training places are available at *anderskompetent GmbH* in Unken, at the *St. Gilgen* Vocational Training Centre and at the Salzburg Training Centre for the Visually and Hearing Impaired (*Landeszentrum für Hör- und Sehbildung, LZHS*). A total of 198 training places are available.

Article 15 § 3

1) Legal framework

Sections 6 (medical treatment), 7 (artificial limbs, orthopaedic aids and other aids) and 15 (social services for persons with disabilities) of the Salzburg Disability Act (*Salzburger Behindertengesetz*) provide for special assistance for persons with disabilities. In addition, the Sections 4 (purpose of integration aid), 10 (social integration support) and 10a (social support aid) constitute the basis for further social integration. The Salzburg Fund for War Victims and Persons with Disabilities (*Salzburger Landeskriegsopfer- und Behindertenfonds, SALKOF*), an administrative fund of the *Land* of Salzburg, also is intended to support social integration.

Sections 28 and 29 of the Salzburg Equal Treatment Act (*Salzburger Gleichbehandlungsgesetz, S.GBG*) provide for a comprehensive prohibition of discrimination. When providing services within the scope of sovereign administration and within private sector management, bodies of the *Land*, the municipalities, the local authorities associations as well as the self-government bodies established by *Laender* law must not directly or indirectly discriminate against anyone on grounds of sex, ethnicity, religion, belief, age, sexual orientation or disability. This prohibition of discrimination also applies to other natural or legal persons, as long as their activities are subject to the *Land's* legislative competence. Anyone who feels discriminated against as defined by these provisions can contact the equality officer of the *Land* of Salzburg or claim damages in court. There are action plans for improving full accessibility of official buildings. Between 1 January 2011 and 31 December 2014, 7 persons approached the Salzburg equality officer with requests and complaints concerning discrimination on the ground of disability in connection with access to public goods and services and with questions concerning the accessibility of buildings or services.

2) Measures for implementation

The *Land* of Salzburg supports a wide range of projects, including counselling, cultural programmes, sports, mobility support, recreational offers for persons with disabilities and their relatives.

Supported associations/projects:

- *ARBOS – Gesellschaft für Musik und Theater*: theatre for the deaf
- *Behindertensportverband Salzburg*
- *Freizeitassistenz* project of *Volkshilfe Salzburg*
- Audio library of the Austrian Federation of the Blind
- *Österreichischer Zivilinvalidenverband*, association of the *Land* of Salzburg
- Salzburg Federation of the Blind and Partially Sighted
- *Salzburger Gerhörlosen - Turn- und Sportverein*
- Theatre group *ECCE*
- *Verband der Gehörlosenvereine im Lande Salzburg*
- *Verein AhA – Angehörige helfen Angehörigen* (communication centre „OASE“)
- Different transport services for persons with disabilities

3) Statistical information:

In addition to the projects listed under 2), the services provided as assistance for people with disabilities in this area include the provision of accommodation for persons with disabilities and a need of residential care and access to cultural and leisure activities as well as the provision of persons with disabilities with aids.

Day care centres and clubs: Day care centres and clubs provide people with mental illnesses and disabilities with offers in the fields of education, health, arts, culture etc. There are also some offers of occupation on an hourly basis. Additionally, support in social matters and health-promoting measures are offered. Offers may be used individually and where necessary.

Day care centre at St. Johann In 2013, the day care centre at St. Johann provided assistance to 125 persons, 73 of them men and 52 women.

Social Centre *Harmogana* The Social Centre *Harmogana* is an institution in the city of Salzburg which is financed as one of the “social benefits”. It offers appropriate daily structures and support in social and health-related matters mainly to persons with mental illnesses and disabilities (but also to persons with other impairments). In addition, former psychiatric patients can meet at the “*Club Harmogana*” at the Social Centre. There are approximately 100 users.

Communication centre “*Oase*”: (*Angehörige helfen Angehörigen, AhA*)

The association *Aha* operates the communication centre “*OASE*” in the city of Salzburg. In 2013, approximately 170 persons frequented the communication centre.

Fully and partially assisted living Throughout Salzburg, the living facilities provided in the framework of assistance for people with disabilities offer support aiming at “normalisation and self-determination”. Living facilities are intended for adults who need different degrees of care. 45 living facilities in the *Land* of Salzburg offer means-tested degrees of support, e.g. fully or partially assisted living. Some living facilities also offer their residents a daily structure and activities on their premises, while the residents of other facilities use offers outside these facilities to provide them with a daily structure. *Lebenshilfe Salzburg, Caritas (Mathiashof, Village St. Anton), St. Vinzenz-Heim Schernberg, Diakoniewerk (Leopold- Pfest-Straße)*, the *Land* of Salzburg (*Konradinum Eugendorf*) und the Salzburg MS Fund (*MS-Haus*) are responsible for operating living facilities in the *Land* of Salzburg. Places as at 31 December 2013: 651

Living facilities for persons with mental illnesses and disabilities: In the *Land* of Salzburg, there are 27 living facilities for persons with mental illnesses offering different degrees of support and having different specialisations; there are, for example, facilities offering support for a limited period of time, long-term support, intensive care 24/7 or day care on an hourly basis. *Laube GmbH, Pro Mente Salzburg, Caritas, the Landesverband für Psychohygiene* and the *Verein Haus Michael* are in charge of these facilities. Places as at 31 December 2013: 218

Fund for war victims and people with disabilities of the *Land* of Salzburg: The fund for war victims and people with disabilities of the *Land* of Salzburg (*Salzburger Landeskriegsopfer- und Behindertenfonds, SALKOF*) may grant allowances to war victims in need who are entitled to receive benefits pursuant to the War Victims' Benefits Act (*Kriegsopferversorgungsgesetz*) and people with permanent and significant impairments as defined by the Salzburg Disability Act (*Salzburger Behindertengesetz*). Specific projects aiming at social rehabilitation, such as conversions of the cars or adaptations of the houses/apartments of wheel chair users, are supported by grants if they are not fully financed by benefits granted by other bodies. There is no legal claim to receiving these benefits. In 2013, 314 persons received support; 70 of them were war victims and 244 civilians with disabilities.

ARTIKEL 18 - THE RIGHT TO ENGAGE IN A GAINFUL OCCUPATION IN THE TERRITORY OF OTHER STATES PARTIES

Paragraph 1 - Applying existing regulations in a spirit of liberality

Question 1

In respect of this paragraph the Government refers to its previous reports on the implementation of Article 18§1 of the 1961 Charter, in particular to the 25th and the 29th report, which is updated as follows:

Right of residence

The main features of the general legal framework did not change during the period under review. General information on the Austrian migration system can be viewed in German and English at www.migration.gv.at.

Austria has introduced a flexible new immigration scheme: The Red-White-Red Card.

It aims to facilitate the immigration of qualified third-country workers and their families with a view to permanent settlement in Austria, based on personal and labour-market related criteria.

The related set of rules entered into force on 1 July 2011.

The Red-White-Red Card is issued for a period of twelve months and entitles the holder to fixed-term settlement and employment by a specified employer.

The following persons are eligible for a Red-White-Red Card:

- Very highly qualified workers
- Skilled workers in shortage occupations
- Other key workers
- Graduates of Austrian universities and colleges of higher education
- Self-employed key workers

Details see questions 2 and Paragraph 2.

Activity as a dependently employed person

Pursuant to the provisions of the Employment of Foreigners Act (*Ausländerbeschäftigungsgesetz, AuslBG*), Federal Law Gazette no. 218/1975 as amended, employers require permits in order to employ foreign nationals.

Similarly, the provisions of the 2005 Settlement and Residence Act (*Niederlassungs- und Aufenthaltsgesetz, NAG*; Federal Law Gazette I no. 100/2005 as amended by Federal Law Gazette I no. 40/2014) and of the Aliens' Police Act 2005 (*Fremdenpolizeigesetz, FPG*; Federal Law Gazette I no. 144/2013) are applied as liberally as possible.

To enter and reside in Austria, foreign nationals wishing to work in gainful employment principally require an Austrian residence title (residence permit or settlement permit), the purpose of which includes employment activities. In addition to the right to reside in Austria for as long as the permit is valid, the residence title additionally includes the right to enter Austria (usually) more than once.

Since Austria joined the EEA, citizens of an EEA member state enjoy visa exemption and the freedom to establish residence and consequently require only a valid travel document. In addition, they enjoy the right of free movement on the Austrian labour market (except nationals of new EU-member states subject to the transitional periods on free movement according to the Accession Treaty of 2011 (i.e. Croatia) – in principle they still need work permits for taking up dependent employment in Austria).

This group of persons no longer falls into the scope of the Employment of Foreigners Act, the statute governing the conditions of access of foreign national employees to the Austrian labour market. Individuals related to an EEA citizen who resides in Austria, either permanently or at least regularly, also enjoy the freedom to establish residence and the right of free movement on the Austrian labour market, even if these relatives are not themselves EEA citizens. This group includes: spouses; registered partners (registered according to the Registered Partnership Act, *Eingetragene Partnerschaft-Gesetz, EPG*); relatives in direct descending line as well as similar relatives of the employee's spouse or registered partner, including adopted children and stepchildren (up to age 21, or older if support is provided); and relatives in direct ascending line as well as similar relatives of the spouse or registered partner, including adopted parents and stepparents (on condition that support is actually provided). Such persons are entitled to an entry and residence permit if they are not already exempt from visa requirements on the basis of bilateral agreements.

Persons holding Swiss citizenship are entitled upon entering the country to residence for an indefinite period with a valid travel document, based on bilateral agreements and the agreement between the EU and Switzerland on the free movement of persons, which entered into force on 1 June 2002. Swiss nationals and their (third-country) spouses, registered partners (registered according to the *EPG*) and children (until age of 21 or as long as they receive financial support from their parents) enjoy the right of establishment. As of 1 June 2004 they do not require a work permit for taking up employment in Austria.

The maximum federal number system according to the *AuslBG (Bundeshöchstzahl)* was repealed as of 1 January 2014.

Special contingents:

Section 5 of the *AuslBG* authorises the Federal Minister of Labour, Social Affairs and Consumer Protection to issue ordinances specifying contingents of foreign national skilled workers and harvest workers to cover temporary needs. Employment permits granted as part of such a contingent are automatically valid as residence permits for the duration of employment. The validity of an employment permit granted in such cases is limited to a maximum duration of six months, whereas the validity period is limited to six weeks for employment permits issued as part of a harvest worker contingent.

Working as a self-employed person:

The residence titles listed below allow a third-country national to engage in a gainful occupation as a self-employed person (under the condition that the appropriate trade licenses and permits have been granted):

- Red-White-Red Card (*Rot-Weiß-Rot – Karte*; issued upon an expert opinion by the provincial office of the Public Employment Service or *PES*, identifying benefits for the economy as a whole that go beyond the benefits for a single business)
- Red-White-Red Card plus (*Rot-Weiß-Rot – Karte plus*; issued in renewal procedures to previous holders of a Red-White-Red Card or EU Blue Card)

- Settlement permit (*Niederlassungsbewilligung*; issued in renewal procedures to previous holders of a Red-White-Red Card planning to continue in self-employment, and issued to third-country nationals enjoying the freedom of establishment under EU law)
- Permanent residence – EU
- Family member (belonging to the family of an Austrian national with unlimited access to the labour market)
- Specific residence permits (self-employed and artists)

Refer also to <http://www.migration.gv.at/de/formen-der-zuwanderung/dauerhafte-zuwanderung-rot-weiss-rot-karte/selbstaendige-schluesselkraefte.html>

<http://www.migration.gv.at/en/types-of-immigration/permanent-immigration-red-white-red-card/self-employed-key-workers.html>

(available in German)

In reply to the additional question by the Committee on Social Rights regarding the requirements to be met with a view for non-EEA-nationals to be granted a residence permit that gives entitlements to self-employment, the following additional information is provided

Various residence titles are available for self-employed work depending on the residence period.

Visa pursuant to Section 24 2005 Aliens' Police Act: For a residence period of up to six months and for working merely temporarily as a self-employed person, individuals can be issued with a C Visa (three months) or a D Visa (six months) for the purpose of employment; Section 2 Para. 4 no. 16 of the 2005 Aliens' Police Act (*Fremdenpolizeigesetz, FPG*) defines merely temporary gainful self-employment as gainful employment "in which the individual engages for not longer than six months within a twelve-month period while maintaining the place of residence in a third country, which continues to be the centre of the person's vital interests; the employment must furthermore not be a case of compulsory insurance as specified in Section 2 of the Commercial Social Insurance Act (*Gewerbliches Sozialversicherungsgesetz, GSVG*)". The visa is to be issued upon application, provided that no grounds for refusal exist and the general conditions for obtaining a visa are met (i.e. secured subsistence, health insurance and accommodation according to local standards).

Residence permit pursuant to Section 60 Settlement and Residence Act (*Niederlassungs- und Aufenthaltsgesetz, NAG*): Residence permits for a temporary stay in Austria for a limited period and a specified purpose can be issued for up to one year. The general conditions for obtaining a permit as mentioned above have to be met in this case as well. The applicant must have additionally contracted for a certain self-employed activity and this obligation has to have existed for more than six months. Where the authorities have reasonable grounds for doubting the self-employed activity, the competent provincial office of the Public Employment Service (*PES*) must ascertain based on the documents presented whether the case is actually one of self-employed activity, that it does not breach the provisions of the Employment of Foreigners Act (*Ausländerbeschäftigungsgesetz, AuslBG*) and whether engaging in the activity is in Austria's interests, considering the economic and labour market-related aspects.

Red-White-Red Card for self-employed key workers pursuant to Section 41 Para. 2 no. 4 NAG: Third-country nationals may apply for a Red-White-Red Card for self-employed key workers if their self-employed activity in Austria presents benefits for the economy as a whole that go

beyond the benefits for a single business. This is particularly the case where the gainful activity is associated with continued transfer of investment capital to Austria, the planned activity will create new jobs or maintain existing ones, the settlement of the key worker is related to a transfer of knowledge and skills or to the introduction of novel technologies, or the key worker's business will be of major significance for an entire region. To this end, the law specifies the preparation of an expert opinion by the competent provincial office of the PES, with the aim of evaluating the benefits of the gainful activity for the economy as a whole, examining in particular the related transfer of investment capital and/or the creation or maintenance of jobs. In addition the general conditions for obtaining a permit as mentioned above have to be met.

The titles or permits mentioned above are for first-time applicants.

In addition numerous residence titles allow third-country nationals already enjoying legal resident status in Austria to take up self-employed activity. Such titles generally provide for unlimited access to the job market (i.e. to jobs as dependently employed and self-employed workers) and include the Red-White-Red Card plus, the family member residence title and the permanent residence – EU permit. Various types of residence permits are issued, each for a specific purpose (see above). Holders of such permits can also become self-employed where the activity corresponds to the purpose of the permit; examples include residence permits for the self-employed, artists, secondary-level and university students and researchers.

Trade law provisions

Section 14 of the Austrian Industrial Code (*Gewerbeordnung, GewO*) of 1994 specifies the conditions under which nationals of other countries are allowed to engage in occupations in trades and crafts (i.e. as self-employed persons) in Austria; this provision is legally relevant mainly for citizens of countries that are neither EU Member States nor signatory countries of the European Economic Area or EEA (i.e. third-country nationals).

Citizens (and analogously legal entities) of the EU or EEA signatory states fall under the freedom of establishment for business purposes and the free movement of services.

Except as otherwise provided for in the *GewO* 1994, foreign nationals who are natural persons may exercise trades under the same terms as Austrian nationals where this has been agreed in state treaties. EEA-related requirements exist in this case of arms trading, the chimney sweep trade, job placement and temporary work agencies; these requirements apply to citizenship and place of residence in the case of natural persons and, in the case of juristic persons, the place of establishment or of the main branch and the citizenship of the board members and shareholders.

Nationals of states with which no such state treaty has been concluded, persons granted asylum or stateless persons may, except as otherwise provided for in the *GewO* 1994, exercise trades under the same terms as Austrian nationals provided they are entitled to reside in Austria under the pertinent regulations to engage in a gainful occupation.

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

Where pursuant to the *NAG* the person registering the trade is required to provide proof of the necessary licence prior to being granted the residence title and where, with the exception of the aforementioned requirements, the requirements for practising the trade have been

fulfilled, the trade authority is required to issue a certificate stating that the requirements for practising the trade have been fulfilled with the exception of the residence title.

Family members of individuals who are citizens of EU Member States or of EEA signatory countries and who are entitled to residence or to permanent residence in an EU Member State or an EEA signatory country are entitled to practise a trade under the same terms as Austrian nationals, regardless of their citizenship. The term 'family members' includes:

1. Spouses and registered partners
2. Relatives directly descending from a citizen of an EU Member State or of an EEA signatory country and spouses or registered partners of such persons who are under 21 years of age or who receive support from them
3. Relatives in direct ascending line of a citizen of an EU Member State or of an EEA signatory country and spouses or registered partners of such persons who receive support from them

Juristic persons and other foreign legal entities that are neither domiciled nor established in Austria are not permitted to practise a trade, except when otherwise provided for in state treaties.

Question 2

Red-White-Red Card – enhanced immigration scheme of July 2011 as amended.

The Red-White-Red (RWR) Card, a new criteria-based immigration scheme, has been introduced, in which qualified workers from third-countries are assessed based on a point system.

In a manner similar to successful immigration models practised by other countries, the new scheme especially targets skilled individuals, extending to them the opportunity to immigrate to Austria.

The RWR Card, which replaces the previous scheme for key employees, is issued in two variants.

The RWR card entitles to residence and employment only with a certain employer.

The RWR Card plus entitles to residence and unlimited labour market access.

The new immigration scheme applies to the following groups of individuals:

- Very highly qualified workers achieving the minimum number of points receive a visa for the purpose of seeking employment, initially limited to six months. Workers who during this period find an employer offering a position commensurate with their skills receive an RWR Card, without a "labour market test" (i.e. to determine whether a worker not requiring a permit could fill the position). An RWR Card plus, offering unlimited access to the labour market, is issued after one year if the individual has been employed at a skilled position for at least ten months.
- Skilled workers in shortage professions. The list of shortage professions is specified each year through an ordinance issued by the Federal Minister of Labour, Social Affairs and Consumer Protection at the recommendation of a social partners' committee of the AMS administrative board and in agreement with the Federal Minister of Science, Research and Economy. The list is based mainly on the ratio, for a particular profession, of registered

vacancies to the number of registered persons seeking employment (labour shortage rate; *Stellenandrangsziffer*). Skilled workers must provide evidence of appropriate vocational training and achieve the minimum number of points for other criteria as prescribed by law. Workers then receive an RWR Card, preliminarily valid for one year, for employment with a certain employer, without a labour market test. Following at least ten months' employment during that year, workers are granted a RWR Card plus.

- For other key employees, the criteria and point system are practically the same as for skilled workers in shortage professions. Yet, in addition, a minimum monthly level of remuneration has been defined: For workers under 30 years of age, 50% of the maximum contribution base defined in the General Social Insurance Act (*Allgemeine Sozialversicherungsgesetz, ASVG*; specifically, EUR 2,325 in 2015), and for workers over 30, 60% of the ASVG maximum contribution base (EUR 2,790 in 2015). Key employees receive an RWR Card only on condition that the AMS is unable to place with the employer any registered Austrian or non-Austrian worker who is seeking employment and has equivalent skills (labour market test).
- University graduates who have done and successfully completed at least half of their course of studies in Austria are eligible after graduation to continue residence in Austria for a further six months in order to seek employment. Without a labour market test or assessment according to a point system, such individuals receive an RWR Card for employment commensurate with their level of education that offers a minimum level of remuneration equivalent to 45% of the ASVG maximum contribution base (EUR 2,092 in 2015).
- Family members, both of key and skilled workers who have already taken up residence and those who have received permits through the new immigration scheme, receive an RWR Card plus immediately, offering unlimited access to the labour market. This is intended to considerably improve the opportunities available to these individuals with respect to securing subsistence income through employment and to consequently help them better participate in economic and social life.

To supplement the RWR Card, the 2011 Aliens' Law Reform Act (*Fremdenrechtsänderungsgesetz, FrÄG*) was passed, transposing the provisions of the Blue Card Directive into national law and introducing the EU Blue Card as a residence title.

The Directive provides for facilitated access to the labour market for workers from third countries who wish to take up highly qualified employment in the EU Member States. It also creates favourable conditions for family reunification and facilitates both the acquisition of a permanent residence permit and mobility within the EU. Applicants receive an EU Blue Card when the following conditions are met: completed university course of three years minimum duration; an employment offer corresponding to the particular education; salary offer amounting to at least 150 % of the average annual gross salary (EUR 57,405); the AMS is unable to place with the employer any registered Austrian or non-Austrian worker who is seeking employment and has equivalent skills. These individuals receive an RWR Card plus after two years on condition of at least 21 months of employment corresponding to their qualification.

The introduction of the Red-White-Red Card system has proven effective.

Discussions are currently in progress with ministries and the interest groups concerned, aimed at further expanding the Red-White-Red Card.

According to the government programme, proposals are to be worked out and implemented by 2018.

Question 3

Statistics on the right of settlement and residence can be viewed by following this link:

http://www.bmi.gv.at/cms/BMI_Niederlassung/statistiken/ (in German)

Long-term permits issued in 2014:

Permanent residence – EC (*Daueraufenthalt EG*): 179,003

Permanent residence of family members (*Daueraufenthalt Familienangehöriger*): 8,249

Permanent Residence Permit (*Niederlassungsnachweis*): 75,347

Exemption certificate (*Befreiungsschein*): 2,997

Work permit (*Arbeitserlaubnis*): 243

Red-White-Red Card plus (*Rot-Weiß-Rot – Karte plus*): 33,015

The decrease of the numbers of long-term permits results from the following developments:

The Austrian labour market was fully opened for citizens of the “new” EU member states that acceded in 2004 (EU-8: Estonia, Latvia, Lithuania, Poland, Czech Republic, Slovakia, Slovenia, Hungary) and 2007 (EU-2: Romania and Bulgaria) in 2011 and 2013, respectively.

This explains the substantial decrease of issued long-term permits, since citizens of EU member states are not required to hold neither such permits nor employment permits, because they enjoy the EU fundamental right of free movement of workers.

Those workers from EU Member states have not disappeared from the Austrian labour market, but now they are (only) registered under their social insurance number.

Their annual average number in 2014 was 191,233.

The **latest data on employment permits applied for, issued, and refused to third-country nationals of other States party and Croatian nationals** (who need an employment permit during the transitional period for free movement of workers in the relevant act of accession to the EU) **are given below:**

	Total applications	Total issued	Total refused
Croatia	19:530	17.239	2.291
Albania	392	315	77
Armenia	84	72	12
Azerbaijan	59	51	8
Bosnia-Herzegovina	12.343	10.344	1,999
Georgia	403	386	17
Republic of Moldova	75	65	10
Montenegro	78	67	11
Russian Federation	1.488	1.387	101
Serbia	5.091	4.442	649
The 'Former Yugoslav Republic of Macedonia'	1.714	1.427	287
Serbia and Montenegro	104	94	10
Turkey	2.448	2.139	309
Ukraine	4.745	4.539	206
Former Yugoslavia	43	31	12
	48.597	42.598	5.999

A refusal rate of 12.34 % results from the data above.

Main reasons for refusal of an initial work permit for Austria

Main reasons for refusal of a Red-White-Red (RWR) Card or an employment permit:

The *PES* does not systematically record the reasons for refusals. Consequently a sample was taken and compared with experiences to arrive at the data.

The majority of refusals (about 60 %) were based on a lack of occupational or other qualification (e.g. knowledge of German); in other words applicants did not achieve the total points required or did not submit the required proof of qualification.

The second most common reason for refusal (20 % of cases) is the employer's inadequate pay offer; this usually indicates a risk of exploitation by the employer or signals wage and social dumping.

Paragraph 2 - Simplifying existing formalities and reducing dues and taxes

Questions 1, 2 and 3

In respect of this paragraph the Government refers to its previous reports on the implementation of Article 18§2 of the 1961 Charter, in particular to the 25th and the 29th report, which is updated as follows:

Work and residence permits

The dependent employment of foreign nationals in Austria is regulated by the Federal Employment of Foreigners Act of 20 March 1975, Federal Law Gazette no. 218, (*Ausländerbeschäftigungsgesetz, AuslBG*) as amended.

Pursuant to the provisions of the *AuslBG*, permits issued by the labour market authority are required in order to employ a foreign citizen.

These permits may be issued as an extra document or may be included in the residence document (as it is e.g. for the residence permit – key employee, document of establishment and long-term EC).

For the sake of ease, reference is made to the details in Article 19 § 2 and § 6 (“labour market access”) for information on the types of procedures and work permits.

The issue of a new permit can be refused on the grounds specified in Section 4 Para. 3 of the *AuslBG*: for instance in case of repeated violations of the *AuslBG* on the part of the employer, or where the employer does not comply with applicable regulations governing pay and working conditions or where in the course of the employment permit procedure the foreign national is unable to provide evidence of a corresponding residence permit.

The principles of the General Administrative Procedure Act 1991 (*Allgemeines Verwaltungsverfahrensgesetz, AVG*), Federal Law Gazette no. 51, which is applicable in Austria, also apply to procedures for foreign nationals. Pursuant to the Act, the regional and *Laender* branch offices of the Austrian Public Employment Service which are responsible for employment matters related to foreign workers have the mandate of issuing administrative decisions in response to applications for the granting of an employment permit and on the refusal of permits for key employees. Employers are entitled to file an appeal against such decisions, as may the foreign national if the individual’s personal circumstances were a major factor in the decision.

Most third country labour migrants and their family members established in Austria, hold long-term permits to work such as a Red-white-red card plus, document of establishment, long-term EC or EU resident status, which grants most of them the right to mobility across the entire territory of Austria.

It should also be noted that Austria is among the countries with the highest share of third-country nationals in the labour market and in active employment within the entire EEA, and has experienced a briskly growing rate of naturalisation over the past decade.

Apart from third-country nationals, numerous EU citizens, both from the new Member States and (particularly) from Germany, have entered the Austrian labour market during the past decade.

In reply to the Committee’s question whether and to what extent the introduction of the red-White-Red Card scheme and the 2011 Aliens Law Reform Act simplified existing formalities with regard to employment of non-EEA nationals, the following information is provided:

Establishing a combined residence and work permit (administered through a “one-stop shop”) benefits applicants, who include very highly qualified workers, skilled workers in shortage occupations, other key workers, self-employed key workers and university graduates. Specifically, they only have to submit one application and no longer two, i.e. for a separate residence title and employment permit, and thus avoid two sets of application procedures.

This has resulted from expanding former procedures for a “settlement permit – key employee” to include a larger group as well as facilitated procedures for certain groups.

Very highly qualified individuals, skilled workers in shortage occupations and graduates of Austrian universities need not pass a labour market test.

There is no longer any maximum federal number of permits.

A visa for the purpose of job-seeking was introduced, as specified in Section 24a of the Aliens’ Police Act (*Fremdenpolizeigesetz, FPG*). Workers in Austria can also submit their application for an RWR Card while residing in the country.

In addition, on introducing the RWR Card a website providing information on migration was set up by the ministries of Labour, Social Affairs and Consumer Protection, of the Interior, and of Europe, Integration and Foreign Affairs (available at www.migration.gv.at/en/). A contact form is provided to get in touch with ministry employees, who respond to enquiries by (potential) applicants. The website is available in German and English. Information sheets, in the languages of migrants’ most common countries of origin, are also on display at the regional offices of the AMS.

An application for an RWR Card (or an EU Blue Card) can be made to the competent authority representing Austria in the applicant’s home country and, since April 2012, in Austria by the potential employer as well.

Plans call for an amendment of the *NAG*, eliminating the requirement to personally collect a residence title. The amendment will allow authorities to have the residence title delivered personally to the recipient in Austria.

Chancery dues and other charges

No essential changes.

Paragraph 4 - Right of nationals to leave the country

No essential changes.

ARTICLE 20 - THE RIGHT OF EQUAL OPPORTUNITIES AND EQUAL TREATMENT IN MATTERS OF EMPLOYMENT AND OCCUPATION WITHOUT DISCRIMINATION ON THE GROUND OF SEX

In respect of this Article the Government refers to its previous reports on the implementation of Article 1 § 2 and Article 4 § 3 of the 1961 Charter.

Brief summary of the previous reports including developments during the reference period:

Question 1

Constitutional law

The principle of equality and the principle of non-discrimination are enshrined in several provisions of Austrian federal constitutional law. These provisions include: Article 7 of the Federal Constitutional Law (*Bundes-Verfassungsgesetz, B-VG*), Article 2 and Article 3 Para. 1 of the Basic Law on the General Rights of Nationals of 21 December 1867 (*Staatsgrundgesetz, StGG*), Imperial Law Gazette no. 142, Article 66 Paras. 1 and 2 and Article 67 of the State Treaty of St. Germain of 10 September 1919, State Law Gazette no. 303/1920, Article 6 and 8 of the State Treaty of Vienna of 15 May 1955, Federal Law Gazette no. 152, and Article 14 of the European Convention for the Protection of Human Rights and Fundamental Freedoms, Federal Law Gazette no. 210/1958 (ECHR). These provisions are as follows:

Article 7 *B-VG*:

“(1) All nationals are equal before the law. Privileges based upon birth, sex, estate, class or religion are excluded. No one shall be discriminated against because of his or her disability. The Republic (Federal Government, *Laender* and municipalities) commits itself to ensuring the equal treatment of disabled and non-disabled persons in all spheres of everyday life.

(2) The Federal Government, *Laender* and municipalities commit themselves to the actual equality of men and women. Action to promote factual equality of women and men, particularly by eliminating actually existing inequalities, is admissible.

(3) Official designations can be applied in such a way as to indicate the gender of the office holder. The same applies to titles, academic degrees and descriptions of occupations.

(4) Public employees, including members of the armed forces, are guaranteed the unrestricted exercise of their political rights.”

Article 13 Para. 3 *B-VG*:

“The Federal Government, *Laender* and municipalities are to strive for the actual equality of women and men in their budgeting.”

Article 51 Para. 8 *B-VG*:

“In the management of the federal budget, the principles of striving for effectiveness, in particular while considering the goal of equality of women and men, of transparency, of efficiency and of presenting as far as possible a true picture of the financial situation of the Federal Government are to be respected.”

Article 2 *StGG*:

“All nationals are equal before the law.”

Article 3 Para. 1 *StGG*:

“Public offices are equally accessible to all nationals.”

Article 6 of the State Treaty of Vienna:

“(1) Austria will take all necessary measures to ensure that all persons living under Austrian sovereignty enjoy, without regard to race, gender, language or religion, their human rights and basic freedoms, including the freedom to express opinions, the freedom of the press and of publication, the freedom to practice religions, the freedom of political opinion, and the freedom of assembly.

(2) Austria furthermore commits itself to ensuring that the laws applicable in Austria do not, either in content or in the manner of application, discriminate or result in discrimination between persons with Austrian citizenship on the ground of those persons’ race, gender, language or religion, be it with regard to the person, the person’s assets or business, occupational or financial interests, legal status, political or civil rights, or with regard to any other area.”

Article 8 of the State Treaty of Vienna:

“Austria will have a democratic government based on secret elections, and pledges for all nationals a free, equal and general right to vote as well as the right to be elected to public office without regard to race, gender, language, religion or political opinion.”

Article 14 ECHR:

“The enjoyment of the rights and freedoms set forth in this Convention shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status.”

The equality of women is also ensured by Article III of the Convention on the Political Rights of Women, which has constitutional status, Federal Law Gazette no. 256/1969.

A foundational, international instrument towards progress in the equality of women and men, the United Nations Convention on the Elimination of All Forms of Discrimination Against Women was drawn up based on the preceding Declaration bearing the same title and adopted by the United Nations General Assembly in 1979. Austria ratified the Convention on 7 September 1982 (Federal Law Gazette no. 443/1982).

Pursuant to Article 9a Para. 3 *B-VG*, since 1 January 1998 female Austrian nationals may voluntarily perform service as soldiers in the armed forces, with the right to terminate their service at any time.

Article 37 of the 2001 Defence Act (*Wehrgesetz*), Federal Law Gazette I no. 146, specifies that women can perform training service for at least twelve months and up to a total of four years, provided they enlist voluntarily in accordance with the military requirements in the specific case. Women may also volunteer for militia exercises. The above mentioned right to terminate service at any time does not apply when the individual irrevocably volunteers for militia exercises or when in such a case military service in postponement of discharge is ordered in a crisis situation (cf. the constitutional provision in Section 39 Para. 2a of the 2001 Defence Act, Federal Law Gazette I no. 146).

After the woman has successfully completed such training and has enlisted appropriately, it is specified that she is to be accepted into federal public service as a professional soldier ('initially as 'temporary military personnel') and later as 'professional military personnel' in accordance with the 1979 Civil Service Act (*Beamten-Dienstrechtsgesetz*, Federal Law Gazette no. 333). Men and women enjoy equality with respect to the career opportunities in the armed forces; irrespective of gender, basically the same military careers and employment opportunities are open to male and female soldiers.

To avoid creating new discrimination between female and male soldiers, it was necessary to introduce a number of provisions of labour and social law for the protection of women. For example, women performing what is termed "training service", fall under the Workplace Protection Act (*Arbeitsplatzsicherungsgesetz*) and enjoy protection against termination during this period. In the case of pregnancy, the Maternity Protection Act (*Mutterschutzgesetz*) additionally applies to such women.

Statutory provisions

Private sector

History

Statutory provisions on the equal treatment of women and men have existed in Austria since 1979. The Federal Act on the Equal Treatment of Women and Men When Determining Remuneration, which became law as of 1 July 1979, raised the level of awareness of gender discrimination issues within the context of employment relationships; at the same time it served as a basis for gradually introducing more comprehensive provisions on equal treatment, thereby approaching the regulatory standard of Community law. The latter has continued to be a model for defining in detail the equal treatment provisions of Austrian law.

This was seen particularly in the further development of the relevant laws between 2004 and 2014 (we refer to reporting on Article 1 § 2 for the legal development applying to all characteristics enumerated in the Equal Treatment Act).

As of 1 July 2004, the Act was supplemented to include ethnic origin, religion and belief, age and sexual orientation as grounds for discrimination.

The prohibition against discrimination on the grounds of gender was broadened as of 1 August 2008 to also take in areas beyond the working world, with regard to access to and supply with goods and services that are available to the public. Improvements were also introduced to both substantive and procedural law.

Focused measures were adopted as of 1 March 2011, which are aimed at improving income transparency for comparisons between women and men. Additional improvements were also made to substantive and procedural law.

The Self-Employed Equal Treatment Directive 2010/41/EU was implemented in 2013. Additional improvements and simplifications were also introduced to procedural law.

Legal framework

Federal Equal Treatment Act (*Gleichbehandlungsgesetz, GIBG*), Federal Law Gazette I no. 66/2004 as amended in Federal Law Gazette I no. 107/2013.

<http://www.ris.bka.gv.at/GeltendeFassung.wxe?Abfrage=Bundesnormen&Gesetzesnummer=20003395> (in German)

Equal Treatment Commission and Equal Treatment Ombuds Office Act (*GBK/GAW-Gesetz*), Federal Law Gazette 1979/198 as amended in Federal Law Gazette I no. 107/2013.

<http://www.ris.bka.gv.at/GeltendeFassung.wxe?Abfrage=Bundesnormen&Gesetzesnummer=10008466> (in German)

Part I of the Equal Treatment Act (Sections 1 to 15 *GIBG*) specifies provisions for the equal treatment of women and men in the working world. The scope of the Act comprises any type of employment relationship based on an agreement under private law as well as several related areas, such as vocational guidance, vocational training, the establishment, setting-up or expansion of a business as well as the commencement or expansion of any other type of self-employment. Its objective, and the principle used in interpreting it, is gender equality.

Part III of the Equal Treatment Act (Sections 30 to 40 *GIBG*) governs equal treatment in other areas, irrespective of gender or ethnic origin. With regard to gender, the Act contains provisions specifying the equal treatment of women and men in regard to access to and supply with goods and services that are available to the public, including housing.

The Equal Treatment Commission and the Equal Treatment Ombuds Office Act is concerned with institutions dedicated to combating discrimination. Individuals who feel they have been discriminated against can appeal to such institutions.

Contents of the *GIBG* and the *GBK/GAW* as well as developments relating to equal treatment in employment and occupation during the reporting period (1 January 2011 to 31 December 2014)

One of the items contained in the Equal Treatment Act is a

ban on direct and indirect discrimination on grounds of gender, particularly in these cases:

- establishing an employment relationship;
- determining remuneration;
- granting fringe benefits that do not constitute remuneration;
- measures of vocational training and continuing training, as well as retraining;
- career opportunities, especially promotions;
- with other working conditions;
- the termination of an employment relationship;

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

- vocational guidance, vocational training, further occupational training and retraining outside an employment relationship;
- participation in employees' organisations or employers' organisations;
- the establishment, setting-up or expansion of a business as well as the commencement or expansion of any other type of self-employment.

In addition to employees, homeworkers are also covered as are employee-like persons.

Direct discrimination: where due to gender an individual experiences less favourable treatment than another individual in a comparable situation experiences, experienced or would experience.

Indirect discrimination: where apparently impartial regulations, criteria or procedures potentially disadvantage individuals of one gender in a specific manner as compared with individuals of the other gender, the exception being where the particular regulations, criteria or procedures are objectively justified by a lawful purpose and the means for achieving that purpose are appropriate and necessary.

Discrimination also occurs where individuals are instructed to discriminate and where individuals are discriminated against due to their close relationship with a person of a certain gender.

Prohibition of sexual harassment and of gender-related harassment

Harassment is unwanted behaviour on the part of one individual:

- that hurts or intends to hurt the dignity of another individual;
- is unwanted, inappropriate or offensive to the latter individual; and
- thereby creates, or intends to create, a threatening, hostile or humiliating environment.

Consequently, one case of harassment is where objectionable behaviour is perceived as such in the subjective feeling of the individual affected, regardless of any intent on the part of the individual responsible for the harassment. It may also exist where the harassing person intends to impair someone else's dignity and, while not subjectively perceiving this as offensive, the affected person nonetheless wishes to fend off the action.

Harassment by either employers or third parties (e.g. co-workers, clients and customers, and suppliers) is prohibited. Where an employee is harassed by a third party, the employer is obliged to intervene and take action opposing such behaviour.

Sexual harassment is harassing behaviour on the part of one individual that infringes on another individual's sexual sphere.

Positive action, i.e. action aimed at promoting gender equality and eliminating inequalities, is not considered discrimination.

Requirement for gender-neutral job posting

Businesses and employment agencies (Public Employment Service, private agencies) are required to use non-discriminatory wording when posting job openings within or outside the organisation. Moreover, the minimum remuneration for the job as defined in the applicable collective agreement, statutory provisions or other standards of collective law (e.g. statute, minimum wage scheme) must be indicated and the employer is required to express any potential willingness to pay more. In business sectors without collective agreements governing minimum remuneration the amount to be used as a basis for negotiating remuneration needs to be specified. Employee-like persons as well as employees in top executive positions (e.g. managing directors) are not included. Violations of this requirement entail administrative penalties.

Remuneration criteria

In the case of company rules for pay classification and of standards of collective law, the principle of equal pay for equal work or for work recognised as of equal value is required to be observed when defining remuneration criteria, and separate criteria that would result in discrimination are not permitted for evaluating work performed by women on the one hand and by men on the other.

Procedures related to evaluating jobs/tasks in collective agreements

In Austria, general wage and salary policy is within the independent scope of responsibility of the parties to a collective agreement. Consequently it is the duty of the groups representing the interests of employees and workers to assess the various aspects of a job in an objective way and without discrimination as defined in the Equal Treatment Act. Guidance for this procedure is provided by a booklet that was issued, on completion of a research project, in mid-2004 by the Federal Ministry of Women's Affairs and entitled "Equal pay for Equal Work and Work of Equal Value – Guideline on Provisions Concerning Equal Payment and Non-Discriminatory Assessment of Work". The guideline provides information on non-discriminatory work assessment in practice, both for employers and for workers.

Pay discrimination

The statutory provision prohibiting pay discrimination based on gender is worded as a legal prohibition.

If a legal standard, which within the Austrian hierarchy of laws ranks lower than a statute, conflicts with a legal prohibition, that lower-ranking standard is void. This principle applies in the same way to standards of collective law (collective agreements, works agreements and similar agreements) and to the terms stipulated in individual agreements.

Just as the claim of a void agreement has to be asserted by the parties to the agreement, so also must the claim of a void term in a collective agreement be asserted (in court) by the employer or worker affected by the term.

In the case of legal arrangements governing collective agreements, the Austrian legal system has no procedure that would enable a court or an administrative authority to eliminate with future effect an unlawful or unethical term of a collective agreement from the legal system, in other words to ensure that the term is not applied in any other potential case of application arising in future. Rather, each individual affected by a void clause must where necessary assert its nullity (either by filing an action or by objection). A legal situation exists here that differs from the case of unlawful ordinances or unconstitutional statutes, inasmuch as in these cases the Constitutional Court is able after conducting a legal review to eliminate such standards from the body of law.

The Labour Constitution Act (*Arbeitsverfassungsgesetz, ArbVG*) was amended in mid-1986 (Federal Law Gazette no. 394/1986, effective as of 1 January 1987), adding an additional reason to the grounds for challenging an unlawful termination, which are listed under Section 105 Para. 3 no. 1. "Where the employee asserts claims arising from the employment relationship that, while apparently not unjustified, are disputed by the employer", the notice of termination that has been issued to an employee of a business required to have a works council (with five or more employees) can be challenged, provided that the works council has not expressly consented to the termination.

Pursuant to Section 105 Para. 5, which applies in such cases, the individual challenging the termination is required to establish facts making credible (but not to prove) any relevant grounds that he or she asserts in the challenge proceedings. The challenge is to be dismissed if after weighing all circumstances it appears more likely that another reason made credible by the employer was the major factor in the termination.

To additionally protect women at small businesses, the Equal Treatment Act was amended to extend the option of challenging a termination to include businesses with fewer than five workers, as an individual right under the Equal Treatment Act.

As part of implementing the National Action Plan on Gender Equality in the Labour Market, as of March 2011 the Equal Treatment Act provides for **measures aimed at improving income transparency** as a means of reducing the income differences between men and women.

The first measure for combating income disparity was the requirement for businesses with a minimum number of employees to prepare income reports (refer to **Income report** for details).

The second measure for improved income transparency is the statutory requirement to indicate the minimum pay level in job postings (refer to **Requirement for gender-neutral job posting** for details).

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

Part-time work

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

Part-time workers must not be disadvantaged because of working part-time unless objective reasons warrant such differing treatment.

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

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

A part-time employment agreement is no hindrance for advancement within pay schedules; specifically, any years worked part-time are fully counted and not just on a pro-rated basis.

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

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

Especially in the retail sector, employers would (and still) often have employees agree to part-time contracts entailing relatively few hours, only to regularly order extra hours later in practice.

Initially attempts were made to counteract this abuse through collective agreements. In line with this intention, either wage supplements for extra hours or a higher hourly wage have been stipulated for part-time employees. The latter measure reflects the regularly observed tendency of part-time workers to work more intensively.

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

- statutory provisions, standards of collective law or work contracts so require;

- times of greater demand or preparatory and concluding activities (Section 8) require such extra hours; and
- such extra hours do not conflict with any worker's interests that warrant consideration.

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

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

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

When measured by median income, women working part-time earn 14.1 % less per hour than their full-time female co-workers (SES 2010, refer to Table 2).

The gross hourly earnings of part-time male workers was 24.5 % lower than that of men working full-time.

The (median) gross hourly wages earned by women in part-time were 28.4 % less than those of full-time male employees.

Among part-time employees, the difference in (median) income attributable to gender is 5.1 %. The discrepancy amounts to 15.1 % in the third quartile. Part-time employment is more likely among men in highly qualified professions (e.g. research positions), in addition to those in low-level jobs (e.g. unskilled labourers).

Among women, part-time work tends to be concentrated in jobs requiring little qualification; a certain share of part-time employees, and women in particular, are probably over-qualified for the activities they perform.

Compared with full-time employment, part-time jobs – especially those held by women – are heavily concentrated in these sectors of the economy: trade and repairs, and real estate and business services (which also includes cleaning services).

Apart from these two sectors, male part-time jobs are also found with a relatively higher

frequency in hotels and restaurants. Yet, compared with part-time jobs held by women, such jobs for men are less common (accounting for 17 % of the part-time jobs recorded overall). Once again it should be noted that the Structure of Earnings Survey does not include several of the service industries that are relevant for female employment, part-time employment and the remuneration for such work compared with full-time employment.

Criteria for identifying pay discrimination

The Equal Treatment Act contains an explicit definition of direct and indirect discrimination. Direct discrimination occurs when, on grounds of gender or another ground for discrimination as specified in the Act, someone is treated less favourably than another person in a comparable situation. Indirect discrimination exists where a regulation that, taken by itself, is impartial has the effect of disadvantaging individuals on grounds of gender or another ground for discrimination as specified in the Act, the exception being where the particular regulations, criteria or procedures are objectively justified by a lawful purpose and the means for achieving that purpose are appropriate and necessary.

When assessing whether a case of pay discrimination exists, one has to first verify whether any differentiation has been made and, if so, whether it is has a disadvantageous effect. One must subsequently verify whether the work is equal or of equal value.

Work of equal value is given where for two jobs, while not identical, no important apparent differences can be recognised when compared on the whole in terms of required knowledge, training, required effort, responsibility and working conditions. In the case of indirect discrimination one also has to verify whether, despite the work being equal or of equal value, the differentiation resulting in disadvantage is objectively justified by way of exception, for example due to a longer period of employment and the implied loyalty to the company.

Assessment of cases of pay discrimination by the labour and social courts

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

The rulings described below, related to the question of gender-related discrimination in the context of determining remuneration, were handed down by the Supreme Court of Justice during the reporting period.

OGH 8 ObA 26/11 of 28 March 2012

In the case of this ruling, the employee alleged discrimination had been practised when her pay level was set, arguing that her employer had used arbitrary criteria for determining her salary category and for granting salary increases.

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

In the specific case the *OGH* drew attention to the fact that the co-worker referred to by the complainant for comparison had, in contrast to the complainant, one year of specialised

professional experience with a chartered accountant and had passed the examination for accountants.

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

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

OGH 8 ObA 89/11 of 28 June 2012

In this case the *OGH* ruled as follows: where a collective agreement stipulates no supplement for part-time employees for the first two hours worked in addition to the working time stipulated in the individual contract and a 25 % supplement beginning only with the third additional hour, no indirect discrimination exists, since for identical work part-time employees receive the same pay as full-time employees. In the specific case, for all additional hours beyond the working time stipulated in their individual agreements and up to the regular weekly working time as defined in the collective agreement, all part-time employees receive at least the amount of pay that full-time employees receive for that working time.

OGH 8 ObA 76/14f of 25 November 2014

The collective agreement for bank employees and bankers stipulates a pro-rated child allowance for part-time employees. In its preliminary ruling of 5 November 2014 (C-476/12, *ÖGB*), the ECJ deemed this clause admissible, stating that child allowance belonged to the employee's remuneration and calculating the allowance based on the principle of *pro rata temporis* (i.e. based on the number of working hours) was objectively justified and appropriate. In the context of remuneration components payable to part-time employees, the principle of *pro rata temporis* is an objective reason related to working time. The *pro rata* clause in the applicable collective agreement is, therefore, justified by objective reasons unrelated to gender, in accordance with the judgement of the ECJ. It follows that the provision in the collective agreement does not result in any discrimination of part-time employees and does not represent a case of indirect discrimination on grounds of gender. After reopening the proceedings the *OGH* consequently rejected the application of the Austrian Trade Union Federation (*ÖGB*) for a declaration that part-time employees are entitled to payment of the full amount of the dependent child allowance.

Assessment of cases of pay discrimination by the Equal Treatment Commission for the private sector

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

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

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

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

Senate III is competent in cases involving equal treatment in other areas, irrespective of gender or ethnic origin.

The cases described in the following involved complaints dealt with or received by Senate I of the *GBK* between 2011 and 2014.

Senate I of the Equal Treatment Commission:

2011:

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

Outcome of the examination:

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

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

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

Withdrawal of application: 2

Examination pending: 4

2012:

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

Outcome of the examination:

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

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

Withdrawal of application: 5

Examination pending: 2

2013:

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

Outcome of the examination:

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

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

Withdrawal of application: 2

Examination pending: 3

The statistics for 2014 will be compiled as part of the **2014-2015 Equal Treatment Report for the Private Sector**. Such reports are published jointly by the Federal Ministry of Education and Women's Affairs, the Federal Chancellery, and the Federal Ministry of Labour, Social Affairs

and Consumer Protection on a two-year basis, as specified in Section 24 of the Equal Treatment Act.

They contain **information about relevant court rulings** and the **activities of the Equal Treatment Commission**. The reports (in German) can be downloaded from the following website:

https://www.bmbf.gv.at/frauen/gleichbehandlung/gbb_privat.html

On the issue of comparing remuneration at the trans-corporate level

Wages and working conditions in Austria are generally governed by industry-specific collective agreements. Taking into consideration that the equal pay requirement, of course, also applies to collective agreements (cf. Section 11 of the Austrian Equal Treatment Act, *GIBG*), this in itself implies that regulations concerning the remuneration of employees which are binding not only at corporate or trans-corporate level but for the entire industry are the basis for these employment relationships and that the principle of equal pay for equal work or work of equal value has to be complied with when assessing the jobs.

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

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

The demand for employers who are neither business affiliates nor subject to a single remuneration scheme to coordinate their bases of remuneration is inappropriate for another reason. Such a procedure would entail virtually insurmountable practical difficulties, since no employer is obliged to reveal the specific details of their wage and salary scheme to another employer. Such information is not disclosed due to competition considerations as well. Yet it is precisely such information that an employer requires to fulfil the principle of equal pay for equal work or for work of equal value, where different employers are able to be examined in a comparison to determine whether equal pay is indeed provided for equal work or for work of equal value.

The requirement to make the remuneration schemes public would also produce data protection issues, especially in smaller companies where pay levels can easily be matched with individual employees.

The geographical frame of reference for the comparability of remuneration is not expressly defined in the Equal Treatment Act.

Here the term "employer" will need to be primarily referred to. The equal pay requirement applies in any case to workers employed in the same business of one employer.

The ruling by the ECJ (C-320/00 Lawrence), which states that all differences in pay conditions attributable to a single source come within the scope of Article 141 of the EC Treaty, implies that the equal pay requirement can also apply to different businesses of one and the same employer. Yet differences within one company are usually to be attributed to one and the same employer and thus to the same source of regulation. The decisive aspect with a company group is whether the head office issues specifications governing remuneration, and those are indeed followed. On the other hand, pay levels differing by region are justified within a company or group where the employer differentiates among regions with varying general wage levels, as such differentiation is based not on gender but on the labour market.

As already mentioned, the Austrian collective agreement system also needs to be considered, in which collective agreements are stipulated at industry level and not for individual companies. This system results in an equal level of minimum remuneration, the scope of which is the industry and thus supersedes the individual company.

Income report

One of the measures to combat pay inequality between women and men is the requirement, applying to companies of a certain size, to prepare a corporate income analysis every two years. A schedule for applying the requirement in stages, depending on the number of workers, was defined. In the final stage, companies with at least 150 employees have been required to submit an income report since 2014.

The report is required to present anonymous data on the pay levels of women and men. It has to indicate the number of women and men classified under one employment category as listed in the collective agreement, as well as the average income of women and men in each category, adjusted for working hours. The basis is total remuneration, which includes allowances, Christmas and holiday pay, and similar items.

The competent works council or – where the business has no works council – the individual worker is entitled to this information. The preparation and disclosure of the income analysis can be enforced through court action.

In cooperation with the Chamber of Labour and the Women's Affairs Department of the Austrian Trade Union Federation, the Federal Minister of Education and Women's Affairs has published a practical guide to aid in the preparation of income reports:

https://www.bmbf.gv.at/frauen/publikationen/einkommensbericht_praxisleit_26575.pdf?4ofaif (in German)

Enforcement of the equal treatment principle

Sanctions are set out in the Equal Treatment Act for individual cases of discrimination:

- compensation for financial losses, i.e. actual harm caused (*positiver Schaden*) and loss of profit; or
- establishing/restoring a non-discriminatory situation;

and in both cases, additionally,

- compensation for the immaterial damage and the personal impairment suffered.

Where discrimination is committed when the employment relationship is established, the minimum amount of damages is two months' pay with the addition of compensation for the

immaterial damage. Where discrimination hinders career advancement, the amount of damages is the difference in pay of at least three months with the addition of compensation for the immaterial damage suffered. As for the other discriminatory acts, no maximum amount of damages is defined. The law was amended as of 1 August 2013 to expressly address court proceedings, specifying that the awarded compensation must be effective and proportionate as well as suited to preventing discrimination.

To enforce their claim to equal treatment, individual employees have the option of appealing to:

- the Labour and Social Court, or
- the Equal Treatment Commission, or
- first the Commission, then the Court, or
- the Court and the Commission simultaneously.

Whereas the Equal Treatment Commission cannot hand down any enforceable rulings, it can contribute to achieving equal treatment by issuing expert opinions on general issues related to the breach of the equal treatment principle and by making proposals to employers in the individual case.

An application filed with the Equal Treatment Commission interrupts the statutory period within which claims must be asserted in court.

Maximum amount of damages

The provisions on the maximum amount of damages apply only where the applicant was not the best-qualified candidate and discrimination occurred only inasmuch as the application was not considered for discriminatory reasons. Only in such cases is the compensation for the personal impairment suffered limited to EUR 500. These provisions are in line with the rulings of the European Court of Justice (case of Draehmpael, C-180/95).

For a person who would have been employed or promoted if the choice had been non-discriminatory, the law does not define any maximum amount but rather a minimum amount with no upper limit.

As of the amendment to the Equal Treatment Act that entered into force on 1 March 2011, the minimum amount of damages in the context of the establishment of an employment relationship is at least two months' pay with the addition of compensation for the immaterial damage suffered. In the case of career advancement, the amount of damages continues to be the difference in pay for at least three months with the addition of compensation for the immaterial damage suffered. As for the other discriminatory acts, no maximum amount of damages is defined.

Facilitated burden of proof

Individuals who feel they have been discriminated against and/or appeal to the Equal Treatment Commission have to establish facts from which it may be presumed that they have been the subject of discrimination on grounds of gender. They must present plausible reasons for having experienced discrimination. It is up to the alleged discriminator to prove the greater likelihood of another motive being the decisive reason for differing treatment, or that the other gender is a necessary prerequisite for the work to be performed or that other objective reasons exist.

Protection from any adverse treatment or adverse consequence as a reaction to a complaint or to proceedings aimed at enforcing compliance with the principle of equal treatment

Protection from any adverse treatment or adverse consequence as a reaction to a complaint or to proceedings aimed at enforcing compliance with the principle of equal treatment was introduced as a measure for enhanced protection against discrimination. Such protection covers not only the person filing the complaint but others as well, such as other employees or witnesses who support the complaint.

Institutions

The Equal Treatment Commission, which is established within the Federal Ministry of Education and Women's Affairs, deals with all issues related to discrimination and can, in particular, prepare expert opinions and carry out case reviews. Claims for damages or performance, however, cannot be asserted; this lies within the exclusive jurisdiction of the courts. The decisions of the Equal Treatment Commission are not binding. The Equal Treatment Commission and the courts can be addressed independently from one other.

Expert opinions issued by the Equal Treatment Commission are published in unabridged yet anonymous form on the website of the Federal Ministry of Education and Women's Affairs.

The Equal Treatment Ombuds Office, which is established within the Federal Chancellery, provides counselling and aid to individuals who feel they have been discriminated against.

In administrative proceedings before the Equal Treatment Commission, rules govern the participation of non-governmental organisations that see their role as representing the interests of certain groups affected by discrimination:

- an individual who is discriminated against may be represented by a member of such NGO in proceedings, on the one hand, and
- the individual concerned may request that a member of such NGO be called in for the proceedings as an expert, on the other hand.

The participation of an NGO in court proceedings is ensured by way of third-party intervention (*Nebenintervention*).

Participation of employer and employee organisations

Provision has been made for the participation of employer and employee organisations both in proceedings before the Equal Treatment Commission and in labour court proceedings.

As specified in the Equal Treatment Commission and Equal Treatment Ombuds Office Act (*GBK/GAW-Gesetz*), the social partners are equally represented in the Equal Treatment Commission. Prior to 1 July 2004 the Equal Treatment Commission was competent only for gender equality. After the scope of the Equal Treatment Act was broadened to include other discriminatory acts, the Commission was subdivided into three senates:

Senate I for equal treatment of women and men in the working world

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

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

Senates I and II, competent for equal treatment in the working world, are each composed of a chairperson (federal employee) and additional members, with one member appointed to each Senate by the Federal Chamber of Labour, the Austrian Federal Economic Chamber, the

Austrian Trade Union Federation and the Federation of Austrian Industry; the other two members are appointed by ministries.

In proceedings before the labour and social courts, jurisdiction is normally exercised in senates over which a judge presides and which are made up of judges as well as experts from among employee and employer groups who serve as lay judges.

Activities of the Equal Treatment Commission during the period under review (2011 to 2014)

Pursuant to Section 1 Para. 2 no. 1 *GBK/GAW-Gesetz*, Senate I is competent for equal treatment of women and men in the working world. Where a case brought before the Equal Treatment Commission concerns both the equal treatment of women and men in the working world as well as equal treatment in the working world, irrespective of ethnic origin, religion or belief, age or sexual orientation (multiple discrimination), Senate I is also competent, pursuant to Section 1 Para. 3 *GBK/GAW-Gesetz*.

In the period of **1 January 2010 to 31 December 2011**, review findings were prepared in a total of 86 cases and one case was completed with a report.

A total of 150 applications were filed. A total of 54 sessions were held, 30 of which were committee sessions.

Of the applications pending at some point between 1 January 2010 and 31 December 2011, 51 were withdrawn at some stage of proceedings, in eight cases the Senate declared itself not competent and one case was not reviewed on grounds of immunity.

In the period of **1 January 2012 to 31 December 2013**, review findings were prepared in a total of 62 cases.

A total of 141 applications were filed. A total of 34 sessions were held, 20 of which were committee sessions.

Of the applications pending at some point between 1 January 2012 and 31 December 2013, 60 were withdrawn at some stage of proceedings and in six cases the Senate declared itself not competent.

Further reference:

https://www.bmbf.gv.at/frauen/gleichbehandlung/gbb_privat.html (in German)

Activities of the Equal Treatment Ombuds Office:

<http://www.gleichbehandlungsanwaltschaft.at/site/7803/default.aspx> (in German)

Public service

Legal framework

Federal Act on the Equal Treatment of Women and Men and the Advancement of Women within the Federal Authorities (*Bundes-Gleichbehandlungsgesetz, B-GlBG*), Federal Law Gazette no. 100/1993) as amended in Federal Law Gazette I no. 210/2013.

<http://www.ris.bka.gv.at/GeltendeFassung.wxe?Abfrage=Bundesnormen&Gesetzesnummer=10008858> (in German)

Provisions governing equal treatment in areas falling within the scope of competence of the Austrian *Laender* are specified in corresponding laws for each *Land*, which set out similar provisions for public employees with the *Laender* and with municipalities.

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

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

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

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

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

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

Discrimination is defined as any differentiation resulting in disadvantage that is without objective justification. It is important to note in this regard that sanctions are imposed not only for direct discrimination, which is readily identified, but also for indirect discrimination, which is much more common in practice and difficult to identify. A case of indirect discrimination is where a rule that, while worded so as to apply without distinction to women and men, as a result of certain circumstances is applied in practice in a way that prefers one group over the other. Discrimination is considered a violation of official duty and is to be prosecuted in accordance with the regulations governing official duties and disciplinary action. A breach of the equal treatment principle has varying legal consequences (i.e. damages or other claims) depending on the type of act.

The equal treatment principle is relevant in these situations:

- Establishing an employment or training relationship (job posting, hiring)
- Determining remuneration (assessing permanent positions, additional fees, allowances)
- Granting voluntary social benefits
- Measures of training and further education within ministerial departments
- Career advancement (especially promotions, assigning roles)
- Other working conditions (special leave without legal claim, scheduling leave periods, arranging working areas, allocating material and human resources, penalising violations of official duty)

- Terminating the employment or training relationship
- Sexual harassment and harassment (penalised as discriminatory acts)
- Effort is to be made to ensure that appropriate numbers of women sit on committees (e.g. hiring, review and reappointment committees, work review, performance appraisal and disciplinary committees)

The principle of advancement of women is to be implemented through relevant advancement plans and by promoting women to higher positions. This principle applies generally in all areas in which the percentage of women among all employees or in the positions within the competence of the particular administrative authority is less than 50 % (positive discrimination). Measures for the advancement of women are not to be applied where gender is a necessary prerequisite for a job.

The principle of advancement of women entails the following measures:

- Obligation of the employer (or that party's representative) to eliminate any under-representation in jobs and positions (target of 50 % women)
- Issue of an action plan to advance women for each department, based on statistical surveys (define a schedule as well as measures in the areas of human resources, organisation and training to eliminate discrimination)
- Report to the Federal Chancellor on progress made in achieving equal treatment and in the advancement of women, serving as the basis for a report to the National Council
- Preferential hiring of equally qualified female job candidates until at least a 50 % share is reached in the particular employment/salary group
- Preferential admittance of women to training and further education measures qualifying them for higher-ranking positions (roles)
- Preferential appointment of (equally qualified) female candidates to higher-ranking positions (roles) until at least a 50 % share is reached in the particular role

The *B-GIBG* also provides for reporting duties specifically directed at federal public service:

Each Federal Minister must, upon expiry of the two-year period of validity of the action plan to advance women, report to the Federal Chancellor on the status of implementing equal treatment and the advancement of women and submit proposals for eliminating discriminatory practices.

These reports are combined in a summary report that also includes information on the work of the Federal Equal Treatment Commission. The Federal Chancellor is required to submit the report to the Federal Government.

Taking into consideration the report submitted by the Federal Chancellor, every two years the Federal Government must submit a report to the National Council on the implementation status regarding equal treatment and the advancement of women in federal public service.

Additionally, the *B-GIBG* includes special employment rules aimed at promoting equal opportunities within federal public service:

- Requirement for gender-neutral wording when posting open jobs and positions in documents addressed to employees
- Mention of the requirement to advance women in job postings

- Gender-equal representation on committees/senates/boards taking human resources decisions
- Specification of the right of women’s representatives to participate in the meetings of such human resources committees in an advisory role
- Requirement to advertise nationwide all jobs and positions entailing career advancement
- Statement that any type of discrimination is deemed a violation of official duty and will therefore lead to disciplinary proceedings
- As of the 2011 amendment: the Federal Government is required to compile annual “income reports” aimed at (further) closing the gender pay gap in the public-service sector
- With the 2011 amendment, a new discriminatory act was introduced – the offence referred to as “associative discrimination”. It applies to cases where individuals are discriminated against based not on any personal characteristics but rather on their close relationship to individuals qualifying as victims of discrimination under equal treatment provisions.

Identification of sexual and other harassment as a punishable discriminatory act

Gender-based discrimination, which establishes the competence of the Equal Treatment Commission, clearly occurs where the female or male employee is:

- harassed by the employer personally,
- discriminated against by the employer in that the latter fails to remedy a case of harassment by a third party, or
- harassed by a third party.

Discrimination also exists, if others are instructed to discriminate against an employee, or if the intention of the incriminating behaviour was to discriminate, even if such discrimination later on did not occur.

Legal consequences of discrimination

One-time compensation (damages) where discrimination occurs:

- Failure to employ an individual (no employment relationship is established):
 1. Through direct discrimination: at least three months’ pay based on the V/2 salary level (the V/2 monthly salary is currently EUR 2,272.4)
 2. Through indirect discrimination: up to three months’ pay based on the V/2 salary level

With the addition of compensation for the personal impairment suffered.
- Lack of career advancement:
 1. Through direct discrimination: difference in pay (remuneration) for at least three months
 2. Through indirect discrimination: up to three months

With the addition of compensation for the personal impairment suffered.

- When determining the remuneration of contractual public employees (discrimination in determining remuneration can occur in federal public service only where the level of

remuneration is not defined by law or collective agreement but subject to private agreement):⁹

Payment of the difference, with the addition of compensation for the personal impairment suffered.

➤ When granting voluntary social benefits:

Entitlement to such benefits (or compensation for financial losses), with the addition of compensation for the personal impairment suffered

➤ Related to measures of training and further education:

Entitlement to inclusion in such measures (or compensation for economic loss), with the addition of compensation for the personal impairment suffered

➤ When granting equal working conditions:

Entitlement to such benefits (or compensation for financial losses), with the addition of compensation for the personal impairment suffered

➤ On termination of the employment or training relationship:

Where the individual concerned requests or files a corresponding action, the dismissal or termination notice or agreement is to be declared ineffective and compensation for the personal impairment suffered is to be awarded. The person affected may alternatively accept the termination while applying for compensation for financial losses and compensation for the personal impairment suffered.

➤ In the case of sexual or other harassment:

Entitlement to compensation for the loss suffered; where the disadvantage does not involve financial losses, at least EUR 1,000 (for all types of harassment)

The burden of proof has been facilitated in favour of discriminated employees, in proceedings before the Equal Treatment Commission and when asserting in court claims related to a discriminatory act. The employee has only to establish facts from which discrimination may be presumed. The employer must provide proof of not having discriminated against the employee.

Protection from any adverse treatment or adverse consequence as a reaction to a complaint or to proceedings aimed at enforcing compliance with the principle of equal treatment is enshrined as a measure for enhanced protection against discrimination:

This measure is intended to protect affected employees as well as other individuals, such as witnesses or persons furnishing information, against any action taken by the employer in response to a complaint or court action that was filed in attempt to enforce claims based on the *B-G/BG*.

⁹ Uniform salary levels applying equally to female and male employees exist in the public service, as specified in federal law or the laws of the individual Austrian *Laender*. If a civil servant feels unequally treated as a result of such a regulation, that person can appeal to the Austrian Constitutional Court based on Article 140 of the Federal Constitutional Law (*Bundesverfassungsgesetz, B-VG*), whereas the labour courts are competent in such cases involving contractual public employees.

At the language level, the wording of the *B-GIBG* was changed to be explicitly gender-neutral, in accordance with the resolutions on gender-neutral language adopted by the Federal Government, which stipulate the use of both the feminine and the masculine form in individual statutory provisions. Particularly a law that refers to women in many of its provisions should ensure that women feel specifically addressed.

In order to achieve equal treatment and the advancement of women in federal public service, the *B-GIBG* provides for special institutions and regulations:

- A separate Federal Equal Treatment Commission
 - serving as an arbitration board for federal employees when lodging complaints (members: one representative of the Federal Chancellery who has at least three years' experience with enforcing the *B-GIBG*, two individuals with at least three years' experience in labour and social law or in federal employment law, one person with at least three years' experience in federal employment law, two representatives of the inter-ministerial Working Party for Equality Issues, and four representatives of the Union of Public Service (*Gewerkschaft Öffentlicher Dienst*))
- Establishment of working parties for equality issues with the central administrative bodies
 - Composed of the equality officers of each of the central administrative bodies
- Appointment of equality officers
 - Appointed by the head of the department, a minimum of three and a maximum of seven, with duties including: accepting and responding to enquiries, requests and complaints and forwarding these to the Working Party for Equality Issues; organising meetings with contact women; filing of disciplinary reports
- Appointment of contact women in the administrative offices
 - Appointed by the chairperson of the working party, with duties including: accepting and responding to enquiries, requests and complaints; advising female employees on issues related to equal treatment and women's advancement
- Inter-ministerial Working Group
 - Established within the Federal Ministry of Education and Women's Affairs (members: chairpersons of the working parties, two representatives each of the Union of Public Service and the Trade Union of Postal and Telecommunications Employees; chaired by the Federal Minister for Women; with duties that include advising the Federal Government)

Amendments to the Federal Equal Treatment Act between 2011 and 2014

The amendments listed below were made to the Federal Equal Treatment Act between 2011 and 2013 (the statute was not amended in 2014):

2011 amendment to the *B-GIBG*:

- The women's quota as defined in the provisions specifying special measures for the advancement of women was increased to 50 %
- Part-time employees and those employed for less than a year were included in the Federal Government income reports
- Minimum remuneration is to be indicated in job postings by the Federal Government

- Information is required to be submitted to the Federal Chancellor for the purpose of evaluating discrimination protection

2012 amendment to the *B-GlBG*:

- Discrimination protection extended: discrimination based on an individual's status as parent or non-parent is prohibited; where selecting among job applicants, the income of a candidate's registered partner is not to be taken into account in a discriminatory way
- Specifications for computing intangible damages are defined
- The period of limitation in cases of sexual and other harassment is extended to three years
- The Federal Chancellor is required to engage in dialogue with NGOs
- Sessions of the Federal Equal Treatment Commission are classified as non-public; chairperson can order separate hearings in cases of (sexual) harassment

2013 amendment to the *B-GlBG*:

- Legal interns also come under the *B-GlBG*
- The powers of administrative authorities in proceedings to rule on compensation claims filed by civil servants are expressly specified in the Federal Employment Law Procedure Act (*Dienstrechtsverfahrensgesetz, DVG*) and the relevant ordinances
- Requirement for administrative authorities and courts to provide reasons for deviating from the Federal Equal Treatment Commission's expert opinion in proceedings involving compensation claims
- Explicit stipulation that the period for asserting claims is interrupted until a ruling by the Federal Equal Treatment Commission is issued
- Precise wording of the Directive adopted with regard to establishing facts from which discrimination may be presumed
- Membership in the Federal Equal Treatment Commission is expressly clarified in cases when members' departments change as a result of the Federal Ministries Act (*Bundesministeriengesetz*)

Activities of Senate I and II of the Federal Equal Treatment Commission:

The Commission's senates are tasked, within their scope of competence, with attending on the basis of the *B-GlBG* to all issues arising in federal public service that relate to the equal treatment of women and men, the advancement of women, and the equal treatment of individuals irrespective of ethnic origin, religion or belief, age or sexual orientation.

Upon application or ex officio, the specific senate of the Federal Equal Treatment Commission is required to prepare an expert opinion to determine whether any measure, action or failure to act violates the principle of equal treatment or the principle of advancement of women.

Applications reviewed by Senate I and II

During the period of 1 March 2010 to 1 March 2012, 63 applications were handled.

Of the 63 applications, 41 were filed by or for female public employees; one application was reviewed as part of official duties. No complaints were expressly related to pay discrimination;

as in previous years, the large majority of cases concerned (alleged) discrimination involving career advancement.

During the period of 1 March 2012 to 1 March 2014, 122 applications were handled.

Of the 122 applications, 56 were filed by or for female public employees. Similarly within the period of 1 March 2013 to 1 March 2014, no complaints were expressly related to pay discrimination; the large majority of cases again concerned (alleged) discrimination involving career advancement.

Question 2

The National Action Plan on Gender Equality in the Labour Market, published in June 2010, is an important instrument for improving the situation of women in the employment market. Through consultations with all federal ministries, the *Laender*, the social partners, NGOs, private companies and researchers, a package of 55 specific measures were defined under the NAP on Gender Equality as a means of achieving four strategic goals: (i) diversifying educational paths and career choices; (ii) increasing women's labour force participation and full-time employment; (iii) increasing the number of women in management positions; and (iv) reducing the gender pay gap. Of the 55 measures in total, 35 measures or 64 % have been fully implemented. Another 14 measures have been partially implemented or are in the process of implementation (as of August 2013). 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 achieve actual gender equality in the labour market.

According to Eurostat, the gender pay gap as based on gross hourly earnings is 23.0 % in the private sector (2013). The 2011 amendment to the Equal Treatment Act (*Gleichbehandlungsgesetz, GIBG*), Federal Law Gazette I no. 7/2011 specifies the requirement for companies to introduce income reports in stages. As of 2013 the requirement applies to companies with more than 250 employees, and since 2014 those with more than 150 employees fall under the requirement. Workshops have been offered to private-sector businesses and a guide for preparing income reports made available. The reports are required to list the average income of women and men in each of the employment categories and in employment category years. The aim is to allow verification of remuneration for equal work and work of equal value. The amendment to the *GIBG* also specifies the requirement for salary details to be included in job advertisements. Sanctions for infringements have been imposed since 1 January 2012. The requirements to include salary details in job advertisements and to publish income reports are currently under evaluation with regard to implementation and effect.

Another incentive for enhanced income transparency is provided by the salary calculator that has been available on the web since late 2011 (available in German at www.gehaltsrechner.gv.at). This online tool can be used to calculate average guidance values for women's and men's wages and salaries according to sector or occupational group. Relevant factors such as education, work experience or the type of work are taken into account.

Frauen-Rechtsschutz, a Vienna-based association active throughout Austria, pursues with its project "Legal protection for women and children" the goal of breaking down the barriers in accessing the legal system which women and children experience in criminal proceedings as

victims of violence, in enforcing civil claims where violence threatens or has occurred, in marital and family proceedings, and when asserting their rights to equal treatment as defined in employment and social laws.

The association provides financial support for legal representation and for the purpose of filing for representative actions. A grant recipient since 1998, the association received support from funds for women's projects, with the annual amounts totalling EUR 30,000 in 2011 and 2012 and EUR 45,000 in 2013 and 2014.

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.

Funding for women's projects

Each and every women's service point and counselling centre for women and girls is generally open to all women and girls seeking aid and counselling on the path to living independently, autonomously and free from violence; refer to: <https://www.bmbf.gv.at/frauen/services/frauenberatungseinrichtungen/index.html> (in German)

Additional, specialised counselling services in the context of educational programmes received about EUR 0.6 million to EUR 0.7 million in funding each year between 2011 and 2014. 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

Gender budgeting

Within the framework of outcome-oriented budgeting, 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. Appropriate action was taken to prepare for the introduction of the budgeting programme, including training for institutions such as the inter-ministerial working group for gender mainstreaming/budgeting.

The Federal Government's budgeting rules require every federal ministry as well as the supreme bodies (Office of the Federal President, Administrative Court, Constitutional Court, Court of Audit and the Austrian Ombudsman Board) to prepare gender equality objectives for all fields of activity and impact within society. This specifically requires the collection of gender information. The next step is to define action suited to achieving the equality objectives, along with appropriate indicators for verifying achievement.

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 Article 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. In terms of these impacts, every piece of legislation and every project is to be analysed with the aid of online tools that allow legislators and budgetary experts to assess outcomes (WFA-IT-Tool; refer also to www.wfa.gv.at (in German)).

Reconciliation of work and family life

Since January 2010 four lump sum options as well as an income-related option are available to parents entitled to childcare benefit. As of 31 December 2014 more than 12 % of the applicants had opted for receiving income-related childcare benefit and 3 % for the short-term lump sum option. Thus, the two short-term options had been elected by almost 15 % of all parents.¹⁰ The percentage of fathers receiving income-related childcare benefit on the effective date was 4.2 %. The percentage of fathers opting for the lump sum scheme "12 + 2 months" was higher, at about 9.4 %. The new short-term options contribute to overcoming the stereotypes of gender role models.

As of 1 January 2011 new fathers in public service are entitled to a special one-month leave (*Papamonat*). This type of leave lasts a maximum of four weeks and is unpaid, and fathers must take it during the maternity leave period (i.e. within the first two months of the birth). Meanwhile more than 1,083 fathers in federal public service have taken such leave. A similar arrangement has since been introduced by many of Austria's *Laender* as well as in a number of companies and collective agreements.

Day care centre statistics compiled by Statistics Austria show that many new childcare places have been established in recent years.

Percentage of children in childcare 2005-2013

¹⁰ Entitlement period up to the child's 12th month, and up to the end of the child's 14th month where both parents take parental leave

Children in day care centres by age group:

		0 - 2 years	3 - 5 years	6 - 9 years
2005	In day care centres	24,508	199,778	41,626
	Percentage of children in childcare	10.2	82.7	11.9
2010	In day care centres	31,981	217,709	52,803
	Percentage of children in childcare	17.1	90.7	16.3
2011	In day care centres	46,409	215,131	52,149
	Percentage of children in childcare	19.1	90.3	16
2012	In day care centres	49,457	215,283	53,335
	Percentage of children in childcare	20.8	90.6	16.4
2013	In day care centres	54,908	217,133	53,346
	Percentage of children in childcare	23	90.8	16.5

Note: Proportion of children in institutional childcare facilities compared to the entire population in the same age group. Children in day care centres as of 15 October of each year, or upon having reached the respective age by 1 September.

6 - 9 years: Mainly includes children in day homes and mixed-age facilities.

Source: *Statistics Austria, Percentages in childcare, day care centre statistics 2005/06, p. 70-71; 2010/11 p. 84; 2011/12 p. 84; 2012/13 p. 84; 2013/14 p. 84 (in German)*

In order to enable all children, independently of their socio-economic origins, to obtain the best possible education, and hence provide them with a good start into their working life later on, the Federal Government has earmarked EUR 70 million in funds for each nursery school year from 2009 to 2013, to be used to finance free and mandatory half-day pre-school support in institutional childcare facilities during the last year prior to starting school. In this way, a legal entitlement to a place in a childcare facility was established for children in this age group in 2009. Since September 2010 half-day attendance has been mandatory throughout Austria.

From 2011 to 2014, the Federal Government funded the expansion of institutional childcare facilities with EUR 15 million per year; this funding was contingent on co-financing from the Austrian *Laender* and compliance with specific criteria (in particular quality standards with respect to opening hours and offering new places for certain age groups). Another EUR 5 million was invested in early language learning in order to remedy any deficiencies in this area prior to starting school.

The Federal Government's work programme for 2013 to 2018 specifies that these targets are to be implemented accordingly. The Barcelona target of 33 % is to be reached as quickly as possible in all the *Laender*. Furthermore, uniform quality standards as well as a uniform quality assurance system are to be established in Austria.

Between 2014 and 2018 the Federal Government will provide the *Laender* with EUR 305 million in start-up funding, while the latter will contribute co-funding to raise the total to about EUR 135 million. The focus is on increasing the number of places for children under three. Austria plans to offer roughly 30,000 new places for this age group within the next few years in order to meet the Barcelona target (i.e. 33 % of children under three in childcare).

Reconciliation of work and family life has been designated as a particular priority in the targets for labour market policy laid down by the Federal Minister. The AMS is explicitly called upon to assist women re-entering the labour market and to support part-time employees in their efforts to move into full-time positions.

Funding for 34,733 persons re-entering the labour market was approved in 2014. In the majority of cases (26,805), funding provided went to finance skills training programmes, and support for re-entry into working life was provided in 7,783 cases. Total spending on women re-entering the labour market came to EUR 93 million in 2014.

The following specific measures and labour market programmes are in place:

➤ Budget

Austria is committed to gender-sensitive labour market policies and gender-responsive budgeting, and the Public Employment Service (AMS) is explicitly required to ensure that at least 50 % of active labour market policy funding is spent on women. At 49 %, spending in 2014 fell just short of this target. This was due to the significantly higher rate of unemployment among men (on average men accounted for approximately 57.5 % of those registered as unemployed). In total, around EUR 536 million of active labour market policy spending was on women.

➤ "Return to Work" (*"Wiedereinstieg unterstützen"*)

Support specifically targeted at women (and men) re-entering the labour market is provided under the "Return to Work" programme. The programme comprises a comprehensive, target-group-specific range of support services aimed at preparing participants to return to the labour market. Services are provided by specially trained advisors and via special information sessions which can be accessed at all regional AMS offices.

The AMS offers an additional course, "Re-entry with a Future" (*"Wiedereinstieg mit Zukunft"*), aimed specifically at women. This course goes beyond vocational guidance and addresses the specific conditions and problems experienced by the target group. Around 4,500 women per year take part in the AMS's "Re-entry with a Future" course.

➤ Childcare allowance

Access to professional childcare is essential for a successful return to the labour market, particularly for women returning to work following maternity leave. With the childcare allowance (contribution towards the cost of childcare to facilitate participation in the labour market) the AMS can make it financially possible for women in particular to access employment or training or to stay in work. Low-income families or single parents who need childcare on a full-day, half-day or hourly basis in order to enter work or participate in labour market measures can receive the childcare allowance for a maximum of 52 weeks in total. The amount paid is dependent on the beneficiary's gross income and the cost, type and duration of childcare used.

➤ "Competence with System" (*"Kompetenz mit System"*, *KmS*)

The Competence with System (“Kompetenz mit System”) qualification scheme fits skills training offered by the AMS into a context for completing a formal apprenticeship. Specifically, the scheme allows women with childcare responsibilities, who are not able to continuously participate in training, to acquire skills in stages and ultimately complete an apprenticeship. KmS is characterised in particular by its flexible structure. Participants complete three modules, which may be taken at any time, to complete an apprenticeship. As such, successive periods of unemployment can be used to improve qualifications. A disproportionate number of participants are women – around 950 women from all over Austria took part in 2014. KmS was launched in 2009, has been available nationwide since 2012, and has enjoyed such popularity that new apprenticeship trades are being added continuously.

Training initiatives for women and girls

To reduce segregation by gender within the labour market, a programme with the aim of enhancing women’s skills levels, entitled “Women in crafts and technology” (FiT), was developed by the Public Employment Service (AMS).

The “Women in Trade and Technology” (*“Frauen in Handwerk und Technik”, FiT*) programme is a key focus of the AMS’s labour market programme for women. FiT is intended to fund high-quality training for women in non-traditional professional fields. The objective for participants is to complete an apprenticeship or course of further study, e.g. at a technical school or university of applied science. The programme makes an important contribution to two employment equality objectives: overcoming gender segregation and reducing the gender pay gap. Not only are skilled manual and technical professions better paid than traditional female occupations, they also offer better career prospects and are in particularly high demand on the labour market. As an expression of the importance of the programme, FiT is also embedded in the goals of the AMS. Over time, it has become clear that it is still difficult to motivate women to enter non-traditional occupations. It is therefore particularly important when providing guidance and advice to emphasise the benefits of training in a skilled manual/technical occupation and to offer training options in this field. Around 1240 women completed training in the skilled manual/technical field under the FiT programme in 2014. According to an evaluative study¹¹ carried out in 2014, the FiT programme is very effective in terms of both labour market success and work satisfaction among women who have passed through it – 85 % of respondents described their job after completing the FiT programme as better than the one they had beforehand.

Women’s Employment Centres (*Frauenberufszentren, FBZ*)

Women’s Employment Centres offer a comprehensive range of advisory and other services aimed at providing intensive and personalised support for women looking to improve their skills. The Women’s Employment Centres facilitate access to the services of the PES, support participants throughout the process, and expedite entry into a suitable programme of education. They also promote the integration of women into the labour market by increasing cooperation with companies in the region. The services provided by the Women’s Employment Centres are structured into various modules offering individual advice and coaching (e.g. a personalised skills review or career planning help) on the one hand, and group workshops providing an opportunity to explore career planning and skills development options and to strengthen self-confidence on the other. Following on from the pilot phase,

¹¹ “Evaluierung des Arbeitsmarkterfolgs von Frauen im Anschluss der AMS-Kurse FIA und FIT”, FORBA, 2014.

which ran from 2010-2012, there are now Women's Employment Centres throughout Austria. The Women's Employment Centres provided support to around 6,800 women across Austria in 2014.

On 24 April 2014 twelve ministries including 40 administrative offices participated in the fifth Girls Day in federal public service. Every year since 2006, on the fourth Thursday in April, girls and young women have had the opportunity to expand their array of occupational choices beyond the traditional role models. Details on the Girls Day are available at www.girlsday-austria.at (in German) and https://www.bmbf.gv.at/enfr/women/girls_day/index.html (in German)

The Girls Day in federal public service is aimed at motivating girls and young women to elect non-traditional, technical-scientific and thus particularly future-oriented training courses, degree courses and occupations that are known to entail a higher income, impact and social recognition.

In 2006 a total of 72 girls participated in the Girls Day in federal employment, with 1,165 girls participating in 2011, 1,278 in 2012, 2,005 in 2013 and 1,829 in 2014.

At the same time as the Girls Day, a Girls Day MINI took place for the first time on 23 April 2015. About 10 federal administrative offices offered attractive events for pre-school-age girls as well. The activities ranged from building a fire extinguisher to programming a robot. The Girls Day MINI in federal public service was developed as a project to allow girls to become acquainted with natural science phenomena and technical issues at the very beginning of their educational careers, that is, in kindergarten. Experiences at kindergarten age can have significant impact on forming further interests and thus on later career choices.

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. Many institutions and organisations have in fact already made available a wide variety of programmes and services especially for girls and women that are aimed at breaking down the barriers to training and education and to careers in natural science and technical fields. Yet a centralised web platform that presents the various opportunities in a manner focusing on this target group has previously been lacking. 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.

Women in management positions

Many studies have demonstrated that in some cases men are significantly overrepresented in management, while the situation has been changing only slightly. 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 2013 and 35 % by 2018. To reinforce the impact of the Federal Government's good example and to increase awareness of the benefits of involving more women, the Federal Government has committed itself 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 37 % in 2014 (2011: 26 %; 2012: 33 %; 2013: 36 %).

An amendment to the Federal Act on the Austrian Broadcasting Corporation (*Bundesgesetz über den Österreichischen Rundfunk, ORF-G*) introduced the obligation for the Austrian Broadcasting Corporation (*ORF*) to grant preferential treatment to women with equal qualifications in recruitment, promotion as well as further education and training, in accordance with a gender equality scheme, until a women's quota of 45 % (number of employees and functions) has been reached. An equal treatment commission as well as equality officers have been established.¹²

Other positive action

No similar obligation to that in the Federal Equal Treatment Act, i.e. to advance women through a quota regulation, has been enshrined in the Equal Treatment Act (*Gleichbehandlungsgesetz, GIBG*), which applies to the private sector.

Section 8 *GIBG* nonetheless explicitly provides for the option of positive action. This provision states that specific measures shall not be considered discriminatory, which are defined in statutes or ordinances or otherwise (e.g. in instruments of collective law) for the purpose of promoting gender equality and with the intention of preventing or compensating for discrimination on grounds of the characteristics listed in the Equal Treatment Act.

Positive action in Austria to advance women has had far greater impact in the public-service sector than on private employment relationships, where it is sometimes received with particular scepticism. Such concerns may be countered by referring to the wide range of possible measures to advance women. In the advancement of women, the legal framework established in the *GIBG* allows numerous steps that may be adapted to the special circumstances of the "private" labour market and the situation of individual businesses.

In practice, businesses with a mandatory works council specifically have the option of concluding, in accordance with the Labour Constitution Act (*Arbeitsverfassungsgesetz, ArbVG*), appropriate works agreements that stipulate terms for optimally adapting positive action to the specific situation of that company. This includes the advancement of women at work in the narrower sense, for example by enhancing career opportunities for female employees, i.e. through a corporate women's advancement scheme, and by enhanced reconciliation of work and private life.

Apart from such authorisation by law to take action for the advancement of women, related awareness-raising projects are being carried out on an ongoing basis, with the aim of

¹² Federal Law Gazette I 50/2010

communicating the right to equal opportunities and the ban on discrimination; such projects include events, information via the media and information brochures.

For instance, the Austrian Federal Economic Chamber launched two initiatives in the course of 2010:

Zukunft.Frauen (Future.Women)

To encourage more women in management and supervisory board positions, the Austrian Federal Economic Chamber started a special programme for women executives, in cooperation with the Federation of Austrian Industries and the Federal Ministry of Economy, Family and Youth. The programme provides support both for obtaining professional advice and for building personal networks. Through networking initiatives the participants are to be enabled to apply for higher positions. At the same time, businesses are made aware of this issue.

Corporate governance code

This voluntary self-regulation measure, which has been in effect since 1 January 2009, is intended to ensure that both genders are equally represented when appointing supervisory board members.

Non-discriminatory advertising

The anti-sexism board was established under the Austrian Advertising Council in 2011, with the objective of continuously combating discriminating advertising in Austria. By giving a permanent place to gender expertise, the Austrian Advertising Council intends to increase sensitivity to the issue within the advertising industry, thereby encouraging the non-discriminatory depiction of genders and an anti-sexism dialogue at institutional level. The anti-sexism board reviews any complaint within a few days, and since November 2011 it has been preparing expert opinions for the Advertising Council that provide the council's 165 members with recommendations for taking decisions. Within three working days the council members take a decision by e-mail as to whether to recommend a halt to the campaign, not to intervene due to lack of grounds or, if the campaign continues, to recommend "enhanced sensitivity". The resolution is adopted with a simple majority of the votes cast by the members of the Austrian Advertising Council, as specified in Article 11 of the Orders of Procedure.

The Gender Award for Advertising was presented for the first and only time up to now in 2012. The purpose of the award is to publicly recognise advertising productions from Austria that demonstrate gender sensitivity, and thus to raise public awareness for non-discriminatory advertising aligned with the principle of gender equality. The McCann Erickson Vienna advertising agency was awarded the prize for an AMA television ad depicting a couple changing a flat tyre. The TV spot deals with the issue of gender equality and, seeking to present women in a context of gender equality, provides a model for advertising themes in future campaigns in Austria.

The "Retouching Barometer" can be cited as an example for the progress made in self-regulation. The Austrian Advertising Council (ÖWR) presents on its website what it calls a "Retouching Barometer". Displaying examples of how images are modified using post-production techniques, the Retouching Barometer is intended as a web platform to contribute to enhanced awareness in advertising and/or media use. The purpose of the Retouching Barometer is to encourage self-regulation in the advertising industry. In line with this aim, a set of guidelines has been jointly developed with the industry to reveal to the public how

creative techniques work in practice. The website www.retuschebarometer.at has been available (in German) since 11 February 2014.

Federal Government Report on the Elimination of Discrimination Against Women

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.

Pursuant to the Act (Section 2 para. 2), the external measures listed below are to be detailed in the report:

- Measures for establishing institutions that allow men and women to reconcile family obligations and work responsibilities
- Social policy measures that reduce discrimination against women on grounds of their role as mothers or potential mothers
- Measures to actively advance women in all areas of society (especially in the labour market, science, art and advancement of the arts, and public service)
- General measures towards ensuring individuals' livelihood, especially in cases of advanced age, disability and unemployment
- Measures for enforcing equal treatment in working life

Every report deals with a focus topic. The focus topic of the report for 2011/2012 was gender budgeting. The next report, covering the period of 2013/2014, is due by 30 June 2015.

PROGRESS project on women in management positions

Since September 2013 the Women's Affairs Department of the Federal Ministry of Education and Women's Affairs (BMBF) has acted as coordinator of 'Women are top! To the top by innovative corporate cultures', a PROGRESS project with the goal of increasing the proportion of women sitting on advisory boards and in executive positions; the project is co-funded by the EU and 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 are closely involved to enable sharing of experiences and model initiatives, with an online simulation being developed to facilitate self-reflection among executives and action aimed at nurturing a corporate culture of gender equality being planned. Further details are available (in German) at: https://www.bmbf.gv.at/frauen/ewam/frauen_spitzenpositionen/top.html

Evaluation of income transparency

The 2011 amendment of the Equal Opportunity Act (*G/BG*) introduced two legislative measures targeted at enhanced transparency of wage levels and thus at raising awareness of the issue of wage discrimination. Companies with a certain minimum number of employees –

a staff of 150 as of 2014 – are required to submit income reports. An obligation is also specified to indicate, in job postings, the minimum wage based on the collective agreement and any willingness to pay more. A study is currently being conducted to evaluate these two measures. The subject of the evaluation is both how the specific provisions of the *G/BG* are being implemented and how effective these measures are for achieving the goal of enhanced income transparency. The opinions of employees, works council representatives and employers are being considered. The final version of the study will serve as a basis for talks on other potential action.

Online salary calculator

Aimed at increasing income transparency, the salary calculator provided by the Ministry of Women's Affairs has been available as a web app since October 2011 ([in German at www.gehaltsrechner.gv.at](http://www.gehaltsrechner.gv.at)). It provides easy access to information on common wage and salary levels (guidance values) according to occupational group, sector and sub-sector, and region. Relevant factors such as education, work experience or the type of work are taken into account. Calculations are based on actual wages and salaries taken from government administration data (payroll tax data). The salary calculator is updated on a regular basis and provides additional information on differing pay levels on grounds of gender.

Question 3

Employment and unemployment rates

On the average over 2014, 1,561,642 women were in **active dependent employment**, representing an increase of 0.9 % compared with the previous year. The number of men in active employment increased only marginally over the previous year, i.e. by 0.6 % to 1,853,887. The percentage of female workers within the actively employed workforce overall was 45.7 %. While in the case of male workers the employment rate for the international reference group (age 15-64) decreased from 77.8 % to 77.1 % in 2012/2013, the rate for female workers rose from 67.3 % to 67.7 %.

A large number of all dependently employed women work **part-time**; 45.9 % of women and 8.5 % of men worked part-time in 2013. In general the number of full-time jobs declined as part-time jobs increased. The percentage of dependently employed female part-time workers increased by 0.5 % year-on-year and by 0.8 % for male part-time workers.

The **unemployment rate for women** climbed on average by 11.3 % or 13,816 women in 2014 compared with the previous year to reach a level of 28.5 % above that of 2010. The male unemployment rate rose by 11.1 %, or by 18,335 men, over the previous year. According to the Public Employment Service's registration figures, the female unemployment rate was 7.6 % in 2014, and the rate for males 9.0 %.

Unemployment among young women (up to age 24) increased by 751 (4.2 %) to reach an unemployment rate of 8.2 % in 2014. Unemployment among young men climbed by 1,652 (6.7 %) for an unemployment rate of 9.2 %.

Active labour market policies contribute to reducing gender-related inequality in the labour market. The goal of the Public Employment Service (*PES*) is to integrate women and men to an equal degree in working life through jobs that ensure them a livelihood. Gender mainstreaming is a binding strategy within the *PES*.

In 2010 48.5 % of all individuals receiving benefits (including for the most part male workers with temporarily reduced working hours) were women. 49.5 % of benefit recipients in skills training were female. The PES only narrowly fell short of the goal of reserving 50 % of all slots in labour market policy programmes for women. A minimum of 50 % of the AMS funding budget has to be invested in measures for the advancement of women and their equality in the labour market. This share was 48.0 % in 2010, including workers with temporarily reduced hours. EUR 54.9 million in funding was spent on temporarily reduced working hours (*Kurzarbeit*) in 2010, i.e. less than half of the EUR 114 million expenditure in 2009.

The annual **funding budget** available to the minister responsible for women's affairs and gender equality was EUR 5.34 million in 2011 and 2012. Following the budget reform in 2013, restructuring of the ministry budget made it possible to increase the funding budget. Consequently, in each of the years 2013 and 2014, EUR 5.9 million in funding could be awarded to projects, initiatives and institutions concerned with women's affairs and gender equality. A list of the women's counselling centres in all of Austria that received funding can be viewed at

<https://www.bmbf.gv.at/frauen/services/frauenberatungseinrichtungen/index.html> (in German). The recognised women's service points in particular take a holistic approach that includes counselling on entering or re-entering the job market or taking a new career step, or on questions related to education and training courses specifically for women, especially with regard to new technologies, choosing atypical occupations, career re-orientation, and continued and advanced education.

Percentage differences in earnings

Private sector

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 2014** (<http://www.rechnungshof.gv.at/berichte/ansicht/detail/einkommensbericht-20141.html>, available in German only) are presented below.

Expressed in terms of mean gross annual income (fully unadjusted), the gender pay gap was 39.1% in 2013, 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 2013 was EUR 19,460 among women and EUR 31,961 for men. Since the onset of the financial and economic crisis in 2008, the difference has decreased slightly by 1.8 percentage points (refer to Table 1). The gender income gap is smaller among higher incomes than in the lower income range, specifically 32.3 % in the third quartile versus 50.3 % in the first quartile. The consistently substantial income gap in the lower income range has decreased by 6.0 % 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 2013, 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 18 % (see General Income Report 2014).

One noteworthy fact is that income differences among year-round full-time employees are significantly smaller in the public sector (contractual public employees 6 %; female civil servants actually earn 2 % more than their male colleagues) than in the private sector (blue-collar workers 31 %, white collar-workers 34 %).

The Austrian **Structure of Earnings Survey (SES)** examines companies 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 2010) reveal a gender difference in median gross hourly earnings of 21.1 % to the disadvantage of women (excluding extra hours and overtime; excluding apprentices). The median hourly earnings of women working part-time are 14.1 % lower than those of women working full-time (difference among men: 24.5 %). The gross hourly earnings of women working part-time are 28.4 % below those of men working full-time (see Table 2).

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

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

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

The structural indicator reveals for Austria in 2013 a gross hourly earnings difference between genders of 23.0 % (arithmetic mean of gross hourly earnings, including extra hours and overtime, including apprentices); this level represents an improvement of 2.1 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 2012) 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 582,627 employees), are female. An above-average share of female employees at 59.7 % is found in the second largest sector ("Public administration and defence, compulsory social security") and at 55 % in the third largest ("Wholesale and retail trade and repair of motor vehicles and motorcycles"). When retail trade alone is considered, women account for 74.1 % of the 286,224 employees in total.

The share of female employees is particularly large in the sections "Activities of households as employers" (85.1 %, with a total of only 2,957 employees) and "Human health and social work activities" (76.3 %). The share of women is particularly small in construction (12.2 %), mining (12.8 %) and energy supply (17.3 %).

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, 64.8 % or almost two thirds of all dependently employed women work in these areas.

1. Table 1: Gross annual income of dependently employed persons 2005-2013, in total

Quartile/median		Women	Men	Difference (%)
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
2009 (in EUR)	First quartile (20 %)	5,475	12,564	56.4
	Second quintile (25 %)	8,006	17,296	53.7
	Median (50 %)	18,112	30,102	39.8
	Third quartile (75 %)	29,602	44,602	33.6
	Fourth quintile (80 %)	33,053	49,000	32.5
	Average	21,403	34,911	38.7
2008 (in EUR)	First quartile (20 %)	5,393	13,427	59.8
	Second quintile (25 %)	7,872	18,009	56.3
	Median (50 %)	17,704	29,938	40.9
	Third quartile (75 %)	28,826	43,565	33.8
	Fourth quintile (80 %)	32,130	48,342	33.5
	Average	20,864	34,787	40.0
2007 (in EUR)	First. quartile (20 %)	5,439	13,393	59.4
	Second quintile (25 %)	7,804	17,693	55.9
	Median (50 %)	17,217	29,057	40.7
	Third quartile (75 %)	27,977	42,190	33.7

	Fourth quintile (80 %)	31,091	46,773	33.5
	Average	20,218	33,771	40.1
2006 (in EUR)	First quartile (20 %)	5,189	12,546	58.6
	Second quintile (25 %)	7,507	16,734	55.1
	Median (50 %)	16,713	28,102	40.5
	Third quartile (75 %)	27,165	40,816	33.4
	Fourth quintile (80 %)	30,184	45,262	33.3
	Average	19,572	32,479	39.7
2005 (in EUR)	First quartile (20 %)	5,086	12,050	57.8
	Second quintile (25 %)	7,326	16,246	54.9
	Median (50 %)	16,296	27,375	40.5
	Third quartile (75 %)	26,407	39,487	33.1
	Fourth quintile (80 %)	29,285	43,729	33.0
	Average	19,005	31,426	39.5

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: General Income Report of the Court of Audit (*RH*), Vienna 2006 (page 250 et seq.).

Figures for 2006 and 2007: *RH* 2008, Statistical Annex, page 2 et seq.

Figures for 2008 and 2009: *RH* 2010, Statistical Annex, page 2 et seq.

Figures for 2010 and 2011: *RH* 2012, Statistical Annex, page 6 et seq.

Figures for 2012 and 2013: Statistics Austria, Payroll Tax Data – Social Statistical Analysis

TABLE 2
GROSS HOURLY EARNINGS OF FULL-TIME AND PART-TIME EMPLOYEES IN 2010 (SES)

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

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

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

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

Source: Structure of Earnings Survey (SES) 2010, Statistics Austria 2013,
www.statistik.at/web_en/statistics/index.html 4]

Table 3
Gross hourly earnings without extra hours and overtime¹⁾ by economic activity (October 2010)

Economic activity by ÖNACE 2008 section		Women		Men		Difference
		Number of dependently employed	Median in EUR	Number of dependently employed	Median in EUR	Gross hourly wages in %
Total		922,153	11.04	1,313,933	13.99	21.09
B	Mining and quarrying	921	12.10	6,175	13.61	11.09
C	Manufacturing	126,757	11.45	382,421	15.17	24.52
D	Electricity, gas and water supply	4,009	17.48	19,952	22.12	20.98
E	Water supply, sewerage, waste management and remediation activities	2,512	10.97	10,027	11.78	6.88
F	Construction	20,704	12.15	172,802	13.28	8.51
G	Wholesale and retail trade, repair of motor vehicles and motorcycles	235,735	10.06	181,873	12.97	22.44
H	Transportation and storage	32,408	12.13	132,883	12.64	4.03
I	Accommodation and food service activities	67,312	7.69	46,454	8.33	7.68
J	Information and communication	19,507	16.16	38,406	20.19	19.96
K	Financial and insurance activities	53,708	16.62	52,484	22.15	24.97
L	Real estate activities	10,817	11.93	8,332	14.93	20.09
M	Professional, scientific and technical activities	46,913	13.68	46,155	18.04	24.17
N	Administrative and support service activities	75,892	8.44	96,749	11.13	24.17
P	Education	57,261	12.65	42,774	16.86	24.97
Q	Human health and social work activities	121,064	12.86	39,623	13.65	5.79
R	Arts, entertainment and recreation	14,999	10.25	17,373	12.34	16.94
S	Other service activities	31,633	10.72	19,450	15.00	28.53
B-F	Industry and construction	154,903	11.63	591,377	14.54	20.01
G-N, P-S	Services	767,250	10.92	722,556	13.37	18.32

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

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

Table 4
Dependently employed persons by economic section (ÖNACE 2008; annual average values 2014)

Economic activity by ÖNACE 2008 section	Dependently employed persons (absolute numbers)			Share of women in %
	Total	Women	Men	
Agriculture, forestry and fishing	21,336	7,384	13,952	34.61 %
Mining and quarrying	5,599	714	4,885	12.75 %
Manufacturing	582,627	145,306	437,321	24.94 %
Electricity, gas and water supply	26,906	4,645	22,261	17.26 %
Water supply, sewage and waste management, and remediation activities	15,347	3,252	12,095	21.19 %
Construction	246,798	30,039	216,759	12.17 %
Wholesale and retail trade, repair of motor vehicles and motorcycles	530,824	291,762	239,062	54.96 %
Transportation and storage	183,594	37,112	146,482	20.21 %
Accommodation and food service activities	197,732	115,542	82,190	58.43 %
Information and communication	82,745	27,324	55,421	33.02 %
Financial and insurance activities	115,836	58,278	57,558	50.31 %
Real estate activities	40,772	24,368	16,404	59.77 %
Professional, scientific and technical activities	160,294	85,212	75,082	53.16 %
Administrative and support service activities	188,012	82,437	105,575	43.85 %
Public administration and defence, compulsory social security	546,159	326,196	219,963	59.73 %
Education	101,945	58,251	43,694	57.14 %
Human health and social work activities	240,374	183,363	57,011	76.28 %
Arts, entertainment and recreation	36,616	16,788	19,828	45.85 %
Other service activities	87,299	60,306	26,993	69.08 %
Activities of households as employers; undifferentiated goods- and services-producing activities of households for own use	2,957	2,517	440	85.12 %
Activities of extraterritorial organisations and bodies	699	409	290	58.51 %
Others	1,061	438	623	41.28 %

National-service conscripts	6,140	19	6,121	0.31%
Parental leave while still employed	81,730	78,700	3,030	96.29 %
Total (excluding conscripts)	3,497,262	1,640,343	1,856,919	46.90 %

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 on 18 March 2015.
<http://www.dnet.at/bali/> (in German)

Employees at federal level

Details of income differences by gender among federal employees can be found in the

[2014 Income Report as specified in Section 6a of the Federal Equal Treatment Act \(*Bundes-Gleichbehandlungsgesetz, B-GlBG*\)](#)

(in German)

The goal of the 2011 amendment to Section 6a *B-GlBG* was to broaden the scope to take in **part-time employees**, in addition to **full-time staff employed year-round**. To ensure comparability of women's and men's incomes, the income figures for part-time employees are converted to the equivalent for **full-time employment** and the figures for staff employed for less than a year are converted to **year-round employment**. The converted figures express the **notional income of all federal public service employees**, presuming that all staff members had worked full-time and all year round. This has the effect of **correcting for any distortion** arising from the fact that part-time employment rates or shares among staff employed less than a year might vary between men and women, thus rendering comparable income data.

Now that the Federal Income Report has been issued in this form for the second time, it is possible to compare the gender pay gap in federal employment year on year. Whereas the income difference was still 13.3 % in 2012, it was reduced to 12.8 % in 2013.

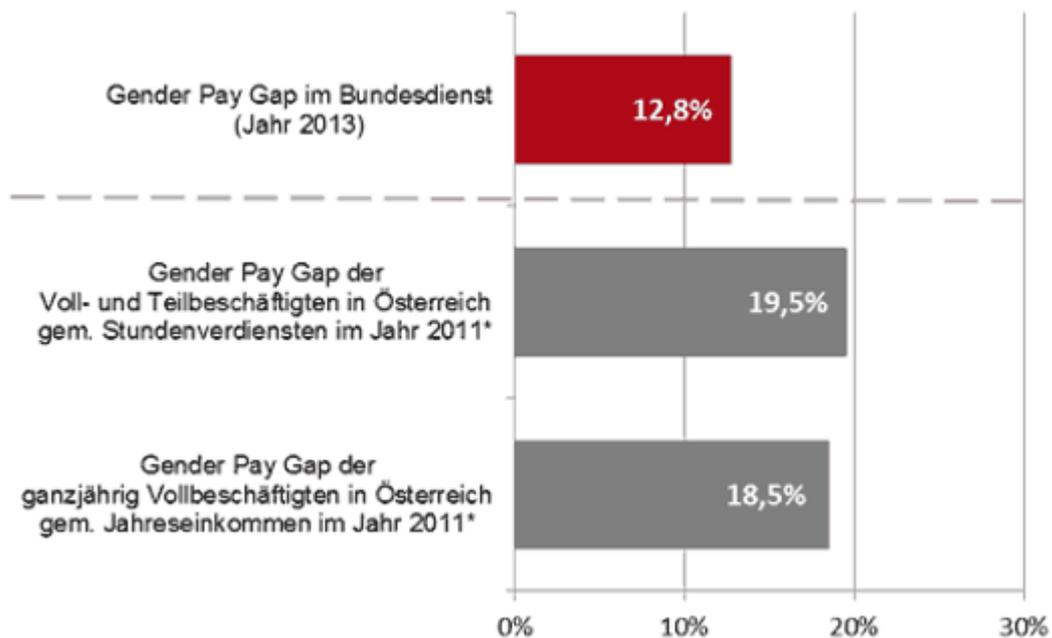
Gender pay gap in federal employment compared year on year

2012	2013
13.3 %	12.8 %

Income differences in federal public service

When addressing the income gap between women and men, the remuneration system for federal public employees, and specifically the statutory pay schemes, offers one benefit over individual salary agreements: **work of equal value is awarded equal pay – regardless of gender**. There is no possibility of treating job candidates unequally by offering them different pay levels, because the salary level depends on how the position is classified. The **mean incomes of women** in federal public service are nonetheless **lower** than those of **men**, although the percent **difference is much smaller than in the private sector**. When adjusted for the number of working hours and for cases of employment lasting less than a year, the **gender pay gap** in the federal public service is **12.8 %**; this is in contrast to a difference of 19.5 % when the hourly wages of full and part-time employees in Austria are compared, or of 18.5 % between women and men employed full-time and year-round.

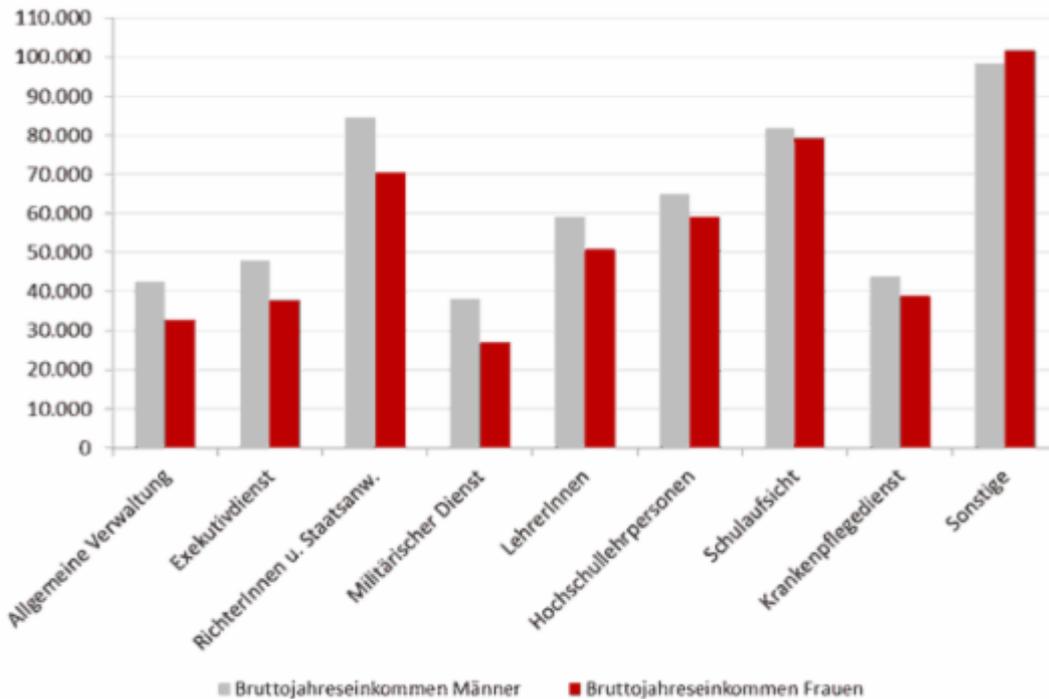
Gender pay gap in the federal public service compared with the difference among dependently employed persons in Austria



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

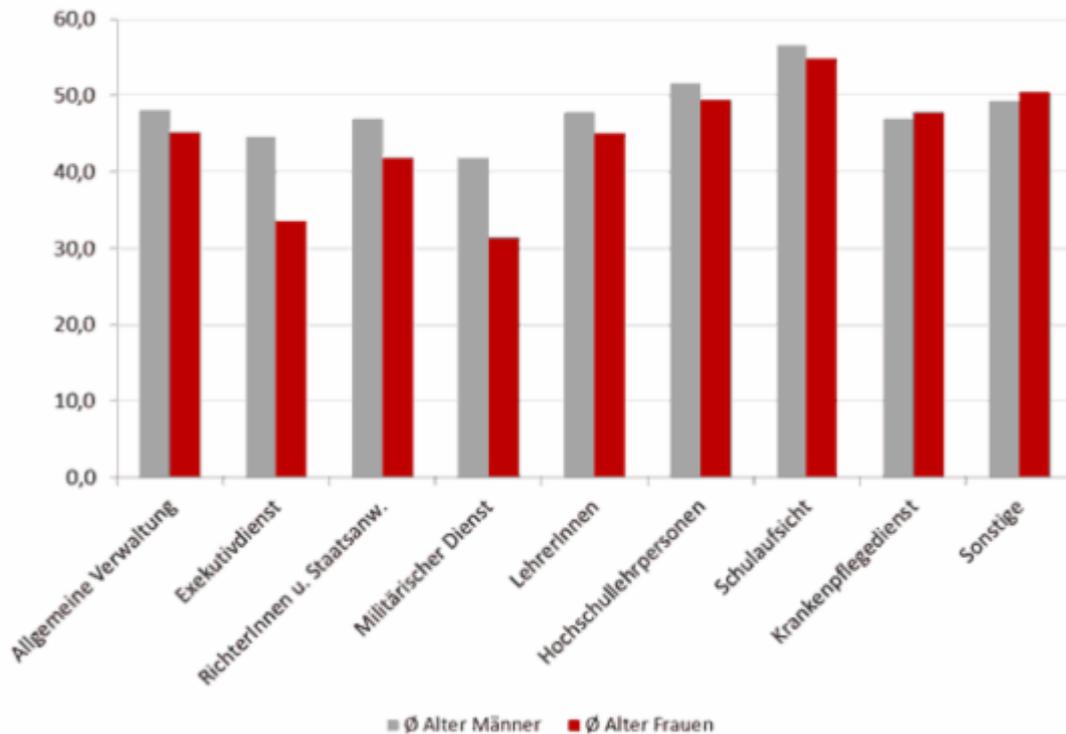
When adjusted for the varying number of working hours and for employment lasting less than a year, a difference of **12.8 % between the average income levels** remains, which varies among occupational groups from 3.0 % (school supervision) to 29.2 % (military service). Within the occupational group referred to as "Others", there is a relatively large number of female school doctors with a higher average age, who therefore earn 3.2 % more than their male colleagues.

Income differences by gender and occupational group



In the federal public service, **age is the most significant factor** accounting for income differences between women and men. This means that significant income differences are observed for occupational groups or employment categories with a large age spread. This phenomenon, which is to be expected in pay schemes based heavily on seniority, needs to be considered when evaluating data. Entry into the federal public service in early years is more often the rule than the exception, so that age correlates positively with years of service and similarly with work experience on the one hand, and with advancement to higher salary or pay levels on the other. A considerable reduction of the gender gap is consequently expected when the age structure of female employees becomes similar to that of male staff.

Average age by gender and occupational group



Low income levels in the context of a higher average age can be attributed to employees working less overtime, or to fewer **advancements** within the pay scheme due to leave periods, or to **late entry** into the **federal public service**. The percentage of women is significantly higher especially among individuals over 30 initially entering federal service (exceptions being military service and police and prison staff). Since prior employment can be counted in pay classification only to a limited extent, such women find themselves at a lower salary or pay level than other employees of the same average age who entered service at an earlier date.

Individual coincidental factors have a heavy impact on statistical indicators where a **group** of employees is particularly **small**. It can be seen in the case of nursing in particular that women earn less despite a relatively high average age. Yet the number of individuals in this occupational group is small, so that any general observation based on the figures for the individual employment and salary groups has only limited validity.

ARTICLE 25 – THE RIGHT OF WORKERS TO THE PROTECTION OF THEIR CLAIMS IN THE EVENT OF THE INSOLVENCY OF THEIR EMPLOYER

Question 1

1. The main rules regarding the protection and scope of outstanding claims of employees in the event of their employer becoming insolvent are laid down in the Insolvency-Guarantee of Remuneration Act (*Insolvenz-Entgeltsicherungsgesetz, IESG*). The original version of the IESG entered into force on 1 January 1978 and was promulgated in Federal Law Gazette no. 324/1977. It has since been amended a number of times; during the period under review (2011 to end of 2014) there were five amendments (Federal Law Gazette I no. 111/2010, Federal Law Gazette I no. 24/2011, Federal Law Gazette I no. 39/2011, Federal Law Gazette I no. 35/2012, Federal Law Gazette I no. 30/2014). – Please see the comments in point 6 in this regard.
2. The IESG has been guided by the same basic principles from the outset:
 - a. The employer must be insolvent (= unable to meet its payment obligations); this insolvency is established by court order.
 - b. There must be or must have been an employment relationship between the employee and the insolvent employer.
 - c. Claims arising from this employment relationship must be outstanding as a result of this insolvency.
 - d. The employee has six months – from the date of the court order establishing the insolvency – to apply to the Austrian guarantee institution for payment of the outstanding claims arising from the employment.
 - e. If insolvency law requires outstanding claims to be filed in any insolvency proceedings pending, entitlement to insolvency pay is dependent on this being done.
 - f. The guarantee institution decides on claims submitted to it and issues one or more administrative decisions stating its decision.
 - g. If the guarantee institution allows the claims submitted (in whole or in part), the corresponding sums are paid out from the Insolvency Remuneration Fund (*Insolvenz-Entgeltsicherungs-Fonds, IEF*); the IEF is financed chiefly by contributions made by employers.
3. The amendment published in Federal Law Gazette no. 580/1980 imposed limits regarding amounts that can be claimed and time limits for these claims.
4. Following the amendment published in Federal Law Gazette no. 647/1982, employee social security contributions (health and pension insurance) not paid by employers will be paid using IEF funds if – generally – the regional health insurance fund concerned was not able to recover these sums in the insolvency proceedings (= dependent on the assets in the estate). The amendment published in Federal Law Gazette I no. 618/1987 applies the same rule to contributions not paid by insolvent construction companies to fund inter alia the holiday entitlements of construction workers. Finally, the amendment published in Federal Law Gazette I no. 158/2002 requires the IEF to make an annual payment to the Republic of Austria specifically dedicated to the funding of apprenticeships and employment for young people; this concerns funding for apprentices in particular. Payments equivalent to approximately EUR 180 million are made per year.
5. Regarding the **basic principles** outlined in points 2 and 3:

- **Re point 2.a:** The IESG gives an exhaustive list of the types of court order which are deemed to confirm the insolvency of the employer with binding effect for the guarantee institution:

- proceedings under the Insolvency Code (*Insolvenzordnung, IO*), Imperial Law Gazette no. 337/1914 (note: restructuring with self-administration, restructuring without self-administration, bankruptcy proceedings).
- supervised administration order (note: special insolvency proceeding for banks)
- non-commencement of insolvency proceedings because assets are insufficient to cover costs
- refusal to commence insolvency proceedings following dissolution of a legal entity until the assets of that entity have been distributed
- removal from the company register of a capital company or cooperative society possessing no assets
- rejection of application for commencement of insolvency proceedings where assets (of the insolvent employer) are no longer situated within the territorial jurisdiction of the court.

It should be noted that the court orders cited are reproduced in the version resulting from the Insolvency Law Amendment Act 2010 (*Insolvenzrechtsänderungsgesetz, IRÄG 2010*), Federal Law Gazette I no. 29/2010, which introduced major changes to Austrian insolvency law.

Foreign court orders as defined in the EU Insolvency Regulation, OJ No. L 160 must be considered as being equivalent to one of the Austrian orders listed if the employment relationship concerned is subject to the provisions of Austrian labour and social security legislation.

- **Re point 2.b:** There are no legal definitions of the terms employee, employer and employment in Austrian law. In accordance with case law and jurisprudence, the key characteristics of employment are that the employee is bound by instructions and is financially dependent on the employer (he or she is reliant on the employer for payment of his or her remuneration). Other characteristics are a prescribed place of work, provision of working materials and – somewhat less importantly – prescribed working times. An employee's remuneration is not normally dependent on the employee producing a particular work (unlike under a contract for work and services) and is generally determined in a collective agreement.

As well as "traditional" employees, other classes of individuals are also entitled to receive insolvency pay according to the IESG:

- workers classified as quasi-freelancers for the purposes of social insurance for employees
- homeworkers
- the surviving dependants and successors in law on death of the aforementioned persons. The entitlements of surviving dependants (e.g. children) and successors in law on death (e.g. widow or widower: severance pay entitlement) are derived rights flowing from the entitlements of the deceased employee. If the employee did not have any entitlements, the successor in law would not be permitted to assert any claim to the guarantee facility in the first place. This entitlement must normally be proven by a corresponding will or testamentary gift.

In the case of quasi-freelancers and homeworkers, the financial dependence criterion must be met. The other requirements – insolvency, outstanding claims, application for

insolvency pay and filing of claims in insolvency proceedings, where required – are the same as for "normal" employees.

The following have no entitlement to insolvency pay:

- Employees of territorial bodies (i.e. of the Republic of Austria, the nine *Laender* and all municipalities).
- Employees of persons with immunity under international law, e.g. employees of embassies and international organisations.
- Shareholders with a controlling influence over decision-making within a company which (subsequently) becomes insolvent (the controlling influence eclipses the function of the employer so greatly that the latter no longer has an effect).
- **Re point 2.c:** Insolvency pay is payable in respect of claims of any kind arising from employment, e.g. wages and salaries, daily expense allowances and travel costs, commissions, holiday entitlement, claims arising from termination of employment and reimbursement of necessary costs incurred in enforcement of claims against the employer. The question of whether the insolvent employer's assets are sufficient to (partly) cover the employee's claims has no impact on the amount of insolvency pay awarded: the employee should not be exposed to the financial risk of having to strive to recover from the insolvency estate at least part of the amount owed him or her, if at all, after months or even years, and so this aspect is not taken into account when awarding insolvency pay.

However, these entitlements are subject to **ceilings and time limits**:

- **The amount** of insolvency pay per month is capped at twice the gross maximum contribution base for Austrian social security contributions: The monthly maximum contribution base for 2015 is EUR 4,650; double this amount is therefore EUR 9,300 (note: social security contributions are payable on amounts up to the maximum contribution base).
This limit does not apply to necessary costs incurred; the amount of insolvency pay awarded will be less than that applied for if insolvency pay is not awarded in respect of all claims, e.g. because the maximum sum has been exceeded or insolvency pay is not payable at all, or only partially payable, for other reasons (e.g. as a result of the time limits).
- In addition, claims are paid "net": any employee social security contributions (for health and pension insurance in particular) are deducted, and from the amount that remains a fixed percentage is then deducted to cover payroll tax (separate treatment under payroll tax law). For 2015, the maximum net payment remaining after these deductions are applied to the gross figure of EUR 9,300 is EUR 7,445.

Separate arrangements apply for company pensions paid by an employer to former employees.

- Regarding **time limits**, the following applies:
 - For periods before the date on which the judgment establishing the employer's insolvency (the reference date) is handed down: six months; if the employment ended before the reference date, this six-month period will be calculated from the date on which the employment ended; all outstanding claims falling due during this six-month period are secured. The six-month limit does not apply
- ** if legal action (including any arbitration proceedings provided for in the relevant collective agreement and proceedings before the Equal Treatment Commission [note: where less favourable treatment is alleged, particularly of a women in comparison to a

man, also as regards wages]) to recover these claims is brought within six months of the date on which they arose;

** where remuneration was below that specified in the collective agreement if the payable hours were worked during the relevant six-month period (the amount paid is the difference between the below-collectively-agreed rate actually paid and the amount that the employer should have paid).

- For periods after the reference date: The secured period following the reference date varies depending on whether or not insolvency proceedings are pending and whether or not the insolvent company is ordered to remain in operation (=so insolvency pay can also be paid in respect of current wages including prorated special payments, i.e. annual leave entitlements, Christmas pay); this period is at least one month but can be three months in some cases. Under certain circumstances, insolvency pay may also be awarded for claims that arise later than this, but only by way of liability in the event of default.

For this liability to apply, two things must happen: Firstly, the insolvency administrator must give notice in writing that he or she is no longer able to make part or all of the payments due, and secondly the employee must hand in his or her notice, with good reason, due to the failure to make part or all of the payment due. Similar provisions apply for employees covered by enhanced protection against termination, such as mothers and men conscripted for mandatory military service.

- Additional rules apply in respect of claims other than current wages including prorated special payments .

In general, insolvency pay is payable for claims which arose during the periods specified, e.g. current wages for the last six months and holiday pay for the last year (i.e. five or six weeks' holiday); if proceedings are justifiably brought (provided of course that the court finds in favour of the employee) insolvency pay is also payable in respect for further periods.

- **Re point 2.d:** The employee has six months – normally from the date of the court order establishing the employer's insolvency – to apply for insolvency pay; this relatively long period is necessary because claims arising e.g. as a result of termination of employment often do not arise until after the court declares the employer insolvent, meaning that only then can the amount of such claims be determined (by the employee or his/her legal representative). In certain cases, a hardship clause permits applications to be submitted after the six-month deadline has passed, provided that the employee or his or her legal representative was not responsible for the lateness of the application.
- **Re point 2.e:** If the law, and the Insolvency Code in particular, requires creditors (and consequently employees) to file their insolvency claims (particularly those from before the reference date) in any insolvency proceedings pending, this must be done before any insolvency pay can be awarded.
- **Re point 2.f:** Whatever the decision reached by the guarantee institution, the latter must communicate it by administrative decision (*Bescheid*). In accordance with the Austrian system of "subsequent jurisdiction", such decision may be appealed before the competent regional Labour and Social Court. Appeals against the decisions of this court may be filed with the respective Court of Appeal (*Oberlandesgericht*), and an appeal on point of law against a decision of the Court of Appeal (to clarify unresolved legal issues in particular) may be brought before the Supreme Court of Justice.
- **Re point 2.g:** If an administrative decision as referred to in point f awards insolvency pay, the money is paid out from the Insolvency Remuneration Fund (IEF). The money in this fund comes mainly from contributions made by employers. Technically, this contribution is a surcharge on the employer contribution to fund unemployment insurance

spending, including subsidies.

6. Regarding the amendments in the period under review:

- Federal Law Gazette I no. 111/2010
- Federal Law Gazette I no. 24/2011
- Federal Law Gazette I no. 39/2011
- Federal Law Gazette I no. 35/2012
- Federal Law Gazette I no. 30/2014

These amendments only concern how expenditure from the IEF is financed; inter alia, the last amendment listed reduces the surcharge payable by employers from 0.55 % to 0.45 % with effect from 2015.

Question 2

While the **Insolvency-Guarantee of Remuneration Act**

<http://www.ris.bka.gv.at/GeltendeFassung.wxe?Abfrage=Bundesnormen&Gesetzesnummer=10008418>

(status as of 1 January 2015) primarily lays down which claims, such as those to insolvency pay in particular, will be granted under what conditions, the **IEF-Service-GmbH Act** (*IEF-Service-GmbH-Gesetz, IEF-G*), Federal Law Gazette I no. 88/2001

<http://www.ris.bka.gv.at/GeltendeFassung.wxe?Abfrage=Bundesnormen&Gesetzesnummer=20001414>

(status as of 1 January 2014) contains organisational rules for the limited liability company (GmbH) named in the title.

This company has the following functions: To award insolvency pay (via nine offices throughout Austria; the office's regional organisation mirrors that of the insolvency courts) and other payments for which it is responsible; to take recourse against the estate of insolvent employers to recover (part of) the insolvency pay disbursed, and to act as creditor in the associated insolvency proceedings. IEF-Service-GmbH fulfils these functions using its own staff.

Question 3

- Maximum insolvency pay per month for recurring monthly claims

Year	Gross limit	Social security deduction	Subtotal	Not. tax	Net amount
2011	8,400.00	758.94	7,641.06	916.93	6,724
2012	8,460.00	764.36	7,695.64	923.48	6,772
2013	8,880.00	802.31	8,077.69	969.97	7,252
2014	9,060.00	818.57	8,241.43	988.97	7,252

As mentioned above, the "gross limit" is adjusted annually; it is equal to twice the maximum social security contribution base.

"Social security deduction" comprises sums deducted from employees' gross pay before the payroll tax deduction is calculated; the resulting amount is purely notional, as it is not passed on.

The subtotal is calculated by subtracting the "social security deduction" from the "gross limit"

The notional tax ("Not. tax"), like the "Social security deduction", is a notional value only and is not passed on

The "Net amount" is the maximum amount per month that may be paid to an employee; as with all amounts paid out, it is always rounded to two decimal places

- The key items of expenditure (in EUR million)

IEG year	Soc. sec. shortfall	BUAK shortfall	youth package	SMC	
2011	207.9	65.4	16.4	159.3	10.1
2012	190.7	50.7	04.6	162.5	10.4
2013	298.7	43.1	09.7	162.1	12.8
2014	235.9	44.3	13.7	165.7	10.5

Insolvency pay (IEG) awarded by administrative decision in the relevant year.

"Soc. sec. shortfall" is the total outstanding employee health and pension insurance contributions that the regional health insurance funds were not able to recover in insolvency proceedings.

The same applies to the outstanding employer contributions that the Construction Workers' Annual Leave and Severance Pay Fund (*Bauarbeiter-Urlaubs- und Abfertigungskasse, BUAK*) was not able to recover in insolvency proceedings.

The Insolvency (Guarantee of Remuneration) Act requires an amount of 0.2 tenth of contributions to be paid to the Federal Government each year for the purpose of funding of apprenticeships etc.

"SMC" refers to the annual staff and material costs paid by IEF-Service-GmbH from IEF funds.

- The key items of income (in EUR million)

Year Contributions Returns

2011	437.0	49.8
2012	452.7	34.5
2013	472.3	44.2
2014	489.7	29.0

"Contributions" are the contributions payable by employers; they are collected by the appropriate regional health insurance fund in the same way as health and pension insurance contributions.

"Returns" are amounts recovered from insolvency estates. It should be borne in mind that there may be significant delays (sometimes years) between the time insolvency pay is awarded and the time the returns are received; returns may also be very low or non-existent.

- Other figures requested:

No statistics are collected regarding the length of time between filing of claims in insolvency proceedings and award of insolvency pay.

Nor are any figures recorded regarding amounts of insolvency pay granted as a percentage of claims filed in insolvency proceedings.

ARTICLE 4 - RIGHT TO A FAIR REMUNERATION

Paragraph 1 – Decent remuneration

In reply to the Committee's questions and conclusion of non-conformity on the ground that it has not been established that the lowest wage paid is sufficient to ensure a decent standard of living, the following information is provided:

The European Committee of Social Rights criticises above all that in certain sectors (**agriculture, education, hotel and restaurant industry, financial services**) minimum wages for **workers** are lower than 50 % of the national net average level.

Part-time work and employment for less than a year are prevalent in **agriculture, forestry and fishing, hotel and restaurant and education and teaching**.

Therefore, it makes sense to rather look at the average net annual income of **full-time workers working all year round**.

The mean value among **workers** is EUR 22,484, while the median comes to EUR 22,057. The bottom decile earns an average EUR 15,290 (source: Statistics Austria, see Appendix).



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Wage negotiations in Austria

In Austria wages are negotiated autonomously by the social partners (employers' and employees' representations) by way of concluding collective bargaining agreements ("tariff contracts").

The large majority of collective bargaining agreements (chiefly for trade, commerce, industry, and much of the services) are entered into by the Austrian Economic Chamber as the employers' representative and the Austrian Trade Union Federation as the employees' representative.

In these sectors and by operation of the law, all employers are members of the Economic Chamber (mandatory membership) and thus governed by the collective bargaining agreements concluded by the Chamber. The Industrial Relations Act stipulates that all employees of an employer governed by a collective bargaining agreement are similarly governed by this agreement even when they are not themselves union members (outsider effect).

Collective bargaining agreements are concluded for sectors; their territorial application as a rule comprises the entire territory of the Republic of Austria. The exception is the hotel and restaurant sector which have Laender-specific wage tables.

If a collective bargaining agreement thus has been made for a sector it applies to all employers and employees of this sector.

Sectors that do not have any collective bargaining agreement may apply to have such an agreement declared applicable by an ordinance of the authority (Federal Conciliation Board; statutes = declaration of general validity).

For sectors which have no corporate body eligible to enter into collective bargaining agreements on the employers' side (e.g. private education facilities, private households) the authority (Federal Conciliation Board) can regulate a minimum wage by an ordinance (minimum wage tariff).

There are more than 800 collective agreements in Austria. The trade unions negotiate more than 450 collective agreements each year. An OECD (Organisation for Economic Cooperation and Development) study recently identified Austria among the international forefront with regard to collective bargaining practice. Almost all Austrian employees (approx. 98 %) are protected by collective agreements, which guarantee minimum standards and legal security in their employment relationships.

In the aforementioned sectors the lowest wages as set forth in collective agreements currently (March 2015) range between EUR 1,200 and 1,400.



Anhang
Kollektivverträge Art

In the sectors of **education and teaching** as well as **financial and insurance activities** the **overwhelming majority of employment relationships** involve **white-collar workers**.

The share of **blue-collar workers** in 2013 amounted to **15 % in the education sector** (some 15,300 persons) and to only **close to 4 % in the financial and insurance activities sector** (some 5,100 persons) of the overall number of employees in the respective sector.

Social or tax transfer payments

The far-reaching and comprehensive system of **transfer payments** plays a major role for the actual income situation of **employees and their households** in Austria and is used as an instrument for positive redistribution.

On average, public benefits account for 36 % of household incomes, with more than half being pensions. After deducting retirement benefits, social welfare benefits still amount to 16 % of household incomes on average. In the case of families, childcare benefit and family allowance play a vital role. With children under the age of three in a household, aggregate social welfare payments contribute 31 % to the overall household income, in single-parent households this portion is even 37 %, and in families with three or more children 29 %. The relatively high percentages are a result of the below-average income from gainful employment, which is associated with the fact that mothers often do not work or work part-time only.

Transfer payments include, **for example**:

- unrestricted and generally free access to education institutions
- Free of charge (less a small fee): transportation to and from school and textbooks
- schooling grant and school boarding grant, commuting grant and study grant
- family allowance

In addition to family allowance, a uniform tax credit is granted, which is paid out as "negative tax".

- birth allowance and special payment
- childcare benefit

- advance payment by the Government in case of unpaid child support
- co-insurance of spouses (cohabitants) and children within the scope of healthcare insurance for employees
- housing allowance and rental assistance (*Mietzinsbeihilfe*)
- commuting allowance, weekly, monthly or annual pass for trains and trams
- reduced family tickets for train rides
- lump sum for cars
- incomes up to EUR 11,000 are not subject to payroll tax.
- special payments may be set off against tax
- tax breaks as savings incentives

The Austrian Government intends **to take the following specific measures** with a view to further improving the situation of low-income earners:

The scheduled **tax reform** is to significantly ease the burden particularly on low-income earners by lowering the tax rate from 35 % to 25 % for incomes between EUR 11,000 and EUR 18,000. Low-income earners are also to be relieved with respect to their social security contributions.

As concerns the Committee's comments on Article 1152 of the General Civil Code (...when an employer is not bound by existing collective agreement, the definition of an "appropriate remuneration" in accordance with Article 1152 raises problems in the absence of a general minimum wage or a statutory definition of "appropriate") the following information is provided:

The "appropriate remuneration" payable to workers depends on the specific location where and the time when the services are offered and accepted as well as on the specific circumstances under which a service is to be provided.

What is appropriate or common practice in a sector where no collective agreement exists is ultimately subject to review by a court.

According to the rulings of the Austrian Supreme Court of Justice (OGH), the appropriate remuneration - in case no sector-specific collective agreement is applicable - is to be determined on the basis of a collective agreement for comparable activities (cf. OGH 29 Nov. 1983, 4 Ob 149/83, infas 1984, A 55). Additionally, the situation of the relevant or a similar industry as well as the conditions of neighbouring towns, the size of the company and the number of employees need to be considered.

Collective agreements applicable to other sectors can be used as models for assessing appropriateness if the wages specified in the pay scale are paid under similar circumstances. If this is not possible, appropriate remuneration is determined by the actual wages generally paid (cf. OGH 11 Nov. 1970, 5 Ob 250/70, JBl. 1971/572).