



European
Social
Charter

Charte
sociale
européenne



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EUROPEAN SOCIAL CHARTER

10th National Report on the implementation
of the European Social Charter

submitted by

THE GOVERNMENT OF AUSTRIA

Articles 2, 4, 5, 6, 26 and 28

for the period 01/01/2017 – 31/12/2020

Report registered by the Secretariat

on 02 February 2022

CYCLE 2022

REVISED EUROPEAN SOCIAL CHARTER

10th 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 2, 4, 5, 6, 26 and 28

for the period 1 January 2017 to 31 December 2020

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 the thematic group "Labour Rights" with the exception of Articles 2§1, 4§4, 6§4, 21, 22, 26§2 and 29.

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

the Austrian Trade Union Federation (*Österreichischer Gewerkschaftsbund*)

the Austrian Federal Chamber of Labour (*Bundesarbeitskammer*)

the Austrian Federal Economic Chamber (*Wirtschaftskammer Österreich*)

the Federation of Austrian Industry (*Vereinigung der Österreichischen Industrie*)

the Presidential Conference of Austrian Chambers of Agriculture (*Präsidentenkonferenz der Landwirtschaftskammern Österreichs*)

Council of Austrian Chambers of Agricultural Labour (*Österreichischer Landarbeiterkammertag*)

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Article 2 – The right to just conditions of work

With a view to ensuring the effective exercise of the right to just conditions of work, the Parties undertake:

2. to provide for public holidays with pay;

3. to provide for a minimum of four weeks' annual holiday with pay;

4. to eliminate risks in inherently dangerous or unhealthy occupations, and where it has not yet been possible to eliminate or reduce sufficiently these risks, to provide for either a reduction of working hours or additional paid holidays for workers engaged in such occupations;

5. to ensure a weekly rest period which shall, as far as possible, coincide with the day recognised by tradition or custom in the country or region concerned as a day of rest;

6. to ensure that workers are informed in written form, as soon as possible, and in any event not later than two months after the date of commencing their employment, of the essential aspects of the contract or employment relationship;

7. to ensure that workers performing night work benefit from measures which take account of the special nature of the work.

a) No information is requested on these provisions, except insofar as they concern special arrangements related to the pandemic or changes to work arrangements following the pandemic: public holidays (Article 2§2), annual holiday (2§3), reduced working time in inherently dangerous or unhealthy occupations, in particular health assessments, including mental health impact (2§4), weekly rest period (2§5), written information or worktime arrangements (2§6), measures relating to night work and in particular health assessments, including mental health impact (2§7).

Exceptions to the weekend and public holiday rest rule during the COVID-19 pandemic

Exceptions were made to the weekend and public holiday rest rule during the COVID-19 pandemic for delivery services in the food sales sector and provided by chemist's shops and drugstores with regard to the following activities:

- receipt, processing and routing of orders,
- order picking and
- handing over of goods to delivery personnel.

These exceptions also applied to the delivery to customers of goods ordered from delivery services in the food sales sector and from chemist's shops and drugstores.

These exceptions were laid down in ordinances. These ordinances were based on Section 12 Para. 1 no. 1 of the Rest Periods Act (*Arbeitsruhegesetz, ARG*). That provision stipulates that exceptions to the weekend and holiday rest rule may be authorised by ordinance in certain businesses for work necessary to provide

the necessities of life. In detail, the activities specified above were permitted as follows:

From 27 March 2020 to 31 May 2020, the undertakings referred to were allowed to carry out the above activities - including any work directly related to those activities or without which those activities would not have been possible - during weekend and holiday rest periods where those activities could not be carried out before or after the weekend or holiday rest period.

As the situation improved slightly during summer 2020, in June 2020 the permitted work - and any activities directly related to that work or without which that work would not have been possible - were allowed to be carried out until 10.00 p.m. (instead of 6.00 p.m.) on Saturdays where that work could not be carried out before or after the weekend rest period.

From 28 November 2020 to 31 December 2020, the undertakings referred to above were again permitted to employ staff to carry out the authorised activities - including any activities directly related to them or without which they would not have been possible - until 10.00 p.m. on Saturdays where those activities could not be carried out before or after the weekend or holiday rest period.

On the last two Saturdays before Christmas (12 December 2020 and 19 December 2020), retail employees were permitted to carry out selling activities until 7.00 p.m. in order to prevent the spread of COVID-19 and regulate customer flows. In addition, work directly related to sales activities or without which those activities would not have been possible was permitted if it could not be carried out before or after the weekend or holiday rest period.

For agricultural workers, a new Agricultural Labour Act (*Landarbeitsgesetz, LAG*) 2021 was enacted on 1 January 2021. No special statutory provisions related to the COVID-19 pandemic were put in place at federal level for the agriculture and forestry sectors.

Covid-19 allowance

In 2020, a number of collective agreements in the social and healthcare services sector (e.g. Sozialwirtschaft Österreich, Caritas, Diakonie) provided for a one-time COVID-19 hazard allowance to compensate for hazards and burdens resulting from personal and physical contact with clients due to COVID-19. The allowance was generally EUR 500.

A number of collective agreements outside the social and healthcare sector (e.g. in various sectors of industry) also provide for payment of one-time COVID-19 bonuses/allowances for 2020 as compensation for the particular burdens on employees during the COVID-19 pandemic.

For 2021, several collective agreements, such as the Collective Agreement for Trade-Sector Employees or the Collective Agreement for the Iron and Metal Processing Industry, recommend payment of a COVID-19 bonus of at least EUR 150.

COVID-19 testing

To make Austrian workplaces even safer and to prevent further lockdowns, the Austrian Federal Economic Chamber (*Wirtschaftskammer Österreich, WKO*) and the Austrian Trade Union Federation (*Österreichischer Gewerkschaftsbund, ÖGB*) concluded a general collective agreement setting out clear rules for COVID-19 testing for employees. The general collective agreement applies to all member companies of the Austrian Federal Economic Chamber and so covers the majority of Austrian companies. Collective agreements with similar provisions were also agreed in sectors not covered by the Austrian Federal Economic Chamber. The rules usually apply until the end of August 2021 or the end of 2021.

If employees need a COVID-19 test to enter their place of work, employers are required to allow them paid time out of work for as long as needed to take the test. This also applies to the time needed to travel to and from the test site. If tests are not carried out within the company, they should be taken on the way from home to work or work to home if possible. Employees on temporarily reduced working hours are not

entitled to paid time for testing.

If employees are not subject to mandatory testing, tests should be taken outside working hours if possible. If that is not possible, employers must allow employees time away from work to be tested once per week as a maximum.

Employees must not be dismissed, terminated or otherwise disadvantaged because they take a test or receive a positive test result.

Employees who are required to wear a mask at work are permitted to take a mask break of at least ten minutes after three hours.

Public service

The Austrian Federal Civil Service and its employees continue to contribute to the smooth functioning of public life and the economy even during the COVID-19 crisis situation. The pandemic has challenged large and important parts of the Austrian Federal Civil Service beyond the usual extent - be it in crisis teams and boards, in the area of health management (e.g. in contact tracing), in the police or in the area of education.

The scheme of temporarily reduced working hours (*Kurzarbeit*), which in the course of the COVID-19 crisis situation in the private sector primarily served to avoid unemployment and to support companies that suffered significant sales losses due to the pandemic, was not applicable to the Federal Civil Service in this form, as there was neither a significant drop in sales, nor a drop in orders, and self-subsidisation by the Federal State was not an option.

The majority of police and educational staff (around 75% of the staff) worked full hours - even if teachers mostly worked from home. In areas with larger numbers of employees, such as finance and justice, a structural decline in work was not discernible. In the area of finance, for example, tax deferrals for companies and similar measures were processed. The remaining areas of the federal administration are differently structured, which is why a large part of the work was carried out from home.

By resolution of the Federal Government, the federal public employees were requested to perform their duties working from home, where possible, to ensure the greatest possible health protection and to guarantee the functioning of the main operational services of the Federal State. This meant that around 90,000 federal public employees, mainly from the administrative area, did not work in their offices but from home. This number is based on estimates from spring 2020 based on feedback from the individual Federal Ministries.

Analogously to the private sector, the following measures were implemented:

- To cope with the pandemic situation, additional “crisis and advisory teams or boards” were set up in the administration, which analysed problems promptly and prepared decisions for policy-makers. The various ministerial and department-specific aspects of the crisis were coordinated across the Federal Ministries. The ministries’ own crisis and advisory teams were usually funded from common personnel expenses. Most of the members of the crisis and advisory teams or boards have a fixed salary or certain additional allowances through which all additional work in terms of time and quantity is considered to be compensated (e.g. all-in-contracts); For the (few) other employees of the crisis boards, such overtime had to be paid in accordance with the provisions of remuneration law. The regulations for working time continued to apply.
- According to Section 12k of the Federal Remuneration Act 1956 (GehG), Federal Law Gazette No. 54/1956, or Section 29p Contractual Public Employees Act 1948 (VBG), Federal Law Gazette No. 86/1948, in each case in conjunction with Section 258 Paras. 1 to 3 of the Civil Service Health and Accident Insurance Act (B-KUVG), Federal Law Gazette I No. 200/1967, federal civil servants and contractual public employees could take a leave of absence with continued payment of their remuneration, until 30 June 2021, by submitting a COVID-19 risk certificate under certain conditions (working from home not possible and workplace cannot be adapted to rule out an infection with the

greatest possible certainty). The COVID-19 risk certificate was issued by the treating physician who has to confirm affiliation to a risk group.

- In order to ensure a uniform procedure in Federal Civil Service, recommendations were provided to the Federal Ministries on using up annual leave and reducing time credits in order to ensure the continued availability of staff after the pandemic situation.
- As part of the 2nd COVID-19 Act (2. *COVID-19-Gesetz*), Federal Law Gazette I No. 16/2020, of 21 March 2020, a legal basis was provided for employers to issue an order to use up annual leave (Section 68 P. 1a of the Federal Civil Servants Act (BDG) 1979, Federal Law Gazette No. 333/1979, or Section 27e Para. 1a VBG). However, these provisions were only in force until 31 December 2020 and were not extended thereafter.

Laender

Reference is made, by way of example, to the specific provisions applicable in **Burgenland, Upper Austria, Styria, Vorarlberg and Vienna**:

In **Burgenland**, the COVID-19 Collective Amendment (COVID-19-Sammelnovelle), State Law Gazette no. 83/2020, introduced specific provisions to the legislation governing employment with the *Land* and municipalities authorising employers, in order to pursue the public interest, to unilaterally require employees to use a maximum of two weeks' annual leave during periods in which operations are significantly restricted for a period of at least six working days, if this is required in the urgent interests of the work carried out (cf. Section 84 Para. 3 of the Burgenland Civil Service Act (*Burgenländisches Landesbeamten-Dienstrechtsgesetz, LBDG*) 1997, Section 56 Para. 3 of the Burgenland Contractual Public Employees Act (*Burgenländisches Landesvertragsbedienstetengesetz, LVBG*) 2013, Section 95 Para. 3 of the Burgenland Municipal Public Employees Act (*Burgenländisches Gemeindebedienstetengesetz, GemBG*) 2014 and Section 61 Para. 3 of the Burgenland Public Employees Act (*Burgenländisches Landesbedienstetengesetz, LBedG*) 2020). At the same time, the rules regarding expiry of annual leave which could not be taken for work-related reasons connected with the COVID-19 crisis were amended to suspend expiry until 31 December 2021 (cf. Section 179a LBDG 1997, Section 112b LVBG 2013, Section 157p GemBG 2014 and Section 138a LBedG 2020). In addition, the aforementioned COVID-19 Collective Amendment introduced specific rules relating to teleworking providing that employers could, in order to pursue the public interest, require employees to work remotely for a limited period if this is required for urgent work-related reasons and the necessary technical equipment is available (cf. Section 37a Para. 6 LBDG 1997, Section 14 Para. 6 LVBG 2013, Section 29a Para. 6 GemBG 2014 and Section 33 Para. 6 LBedG 2020).

Regarding **Upper Austria**, reference is made to the following specific provisions relating to COVID-19 (see State Law Gazette no. 35/2020):

- Due to the crisis, special arrangements for 2020 regarding use of untaken leave from previous years were introduced into public-sector employment legislation ("option to unilaterally require employees to use a maximum of 80 hours leave in the case of full-time employees"); see Section 75a Upper Austria Civil Service Act (*Oberösterreichisches Landesbeamtenengesetz, LBG*), Section 39a Upper Austria Contractual Public Employees Act (*Oberösterreichisches Landesvertragsbedienstetengesetz, LVBG*), each as amended, State Law Gazette no. 35/2020; these provisions expired on 31 December 2020).
- In line with federal provisions, a priority entitlement to working from home, or in the alternative to release from work, for public employees in Upper Austria belonging to the COVID-19 risk group was enshrined in law (see Section 21a Upper Austria Public Employees Sickness and Accident Insurance Act (*Oö. Kranken- und Unfallfürsorgegesetz für Landesbedienstete, Oö. KFLG*) as amended by State Law Gazette no. 35/2020 and State Law Gazette no. 116/2020).
- The social security-related provisions of the Federal Government's 3rd COVID-19 Act (3. *COVID-19-Gesetz*) were adopted for public-sector employees in Upper Austria in order to ensure that employees

working from home are covered by accident insurance in case of an occupational accident. To that end, an employee's place of residence (from where they work) was declared equivalent to their place of work. These arrangements were made permanent in the Upper Austria Public Sector Employment Deregulation Act (*Oö. Dienstrechtsderegulierungsgesetz*) 2021, State Law Gazette no. 76/2021.

- Finally, a legal basis was put in place permitting public employees to be seconded to other public-sector bodies for a limited period of time in the event of a crisis (if the employee consents), in order in particular to safeguard the functioning of critical infrastructure and the public health and care sector (see Section 91 Para. 1a Oö. LBG, Section 10a Para. 1a Oö. LVBG).

In **Styria**, notwithstanding the rules otherwise in force, public employees at *Land* level have the option, in light of the pandemic, of using part of their annual leave entitlement on an hourly basis. The amount of leave which can be taken on an hourly basis is limited to 40 hours per calendar year.

In **Vorarlberg**, special arrangements relating to measures to combat COVID-19 were implemented in Section 128 of the Vorarlberg Public Employees Act (*Landesbedienstetengesetz, LBedG*) 2000. Para. 1 provides that employees can be required to work from home for the duration of measures to counteract COVID-19 put in place on the basis of ordinances adopted under the Epidemic Disease Act (*Epidemiegesetz*) or the COVID-19 Measures Act (*COVID-19-Maßnahmengesetz*). Para. 2 enables the employer to unilaterally require employees to use up to two weeks' annual leave if operations are significantly restricted for a period of at least six working days due to measures to counteract COVID-19 defined in Para. 1 and if important work-related interests or other public interests exist. These measures were extended until 31 December 2021 by the 3rd COVID-19 Collective Amendment (*COVID-19-Sammelnovelle*). Various arrangements permitting extended care leave times to cover additional childcare requirements resulting from school closures or self-isolation measures were also introduced. High-risk patients whose work was not able to be carried out from home or whose workplace could not be appropriately adapted were also granted paid leave from work on presentation of a COVID-19 risk certificate.

In light of the COVID-19 pandemic, a provision was included in the **Vienna** Public Sector Employment Amendment Act (*COVID-19-Dienstrechts-Novelle*), State Law Gazette no. 29/2020, enabling the employer, in order to pursue particular public interests, to unilaterally require employees to take up to 80 hours' unused annual leave remaining from previous years if operations were significantly restricted for at least five working days (cf. Section 110c Para. 1 Employment Code (*Dienstordnung, DO*) 1994, Section 62l Para. 1 Contractual Public Employees Code (*Vertragsbedienstetenordnung, VBO*) 1995 and Section 138b of the Vienna Public Employees Act (*Wiener Bedienstetengesetz, W-BedG*)). During the pandemic, numerous employees who were not employed in healthcare or essential public services or whose presence in the workplace was not otherwise indispensable were able carry out their work from home. However, the crisis also produced a situation in which, due to external circumstances, continued employment of some employees was no longer possible, or rather, demand for their work was greatly diminished, but those employees still had significant amounts of untaken annual leave from previous years. The aim was to strike a balance and to ensure that as much labour capacity as possible would be available after the crisis. A decision to unilaterally instruct employees to take leave had to be taken according to objective criteria, particularly as regards the needs of the specific work, the employer's duty of care, and the efficient and appropriate management of personnel. This rule expired on 30 June 2021.

b) However, if the previous conclusion concerning provisions in Article 2, paragraphs 2 through to 7, was one of non-conformity, please explain whether and how the problem was remedied. If the previous conclusion was deferred or conformity pending receipt of information, please reply to the questions raised.

Conclusions 2018 of the European Committee of Social Rights on Article 2§6 - conformity subject to receipt of the information requested:

The Committee requested to provide exhaustive, updated information on the provisions of the Contractual

Public Employees Act (VBG) 1948, as amended, and on the implementing ordinances as amended. It also asked what measures were implemented to ensure that workers are informed in written form, as soon as possible, of the essential aspects of the contract or employment relationship.

Pending receipt of the information requested, the Committee concluded that the situation in Austria is in conformity with Article 2§6 of the Charter.

The VBG regulates the essential aspects of the contract or employment relationship as referred to in Article 2§6 applicable for federal contractual public employees. There is a high degree to which the duties of service and remuneration are defined in law, thus, the room to manoeuvre for the responsible personnel authority is rather small.

Section 4 Para. 2 VBG lays down the requirements to be contained in an employment contract as a minimum, such as

- the date of commencement of the employment relationship
- the place of work or local administrative district
- if the contractual public employee is a substitute (and where appropriate, for whom)
- if the employment relationship is for a specified or an unlimited period of time and if there is a trial period (at most one month)
- the category of the work for which the employee is employed, the remuneration scheme, remuneration group and function group
- the agreed working hours (full-time or part-time work)
- which initial training is obligatory and
- that the most recent version of the VBG and of any implementing ordinances issued are applicable.

The VBG lays down the staff regulations for federal contractual public employees.

Regarding the termination of work, the VBG stipulates a high degree of protection against dismissal/termination; an unlimited employment relationship which has lasted at least one year can only be terminated in written form and indicating the reasons by the employer. Section 32 VBG contains a non-exhaustive enumeration of possible reasons that can lead to a termination such as: breach of duty, the employee is not suitable for the job for health reasons anymore, does not achieve the appropriate results of the job, does not complete the agreed (initial) training successfully, becomes unable to act, behaves in a way that damages confidence of the general public in the employee's duties or has reached the retirement age. Besides these reasons lying in the person of the employee, the employment can also be terminated by the employer for organisational reasons (when the employment in a job of the function group of the employee is not possible anymore; there are exceptions for older employees working in the federal administration for at least ten years as well as for employees in higher functions).

Employees, however, can terminate the employment relationship without reasons.

In case of termination of the contract or the employment the periods of notice to be observed both by the employer and the employee is stipulated in Section 33 VBG. The notice period is the same for both parties and depends on the length of service. The shortest period is one week when the employment relationship has lasted less than six months, it increases up to two weeks after six months of employment, one month after one year of employment, two months after two years of employment, three months after five years of employment, four months after ten years of employment and the longest period is five months, when the employment relationship has already lasted fifteen or more years. The period of notice has to end at the end of a week when it is defined in weeks and at the end of a month when it is defined in months.

A fixed-term employment relationship ends at the end of the fixed period. An earlier termination is subject to an agreement between employer and employee.

Concerning the amount of paid leave Section 27a VBG stipulates that every employee is entitled to 200 hours a year of annual leave based on a full-time work. After reaching the age of 43, the employee's annual leave entitlement increases to 240 hours a year. Furthermore, there is an increased amount of paid leave for employees with disabilities (Section 27b VBG).

If the employment relationship is terminated and the employee has not taken the annual leave, they are entitled to an allowance in lieu of the leave that corresponds to the length of service in the year of termination, less the hours already taken by the employee. The basis of assessment is the salary plus allowances that are paid regularly and that would have been paid during the leave. Furthermore, the employee is entitled to a payment for remaining leave from the years before the year of termination, unless the entitlement has expired.

Section 4 Para. 1 VBG stipulates that the personnel authority should hand over the employment contract in written form at the beginning of the employment relationship without delay and on the occasion of an amendment to the contract. The employment contract has to be signed by both, the competent personnel authority and the employee.

The information given by way of reference to the most recent version of the VBG and of any implementing ordinances is easily accessible via the Austrian Legal Information System (*Rechtsinformationssystem*): [RIS - Vertragsbedienstetengesetz 1948 - Bundesrecht konsolidiert, Fassung vom 23.11.2021 \(bka.gv.at\)](https://www.ris.bka.gv.at), the platform for all Austrian laws, as well as via the *Bundesintranet* which provides information especially for the Federal Civil Service.

The working conditions as well as the rights and duties of federal contractual public employees are also communicated as part of the initial training the employees have to undergo at the beginning of the employment relationship.

Laender

Reference is made, by way of example, to the provisions applicable in **Upper Austria and Vienna**:

Upper Austria

Under Section 4 Para. 1 Oö. LVBG, contractual public employees must (in temporal proximity to starting work) receive a written copy of their employment contract. The employment contract must specify the following: 1. when the employment relationship begins, 2. whether the contractual public employee has been hired for a certain place of work or a local administrative area, 3. whether employment is for a pre-defined period or an indefinite period, 4. the type of work for which the contractual public employee has been hired and the salary schedule and salary group to which the employee has been assigned, 5. whether the contractual public employee is employed full time or part time, 6. whether the contractual public employee has been hired to substitute for another employee and if so for whom, and 7. that the Oö. LVBG and the related implementing provisions, as amended, apply to the employment relationship. The rules regarding termination and notice periods can be found in Sections 51, 53 and 54 Oö. LVBG; regarding compensation for any annual leave not taken on termination of employment based on private law, reference is made to Section 45 Oö. LVBG.

Vienna

Pursuant to Section 2 Para. 3 no. 2 VBO 1995, the employment contract must be accompanied by a notice stating that the Contractual Public Employees Code (VBO) 1995 (regarding working time, annual leave, work duties, termination of employment, notice periods, etc.) and the Pay Regulation (*Besoldungsordnung, BO*) 1994 (regarding pay and payment) apply to the contractual public employee's employment relationship. Under Section 3 Para. 3 no. 2 W-BedG, the employment contract must be accompanied by a notice stating the employee's employment relationship is primarily subject to the Vienna Public Employees Act (W-BedG). The Vienna Public Employees Act applies to employees whose contractual public employment relationship with the Municipality of Vienna was established after 31 December 2017. Employment relationships which commenced prior to 1 January 2018 are subject to the Contractual Public

Employees Code (VBO) 1995. In accordance with the above statutes, a supplement to the employment contract which expressly states that the legislation referred to applies is handed over to the employee when the contract is signed. The statutory provisions concerned can be accessed on the intranet at any time, in addition to which (contractual) public employees will receive training on their rights and obligations under the employment relationship soon after starting work.

Article 4 – The right to a fair remuneration

With a view to ensuring the effective exercise of the right to a fair remuneration, the Parties undertake:

1. to recognise the right of workers to a remuneration such as will give them and their families a decent standard of living;

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

- a) *Please provide information on gross and net minimum wages and their evolution over the reference period, including about exceptions and detailed statistics about the number (or proportion) of workers concerned by minimum or below minimum wage. Please provide specific information about furlough schemes during the pandemic, including as regards rates of pay and duration. Provide statistics both on those covered by these arrangements and also on categories of workers who were not included.*

Information on gross and net minimum wages

In 2017/2018, the Federal Government of the time set out a goal to work, jointly with the social partners, on the implementation of a plan providing for the gradual introduction of a minimum wage of at least EUR 1,500 on a nationwide basis and, failing which, the Federal Government would adopt a proposal of its own. At the end of June 2017, the social partners agreed on a minimum wage of EUR 1,500 gross across the board and a corresponding general agreement was negotiated. The collective agreement parties agreed incremental plans for sectors where the lowest starting wage was below this threshold. Implementation was largely complete by 2020.

As of July 2021, the lowest gross minimum wages stipulated in collective agreements were all above EUR 1,500. The majority of collective agreements stipulate minimum remuneration significantly above EUR 1,500.

Trade-sector employees, for example, have a minimum wage of EUR 1,613 in their collective agreement. The corresponding agreement for employees in the crafts and trades, service provides for minimum remuneration of EUR 1,521.75. These collective agreements, which cover a large group of employees, specify wage levels tending towards the low-income range.

The above wage figures represent gross income. The corresponding net amounts are given below, as determined using the calculator provided by the Federal Ministry of Finance [CPULohn Online Apps \(bruttonetto.azurewebsites.net\)](https://bruttonetto.azurewebsites.net/); please note that any tax deduction options were not taken into account and the actual net amounts are therefore normally higher:

Gross: EUR 1,500.00 Net: EUR 1,237.43

Gross: EUR 1,600.00 Net: EUR 1,305.33

Gross: EUR 1,700.00 Net: EUR 1,373.23

Gross: EUR 1,521.75 Net: EUR 1,252.19

Gross: EUR 1,613.00 Net: EUR 1,314.15

For information on actual remuneration paid in sectors covered by a collective agreement and sectors in which no collective agreement applies, please see the relevant Statistical Annex to the General Income Report 2018 (covering 2016 and 2017) and the General Income Report 2020 (covering 2018 and 2019)

(both in German).

Tables section for the 2018 General Income Report:

- [Income Report of the Court of Audit - Court of Audit Austria](#)
→ [Statistischer Annex 2018\(1\).pdf \(rechnungshof.gv.at\)](#)

Tables section for the 2020 General Income Report:

- [Allgemeiner Einkommensbericht \(statistik.at\)](#)
→ [statistischer annex zum allgemeinen einkommensbericht 2020.pdf](#)

Reference is made to the following tables in particular:

- Gross annual income of dependently employed workers
- Net annual income of dependently employed workers
- Gross annual income of dependently employed workers by sector
- Net annual income of dependently employed workers by sector

For information on average actual wages and salaries (gross) in industry, please see the relevant statistics published by the Austrian Federal Economic Chamber: [Statistical Yearbook - WKO.at](#) (chapter 5, Income and Wages).

In line with the scheme and philosophy of Austrian employment law, wage and salary policy has for decades fallen within the independent scope of responsibility of the bodies representing the interests of employers and employees. Involvement by the government would constitute interference in Austria's well-established system of collective bargaining autonomy.

However, there are segments of the Austrian economy in which no collective agreements currently exist. The current government programme intends to appropriately close those gaps with the involvement of the social partners. This will reduce yet further the already small proportion of employees who are not covered by a collective agreement.

Public service

The salaries of civil servants and contractual public employees are periodically adjusted (usually annually) after negotiations between the Union of Public Service (*Gewerkschaft Öffentlicher Dienst*) and representatives of the federal public employer. The results are incorporated into the employment and remuneration laws by means of amendments. The trade unions take account of the increased cost of living and the increase in production when negotiating new salaries and wages.

Year (Agreement counts for the following year)	Result	Inflation	Economic growth (real), (Forecast for the current calendar year)
2016	+1,3%	0,75%	1,7%
2017	+2,33%	1,87%	2,8%
2018	Salaries: +2,33% and additionally 19,50 Euro; additional payments: +2,76%	2,02%	3,0%
2019	Salaries: +2,25% at least 50 Euro; additional payments: + 2,3%	1,7%	1,7% (WIFO) bzw. 1,5% (IHS)

About 135,128 federal public employees are affected; many of the Austrian *Laender* adopt the result of the salary negotiations for federal public employees also for salary increases at *Laender* and municipal level.

Laender

Reference is made, by way of example, to the provisions applicable in **Styria and Vienna**:

Styria

Two pay schemes are in force in Styria for public service employment, an old one and a new one. All employees who started work with the Styria public service in 2003 or later are automatically paid under the new scheme. All employees who were working for the Styria public service before 2003 can switch to the new pay scheme if they wish, but can also stay with the old scheme. There are therefore minimum remuneration levels in both the old and the new pay schemes; these changed as follows during the reference period (percentage of employees concerned in the second column):

ST01, salary bracket 1

2017	0.04% of employees	EUR 1,765.40 gross/month
2018	0.07% of employees	EUR 1,806.50 gross/month
2019	0.05% of employees	EUR 1,868.10 gross/month
2020	0.08% of employees	EUR 1,918.10 gross/month

Employment category E, salary bracket 1

2017	0.00% of employees	EUR 1,684.00 gross/month
2018	0.00% of employees	EUR 1,723.20 gross/month

2019	0.00% of employees	EUR 1,782.90 gross/month
2020	0.00% of employees	EUR 1,832.90 gross/month

Starting in 2019, the minimum wage under all collective agreements covering agricultural and forestry operations in Styria was gradually increased, and by 1 January 2021, a gross minimum wage of EUR 1,500 had been achieved in the lowest categories across all collective agreements.

Minimum wages (gross/net) in agriculture and forestry - Styria

	Gross/EUR	Net/EUR
2017	1,301.06	1,097.19
2018	1,332.29	1,117.14
2019	1,368.00	1,139.93
2020	1,434.00	1,182.07

Vienna

The earnings of employees of the Municipality of Vienna are generally regulated by statute: the Pay Regulation (*Besoldungsordnung, BO*) 1994 for employees whose employment relationship commenced before 1 January 2018 and the Vienna Public Employees Act (*Wiener Bedienstetengesetz, W-BedG*) for employees whose employment relationship commenced after 31 December 2017. Salaries are set out in Annex 2 to the BO 1994, Annex 1 to the VBO 1995 and Annex 3 to the W-BedG. In 2020, the lowest salaries stipulated were EUR 1,558.82 gross per month under the BO 1994 (scheme I, employment category 4, salary bracket 1, and scheme II, employment grade III, employment category E, salary bracket 1), EUR 1,587.06 gross under the VBO 1995 (Schema IV, employment grade III, employment category E, salary bracket 1) and EUR 1,779.89 gross under the W-BedG (scheme W1, salary band W1/1, salary bracket 1). All pay components (salary, allowances and additional fees/supplements, hardship allowance and other compensation payments) are increased at the time and by the amount set out in the pay agreement, which is concluded annually by the social partners. Salary increases during the reference period were as follows: 1.3% with effect from 1 January 2017, 2.33% with effect from 1 January 2018, 2.33% plus EUR 19.50 with effect from 1 January 2019, and 2.25% (but at least EUR 50) with effect from 1 January 2020.

The rates of pay applicable for employees of the forestry and agriculture operations of the Municipality of Vienna (*Forst- und Landwirtschaftsbetrieb der Stadt Wien*) whose employment relationship commenced before 1 January 2018 are laid down in the collective agreements for forestry/farm workers and salaried employees of the Municipality of Vienna (applying to blue-collar and white collar workers, respectively); the lowest monthly wages agreed in 2020 were EUR 1,782.21 gross (forestry – wage group 1 – unskilled and temporary workers), EUR 1,726.47 gross (agriculture – wage group 1 – unskilled and temporary workers), and EUR 1,640.21 gross (category I – agricultural interns).

Since 1 January 2021, the collective agreements for teachers at the *Musik- und Singschule Wien* and teachers assigned to *Konservatorium Wien GmbH* have specified a minimum monthly salary of EUR 2,389.88 gross (salary scheme LMS old, salary bracket 1). During the reference period, wages determined by collective agreement increased each at the same time and by the same amount as the salaries referred to above.

Information about furlough schemes during the pandemic

Between 2017 and 2019, only between 326 (2018) and 1,227 (2019) workers were working temporarily reduced hours (*Kurzarbeit*). The number of people working temporarily reduced hours increased dramatically during the COVID-19 pandemic. In 2020, the number of employees supported under this

scheme rose drastically to 1,245,556, 44% of them female, due to the COVID-19 reduced working time allowance (*COVID 19-Kurzarbeitsbeihilfe*). The pre-existing model for the temporary reduction of working hours was revised in March 2020: The COVID-19 scheme provides defined net compensation for employees whose working hours have been temporarily reduced, on a sliding scale determined by the employee's previous gross income:

Monthly gross pay	Minimum percentage of net pay before reduction of working hours
up to EUR 1,700.00	90%
between EUR 1,700,00 and EUR 2,685.00	85%
above EUR 2,685.00	80%
Apprentices and persons in equivalent training relationships	100%

The temporary reduced working hours scheme was administered in several phases, each with a funding period of three to six months. The fifth phase will run until 30 June 2022 and is intended for businesses which were or are particularly badly affected by the crisis; as previously, these businesses are not required to cover any part of payments to employees under the scheme. The net compensation rate for employees also remained unchanged.

There was no general prohibition of employment for pregnant women due to the pandemic during the reference period (though of course the absolute prohibition applicable during the eight weeks before and after childbirth remained in place), but infection risk was to be taken into account when evaluating whether appropriate maternity protection was safeguarded: Employers are required by law to put in place all necessary safeguards to eliminate the risk of infection with COVID-19. If no adequate safeguards are objectively possible or the employer cannot be reasonably expected to implement them, other suitable work must be provided instead of the work carried out before pregnancy. If no suitable work is available, pregnant employees must be released from work for the last 13 weeks of their pregnancy and paid the average wage during that period.

A statutory entitlement to release from work for pregnant employees with physical contact with other persons was not introduced until 1 January 2021 (Section 3a Maternity Protection Act (*Mutterschutzgesetz, MSchG*)), as only then was medical knowledge available indicating that COVID-19 infection can be more severe in pregnant women and that they are therefore admitted to intensive care more frequently. This provision also applies to pregnant agricultural workers. However, as it was not in force during the reference period it will not be discussed any further here.

For agricultural workers, both the old Agricultural Labour Act (*Landarbeitsgesetz, LAG*) 1984 (Section 96a)- which as the law setting out fundamental principles was in force and implemented in the laws at *Laender* level - and the new Agricultural Labour Act 2021 (Section 169) provide for a comparable maternity protection evaluation.

Public service

Reference is made to the information provided on Article 2, question a).

Laender

Reference is made, by way of example, to the provisions applicable in **Upper Austria and Vienna**:

Upper Austria

Thanks to the work from home arrangements, there was very little need to furlough public service employees in Upper Austria. Only in exceptional cases were employees released from work in light of their individual risk.

As described above, employees belonging to the risk group who were unable to work from home and for whom infection could not be prevented with the greatest possible certainty due to the nature of their work and conditions in their workplace, with due regard for their journey to work and changed working conditions and with due regard for particular safeguards, could be released from work.

In addition, employees with childcare responsibilities for children under the age of 15 and whose work could not be carried out from home could also be released from work during periods when opening of nursery schools and schools was restricted for pandemic-related reasons.

Vienna

The rules relating to release from work in connection with the COVID-19 pandemic for employees of the Municipality of Vienna are as follows:

Absence from work, without illness, pursuant to an official order (administrative decision of an authority ordering self-isolation, quarantine or travel restrictions) under the Epidemic Diseases Act (*Epidemiegesetz*) 1950 constitutes a justified absence, and affected employees are entitled to payment of wages in the same way as if they were ill.

If there exists a risk that an employee (who is not unwell him- or herself) has been in direct contact with a person who is infected or otherwise presents a risk, but no official order has been issued, the employer must determine on a case-by-case basis whether to require the employee to come to work, reach an agreement on mobile working, or place them on leave. During this period of release from work, they are entitled to payment of wages in the same way as if they were ill.

The additional safeguards put in place by the 3rd COVID-19 Act, Federal Law Gazette I no. 23/2020, to protect individuals at particular risk from infection with COVID-19 were adopted into Vienna employment law for employees of the Municipality of Vienna belonging to the COVID-19 risk group (Section 110c Paras. 2 and 5 DO 1994, Section 62I Paras. 2, 3 and 6 VBO 1995, and Section 138b Para. 2, 3 and 6 W-BedG). In accordance with these provisions, employees who submit a COVID-19 risk certificate were entitled to work from home (for up to 100% of their normal working hours) or to have safeguards to prevent COVID-19 infection (changes to working conditions) put in place in the workplace and on the journey to work or, as a last resort and if neither of these was possible, to be released from work on normal pay. These provisions expired on 30 June 2021.

Employees for whom mobile working is not possible due to the nature of their work (e.g. cleaning staff) can be placed on leave if they are not needed for the maintenance of critical infrastructure, their work cannot be carried out from home, and they cannot be redeployed elsewhere. Employees must be called into work where required. For remuneration purposes, leave from work granted unilaterally is treated as approved special leave, meaning that those employees will continue to receive their full monthly pay and flat-rate supplements.

In areas where maintenance of healthcare and critical infrastructure during the pandemic over an extended period is essential, requiring the formation of permanent teams in order to provide the necessary resources, members of individual teams must be released from work on an alternating basis to prevent cross-contamination. Here again employees remain entitled to their monthly pay.

From the start of the 14th week of pregnancy until the start of the prohibition of employment in accordance with Section 3 of the Austrian Maternity Protection Act 1979, pregnant employees in close contact occupations who are not yet fully vaccinated cannot be employed to carry out work requiring physical contact with other persons. If the employer is unable to make adjustments to their work environment by modifying working conditions or allowing the employee to work elsewhere (e.g. mobile working), the employee is entitled to release from work on normal pay.

Until 9 July 2021, employees with childcare responsibilities for children under the age of 15 were also entitled to a maximum total of four weeks' leave from work to provide necessary care in the event that nursery schools and schools were closed by order of an authority due to the COVID-19 pandemic or a child suspected of having COVID-19 is placed in self-isolation (quarantine) on the instruction of an authority.

No employees of the Municipality of Vienna have had their working hours temporarily reduced.

b) The Committee also requests information on measures taken to ensure fair remuneration (above the 60% threshold, or 50% with the proposed explanations or justification) sufficient for a decent standard of living, for workers in atypical jobs, those employed in the gig or platform economy, and workers with zero hours contracts. Please also provide information on fair remuneration requirements and enforcement activities (e.g. by labour inspectorates or other relevant bodies) as well as on their outcomes (legal action, sanctions imposed) as regards circumvention of minimum wage requirements (e.g. through schemes such as sub-contracting, service contracts, including cross-border service contracts, platform-managed work arrangements, resorting to false self-employment, with special reference to areas where workers are at risk of or vulnerable to exploitation, for example agricultural seasonal workers, hospitality industry, domestic work and care work, temporary work, etc.).

In Austria, minimum wage schemes and collective agreements ensure that employees who are particularly vulnerable to exploitation are fairly paid.

With regard to domestic workers, a minimum wage scheme is in place.

In the agricultural and forestry sector, the social partners regularly enter into collective agreements which specify a minimum wage for agricultural and forestry employees (and thus also for seasonal agricultural workers and harvest workers).

If an employer is paid below the minimum wage stipulated by collective agreement or minimum wage scheme, the employer commits an offence under the Anti-Wage and Social Dumping Act (*Lohn- und Sozialdumpingbekämpfungsgesetz, LSD-BG*) and may be subject to an administrative penalty (fine).

Laender

Regarding seasonal agricultural workers, reference is made, by way of example, to the provisions applicable in **Styria**:

The Styrian Chamber of Agricultural Labour (*Steiermärkische Landarbeiterkammer, Stmk. LAK*) is the statutory body representing the interests of agricultural and forestry employees in Styria. Anyone employed in an agricultural business in Styria is automatically a member of the Styrian Chamber of Agricultural Labour. The Chamber works with all authorities (Public Employment Service (AMS), Austrian Health Insurance Institution (ÖGK), finance police and Agriculture and Forestry Inspection) to prevent offences in relation to seasonal agricultural work. The Styrian Chamber of Agricultural Labour provides information leaflets to foreign harvest workers and seasonal employees. These leaflets were translated into 14 languages and provide basic information on employment law, including the current minimum wage, disbursement of special payments, working time and annual leave entitlement. All information leaflets are available for download online in German and in other languages including English, Slovak, Czech, Hungarian, Polish, Romanian, Bulgarian, Bosnian, Serbian, Croatian, Slovenian, Ukrainian, Albanian and Turkish: [Rechtsangelegenheiten - Steiermärkische Landarbeiterkammer \(lak-stmk.at\)](https://www.lak-stmk.at/Rechtsangelegenheiten)

Fair remuneration for workers in atypical employment relationships, those employed in the gig economy, and workers with zero hours contracts

Atypical employment refers to any form of employment other than a permanent full-time employment relationship. Relevant forms of employment in Austria are marginal part-time employment, part-time employment, fixed-term employment and temporary agency work. Zero hours contracts are not permitted in Austria.

Collective agreements do not differentiate the various types of employment mentioned and are therefore also applicable for atypical forms of employment. Around 98% of Austrian workers are covered by collective agreements, meaning that Austria has one of the highest levels of coverage by collective agreement in the world. Collective agreements are concluded between the Austrian Trade Union Federation and employers' organisations. They guarantee fair remuneration for employees on the hand and take appropriate account of the specific economic needs of the individual sector on the other.

In 2019, the median gross income in Austria was EUR 29,458 per year, 60% of which = EUR 17,674.80; or EUR 2,454.83 per month, of which 60% = EUR 1,472.90. In 2019, the gross average wage was EUR 34,167 per year, of which 50% = EUR 17,083.50; or EUR 2,847.25 per month, of which 50% = EUR 1,423.63 (source: Statistik Austria: [Annual Personal Income \(statistik.at\)](https://www.statistik.at), in German).

As agreed between the social partners, the figure of EUR 1,500 gross/month has now been implemented in all collective agreements; this corresponds to an annual minimum wage of EUR 21,000 gross (EUR 1,500 x 14), significantly higher than the thresholds of 60% of median gross wage or 50% of the gross average wage.

According to a survey by the Austrian Institute of Economic Research (WIFO), just under 190,000 people in Austria regularly work for or via a platform. This corresponds to almost 5% of all employees in Austria. However, these individuals earn only 3% of their income from these activities (Accenture, platform economy study, 2020). There are no indications that these activities are becoming significantly more important. A survey conducted by the Chamber of Labour (AK) found that crowd work was the sole source of income for only 2% of crowd workers surveyed.

Crowd workers in Austria, both self-employed and dependently employed, enjoy comprehensive social protection. Self-employed workers are fully covered by social insurance and 90% are entitled to unemployment benefit if they cease to be self-employed. Protection in the case of long-term illness was also improved, as was reconciliation of work and family life. A pioneering prevention model for self-employed workers in Austria was established (halving of the deductible).

Self-employed persons who do not require a business licence in order to carry out self-employed activities under contracts for work are covered as what is referred to as *Neue Selbständige* from the Social Insurance Institution for the Self-Employed (SVS).

Failure to pay the remuneration specified in collective agreements etc. for work performed not only negatively affects the individual directly concerned, but also impacts the economy as a whole, in particular because wage and social dumping of this kind disrupts fair competition in economic life.

It was also feared that opening up the employment market to citizens of the new EU member states would result in foreign employers posting employees or hiring out temporary agency workers to Austria and not paying them in line with Austrian law.

Since 2011, efforts have been taken to counteract this development, which is undesirable both for the employment market and in terms of social policy. As a landmark piece of legislation, the Anti-Wage and Social-Dumping Act (*Lohn- und Sozialdumping-Bekämpfungsgesetz, LSD-BG*) entered into force on 1 January 2017. The aim of the Act is to ensure equal labour market conditions and terms of remuneration for Austrian and foreign workers and to safeguard competitiveness among companies. The health insurance institutions were empowered to enforce fair remuneration within their remit under the LSD-BG.

In its capacity as the Competence Centre for Combating Wage and Social Dumping (CWSD Competence

Centre), the Austrian Health Insurance Institution (*Österreichische Gesundheitskasse, ÖGK*) is tasked in particular with verification of pay levels of workers hired out or posted to Austria who are not subject to the General Social Insurance Act (*Allgemeines Sozialversicherungsgesetz, ASVG*). The CWSD Competence Centre also administers the central register of penalties, into which all administrative decisions with final effect issued in administrative penal proceedings pursuant to the LSD-BG are entered.

When carrying out verifications, inspectors also check the wages of employees subject to the ASVG and homeworkers under the Homeworking Act (*Heimarbeitsgesetz, HAG*) for underpayment.

If a verification finds that an employer employs or has previously employed one or more individuals without paying the remuneration to which they are entitled in accordance with the laws, ordinances or collective agreements, the case will be reported to the competent authorities. The ÖGK has the status of a party in subsequent administrative penal proceedings and participates in proceedings accordingly. Any claims to outstanding remuneration are collected in accordance with the rules of civil law without any involvement by the ÖGK.

An up-to-date summary on LSD-BG statistics is contained in the following document (in German): *see Annex at the end of the report (page 48 ff.)*.

Reference is made to the [Posting of workers platform - Non-compliance and consequences \(entsendeplattform.at\)](https://entsendeplattform.at) and the schedule of [legal consequences in case of payment below the minimum wage](#) (information as of 2017).

Reference is also made to the report on the execution of the inspection plan 2020: [LSD-BG Activity Report \(parlament.gv.at\)](https://parlament.gv.at) (in German).

Excerpt from the 2020 inspection plan report:

Inspection plan 2020

Under Section 69 LSD-BG, the Federal Ministry of Finance (BMF) and the Federal Ministry for Labour, Family and Youth (BMAFJ; now the Federal Ministry of Labour (BMA)) are required to produce an inspection plan, based on risk assessment and statistical data, in order to ensure effective monitoring.

The Federal Minister of Finance must prepare a report on fulfilment of the inspection plan for each year by 30 June of the subsequent year. The specific measures to be taken are set out in section 5 of the inspection plan.

Remit of the finance police

The LSD-BG is intended to ensure that workers receive the remuneration for work performed and enable fair competition among companies. Inspectors therefore check whether every worker who is employed in Austria receives the remuneration to which he/she is entitled.

The finance police, working with the Competence Centre established within the Vienna Regional Health Insurance Fund (*Wiener Gebietskrankenkasse*), carries out inspections in relation to workers who are not subject to compulsory insurance in Austria (e.g. workers hired out or posted to Austria).

If it is found that workers receive remuneration below the level to which they are entitled, that notification requirements are not being met, or that the relevant documents are not kept readily available, the matter is referred to the District Administration Authority.

Risk analysis

The Central Co-ordinating Agency Charged with Investigating Illegal Employment (*Zentrale Koordinationsstelle für die Kontrolle der illegalen Beschäftigung, ZKO*) administers all reports on posted workers and temporary agency worker reports from other EU countries. The following types of potential

irregularity are commonly filtered out:

- suspected violation: hiring out of temporary agency workers instead of posting,
- suspected violation: construction workers (falsely reported as non-construction),
- identified foreign bogus companies (per IMI report),
- new conspicuous sectors in which postings are carried out.

The ZKO routes all reports of such suspicious activity to the financial police office competent for the places of work concerned.

The individual finance police offices also carry out their own risk analyses based on reports and information received from third parties and based on their own observations.

Results

Businesses inspected

Inspections under the LSD-BG are among the common activities of the finance police. During the calendar year 2020, the finance police inspected a total of 1,439 businesses^[1] which brought workers to Austria from abroad – see the table below.

Number of businesses inspected under the LSD-BG		2020
Burgenland	LSD-BG - employer	55
	LSD-BG - user undertaking	1
	LSD-BG - third party	0
	LSD-BG - temporary work agency	1
	Total	57
Carinthia	LSD-BG - employer	158
	LSD-BG - user undertaking	2
	LSD-BG - third party	0
	LSD-BG - temporary work agency	10
	Total	170
Lower Austria	LSD-BG - employer	177
	LSD-BG - user undertaking	7
	LSD-BG - third party	3
	LSD-BG - temporary work agency	5
	Total	192
Upper Austria	LSD-BG - employer	199
	LSD-BG - user undertaking	15
	LSD-BG - third party	3
	LSD-BG - temporary work agency	12
	Total	229
Salzburg	LSD-BG - employer	73
	LSD-BG - user undertaking	6
	LSD-BG - third party	0
	LSD-BG - temporary work agency	5
	Total	84

Styria	LSD-BG - employer	227
	LSD-BG - user undertaking	7
	LSD-BG - third party	0
	LSD-BG - temporary work agency	8
	Total	242
Tyrol	LSD-BG - employer	297
	LSD-BG - user undertaking	10
	LSD-BG - third party	0
	LSD-BG - temporary work agency	16
	Total	323
Vorarlberg	LSD-BG - employer	30
	LSD-BG - user undertaking	1
	LSD-BG - third party	0
	LSD-BG - temporary work agency	3
	Total	34
Vienna	LSD-BG - employer	86
	LSD-BG - user undertaking	12
	LSD-BG - third party	0
	LSD-BG - temporary work agency	10
	Total	108
Total	LSD-BG - employer	1,302
	LSD-BG - user undertaking	61
	LSD-BG - third party	6
	LSD-BG - temporary work agency	70
	Total	1,439

Employees inspected

At these companies, a total of 3,481 employees were posted or hired out to Austria were inspected – see the table below:

Number of employees inspected		2020
Burgenland	LSD-BG - employer	138
	LSD-BG - user undertaking	2
	LSD-BG - third party	0
	LSD-BG - temporary work agency	5
	Total	145
Carinthia	LSD-BG - employer	245
	LSD-BG - user undertaking	2
	LSD-BG - third party	0
	LSD-BG - temporary work agency	61
	Total	308
Lower Austria	LSD-BG - employer	408

	<i>LSD-BG - user undertaking</i>	19
	<i>LSD-BG - third party</i>	2
	<i>LSD-BG - temporary work agency</i>	11
	Total	440
Upper Austria	<i>LSD-BG - employer</i>	394
	<i>LSD-BG - user undertaking</i>	48
	<i>LSD-BG - third party</i>	1
	<i>LSD-BG - temporary work agency</i>	29
	Total	472
Salzburg	<i>LSD-BG - employer</i>	184
	<i>LSD-BG - user undertaking</i>	20
	<i>LSD-BG - third party</i>	0
	<i>LSD-BG - temporary work agency</i>	17
	Total	221
Styria	<i>LSD-BG - employer</i>	530
	<i>LSD-BG - user undertaking</i>	20
	<i>LSD-BG - third party</i>	0
	<i>LSD-BG - temporary work agency</i>	17
	Total	567
Tyrol	<i>LSD-BG - employer</i>	516
	<i>LSD-BG - user undertaking</i>	189
	<i>LSD-BG - third party</i>	0
	<i>LSD-BG - temporary work agency</i>	197
	Total	902
Vorarlberg	<i>LSD-BG - employer</i>	93
	<i>LSD-BG - user undertaking</i>	7
	<i>LSD-BG - third party</i>	0
	<i>LSD-BG - temporary work agency</i>	17
	Total	117
Vienna	<i>LSD-BG - employer</i>	221
	<i>LSD-BG - user undertaking</i>	46
	<i>LSD-BG - third party</i>	0
	<i>LSD-BG - temporary work agency</i>	42
	Total	309
Total	<i>LSD-BG - employer</i>	2,729
	<i>LSD-BG - user undertaking</i>	353
	<i>LSD-BG - third party</i>	3
	<i>LSD-BG - temporary work agency</i>	396
	Total	3,481

Cases of suspected underpayment detected

Of the above workers inspected, a total of 435 cases of underpayment, or around 10%, were identified –

see the table below:

Number of employees affected by underpayment	2020
Burgenland	10
Carinthia	28
Lower Austria	103
Upper Austria	146
Salzburg	8
Styria	102
Tyrol	7
Vorarlberg	3
Vienna	28
Total	435

All such findings were forwarded to the Competence Centre at the Vienna Regional Health Insurance Fund.

Criminal complaints

The finance police made a total of 829 criminal complaints regarding failure to keep/make readily available registration or pay documents to the competent District Administration Authorities – see the table below:

Number of criminal complaints		2020
Burgenland	Obligation of keeping registration documents readily available under Section 21 LSD-BG as amended	17
	Obligation of keeping/making wage documents readily available under Section 22 LSD-BG as amended	22
	Total	39
Carinthia	Obligation of keeping registration documents readily available under Section 21 LSD-BG as amended	25
	Obligation of keeping/making wage documents readily available under Section 22 LSD-BG as amended	43
	Total	68
Lower Austria	Obligation of keeping registration documents readily available under Section 21 LSD-BG as amended	55
	Obligation of keeping/making wage documents readily available under Section 22 LSD-BG as amended	76
	Total	131
Upper Austria	Obligation of keeping registration documents readily available under Section 21 LSD-BG as amended	42
	Obligation of keeping/making wage documents readily available under Section 22 LSD-BG as amended	70
	Total	112
Salzburg	Obligation of keeping registration documents readily available under Section 21 LSD-BG as amended	40
	Obligation of keeping/making wage documents readily available under Section 22 LSD-BG as amended	68
	Total	108
Styria	Obligation of keeping registration documents readily available under Section 21 LSD-BG as amended	56

	Obligation of keeping/making wage documents readily available under Section 22 <i>LSD-BG</i> as amended	105
	Total	161
Tyrol	Obligation of keeping registration documents readily available under Section 21 <i>LSD-BG</i> as amended	55
	Obligation of keeping/making wage documents readily available under Section 22 <i>LSD-BG</i> as amended	65
	Total	120
Vorarlberg	Obligation of keeping registration documents readily available under Section 21 <i>LSD-BG</i> as amended	9
	Obligation of keeping/making wage documents readily available under Section 22 <i>LSD-BG</i> as amended	11
	Total	20
Vienna	Obligation of keeping registration documents readily available under Section 21 <i>LSD-BG</i> as amended	24
	Obligation of keeping/making wage documents readily available under Section 22 <i>LSD-BG</i> as amended	46
	Total	70
Total	Obligation of keeping registration documents readily available under Section 21 <i>LSD-BG</i> as amended	323
	Obligation of keeping/making wage documents readily available under Section 22 <i>LSD-BG</i> as amended	506
	Total	829

Applications filed for fines to be imposed

In the criminal complaints specified above, the finance police claimed fines totalling EUR 2,784,550.00 to be imposed – see the table below:

Amount of fines		2020
Burgenland	Obligation of keeping registration documents readily available under Section 21 <i>LSD-BG</i> as amended	40,000.00
	Obligation of keeping/making wage documents readily available under Section 22 <i>LSD-BG</i> as amended	110,000.00
	Total	150,000.00
Carinthia	Obligation of keeping registration documents readily available under Section 21 <i>LSD-BG</i> as amended	42,700.00
	Obligation of keeping/making wage documents readily available under Section 22 <i>LSD-BG</i> as amended	105,700.00
	Total	148,400.00
Lower Austria	Obligation of keeping registration documents readily available under Section 21 <i>LSD-BG</i> as amended	238,500.00
	Obligation of keeping/making wage documents readily available under Section 22 <i>LSD-BG</i> as amended	389,800.00
	Total	628,300.00
Upper Austria	Obligation of keeping registration documents readily available under Section 21 <i>LSD-BG</i> as amended	90,000.00
	Obligation of keeping/making wage documents readily available under Section 22 <i>LSD-BG</i> as amended	210,700.00
	Total	300,700.00
Salzburg	Obligation of keeping registration documents readily available under Section 21 <i>LSD-BG</i> as	128,600.00

	amended	
	Obligation of keeping/making wage documents readily available under Section 22 <i>LSD-BG</i> as amended	289,700.00
	Total	418,300.00
Styria	Obligation of keeping registration documents readily available under Section 21 <i>LSD-BG</i> as amended	126,300.00
	Obligation of keeping/making wage documents readily available under Section 22 <i>LSD-BG</i> as amended	351,650.00
	Total	477,950.00
Tyrol	Obligation of keeping registration documents readily available under Section 21 <i>LSD-BG</i> as amended	112,500.00
	Obligation of keeping/making wage documents readily available under Section 22 <i>LSD-BG</i> as amended	172,500.00
	Total	285,000.00
Vorarlberg	Obligation of keeping registration documents readily available under Section 21 <i>LSD-BG</i> as amended	17,300.00
	Obligation of keeping/making wage documents readily available under Section 22 <i>LSD-BG</i> as amended	25,100.00
	Total	42,400.00
Vienna	Obligation of keeping registration documents readily available under Section 21 <i>LSD-BG</i> as amended	95,500.00
	Obligation of keeping/making wage documents readily available under Section 22 <i>LSD-BG</i> as amended	238,000.00
	Total	333,500.00
Total	Obligation of keeping registration documents readily available under Section 21 <i>LSD-BG</i> as amended	891,400.00
	Obligation of keeping/making wage documents readily available under Section 22 <i>LSD-BG</i> as amended	1,893,150.00
	Total	2,784,550.00

Focus areas

To achieve these results, particular focus areas were defined.

For example, the finance police in the eastern and southern regions of Austria carried out one or two focussed inspections every six months at or in the immediate vicinity of the borders between Burgenland, Carinthia, Lower Austria and Styria and the respective neighbouring states. During these inspections, business vehicles entering the country and their occupants were subjected to checks regarding compliance with the LSD-BG.

The finance police carried out focussed inspections as follows: a total of 1013 FTE days for focussed inspections in the construction sector per region and focussed inspections of companies from low-wage countries; a total of 1418 FTE days for ad-hoc, sectoral and seasonal focussed inspections and focussed inspections of companies in receipt of COVID-19 funding (temporarily reduced working hours); and a total of 566 FTE days for operations at or near borders.

Staffing

As of the date of the report on the execution of the inspection plan 2020, the finance police has staffing of approximately 431.375 full-time equivalents (FTEs).

c) *Please also provide information on the nature of the measures taken to ensure that this right is effectively upheld as regards the categories of workers referred to in the previous paragraph (b) or in other areas of activity where workers are at risk of or vulnerable to exploitation, making in particular reference to regulatory action and to promotion of unionisation, collective bargaining or other means appropriate to national conditions.*

Reference is made to the information provided on question a).

d) *If the previous conclusion was one of non-conformity, please explain whether and how the problem was remedied. If the previous conclusion was deferred or conformity pending receipt of information, please reply to the questions raised.*

Conclusions 2018 of the European Committee of Social Rights on Article 4§1 - conformity subject to receipt of the information requested:

The Committee reiterated its request with regard to information or examples regarding the lowest wages actually earned by full-time workers not covered by a collective agreement. It also asked the next report to provide further information on the situation of workers in agriculture, forestry and fishing. In the meantime, it reserved its position on these points. Pending receipt of the information requested, the Committee concluded that the situation in Austria is in conformity with Article 4§1 of the Charter.

Reference is made to the information provided on question a).

Collective agreements for agriculture and forestry workers are negotiated by the social partners. The minimum wages specified in a number of collective agreements in the agriculture and forestry sector are mentioned below by way of example:

The Collective Agreement for Forestry Workers in the Private Sector stipulates a minimum wage of EUR 1,744.12 (EUR 1,403.19 net); for example, forepersons with skilled forestry workers' examination (skilled employees, e.g. bricklayers, mechanics, etc.) receive a minimum wage of EUR 2,102.13 (EUR 1,577.98 net).

The Collective Agreement for Farming Operations in Lower Austria stipulates a minimum wage for farm workers for house, estate, field and barn and for harvest workers of EUR 1,420.86. A lump sum for overtime must also be paid, meaning that the lowest total wage for these workers is EUR 1,542.65 (EUR 1,266.39 net).

The Collective Agreement for Agricultural and Forestry Workers in Vorarlberg stipulates a minimum wage of EUR 1,572.06 (EUR 1,286.35 net) for unskilled workers over 18 years of age, and EUR 1,779.37 (EUR 1,427.13 net) for skilled workers.

The Collective Agreement for Market Gardening Operations in Vienna, Lower Austria and Burgenland stipulates a minimum wage of EUR 8.66 to EUR 8.74 per hour for simple tasks, EUR 9.58 to EUR 12.18 per hour for tasks requiring qualification, and EUR 15.23 per hour for tasks requiring high qualification. Over 173 working hours per month (40 normal working hours per week), this translates to a minimum wage of EUR 1,498.18 to EUR 1,512.02 (EUR 1,236.19 to EUR 1,245.59 net) for simple tasks, from EUR 1,657.34 to EUR 2,107.00 (EUR 1,344.27 to EUR 1,580.68 net) for tasks requiring qualification, and EUR 2,634.79 (EUR 1,847.81 net) for tasks requiring high qualification.

The Collective Agreement for Agricultural Estates in Vienna, Lower Austria and Burgenland stipulates a minimum wage of EUR 1,768.37 (EUR 1,419.66 net).

As the collective agreements specify gross amounts only, the net amounts given in brackets above were determined using the calculator provided by the Federal Ministry of Finance; please note that any tax deduction options were not taken into account.

2. to recognise the right of workers to an increased rate of remuneration for overtime work, subject to exceptions in particular cases;

- a) *Please provide up to date information on the rules applied to on-call service, zero-hour contracts, including on whether inactive periods of on-call duty are considered as time worked or as a period of rest and how these periods are remunerated.*

Zero-hours contracts, under which the employer pays only for hours actually worked but employees must be constantly available to work for that employer only, are unlawful in Austria. Pursuant to Section 19d Para. 2 of the Working Hours Act (*Arbeitszeitgesetz, AZG*), if working hours will be less than normal statutory or collectively agreed working hours, the number and scheduling of working hours must be agreed, unless determined by existing collectively agreed rules. Agreements which do not specify a fixed number of working hours per week, meaning that the number of working hours exclusively depends on the requirements of the employer, are therefore unlawful. Another fact rendering zero-hours contracts irrelevant in practice is that employees are required to be registered for social insurance before starting employment.

Periods of readiness for work (*Arbeitsbereitschaft*), during which employees are present at their place of work or other place specified by the employer without working but are ready to start work at any time, are considered time worked. Under Section 5 AZG, normal working hours may be extended to 12 hours per day and 60 hours per week based on the applicable collective agreement (or based on a works agreement negotiated by the works council or, where no collective agreement applies and no works council has been established, based on permission by the Labour Inspectorate) if employees are regularly required to remain ready for work for a substantial part of their working time (a substantial part being defined as at least one third of the working time).

Periods of standby time (*Rufbereitschaft*), on the other hand, are considered as rest periods and not as time worked, because the employee is free to choose where they wish to be and how they wish to use their time and are merely required to be contactable. However, the employee must be available and ready to work within a certain time (being defined as 30 minutes by way of indication). Standby time must be agreed in accordance with Section 20a AZG and is permitted on 10 days per month only (the reference period may be extended to up to three months by collective agreement or works agreement). If the employee actually works during a period of standby time, this is considered time worked.

There is also a statutory limitation on standby time during the weekly rest period: Under Section 6a of the Rest Periods Act (*Arbeitsruhegesetz, ARG*), standby time can be agreed during two weekly rest periods per month only. The employee is entitled to appropriate remuneration for standby time. This can be lower than the remuneration paid for actual working time, however.

For agricultural workers, a new Agricultural Labour Act (*Landarbeitsgesetz, LAG*) has been in force since 1 January 2021. In both the LAG 2021 and the previous LAG 1984, the rules regarding readiness for work and zero-hours contracts are modelled on those in the AZG.

A number of collective agreements contain provisions regarding remuneration for standby time: Several collective agreements for industrial workers and salaried employees stipulate that stand-by duty outside the hours of 10.00 p.m. to 6.00 a.m. must be paid at 30% at the employee's hourly wage or salary for the time in which the employee is on stand-by. Between the hours of 10.00 p.m. to 6.00 a.m., remuneration of 15% of the employee's hourly wage or salary is paid. On Sundays and public holidays, stand-by duty outside the hours of 10.00 p.m. to 6.00 a.m. is paid at 50% of the employee's hourly wage or salary;

between the hours of 10.00 p.m. to 6.00 a.m. stand-by duty is paid at 15% of the employee's hourly wage or salary.

Under the Collective Agreement for Telekom Austria AG, standby time is paid at EUR 31.00 per day on working days and EUR 54.00 per day on Sundays and public holidays.

The Collective Agreement for Sozialwirtschaft Österreich stipulates compensation for standby time of EUR 3.38.

The Collective Agreement for Private Social and Healthcare Organisations in Vorarlberg stipulates compensation of either 10 minutes added to the employee's time account or EUR 2.90 for each hour of standby time.

The Collective Agreement for Employees of Diakonie Österreich stipulates compensation of EUR 3.94 per hour for periods of standby duty lasting up to 11 hours. Periods of standby duty lasting up to 16 hours are compensated at EUR 2.47 per hour. Periods of standby duty lasting between 17 and 24 hours are paid at a flat rate of EUR 52.86.

Public service

For operational reasons, employees can be obliged to be present at a specific office or location or other place specified by the employer outside the working hours set out in the work schedule and to take up work as and when necessary or as instructed (readiness for work; *Dienststellenbereitschaft*, *Journaldienst*).

They can also be obliged to keep themselves available in their (private) homes or to choose their location during the off-duty period in such a way that they can be reached at any time and will be ready to start working within a very short time. Periods of standby time (*Rufbereitschaft*) do not count as working hours.

As soon as the duty is started, this is paid as overtime (regular hourly wage plus overtime allowances; the amount varies and depends on the day of the week and the time of the day), because it is performed outside the working hours set out in the work schedule.

For periods of readiness for work, there is a compensation of 40% of the overtime pay as well as around EUR 1.40 per hour on working days and EUR 1.90 on Sundays and public holidays.

Laender

Reference is made, by way of example, to the provisions applicable in **Upper Austria**:

Section 22a of the Upper Austria Contractual Public Employees Act (*Oö. Landes-Vertragsbedienstetengesetz, Oö. LVBG*) and Section 63a of the Upper Austria Civil Service Act (*Oö. Landesbeamtenengesetz, Oö. LBG*) 1993 stipulate that those parts of on-call duty and standby duty during which employees have to perform their work are counted towards working time, while breaks are not.

Pursuant to Section 25 Para. 1 *Oö. LVBG* or Section 66 Para. 1 *Oö. LBG*, it is possible, for operational reasons, to impose on employees an obligation to be present at a specific office or location or other place specified by the employer outside the working hours set out in the work schedule and to take up work as and when necessary or as instructed (on-call duty, standby duty).

If necessitated by operational requirements, employees may, from time to time, be requested, under Section 25 Para. 2 *Oö. LVBG* or Section 66 Para. 2 *Oö. LBG*, to choose their location during off-duty hours in such a way that they can be reached at any time and will be ready to start working within a very short time (standby time). Periods of standby time as such are not counted towards hours worked. However, if the employee actually works during a period of standby time, this is considered time worked.

Please refer to Section 36 of the Upper Austria Salary Act (*Oö. Gehaltsgesetz, Oö. GG*) 2001 (similar

provisions to be found in Sections 17a, 17b Oö. LGG) for more detailed information on the remuneration due.

Section 36 Upper Austria Salary Act 2001

Remuneration for standby duty, compensation for on-call duty

- (1) Public sector employees called upon to perform standby duty outside the working hours set out in the work schedule shall be entitled to remuneration for standby duty instead of the remuneration stipulated in Section 34 Paras. 1 to 6 and 8 and Section 35 Paras. 1 to 4 for the time of on-call duty and the performance of duties within the standby duty period.
- (2) The amount of remuneration for standby duty shall be set with due regard to the duration of such duty period and the average time the employee had to actually work during such duty period.
- (3) Public sector employees who, upon instruction, are present at a specific office or location or other place outside the working hours set out in the work schedule in order to be able to take up work on site as necessary shall be entitled to compensation for on-call duty instead of the additional fees set out in Section 34 and Section 35 Paras. 1 to 4 and Section 36 Paras. 1 and 2, the amount of which shall be set depending on the duration of such on-call duty.
- (4) Public sector employees who have to be contactable at home and able to start work on their own initiative (upon the occurrence of circumstances which they have to monitor) outside the working hours set out in the work schedule shall be entitled to compensation for on-call duty instead of the additional fees set out in Section 34 and Section 35 Paras. 1 to 4 and Section 36 Paras. 1 and 2, the amount of which shall be set depending on the duration of such on-call duty as well as, where applicable, the frequency of monitoring activities stipulated.
- (5) Public sector employees who have to be contactable outside the working hours set out in the work schedule (standby time) shall be entitled to compensation for on-call duty instead of the additional fees set out in Section 34 and Section 35 Paras. 1 to 4 and Section 36 Paras. 1 and 2, the amount of which shall be set depending on the duration of such on-call duty.

b) *Please explain the impact of the COVID-19 crisis on the right to a fair remuneration as regards overtime and provide information on measures taken to protect and fulfil this right. Please include specific information on the enjoyment of the right to a fair remuneration/compensation for overtime for medical staff during the pandemic and explain how the matter of overtime and working hours was addressed in respect of teleworking (regulation, monitoring, remuneration, increased compensation).*

COVID-19 crisis

The COVID-19 crisis did not bring about any changes or amendments to the provisions governing overtime work, its admissibility and remuneration or compensation. Section 6 of the Working Hours Act (*Arbeitszeitgesetz, AZG*) defines overtime as the hours worked beyond either the normal daily or weekly working time. A maximum working time of 12 hours per day and 60 hours per week continues to apply, with the weekly average being defined as 48 hours. A supplement of no less than 50% continues to apply for overtime work, with higher supplements being provided for in many collective agreements for specific overtime hours.

The overtime provisions for medical staff were not amended in any way during the pandemic. Section 5 of the Hospital Working Hours Act (*Krankenanstalten-Arbeitszeitgesetz, KA-AZG*) defines overtime for medical staff as the hours worked beyond the daily working time of eight - or nine hours where working hours are distributed differently across the working week - or the weekly working time of 40 hours is exceeded. The collective agreement or, in its absence, the works agreement may stipulate different

arrangements. In any event, medical staff working overtime are entitled to a supplement of no less than 50% or, where agreed upon, to time in lieu at a ratio of no less than 1:1.5.

The general statutory provisions on working times and rest periods apply also to teleworking. To enable compliance with working time rules to be monitored, employers are required to keep records of hours worked. However, this obligation may be delegated to the individual employee based on an internal agreement, which makes sense specifically for teleworking arrangements. In this case employers merely have to provide guidance to their employees on how to properly keep such working time records, ensure the records are handed in at periodic intervals and inspect them. Upon request, the Labour Inspectorate has to be granted access to inspect those records. Any violation of this obligation to keep working time records – even if internally delegated to the individual employee – may entail administrative penalties (fines) for the employer.

While the COVID-19 pandemic did not bring about any amendments to overtime work stipulations applicable in agriculture and forestry, the Agricultural Labour Act (*Landarbeitsgesetz, LAG*) was amended and entered into force on 1 January 2021. However, as it was not in force during the reference period it will not be discussed any further here.

Public service

The actual provisions on working time have generally remained unchanged, as they already allow a high degree of flexibility - even in times of crisis like the current one. Additional work is therefore permitted on request beyond the working hours set out in the work schedule and are paid separately. Since the types of activity in the Federal Civil Service are very inhomogeneous and the tasks are very different, there was more overtime in some areas than in others (e.g. police services). Special groups of staff have a fixed salary or certain additional allowances, through which all additional work in terms of time and quantity is considered to be compensated (e.g. all-in-contracts).

Civil servants and contractual public employees, unless explicitly defined as essential key personnel, were ordered to not enter the office but work from home. As regards overtime and working hours during working remotely, no general statement can be made, as these organisational matters are the responsibility of each ministry. The general provisions regarding working hours and overtime remained applicable (Section 47a et seq. BDG 1979 or Section 20 VBG). In most cases, overtime was only incurred if this was necessary for operational reasons and working time records had to be kept.

Statutory provisions governing telework are laid down in Section 36a BDG 1979 with regard to civil servants and in Section 5c VBG with regard to contractual public employees. The provisions lay down that the following matters shall be regulated as a minimum content (additional content can be included):

1. type, amount and quality of the duties to be performed by the teleworking civil servant or contractual public employee
2. the official procedures and the forms of communications by or with the teleworking civil servant or contractual public employee
3. times, in which the teleworking civil servant or contractual public employee shall be reachable
4. causes and times, in which the teleworking civil servant or contractual public employee shall be present at the office.

Laender

Reference is made, by way of example, to the provisions applicable in **Upper Austria**:

The requirements generally applicable to the recording of working time also apply to the work in crisis teams (flexible working hours with electronic time recording). For this reason, overtime worked will generally be credited in the same way as before the pandemic. In addition, crisis team members can

elect, instead of receiving financial compensation, to have hours worked on Sundays and public holidays credited as time in lieu. Working remotely has not entailed any general changes in the applicable legal provisions on working time. Upon instruction by the employer, employees can work extra hours also when working from home.

c) The Committee would welcome information on any other measures put in place intended to have effects after the pandemic which affect overtime regulation and its remuneration/compensation. Provide information on their intended duration and the time frame for them to be lifted.

No (other) legislative measures were put in place intended to have effects after the pandemic which affect overtime regulation and its remuneration/compensation.

Public service

The actual provisions on working time have generally remained unchanged, as they already allow a high degree of flexibility – even in times of crisis like the current one. However, the provisions applicable for civil servants and contractual public employees regarding their employment and salary law is subject to a permanent and updating procedure. The provisions on overtime and overtime remuneration have remained unchanged during the reference period. These provisions have previously defined the right to increased remuneration for overtime work. Since these provisions proved appropriate for managing the COVID-19 crisis, they remained unchanged throughout the pandemic situation.

Regarding telework (Section 36a BDG 1979 or Section 5c VBG) a few adaptations were made in 2021 to be even better prepared to manage the COVID-19 crisis or future crises. However, these changes did not affect overtime arrangements and overtime remuneration or compensation.

Laender

Reference is made, by way of example, to the provisions applicable in **Vorarlberg**:

Employees of the Office of the Vorarlberg Government and of the departments that were strongly involved in fighting the pandemic were given a time account for crediting 80 hours of overtime work. These hours have to be used up by the end of 2023.

3. to recognise the right of men and women workers to equal pay for work of equal value;

a) Please provide information on the impact of COVID-19 and the pandemic on the right of men and women workers to equal pay for work of equal value, with particular reference and data related to the extent and modalities of application of furlough schemes to women workers.

In Austria, the gender pay gap (difference between the average gross hourly earnings of men and women expressed as a percentage of the average gross hourly earnings of men) amounted to 19.9% according to Eurostat.

According to the 2020 General Income Report of the Austrian Court of Audit for the year 2019, a total of 4,555,328 persons were employees (apprentices excluded). Of these, 2,135,744 were women (47%) and 2,419,584 were men (53%). In 2019, the median gross annual income of employees was EUR 29,458. With a median gross annual income of EUR 22,808, women earned only about 64% of the median gross

annual income of men (EUR 35,841) in 2019.

Women were overrepresented in lower income groups and underrepresented in high income groups. While women account for 47% of all employees, the quarter of the working population earning the lowest incomes was made up of 57% women and 43% men. The situation is similar for the quarter of employees earning the second-lowest incomes, where the female share amounted to 62%. In the second-highest and highest income groups among all employees, it is the other way round: women were represented at below average rates of 39% and 29% respectively.

The Austrian 2020-2024 Government Programme provides for the following measures aimed to achieve gender equality in the labour market:

- stepping up employment opportunities for women in rural areas (focus on digitisation)
- providing training and education
- income report: providing information in adequate form to all employees within the company/organisation as soon as the income report is submitted
- providing practical guidance for businesses to ensure equal pay
- awarding an equal pay seal (list of criteria)
- implementing a 40% women's quota on the supervisory boards of all public-sector companies (more than 50% state-owned)
- reviewing measures to raise women's quotas in listed companies
- launching an information and awareness-raising campaign: effects of part-time working on social security benefits for unemployment and old age, education and training measures for part-time workers, leadership for part-time workers, part-time work calculator, part-time work for parents
- initiating studies on time allocation: paid vs. unpaid work, distribution of family work, cost of having a family/children
- initiating studies on migration trends to/from urban/rural areas
- parental leave management: providing comprehensive information prior to taking leave
- expanding and strengthening training opportunities for female journalists

Measures for equality and empowerment, female health:

- promoting implementation of the measures provided in the NAP on female health
- implementing the Austrian Constitutional Court's ruling in the case G77/2018 (right of intersexual persons to adequate registration in the civil status register)
- strengthening the role of the Equal Treatment Ombuds Office (*Gleichbehandlungsanwaltschaft*) and providing anti-discrimination offers that are easily accessible
- enhancing protection against discrimination in various areas of life
- developing special arts mentoring programmes for women
- achieving equal treatment and promotion of women
- public funding: raising awareness and safeguarding gender equality in any decisions on grants
- providing grants and subsidies only where equal pay for men and women for equal work has been established
- Step-by-step reduction of the gender pay gap in art and culture organisations

- integrating intercultural and equal treatment skills in all teacher training programmes.

For 2020, income data (income and salary tax data) are not yet available; they are expected for the end of 2021 as in previous years. As the scheme of temporarily reduced working hours has been used differently based on gender, sector and time, the income for female and male workers and employees is expected to develop differently.

According to the Equal Treatment Commission (*Gleichbehandlungskommission, GBK*) for the private sector, in 2020/2021 no increase in applications in regard to the determination of remuneration was recorded. Like in previous years, remuneration was not the focus of the applications to the GBK. Furthermore, no exceptional focus on or increase in applications was recorded due to the COVID-19 pandemic.

Parents who return to work after parental leave and re-enter employment during a period of temporarily reduced working hours can be included in the temporarily reduced working hours scheme (for more information on that scheme see the information provided in this report on Article 4§1). The remuneration received prior to parental leave will be used as the assessment base in such cases. Persons with gross earnings of less than EUR 1,700 are paid at least 90% of their previous net income during a period of temporarily reduced working hours.

- b) *If the previous conclusion was one of non-conformity, please explain whether and how the problem was remedied. If the previous conclusion was deferred or conformity pending receipt of information, please reply to the questions raised.*

Conclusions 2018 of the European Committee of Social Rights - failure to submit information:

As already stated in its Conclusions under Article 20 (Conclusions on Austria, 2016), noting that despite the measures taken, there is still an occupational sex segregation on the labour market and that the gender pay gap is still high, the Committee asks the next report to provide comprehensive information on all measures taken to eliminate de facto inequalities between men and women, including positive actions/measures taken and actual national plans and strategies. It asks in particular information on their implementation and impact on combating occupational sex segregation in employment and to reduce the gender pay gap. Meanwhile, it reserves its position on this point.

Pending receipt of the information requested, the Committee defers its conclusion.

Measures to reduce gender-specific income differences

Equality in all areas of life, especially in the field of work, is a central concern. One measure to reduce the income gap is income transparency. To increase income transparency, companies are obliged to draw up income reports, which was enshrined in the law already back in 2011 as mentioned in Austria's report. Since 2014, this requirement applies to companies with more than 150 employees. Additionally, it has been compulsory since 2011 to include the minimum collective wage in job vacancy adverts as well as the option for overpay where applicable, as stated in the previous reports. Austria is thus one of few EU member states that have already taken action and introduced changes.

To increase income transparency, some concrete and important steps have been taken in Austria that have been reported previously. To further improve knowledge about the mandatory income reports and their informative value, a "toolbox for good practice income reports" was published in 2017 and updated in 2021.

Furthermore, in 2011 the online wage calculator ([Lohn- und Gehaltsrechner](#)) was published. It informs users on what salary level can be expected in a specific position, profession, sector and region and in this way contributes to income transparency for persons (re-)entering the labour market or changing

professions. The data used for the calculations are based on administrative data and updated regularly: the calculator was last updated in 2019, the next update is planned for 2022.

Additional measures were taken after the last report:

- The “equalitA” seal of quality was presented in March 2020 and is awarded to companies that implement measures to promote women, including in the fields of income transparency, performance ratings and salary decisions. By August 2021, the award had been granted to 54 companies.
- In the ESF-programme 2014-2020 a pilot project on “equal pay” was carried out. Since 2021, a broader approach to income and career has been taken within the scope of the ESF project “100% - Equality pays off” ([Beratung | 100 Prozent | Österreich \(100-prozent.at\)](#)).

The measures mentioned in the previous national report to further reduce the pay gap were both continued and extended, such as:

- Girls’ Day and Girls’ Day MINI: Many girls opt for “typically female” careers. As a result, the majority of young women apprentices are to be found in three service occupations: retail sales assistant, office clerk and hair stylist. Hence, in order to encourage girls to conquer new job segments in STEM subjects (science, technology, engineering and mathematics), girls from the age of six are invited to participate in the “Girls’ Day” which is organised in the public service each year. Since 2006, this action day has taken place within the federal ministries and the subordinated departments and allows young girls to gain active insights and real experience within these fields. For the target group of pre-school girls, the “Girls’ Day MINI” (since 2015) in the federal civil service was initiated additionally.
- To further increase women’s and girls’ representation in STEM subjects and professions, in 2021 a call for funding projects on STEM and the empowerment of (young) women was launched.
- The “MINT-Girls Challenge“ is a nationwide initiative and competition launched in 2021 in which girls and young women are encouraged to use mathematics, IT/computer science, natural sciences or technology in developing creative ideas and solutions to tackle global challenges. Ideas could be submitted until 31 August 2021. The initiative aims to boost girls’ and young women's enthusiasm for mathematics, computer science, natural sciences and technology (MINT as German abbreviation for STEM fields) and to counteract the shortage of skilled workers in those fields in Austria and thus foster Austria’s position as a business location.
- The online information platform “*meine Technik*” aims at inspiring more women to opt for careers in non-typical professions and to reduce barriers they face in accessing these fields.
- An important step toward achieving balanced and equal representation of women and men in economic leadership positions was the resolution of the Council of Ministers of 3 June 2020. It was decided to increase the proportion of women on the supervisory boards of state-affiliated companies (with a federal share of at least 50%) from 35% to 40% during the current legislative period (which ends in 2024). The status of the efforts taken is reviewed annually in a progress report. On average, the federal women's quota, i.e. the percentage of female supervisory board members of state-affiliated companies, was 45.3% in 2020. Compared to the 2019 reporting period, an increase of 2 percentage points was seen in 2020 (2019: 43.3%).

Cases submitted to the Equal Treatment Commission

According to the Equal Treatment Commission (GBK), in 2020/2021 14% of all applications to Senate I (as of 31 July 2021) were cases involving remuneration.

A reduction of gender-specific income differences was seen between 2010 and 2019.

Data on income differences and developments since 2010

As regards the gender pay gap (Eurostat-indicator on average gross hourly wages), a decline of 4.1 percentage points between 2010 and 2019 was recorded. Compared to the other EU member states, Austria is one of the countries with an above-average reduction of the gender pay gap between 2010 and 2019. In 2019, the gender pay gap was 19.9%.

Concerning gross annual incomes (median) of all employees (*Rechnungshofbericht/ Report of the Austrian Court of Audit*) the reduction was 3.3 percentage points between 2010 and 2019. In 2019 the gender-specific difference stood at 36.4%.

For the gross annual incomes (median) of full-time employees (*Lohnsteuerstatistik, income tax statistics*) the reduction was 4.8 percentage points between 2010 and 2019. In 2019, the gender-specific difference stood at 14.3%.

The committee concludes the following regarding Article 20(c):

[...]The Committee considers that the Government has produced useful statistics, put in place a series of measures and made available the financial means to achieve the goal of reducing the wage gap between women and men. These measures have taken into account the findings of the 2015 evaluation that was carried out to assess the requirements contained in the Equal Treatment Act. The Committee notes that the wage gap has decreased by 2.4% since 2010 (according to the report) and is steadily decreasing, albeit at a very slow pace. However, in relative terms, it is high as it is above the EU average. In the light of the above, the Committee considers that the situation is not in conformity with Article 20 (c) of the Charter on the ground that the obligation to make measurable progress in reducing the gender pay gap has not been fulfilled.

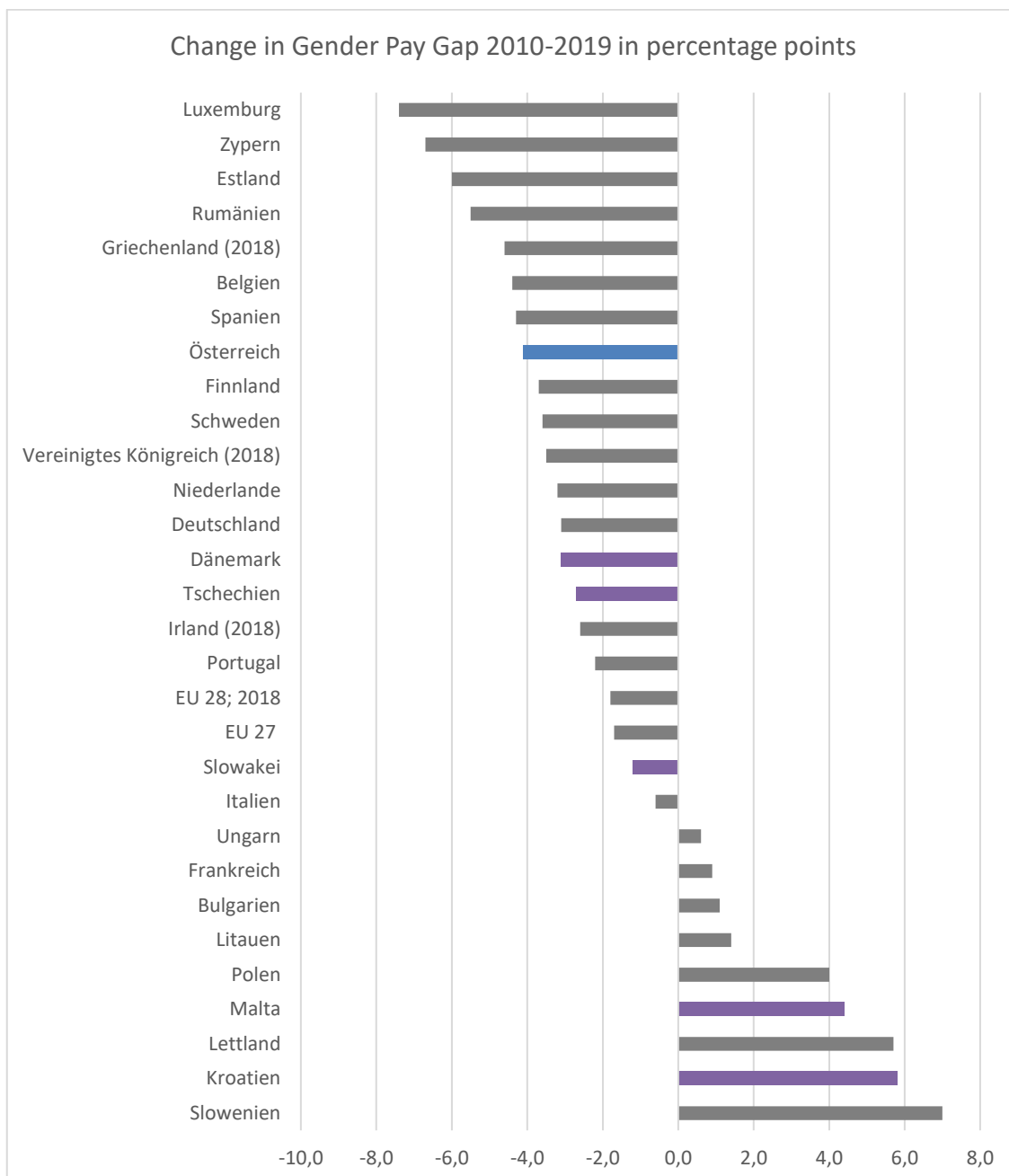
Conclusion

The Committee concludes that the situation in Austria is not in conformity with Article 20 (c) of the Charter on the ground that the obligation to make measurable progress in reducing the gender pay gap has not been fulfilled.

In this conclusion, however, the cited 2.4 percentage points in the State Report refer to differences in annual incomes. This difference decreased, as detailed above, by 3.3 percentage points between 2010 and 2019 (and by 2.4 percentage points between 2010 and 2017). This indicator shows the differences in annual incomes of all employees, which are high mainly due to the high female part-time employment and is therefore not fully suitable to measure the fulfilment of the principle of equal pay for equal work or work of equal value.

Measures to increase women's annual incomes aim at increasing their work time, inter alia by increased child care and equal sharing of care; as well as increasing their education and uptake of jobs in better paid industries (e.g. STEM).

Concerning the EU-wide comparable Eurostat-indicator gender pay gap, it is noted that the reduction between 2010 and 2019 in Austria is one of the highest reductions in the EU:



Q: Eurostat

Besides Austria, another 13 member states do not meet the obligation of making measurable progress in reducing the gender pay gap according to the Committee (including the EU member states Croatia, Czech Republic, Denmark, Malta and the Slovak Republic). Among these countries, Austria is the one with the highest reduction of the gender pay gap (see chart above). In two of these EU member states the gap even increased between 2010 and 2019.

The promotion of women in the labour market is a key focus area, its aim being to improve the employment situation of women, to eliminate existing disadvantages and thus contribute towards reducing the gender pay gap. The employment rate, the number of working hours and the correlated level of pay are of utmost importance to these efforts. Women are among the key target groups of the Austrian government's COVID-19 job initiative (referred to as *Corona-Joboffensive*). Within the scope of this comprehensive funding package, additional funding has been provided for women since October 2020, promoting measures and initiatives under the women's labour market programme.

The Public Employment Service (AMS), for instance, offers a course called "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 women re-entering the labour market. The focus is placed on reconciling work and family life, analysing the occupational potential, matching the skills and qualifications available with employers' requirements, reviewing career paths and re-orientation. In the AMS counselling process, awareness of the potential disadvantages resulting from long-term part-time work or late re-entry is raised among women, especially among women re-entering the labour market after taking time out to care for family members.

Offering training is another important lever to promote women in the labour market and support them in efforts towards increasing the number of working hours and earning a higher income. The COVID-19 job initiative also provides increased funding for programmes aimed specifically at women, such as the "Women in Trade and Technology" (*Frauen in Handwerk und Technik, FiT*) programme, "Re-entry with a Future" (*Wiedereinstieg mit Zukunft*) and Women's Employment Centres (*Frauenberufszentren, FBZ*).

5. to permit deductions from wages only under conditions and to the extent prescribed by national laws or regulations or fixed by collective agreements or arbitration awards.

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

No information requested, except where there was a conclusion of non-conformity or a deferral in the previous conclusion for your country. For conclusions of non-conformity, please explain whether and how the problem has been remedied and for deferrals, please reply to the questions raised.

Conclusions 2018 of the European Committee of Social Rights - subject to receipt of the information requested:

The Committee asked the next report to provide further information on the amount the fines to be collected by the disciplinary commission and requested information on the means employees had to check the calculations of the minimum subsistence level.

Due to the different legal status of federal civil servants and federal contractual public employees working on a contractual basis (contractual public employees), the provisions governing the disciplinary proceedings of civil servants on the one hand and contractual public employees on the other hand differ slightly. In the event of a culpable breach of official duties disciplinary action is instituted. The superior is required to investigate any reasonable suspicion of a breach of official duties by a federal civil servant and file a disciplinary complaint with the competent personnel authority without delay. If the breach of official duty also constitutes a criminal offence, there is an obligation to report the matter to the public prosecutor's office.

The following disciplinary measures are available under the disciplinary code applicable to federal civil servants: reprimands, small fines (up to a months' salary), large fines (from one to five months' salary) and dismissal. When assessing the fine, the federal civil servants' personal circumstances and economic capacity have to be taken into account as well as the relevant reasons for assessing a fine according to the penal code. The competent personnel authority may temporarily suspend federal civil servants and issue disciplinary orders in respect of federal civil servants.

Also when it comes to the recovery of small or large fines, the federal civil servant's personal circumstances and economic capacity must be taken into account. If necessary, the recovery of fines has to be executed

by the department to which the accused federal civil servant belongs. The Federal Disciplinary Authority may approve payment of a fine in a maximum of 36 monthly instalments.

For federal contractual public employees the disciplinary measures applicable are reprimands, termination of contract or dismissal. The competent personnel authority issues disciplinary measures regarding federal contractual employees.

The new Federal Disciplinary Authority (*Bundesdisziplinarbehörde*), which officially started its work on 1 October 2020, replaced 26 former disciplinary commissions. This Federal Disciplinary Authority is organised as an entity within the Federal Ministry for Arts, Culture, the Civil Service and Sport and is competent to issue disciplinary decisions and to decide on suspensions for federal civil servants. Its members are independent and autonomous in the performance of their duties. A Disciplinary Attorney (*Disziplinaranwalt or Disziplinaranwältin*) represents the interests of public service in the proceeding before the Federal Disciplinary Authority. The Federal Disciplinary Authority is also required to compile an annual report of activities.

The Federal Disciplinary Authority is not competent to take disciplinary decisions for the breach of official duties and decide on the suspension of federal civil servants of the Austrian Parliamentary Administration (*Parlamentsdirektion*), the Austrian Court of Audit (*Rechnungshof*) and the Austrian Ombudsman Board (*Volksanwaltschaft*). For disciplinary decisions involving civil servants of these institutions, a joint disciplinary commission has been set up at the Austrian Parliamentary Administration.

Against decisions of the Federal Disciplinary Authority, appeal to the Federal Administrative Court (*Bundesverwaltungsgericht*) is admissible. The parties of the proceedings before the Federal Administrative Court are entitled to file a final complaint at the Supreme Administrative Court (*Verwaltungsgerichtshof*).

Federal contractual public employees may file an action against a disciplinary order issued by a personnel authority to the courts for labour and social matters.

Article 5 – The right to organise

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

- a) *Please provide data on trade union membership prevalence across the country and across sectors of activity, as well as information on public or private sector activities in which workers are excluded from forming organisations for the protection of their economic and social interests or from joining such organisations. Also provide information on recent legal developments in these respects and measures taken to promote unionisation and membership (with specific reference to areas of activity with low level of unionisation, such as knowledge workers, agricultural and seasonal workers, domestic workers, catering industry and workers employed through service outsourcing, including cross border service contracts).*
- b) *Also provide information on measures taken or considered to proactively promote or ensure social dialogue, with participation of trade unions and workers organisations, in order to take stock of the COVID-19 crisis and pandemic and their fallout, and with a view to preserving or, as the case may be, restoring the rights protected under the Charter after the crisis is over.*

Link to the member statistics of the Austrian Trade Union Federation (ÖBG): [Der ÖGB in Zahlen \(oegb.at\)](https://www.oegb.at/de/der-oegb-in-zahlen) *(in German)*

The Austrian federal government and the social partners worked closely together to fight the negative impact of the COVID-19 pandemic on economic activity and employment. One of the results of these collaborative efforts is the scheme of temporarily reduced working hours (*Kurzarbeit*), based on a framework agreement negotiated by the Austrian Economic Chamber and the Austrian Trade Union Federation to provide AMS funding to employers who are forced to implement reduced working hours during the COVID-19 pandemic.

Article 6 – The right to bargain collectively

With a view to ensuring the effective exercise of the right to bargain collectively, the Parties undertake:

1. to promote joint consultation between workers and employers;

No information requested.

2. to promote, where necessary and appropriate, machinery for voluntary negotiations between employers or employers' organisations and workers' organisations, with a view to the regulation of terms and conditions of employment by means of collective agreements;

Please provide information on specific measures taken during the pandemic to ensure the respect of the right to bargain collectively. Please make specific reference to the situation and arrangements in the sectors of activity hit worst by the crisis whether as a result of the impossibility to continue their activity or the need for a broad shift to distance or telework, or as a result of their frontline nature, such as health care, law enforcement, transport, food sector, essential retail and other essential services.

As it was not always possible because of the COVID-19 crisis to hold elections for workforce representation, including representatives for persons with disabilities, the Labour Constitution Act (*Arbeitsverfassungsgesetz, ArbVG*) was amended to provide that the period of office of the related bodies expiring in the time from 16 March 2020 to 31 October 2020 were automatically extended until new bodies have been elected in compliance with applicable provisions and within the defined periods and such new bodies have been constituted. By ordinance of the Federal Minister for Labour, Family and Youth, this provision was extended to apply until 31 December 2020.

Public service

See the answer to Article 4§1 question a). There is a long and well-established tradition of social partnership negotiations in the Austrian Federal Civil Service. Legislation within the framework of Federal Civil Service and remuneration law are traditionally negotiated with the social partners and therefore enjoy a high degree of approval.

Laender

Reference is made, by way of example, to the *Land* of Styria:

On 1 July 2021, a uniform nationwide Agricultural Labour Act entered into force, repealing the Agricultural Labour Codes of the various *Laender* which were in force before. As previously, the new Act meets all the requirements with respect to occupational health and safety and works representation (i.e. works council and staff meeting).

Styria

In spite of the extraordinary situation caused by the COVID-19 pandemic, the negotiations between the social partners on the collective agreement came to a successful conclusion.

3. to promote the establishment and use of appropriate machinery for conciliation and voluntary arbitration for the settlement of labour disputes;

No information requested.

Article 26 – The right to dignity at work

With a view to ensuring the effective exercise of the right of all workers to protection of their dignity at work, the Parties undertake, in consultation with employers' and workers' organisations:

to promote awareness, information and prevention of sexual harassment in the workplace or in relation to work and to take all appropriate measures to protect workers from such conduct;

1. to promote awareness, information and prevention of recurrent reprehensible or distinctly negative and offensive actions directed against individual workers in the workplace or in relation to work and to take all appropriate measures to protect workers from such conduct.

a) Please provide information on the regulatory framework and any recent changes in order to combat harassment and sexual abuse in the framework of work or employment relations. The Committee would welcome information on awareness raising and prevention campaigns as well as on action to ensure that the right to dignity at work is fully respected in practice.

b) Please provide information on specific measures taken during the pandemic to protect the right to dignity in the workplace and notably as regards sexual, and moral harassment. The Committee would welcome specific information about categories of workers in a situation of enhanced risk, such as night workers, home and domestic workers, store workers, medical staff, and other frontline workers.

c) Please explain whether any limits apply to the compensation that might be awarded to the victim of sexual and moral (or psychological) harassment for moral and material damages.

As reported by the Equal Treatment Commission, in 2020/ 2021, applications regarding the examination of sexual harassment accounted for 29% of total applications to Senate I. Compared to the previous year, this trend remained stable. (deadline 31st July 2021)

People who consider themselves discriminated against within their work environment on the basis of their gender, age, ethnic origin, religion or belief, or sexual orientation can refer to the Equal Treatment Commission. No increase in applications was recorded due to the COVID-19 pandemic.

The Equal Treatment Commission does not award damages. The procedure before the Equal Treatment Commission is not legally binding. Its task is to investigate discrimination cases and provide an expert opinion. Appeals to termination of employment – and claims for damages - can only be lodged with the court.

The provisions on the payment of damages in Section 12 Para. 11 in conjunction with Section 14 of the Equal Treatment Act (*Gleichbehandlungsgesetz, GlBG*) lay down only a lower limit of EUR 1,000 for non-material loss or damage suffered, but no upper limit. Section 3 Para. 7 *GlBG* bans any direct or indirect discrimination on grounds of sex/gender, in particular in connection with the employees' marital status or the fact whether they have children, when employment is terminated. "Terminating employment" here is not limited to a particular type of employment or to a particular type of termination. With a view to the all-encompassing wording of the ban on discrimination, which includes any disadvantageous discrimination on ground of sex/gender, termination has to be understood in its broadest sense.

It also applies to employment during a trial period and to fixed-term employment. Even in cases where an employment relationship is terminated by mutual agreement, employers may be acting in violation of the ban on sex/gender discrimination, for instance where termination is only offered to (or forced upon) women.

The ban on discrimination also applies to termination of employment on the part of the employee or

premature resignation by the employee, where gender-discriminating conduct by the employer may cause employees to terminate employment.

However, the legal consequences set out in Section 12 Para. 7 *GIBG* refer to the termination of employment by the employer (see the ruling of the Austrian Supreme Court of Justice of 17 August 2016, 8 ObA 47/16). In cases where the employment relationship is terminated by the employee, Section 12 Para. 7 *GIBG* fails to assign a corresponding legal consequence. However, the legal consequences set out in Section 12 Para. 11 would be applicable (compensation for financial loss; compensation for personal impairment suffered).

Even if Section 12 *GibG* does not provide for legal consequences, this does not preclude adjudicating existing discrimination on grounds of sex/gender as defined in Section 3. The employee may have a legal interest in the individual case in having a court establish that the principle of equal treatment has been violated by the employer and consequently seek declaratory relief (pursuant to Section 228 of the Code of Civil Procedure (*Zivilprozessordnung*, ZPO)).

d) If the previous conclusion was one of non-conformity, please explain whether and how the problem was remedied. If the previous conclusion was deferred or conformity pending receipt of information, please reply to the questions raised.

The Committee previously noted (Conclusions 2014) that a person subject to sexual or gender-based harassment was entitled to compensation covering material and moral damages (at least EUR 1.000) and asked whether a right to reinstatement was available to all victims of sexual harassment, including in cases where they had been pressured to resign, and whether the damages awarded were sufficiently deterrent for the employer. (...) However, the Committee considers that this information does not sufficiently clarify whether victims of harassment are entitled to reinstatement, including in cases where they have been pressured to resign on account of the sexual harassment, and what are the damages awarded in this type of case. It accordingly reiterates these questions.

Reference is made to the answer to item c).

Public service

In the public sector there is a wide range of statutory provisions on combatting harassment and sexual abuse.

The BDG 1979 lays down that civil servants have to treat their employees, superiors and colleagues with due respect and contribute to a positive working environment and good cooperation. Civil servants are required to avoid any conduct or behaviour in the working environment that violates or intends to violate the human dignity of superiors, employees and colleagues. This is also applicable to any conduct or behaviour that is discriminatory in any other way (Section 43a BDG 1979). These requirements also apply to contractual public employees under Section 5 Para. 1 VBG.

The Federal Equal Treatment Act (*Bundes-Gleichbehandlungsgesetz – B-GIBG*, Federal Law Gazette No. 100/1993), which is applicable to the public sector, is the equivalent to the Equal Treatment Act (*Gleichbehandlungsgesetz – GIBG*, Federal Law Gazette No. 66/2004), which is applicable for the private sector. It lays down that everybody has to be treated equally in the context of an employment relationship irrespective of gender, ethnic origin, religion or belief, age and sexual orientation. The Act bans harassment in the context of an employment relationship based on gender, ethnic origin, religion or belief, age and sexual orientation. Any direct or indirect discrimination, including any instruction to discriminate according to the relevant provisions, by an employee constitutes a violation of the obligations arising from the employment relationship and is to be prosecuted in accordance with

employment and disciplinary provisions.

Section 8 B-GIBG provides that the term discrimination based on gender also includes sexual harassment. Discrimination based on gender is deemed a violation of duty of service and constitutes a violation that has to be prosecuted in accordance with disciplinary regulations. In the case of a discrimination on grounds of a sexual harassment, victims are entitled to compensation for the harm suffered (Section 19 Para. 1 B-GIBG). Where the harm suffered does not involve explicit financial loss, public servants and contractual public employees are entitled to appropriate compensation for the harm suffered amounting to no less than EUR 1,000.

According to the Federal Labour Protection Act (*Bundes-Bedienstetenschutzgesetz – B-BSG*, Federal Law Gazette Nr. 70/1999) the employer has to take the measures necessary to protect the life, health, integrity and dignity of employees (Section 3 Para. 1 B-BSG). Employees have to apply the protective measures required to protect life, health, integrity and dignity under this Federal Act and the regulations issued for it. They have to behave in such a way that a hazard is avoided as far as possible (Section 15 Para. 1 B-BSG). The definition of the term health includes physical and mental health (Section 2 Para. 11a B-BSG).

In principle, victims have the right to continued employment. Both the employer and the employee can terminate the contract if there are grounds for termination. Since termination is a unilateral declaration of intent in Austrian labour law that must be received and which provides for the employment relationship to be terminated immediately after the end of the notice period, upon the contracting party's explicit wish, this option is available to each of the contracting parties. As victims of harassment and sexual abuse in civil service often face difficult situations, the law provides for various options to support those victims, including the following: transfer to a different position, guidance and assistance from staff representation bodies or the women's representative (a role specially established to support female staff); under the general duty of care of the authority, which applies specifically to the duties of the superior, any violations can be pursued under disciplinary provisions or by other means (e.g. dismissal).

The regulatory framework for combatting harassment and sexual abuse is subject to a continuous adaption and updating procedure. As the applicable laws have been found to be adequate – even in times of crisis like the current one – they have generally remained unchanged.

Article 28 – The right of workers’ representatives to protection in the undertaking and facilities to be accorded to them

With a view to ensuring the effective exercise of the right of workers’ representatives to carry out their functions, the Parties undertake to ensure that in the undertaking:

- a) they enjoy effective protection against acts prejudicial to them, including dismissal, based on their status or activities as workers’ representatives within the undertaking;
- b) they are afforded such facilities as may be appropriate in order to enable them to carry out their functions promptly and efficiently, account being taken of the industrial relations system of the country and the needs, size and capabilities of the undertaking concerned.

a) *With the objective of keeping this reporting exercise focused, the Committee asks for no specific information in respect of Article 28. Nonetheless, it would welcome information about the situation in practice concerning this right during the pandemic and about measures taken to ensure that the COVID-19 crisis was not used as an excuse to abuse or circumvent the right of workers’ representatives to protection, especially protection against dismissal.*

The termination and dismissal safeguards already enshrined in law are highly effective in providing protection against abusive practices.

Public Service

The Federal Staff Representation Act (*Bundes-Personalvertretungsgesetz, PVG*), Federal Law Gazette No. 133/1967, governs the rights and obligations of staff representatives of federal civil servants. There were no changes to this law during the COVID-19 pandemic. The provisions on protection against dismissal, transfer to another department or discrimination against staff representatives remained unchanged. According to Section 2 PVG, one of the main tasks of the staff representatives is to protect and promote the health interests of employees. Accordingly, the staff representation bodies in the Federal Ministries, with the support of the intercompany interest representation body of the Union of Public Services, have made a significant contribution to fighting the pandemic situation and protecting the health of employees.

b) *If the previous conclusion was one of non-conformity, please explain whether and how the problem was remedied. If the previous conclusion was deferred or conformity pending receipt of information, please reply to the questions raised.*

Conclusions 2018 of the European Committee of Social Rights - non-conformity:

The Committee considers that the protection afforded to workers’ representatives, which lasts for three months after the end of their mandate, did not change during the reference period. It therefore upholds its conclusion of non-conformity.

There are two scenarios which need to be distinguished. Both scenarios, however, provide for protection against dismissal or termination in cases of current or previous participation in the works council.

a) During the mandate and within 3 months after its end:

During the mandate and within three months after its end, the termination or dismissal must be previously

approved by a civil court judgment. A termination or dismissal without the court's approval is invalid. The consent to termination or dismissal of employment is therefore given by way of a constitutive judgement by a civil court. The court will give its consent only in cases specified in the law. In some severe cases (misleading about contract conditions, violent behaviour or severe libel that impedes reasonable cooperation with the employer) the person may be dismissed, with approval of the court being sought as the next step. The ruling of the court can then be challenged by appeal.

Therefore, generally, workers representatives cannot be dismissed without the court's prior approval.]] The prior approval by the court is mandatory during the mandate and within 3 months after the end of the mandate.

b) After expiry of the 3 months period:

Where notice of termination or dismissal is given after expiry of the three-month period of the mandate, the termination/dismissal of a former works council member can be challenged in court under the Labour Constitution Act.

Termination or dismissal based on previous participation in the works council is deemed unlawful. Termination or dismissal on the grounds of participation in the works council may be challenged at any time after expiry of the employee's mandate. Steps that need to be followed by the employer in case of termination/dismissal:

1. The employer has to notify the current works council of the intended termination or dismissal of the former works council member.
2. The current works council may approve, acquiesce or object within a period of five working days.
3. The employer may only proceed after this period has expired or the works council has reacted; otherwise the termination/dismissal will be void.
4. Upon objection, the current works council is entitled to file a complaint with the labour court.
5. In case of approval of the termination/dismissal or acquiescence by the former works council, the employee (the former works council member) is entitled to contest the termination by filing an action based on unlawfulness herself/himself.

Where a termination or dismissal is related to the exercise of trade union rights or related activities such as being a member of the works council, the termination or dismissal is deemed *contra bonos mores* and constitutes unjustified termination/dismissal.

During the court proceedings, there is an easing of the burden of proof in favour of the plaintiff. The employee (the former works council member) only has to plausibly demonstrate that the termination/dismissal is based on his/her former participation in the works council. The challenge is only to be dismissed where, after weighing all circumstances, it appears more likely that another reason made credible by the employer was the major reason for the termination/dismissal.

If the termination/dismissal is set aside due to unlawfulness of the termination/dismissal, the employment relationship will be reinstated. The employee is consequently entitled to full payment including compensation for the duration of the legal procedure.

The Labour Constitution Act stipulates the independence of workers' representatives and prohibits any restrictions to this requirement. The members of the works council are not allowed to be limited in the exercise of their duties or disadvantaged due to their mandate, in particular with regard to wages and career opportunities. This prohibition of restrictions also applies with regard to the transfer of a works council member. There are several rulings of the Court of Appeal or the Supreme Court on the question of whether violent behaviour or libel impedes reasonable cooperation with the employer and whether a dismissal is possible on such grounds. Only in two cases the court adjudicated that dismissal was justified.

- 9 ObA 285/97w: verbal abuse, both against employees as well as members of bodies of the company (insults, mocking and allegations of lacking qualifications or intrigues towards superiors or employees).

- RS0052881: defamation and simultaneous acts that can lead to a serious disruption of personal contact between the business owner and the works council member.

Annex:

Zusammenfassung der LSDB-Statistik

(kumulierter Datenbestand 01.05.2011 bis 31.05.2021)

1. Anzeigen wegen Unterentlohnung:

Inland Ausland	Anzahl	betroffene Arbeitnehmer	beantragte Strafe
Inland	1561	6191	€ 16.585.740,12
Ausland	2781	11437	€ 39.443.070,00
gesamt	4342	17628	€ 56.028.810,12

2. Anzeigen wegen Verweigerung der Einsichtnahme in Unterlagen (incl. AG):

Anzahl Anzeigen	beantragte Strafen
1646	€ 12.928.250,00

3. Insgesamt erlassene Entscheidungen wegen Unterentlohnung:

Inland Ausland	Anzahl	betroffene Arbeitnehmer	verhängte Strafe
Inland	1153	3306	€ 6.744.429,03
Ausland	2001	6680	€ 21.154.854,55
gesamt	3154	9986	€ 27.899.283,58

4. rechtskräftige Entscheidungen wegen Unterentlohnung:

Inland Ausland	Anzahl	betroffene Arbeitnehmer	verhängte Strafe
Inland	964	2276	€ 4.298.740,00
Ausland	1611	5127	€ 15.241.817,00
gesamt	2575	7403	€ 19.540.557,00

5. rechtskräftige Entscheidungen wegen Nichtbereithaltung von Unterlagen (ausl. AG):

Anzahl	verhängte Strafe
3619	€ 12.884.853,55

Zusammenfassung der LSDB-Statistik

(kumulierter Datenbestand 01.05.2011 bis 31.05.2021)

6. rechtskräftige Entscheidungen wegen Vereitelung der FinPol-Kontrolle (ausl. AG):

Anzahl	verhängte Strafen
1932	€ 5.837.266,00

7. insgesamt erlassene Entscheid. wg. Verweig. der Einsichtnahme in Unterlagen (incl. AG):

Anzahl	verhängte Strafen
1551	€ 9.126.713,45

8. rechtskräftige Entscheidungen wg. Verweig. der Einsichtnahme in Unterlagen (incl. AG):

Anzahl	verhängte Strafen
1441	€ 7.202.181,45

9. rechtskräftige Entscheidungen wegen Untersagung der Dienstleistung (ausl. AG):

Anzahl
41

10. rechtskr. Entscheidungen wegen Verstoßes gegen Untersagung der DL (ausl. AG):

Anzahl
3

Zusammenfassung der LSDB-Statistik

(kumulierter Datenbestand 01.05.2011 bis 31.05.2021)

11. Verteilung der Anzeigen wegen Unterentlohnung:

Bundesland	Anzahl
Niederösterreich	948
Wien	822
Steiermark	774
Oberösterreich	372
Vorarlberg	341
Tirol	300
Salzburg	286
Kärnten	257
Burgenland	242
gesamt	4342

Institution	Anzahl
BUAK	1864
CCLSDB	1022
ÖGK-N	478
ÖGK-W	296
ÖGK-V	246
ÖGK-S	162
ÖGK-O	85
ÖGK-ST	79
ÖGK-T	65
ÖGK-B	25
ÖGK-K	18
PLB	2
gesamt	4342

Herkunftsland	Anzahl
Österreich	1130
unbekannt	762
Slowenien	711
Ungarn	474
Slowakei	365
Polen	238
Deutschland	153
Tschechien	129
Portugal	110
Rumänien	97
Kroatien	58
Italien	32
Bulgarien	27
UK	9
Litauen	9
Schweiz	7
Niederlande	7
Spanien	7
Lettland	6
Estland	4
Serbien	3
Dänemark	2
Bosnien und Herzegowina	1
Griechenland	1
gesamt	4342

Zusammenfassung der LSDB-Statistik

(kumulierter Datenbestand 01.05.2011 bis 31.05.2021)

12. Verteilung der rechtskräftigen Entscheidungen wegen Unterentlohnung:

Bundesland	Anzahl
Niederösterreich	567
Wien	553
Steiermark	423
Oberösterreich	224
Vorarlberg	210
Tirol	182
Salzburg	168
Kärnten	139
Burgenland	109
unbekannt	0
gesamt	2575

Institution	Anzahl
CCLSDB	1046
BUAK	775
ÖGK-N	228
ÖGK-W	181
ÖGK-V	158
ÖGK-S	81
ÖGK-O	52
ÖGK-ST	33
ÖGK-T	11
ÖGK-B	8
PLB	2
ÖGK-K	0
gesamt	2575

Herkunftsland	Anzahl
Österreich	712
unbekannt	531
Slowenien	367
Ungarn	321
Slowakei	181
Polen	117
Tschechien	93
Deutschland	81
Rumänien	50
Portugal	46
Kroatien	30
Bulgarien	16
Italien	10
Niederlande	8
Litauen	3
Serbien	2
Lettland	2
Spanien	2
Dänemark	1
Schweiz	1
UK	1
gesamt	2575

Zusammenfassung der LSDB-Statistik

(kumulierter Datenbestand 01.05.2011 bis 31.05.2021)

13. Verteilung nach Wirtschaftsklassen (Abteilungen gem. ÖNACE):

Anzeigen - Unterentlohnung	Anzahl
Hochbau	1830
Vorbereitende Baustellenarbeiten, Bauinstallation und sonstiges Ausbaugewerbe	736
Gastronomie	378
Landverkehr und Transport in Rohrfernleitungen	253
Einzelhandel (ohne Handel mit Kraftfahrzeugen)	135
Gebäudebetreuung; Garten- und Landschaftsbau	118
Tiefbau	112
unbekannt	92
Vermittlung und Überlassung von Arbeitskräften	91
Großhandel (ohne Handel mit Kraftfahrzeugen und Krafträdern)	82
Beherbergung	39
Erbringung von sonstigen überwiegend persönlichen Dienstleistungen	36
Handel mit Kraftfahrzeugen; Instandhaltung und Reparatur von Kraftfahrzeugen	35
Herstellung von Metallerzeugnissen	35
Herstellung von Nahrungs- und Futtermitteln	33
Landwirtschaft, Jagd und damit verbundene Tätigkeiten	32
Architektur- und Ingenieurbüros; technische, physikalische und chemische Untersuchung	22
Grundstücks- und Wohnungswesen	19
Reparatur und Installation von Maschinen und Ausrüstungen	18
Erbringung von wirtschaftlichen Dienstleistungen für Unternehmen und Privatpersonen a. n. g.	16
Lagerei sowie Erbringung von sonstigen Dienstleistungen für den Verkehr	15
Herstellung von Möbeln	15
Post-, Kurier- und Expressdienste	12
Reisebüros, Reiseveranstalter und Erbringung sonstiger Reservierungsdienstleistungen	11
Vermietung von beweglichen Sachen	10
Herstellung von Holz-, Flecht-, Korb- und Korkwaren (ohne Möbel)	10
Erziehung und Unterricht	10
Herstellung von Glas und Glaswaren, Keramik, Verarbeitung von Steinen und Erden	9
Forstwirtschaft und Holzeinschlag	8
Wach- und Sicherheitsdienste sowie Detekteien	8
Sozialwesen (ohne Heime)	7
Erbringung von Dienstleistungen der Informationstechnologie	7
Herstellung von Gummi- und Kunststoffwaren	7
Rechts- und Steuerberatung, Wirtschaftsprüfung	6

Zusammenfassung der LSDB-Statistik

(kumulierter Datenbestand 01.05.2011 bis 31.05.2021)

13. Verteilung nach Wirtschaftsklassen (Abteilungen gem. ÖNACE):

Anzeigen - Unterentlohnung	Anzahl
Private Haushalte mit Hauspersonal	6
Werbung und Marktforschung	6
Erbringung von Dienstleistungen des Sports, der Unterhaltung und der Erholung	5
Heime (ohne Erholungs- und Ferienheime)	5
Maschinenbau	5
Interessenvertretungen sowie kirchliche und sonstige religiöse Vereinigungen (ohne Sozialwesen und Sport)	5
Sonstige freiberufliche, wissenschaftliche und technische Tätigkeiten	4
Herstellung von Druckerzeugnissen; Vervielfältigung von bespielten Ton-, Bild- und Datenträgern	4
Mit Finanz- und Versicherungsdienstleistungen verbundene Tätigkeiten	4
Informationsdienstleistungen	4
Herstellung von elektrischen Ausrüstungen	4
Gesundheitswesen	4
Energieversorgung	3
Öffentliche Verwaltung, Verteidigung; Sozialversicherung	3
Verwaltung und Führung von Unternehmen und Betrieben; Unternehmensberatung	3
Herstellung von Kraftwagen und Kraftwagenteilen	2
Verlagswesen	2
Sammlung, Behandlung und Beseitigung von Abfällen; Rückgewinnung	2
Forschung und Entwicklung	2
Metallerzeugung und -bearbeitung	2
Gewinnung von Steinen und Erden, sonstiger Bergbau	2
Herstellung von chemischen Erzeugnissen	2
Herstellung von Textilien	2
Erbringung von Finanzdienstleistungen	2
Herstellung von Papier, Pappe und Waren daraus	2
Herstellung von Leder, Lederwaren und Schuhen	1
Telekommunikation	1
Rundfunkveranstalter	1
Herstellung von Datenverarbeitungsgeräten, elektronischen und optischen Erzeugnissen	1
Exterritoriale Organisationen und Körperschaften	1
Herstellung von Bekleidung	1
Kokerei und Mineralölverarbeitung	1
Abwasserentsorgung	1
Herstellung, Verleih und Vertrieb von Filmen und Fernsehprogrammen; Kinos; Tonstudios und Verlegen von Musik	1

Zusammenfassung der LSDB-Statistik

(kumulierter Datenbestand 01.05.2011 bis 31.05.2021)

13. Verteilung nach Wirtschaftsklassen (Abteilungen gem. ÖNACE):

Anzeigen - Unterentlohnung	Anzahl
Getränkeherstellung	1
gesamt	4342

Zusammenfassung der LSDB-Statistik

(kumulierter Datenbestand 01.05.2011 bis 31.05.2021)

13. Verteilung nach Wirtschaftsklassen (Abteilungen gem. ÖNACE):

Rechtskräftige Entscheidungen - Unterentlohnung	Anzahl
Hochbau	787
unbekannt	502
Vorbereitende Baustellenarbeiten, Bauinstallation und sonstiges Ausbaugewerbe	421
Gastronomie	219
Landverkehr und Transport in Rohrfernleitungen	147
Gebäudebetreuung; Garten- und Landschaftsbau	78
Einzelhandel (ohne Handel mit Kraftfahrzeugen)	72
Großhandel (ohne Handel mit Kraftfahrzeugen und Krafträdern)	44
Tiefbau	42
Vermittlung und Überlassung von Arbeitskräften	26
Handel mit Kraftfahrzeugen; Instandhaltung und Reparatur von Kraftfahrzeugen	22
Herstellung von Metallerzeugnissen	18
Beherbergung	17
Erbringung von sonstigen überwiegend persönlichen Dienstleistungen	17
Architektur- und Ingenieurbüros; technische, physikalische und chemische Untersuchung	14
Reparatur und Installation von Maschinen und Ausrüstungen	13
Herstellung von Nahrungs- und Futtermitteln	12
Herstellung von Möbeln	9
Reisebüros, Reiseveranstalter und Erbringung sonstiger Reservierungsdienstleistungen	8
Erbringung von wirtschaftlichen Dienstleistungen für Unternehmen und Privatpersonen a. n. g.	6
Herstellung von Glas und Glaswaren, Keramik, Verarbeitung von Steinen und Erden	6
Herstellung von Gummi- und Kunststoffwaren	6
Post-, Kurier- und Expressdienste	6
Vermietung von beweglichen Sachen	6
Erziehung und Unterricht	5
Grundstücks- und Wohnungswesen	5
Landwirtschaft, Jagd und damit verbundene Tätigkeiten	5
Wach- und Sicherheitsdienste sowie Detekteien	5
Interessenvertretungen sowie kirchliche und sonstige religiöse Vereinigungen (ohne Sozialwesen und Sport)	4
Maschinenbau	4
Erbringung von Dienstleistungen des Sports, der Unterhaltung und der Erholung	3
Gesundheitswesen	3
Herstellung von Bekleidung	3
Herstellung von Holz-, Flecht-, Korb- und Korkwaren (ohne Möbel)	3

Zusammenfassung der LSDB-Statistik

(kumulierter Datenbestand 01.05.2011 bis 31.05.2021)

13. Verteilung nach Wirtschaftsklassen (Abteilungen gem. ÖNACE):

Rechtskräftige Entscheidungen - Unterentlohnung	Anzahl
Lagerei sowie Erbringung von sonstigen Dienstleistungen für den Verkehr	3
Öffentliche Verwaltung, Verteidigung; Sozialversicherung	3
Forschung und Entwicklung	2
Herstellung von Druckerzeugnissen; Vervielfältigung von bespielten Ton-, Bild- und Datenträgern	2
Herstellung von Kraftwagen und Kraftwagenteilen	2
Herstellung von elektrischen Ausrüstungen	2
Informationsdienstleistungen	2
Metallerzeugung und -bearbeitung	2
Private Haushalte mit Hauspersonal	2
Rechts- und Steuerberatung, Wirtschaftsprüfung	2
Verlagswesen	2
Verwaltung und Führung von Unternehmen und Betrieben; Unternehmensberatung	2
Abwasserentsorgung	1
Erbringung von Dienstleistungen der Informationstechnologie	1
Exterritoriale Organisationen und Körperschaften	1
Forstwirtschaft und Holzeinschlag	1
Herstellung von Papier, Pappe und Waren daraus	1
Herstellung von Textilien	1
Herstellung, Verleih und Vertrieb von Filmen und Fernsehprogrammen; Kinos; Tonstudios und Verlegen von Musik	1
Rundfunkveranstalter	1
Sonstige freiberufliche, wissenschaftliche und technische Tätigkeiten	1
Telekommunikation	1
Werbung und Marktforschung	1
gesamt	2575