

REVISED EUROPEAN SOCIAL CHARTER

3rd 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 7, 8, 16, 17, 19 and 27

for the period 01/01/2010 – 31/12/2013

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 this group with the exception of Article 7 § 6, Article 19 §§ 4, 8, 10 and 11, Article 27 § 3 and Article 31.

With regard to Article 8 § 2 Austria is still bound by Article 8 § 2 of the 1961 Charter.

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

the Austrian Trade Union Federation,

the Austrian Federal Chamber of Labour,

the Austrian Federal Economic Chamber,

the Federation of Austrian Industry,

the Presidential Conference of Austrian Chambers of Agriculture,

and

the Council of Austrian Chambers of Agricultural Labour

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ARTICLE 7 - RIGHT OF CHILDREN AND YOUNG PERSONS TO PROTECTION

Paragraph 1 – Minimum age of admission to employment

Questions 1, 2 and 3

Child labour was expressly prohibited through a statute with the status of constitutional law, the Federal Constitutional Act on the Rights of Children (*Bundesverfassungsgesetz über die Rechte von Kindern*), Federal Law Gazette I no. 4/2011.

<http://www.ris.bka.gv.at/GeltendeFassung.wxe?Abfrage=Bundesnormen&Gesetzesnummer=20007136>

Important statutes relating to the prohibition of child labour and to employment protection for young persons include the Young Persons Employment Act 1987 (*Kinder- und Jugendlichen-Beschäftigungsgesetz, KJBG*), Federal Law Gazette no. 599 as amended by Federal Law Gazette I no. 138/2013, and the Ordinance on Prohibitions and Restrictions of Employment for Young Persons (*Verordnung über Beschäftigungsverbote und Beschränkungen für Jugendliche, KJBG-VO*), Federal Law Gazette II no. 436/1998 as amended by Federal Law Gazette II no. 221/2010, as well as, in the case of young persons employed in agriculture and forestry, the Agricultural Labour Act (*Landarbeitsgesetz, LAG*), Federal Law Gazette no. 287/1984 as amended by Federal Law Gazette I no. 157/2013, and the corresponding implementing acts and ordinances passed by the *Laender*.

<http://www.ris.bka.gv.at/GeltendeFassung.wxe?Abfrage=Bundesnormen&Gesetzesnummer=10008632>

<http://www.ris.bka.gv.at/GeltendeFassung.wxe?Abfrage=Bundesnormen&Gesetzesnummer=10009096>

<http://www.ris.bka.gv.at/GeltendeFassung.wxe?Abfrage=Bundesnormen&Gesetzesnummer=10008554>

Young persons are individuals under 18 years of age who are no longer children (Section 3 *KJBG*). Children are defined as minors under the age of 15, or older if compulsory education is completed later (Section 2 Para. 1 *KJBG*).

For minors under the age of 15 who have completed compulsory education and are employed

- under an apprenticeship,
- within the framework of a holiday internship (Section 20 Para. 4 of the School Instruction Act (*Schulunterrichtsgesetz, SchUG*), Federal Law Gazette no. 472/1986), or
- within the framework of a compulsory internship as specified by the School Organisation Act (*Schulorganisationsgesetz, SchOG*), Federal Law Gazette no. 242/1962, or
- within the framework of a training relationship as specified in Section 8b Para. 2 of the Vocational Training Act (*Berufsausbildungsgesetz*), Federal Law Gazette no. 142/1969,

the provisions of Chapters 3 to 5 of the *KJBG*, which concern young persons, apply (refer to Section 2 Para. 1a *KJBG*).

The explanatory comments in the committee report on amendment 1997/79 to the *KJBG*, annex 723 of the 20th legislative period, elucidate this point as follows:

“Art. 1 (1) and Art. 3 lit. b of the EU Directive specify that only minors who have reached the age of 15 may be permitted to be employed.

Art. 1 (1) also requires that employment be permitted only on completion of compulsory schooling. For children whose birthday falls within the months of January to June, compulsory schooling ends on reaching the age of 15 years. Art. 4 (2) lit. b of the EU Directive provides for an exception in the case of minors who are at least 14 years of age and are working under a combined work/training scheme or an in-plant work-experience scheme. Such exceptions are only admissible, however, provided that such work is done in accordance with the conditions laid down by the competent authority. A legal arrangement is therefore required that applies only in the cases enumerated in Para. 1a. Training relationships governed only by the regulations of an association (e.g. riding school trainees) and voluntary holiday employment cannot therefore be included.

Protection regulations apply to young persons and minors as defined in Section 2 Para. 1a *KJBG* and are specified in Chapter 3 of the *KJBG*.

For persons under the age of 15 years who are employed within the framework of a holiday internship or a compulsory internship (Section 2 Para. 1a nos. 2 and 3), Sections 11 and 12 apply with the following derogations (Section 13 *KJBG*):

- During school holidays lasting at least one week, the daily working time must not exceed seven hours and the weekly working time 35 hours. During such periods it is not admissible to distribute working time in any other way (Section 11 Paras. 2 to 3) or to extend working time through the addition of preparatory and concluding activities (Section 12 Paras. 2 and 3).
- If the period of instruction is at least seven hours on a school day or at least 35 hours during a school week, employment at a plant or business is no longer admissible. Where the instruction period is less than seven hours, the total of instruction time, the time required to travel between the business and school, and the time spent at the business must not exceed seven hours, and the time at the business must not exceed two hours.

Child labour is generally prohibited in Austria (Section 5 *KJBG*). The employment of children is permitted only for the purpose of instruction or education or, in the case of one's own children, when they are given light household tasks for a short period (Section 4 *KJBG*).

In specific cases the head of the provincial government can approve the deployment of children at music, theatre or other performances or at photo or film shoots or television or audio recordings (Section 6 *KJBG*). Approval may be granted only if

- a special artistic, scientific or educational interest exists or for the purpose of recording advertising and
- the character and nature of the work justify it in the specific case.

The deployment of children at variety shows, cabarets, bars, sex shops, dance clubs, discotheques or similar businesses must not be approved.

Approval may be granted only under written consent by the child's legal representative.

In the case of commercial performances, the Labour Inspectorate's opinion must first be heard and a general practitioner or paediatrician must issue an official medical opinion certifying that the child meets the physical requirements for the work. In the case of film or television or similar recordings, approval may furthermore be granted only under condition of an opinion by an ophthalmologist certifying that no objections exist to such work.

Approval may be granted for a specific performance or for a limited period in each case. In the case of commercial performances, the notice of approval as issued must also include conditions specifying the duration and scheduling of working hours and of rest periods and any work on Sundays or holidays.

Section 7 Para. 2 *KJBG* additionally specifies:

- a prohibition of night work;
- rest periods following instruction;
- the limitation of employment of children during school holidays to, with the exception of tours outside Austria, a maximum of one third of that period and to the extent absolutely necessary;
- the requirement for the municipality to issue a declaration of non-objection to the organiser of the performance.

The amendment of the *KJBG* published in Federal Law Gazette I no. 93/2010 included a change of the age limit for isolated and light tasks as defined in Section 5a *KJBG*. Section 5a *KJBG* permits children who are at least 13 years of age (instead of 12 years of age as prior to the amendment) to be employed under certain conditions at **isolated and light tasks**. The permitted activities are:

- tasks at family businesses;
- tasks in the household;
- errands, providing help at sports grounds and playgrounds, gathering flowers, herbs, mushrooms and fruit, and comparable activities when not performed within the framework of a commercial business or an employment relationship.

Isolated tasks are not considered light if, when performing them, the child exceeds the level of work it can be expected to reasonably perform when considering children's varying capabilities based on age and personal ability.

Section 5a *KJBG* specifies the following additional limitations:

- prohibition of employment on Sundays and holidays;
- prohibition of night work;
- a limit of two hours' work on school days and on school holidays, whereas the total number of hours dedicated to school instruction and to light jobs must not exceed seven hours;
- any impairment of school attendance or the fulfilment of religious duties is prohibited;
- any risk to the child's physical or mental health and development or safety must be ruled out, as must be any risk of accident or of harmful effects due to heat, cold or moisture, or due to physically harmful substances or radiation, dust, gases or vapours.

A child must only be employed in such a capacity under the consent of its legal representative.

It is furthermore permitted to deploy children under the condition that there is no impairment to the protection of the child's health and physical and mental development, as well as of morality, of uninterrupted school attendance and of the fulfilment of religious duties (Section 7 Para. 1 *KJBG*).

The District Administration Authorities are jointly responsible for monitoring compliance with the provisions of the act, in collaboration with the Labour Inspectorates (labour inspectors responsible for child labour and the protection of young persons and apprentices), municipal authorities and school administrations. An obligation exists to report any evidence of violations of child labour regulations; this obligation applies to school teachers, physicians and bodies of private youth welfare organisations as well as all corporate bodies whose responsibilities include matters pertaining to youth welfare (Section 9 *KJBG*).

In 2012 the Labour Inspectorate identified four cases of violations of regulations related to child labour. Four violations were also identified in 2011 and two in 2010.

Regulations analogous to those listed above were introduced for the agricultural and forestry sector through Sections 109 and 110 of the Agricultural Labour Act (*Landarbeitsgesetz, LAG*).

Young persons employed as contractual employees in public service:

The Contractual Public Employees Act 1948 (*Vertragsbedienstetengesetz 1948, VBG*), Federal Law Gazette no. 86/1948 requires a minimum age of 15 years in order to be admitted to federal service (Section 3 Para. 1 no. 4 *VBG*).

Periods worked in the employment relationship prior to the age of 18 are to be taken into account when determining certain rights that depend on the duration of the employment relationship or on the duration of a certain period of employment. Examples of such duration-dependent rights include the date for advancement, which is determined by taking into account certain previous employment and training periods, the advancement to higher salary levels and the entitlement to continued remuneration when prevented from work as a result of illness or accident or for other serious personal reasons (Section 3 Para. 3 *VBG*).

No derogations from the salary provisions exist for young persons.

The provisions of the Young Persons Employment Act 1987 (*Kinder- und Jugendlichen-Beschäftigungsgesetz 1987, KJBG*), Federal Law Gazette no. 599/1987 that pertain to protection also apply to young persons employed as contractual public employees.

Comparable regulations exist for public employees with the *Laender* and municipalities as specified by provisions of the particular *Land*.

Paragraph 2 – Higher minimum age in dangerous or unhealthy occupations

Questions 1 and 2

In respect of this paragraph the Government refers to its previous reports on the implementation of the 1961 Charter and notes that the relevant legislation remained unchanged during the reporting period.

In response to the request of the European Committee of Social Rights (hereinafter

referred to as “Committee”) for up-dated information on the prescribed occupations in which a higher minimum age of admission to employment is provided for, the following information is provided:

The Ordinance on prohibitions and restrictions of employment for young persons (*Verordnung über Beschäftigungsverbote und Beschränkungen für Jugendliche, KJBG-VO*), Federal Law Gazette II no. 436/1998, was issued by the Federal Minister of Labour, Health and Social Affairs, the Federal Minister of Economic Affairs and the Federal Minister of Science and Transport; this ordinance, as amended, prohibits young persons from performing, or subjects to conditions, work with hazardous substances, work under physical forces, work under psychological or physical strain, work with hazardous work equipment and other hazardous or stressful work or procedures; young persons in this case refers to persons who are not considered children as defined in Section 2 Para. 1 of the Federal Act on the Employment of Young Persons 1987 (*Kinder- und Jugendlichen-Beschäftigungsgesetz 1987, KJBG*), Federal Law Gazette no. 599/1987 as amended, and who are below the age of 18 years as well as minors as defined in Section 2 Para. 1a *KJBG*.

Section 109a of the Agricultural Labour Act 1984 (*Landarbeitsgesetz 1984, LAG*), Federal Law Gazette no. 287 as amended, provides the basis for issuing employment prohibitions. Employment prohibitions are specified for the individual case in the implementing legislation of the *Laender*. The provisions of the individual *Laender* are essentially comparable to the provisions of the *KJBG-VO*, apart from any additional prohibitions and limitations that are specifically required for agriculture and forestry.

In summary it can be observed that, in general, all of the types of work prohibited for young persons by the *KJBG*, the *KJBG-VO*, the *LAG* or the implementing legislation of the individual *Laender* are permitted only as of 18 years of age, provided that other employee protection regulations do not conflict with allowing such work.

An age limit of 16 or 17 years is defined as a prerequisite for allowing certain activities, which are permitted for training purposes and/or only under supervision.

The *KJBG* specifically prohibits:

- piece-work;
- work similar to piece-work;
- performance-related work;
- other work that allows higher remuneration to be achieved by increasing the work pace, examples including work for which pay is based on work (personality) assessment methods, statistical methods, data collection methods, pre-determined time systems or similar pay determination methods;
- and assembly-line work involving a specified work pace;

for young persons who are under the age of 16 years or are in an apprenticeship or other training relationship lasting at least one year (Section 21 *KJBG*).

Young persons (i.e. persons under 18 years) are furthermore prohibited from transporting large amounts of cash or material assets outside of the business premises on their own responsibility (Section 21a *KJBG*).

Section 2 *KJBG-VO* prohibits the employment of young persons at the following businesses:

- sex shops, sex cinemas, striptease clubs, table-dancing clubs, go-go clubs, peep shows and clubs with peep shows;
- at the manufacturing, sale and presentation of pornographic products, irrespective of the medium (data carrier) used;
- betting offices and all activities related to the brokering and the agreement of bets on a commercial basis;
- at the cash desk of gambling halls where machines offering cash or material winnings are located.

Young persons are also largely prohibited from performing the following types of work, listed in Sections 4 to 6 *KJBG-VO*:

- work with hazardous substances (lead, asbestos etc.);
- work under physical forces (exerted by electromagnetic fields in the 0 Hz to 300 GHz frequency range, with various classes of laser equipment etc.);
- work under psychological and physical strain (chiselling without using power equipment, work in rooms with temperatures below -10°C etc.);
- work with hazardous work equipment (manually-fed machine saws, operating lifting gear etc.);
- other hazardous and stressful work and procedures (demolition work in construction and civil engineering, work on scaffolding etc.).

Such work is permitted as of 18 years of age, provided that no other employee protection regulations conflict with employment.

Young persons are permitted to perform the types of work listed above in certain cases, but only under the condition that those persons are in training, and the work is necessary for the training and performed under supervision (e.g. Section 3 Para. 2 or Section 5 no. 3 *KJBG-VO*).

Question 3

In **2012** there were 1,636 cases of violations of the specific provisions aimed at protecting young persons; 488 (30%) of those violations concerned hotels and restaurants, 373 (23%) manufacturing, and 372 (23%) wholesale and retail trade and repair of motor vehicles and motorcycles. In construction 232 (14%) breaches were identified. A total of 4,000 young persons were affected by the violations, whereas it should be considered that several violations can concern one and the same young person. The largest share, namely 1,111 young persons, was identified among hotels and restaurants.

Violations of the maximum working time accounted for 309 of the cases, while **29 concerned breaches of prohibitions and restrictions of employment**. The remaining violations related to: duties to keep records (493); breaks, rest periods, night rest, rest on Sundays and holidays, weekly time off (443); and evaluation (362).

In **2011** there were 1,461 cases of violations of the specific provisions aimed at protecting young persons; 453 (31%) of those violations concerned hotels and restaurants, and 364 (24.9%) wholesale and retail trade and repair of motor vehicles and motorcycles. 247 (16.9%) violations were identified in manufacturing and 211 (14.4%) in construction. A total of 2,257 young persons were affected by the violations, whereas it should be considered

that several violations can concern one and the same young person. The largest share, namely 823 young persons, was identified among hotels and restaurants.

Violations of the maximum working time accounted for 318 of the cases, while **24 concerned breaches of prohibitions and restrictions of employment**. The remaining violations related to: duties to keep records (499); breaks, rest periods, night rest, rest on Sundays and holidays, weekly time off (472); and evaluation (148).

In **2010** there were 1,207 cases of violations of the specific provisions aimed at protecting young persons; 524 (44%) of those violations concerned hotels and restaurants, and 359 (30%) wholesale and retail trade and repair of motor vehicles and motorcycles. 126 violations were identified in manufacturing and 91 in construction.

Violations of the maximum working time accounted for 254 of the cases, while **36 concerned breaches of prohibitions and restrictions of employment**. The remaining violations related to: duties to keep records (341); and breaks, rest periods, night rest, rest on Sundays and holidays, weekly time off (576).

Paragraph 3 – Safeguarding the full benefit of compulsory education

Questions 1, 2 and 3

In respect of this paragraph the Government refers to its previous reports on the implementation of the 1961 Charter. The relevant legislation remained basically unchanged during the reporting period.

The only change during the period under review was an amendment to the *KJBG*, Federal Law Gazette I no. 93/2010, which altered the age limit for isolated and light tasks as defined in Section 5a *KJBG*. Section 5a *KJBG* permits children who are at least 13 years of age (instead of 12 years of age as prior to the amendment) to be employed under certain conditions at isolated and light tasks. For details refer to Art. 7§1 above.

In response to the Committee's questions as to whether the rest period free of work has a duration of at least two consecutive weeks during the summer holidays and what the rest periods during the other school holidays are, the following information is provided:

We refer here to the reporting on Art. 7§1 above, giving details concerning Section 5a *KJBG* and Section 6 *KJBG*.

Section 6 provides for the employment of children under certain conditions.

Pursuant to Section 7 Para. 2 no. 3 *KJBG*, the employment of children during school holidays is only admissible if the head of the provincial government issues an administrative decision ensuring that:

- the children are employed for a maximum of one third of the school holidays and only to the extent absolutely necessary;
- the performances, photo or film shoots, or television or audio recordings are of special value for culture or popular education and cannot take place outside of the school holidays.

The restriction of maximum employment to one third of the school holidays may in justified cases be waived only for tours outside Austria.

School holidays last an average of three months (i.e. two months summer holidays, two

weeks Christmas holidays, 10 days Easter holidays and one week semester break as well as five days on which each school chooses to remain closed).

Employment is permitted for a maximum of one third of total school holidays; consequently, a period of employment as specified in Section 6 *KJBG* may last for one month of the school year at most. Two months must therefore be time off school. Even if, therefore, employment for the one month permitted at most falls within the summer holidays – and thus no further employment is admissible during the remaining school holidays – one month of leisure is left during the summer holidays.

Austrian law thus ensures that at least two weeks of school holidays remain free of any employment.

No express limitation of work during school holidays exists for the tasks permitted by Section 5a *KJBG*, since regular periods of employment over a longer period are generally prohibited. It is only admissible to work under the additional conditions specified in Section 5a *KJBG*, i.e. the tasks are performed in an isolated manner and not on a regular basis. Where such work is performed regularly during school holidays and not just in isolated cases, such tasks are no longer admissible but constitute illegal child labour.

Paragraph 4 – Limited working hours of persons under 18 years of age

Questions 1 and 2

1. Limiting the working hours of children only comes under consideration in cases where the employment of children is at all admissible.

It is admissible

- pursuant to Section 5a *KJBG*, to employ children as of 13 years of age at the types of isolated and light tasks which the *KJBG* lists by way of example; and
- pursuant to Section 6 *KJBG*, to deploy children, subject to administrative decision, at public performances (music, theatre or other performances or at photo or film shoots or television or audio recordings).

Employment as specified in Section 5a *KJBG* is admissible in such cases only under the following conditions:

- On both school days and school holidays children must not be deployed for more than two hours, whereas the total number of hours dedicated to school instruction and to isolated and light tasks must never exceed seven hours.
- After the end of instruction and, where divided into periods, after the end of every instruction period, one hour must be kept free, whereas the time required for travelling to and from school must not be counted towards that hour, except where employment involves only an errand.
- Employment at such tasks is prohibited on Sundays and holidays, as is employment during night hours (from 8 pm until 8 am), whereas the time required for travelling to and from the place of work must not fall within such a period (Section 5a Para. 3 nos. 2 and 3 *KJBG*).

Employment as specified in Section 6 *KJBG*, subject to administrative decision, is admissible only under the following conditions:

- Children must only be employed during the period between 8 am and 11 pm and not before morning instruction, whereas the time required for travelling to and from the place of work is not counted as working time (Section 7 Para. 2 no. 1 *KJBG*).
- An uninterrupted period off work of at least two hours after morning instruction and of one hour following afternoon instruction must be granted, whereas the time required for travelling to and from school must not be counted towards those periods (Section 7 Para. 2 no. 2 *KJBG*).
- Children may be employed during school holidays where an administrative decision ensures that: they are employed for a maximum of one third of the school holidays and only to the extent absolutely necessary; and the performances, photo or film shoots, or television or audio recordings are of special value for culture or popular education and cannot take place outside of the school holidays (Section 7 Para. 2 no. 3 *KJBG*).
- For commercial performances, the administrative decision must define the duration and scheduling of working hours and of rest periods (Section 6 Para. 5 *KJBG*).
- While legislation does not provide for a limit to employment hours in the case of non-commercial performances, the approval procedure ensures that employment is limited to the extent absolutely necessary and that consideration is given to the child's health, physical constitution and age as well as to the child's performance at school.

2. Except where employment in agriculture or forestry or in private households is concerned, Section 11 *KJBG* specifies provisions governing the hours worked by young persons.

According to that section, daily working time must not exceed eight hours and weekly working time 40 hours – even where the individual is employed by more than one employer (Section 10 Para. 2 *KJBG*).

Daily working time is the period from the beginning to the end of work, not counting the rest periods. Weekly working time is the working time during the period from Monday up to and including Sunday (Section 10 *KJBG*).

The following options exist for deviating from the rule of an eight-hour day and a 40-hour week (Section 11 Para. 1 *KJBG*):

- To obtain an extended period of time off, which is required to be contiguous with the weekly time-off period, weekly working time can be distributed in a way that differs from the eight hours daily working time (Section 11 Para. 2).
- Where in connection with public holidays the young person takes time off work on working days in order to allow for an extended period of free time, the lost normal working time can be distributed across the remaining working days of a maximum of seven weeks including the days taken off (Section 11 Para. 2b).
- If not exceeding an average of 40 hours per week, the weekly working time can be increased during individual weeks within a reference period encompassing several weeks. Such a working time arrangement is required to be approved by the collective agreement and to be applicable for comparable adult employees of the business, and it must not be reasonable for the employer to accept a differing working time arrangement for young persons (Section 11 Para. 2a).

- Whereas young persons may be deployed for preparatory and concluding activities, this must not result in longer weekly working hours within any two consecutive weeks (Section 12 Para. 1 *KJBG*).
- In no case may the working time of young persons under 16 years of age be extended on compelling grounds related to the business through the addition of preparatory and concluding activities, as specified in Section 12 Paras. 2 to 4. The working hours permitted for young persons over 16 years of age may be extended by half an hour each day.

Yet, under any deviation from the rule, the daily working time must not exceed nine hours and the weekly working time 45 hours.

Section 9 Para. 5 of the Vocational Training Act (*Berufsausbildungsgesetz, BAG*), Federal Law Gazette no. 142/1969 as amended by Federal Law Gazette no. 563/1986, requires the person authorised to train apprentices to allow an apprentice who is obligated to attend occupational school (Sections 20 to 23 of the Compulsory Schooling Act (*Schulpflichtgesetz, SchPflG*), Federal Law Gazette no. 76/1985 as amended by Federal Law Gazette no. 161/1987) the time off required to attend school, to encourage the apprentice to attend school regularly, and to take into consideration as far as possible the level of training at the occupational school. Where the expense of accommodation and meals that is incurred through the apprentice's stay at a school boarding house designated for the students of the occupational school exceeds the amount of apprenticeship pay to which the apprentice is entitled, the person authorised to train the apprentice is required to reimburse the apprentice with the difference between the boarding costs and apprenticeship pay. Apprenticeship pay must continue to be paid for the duration of instruction at the occupational school, excluding noon break (Section 17 *BAG*).

Section 11 Paras. 4 to 8 *KJBG* require the young persons to be given the time off necessary to comply with the legal obligation to attend occupational school (Sections 20 to 23 of the Compulsory Schooling Act, Federal Law Gazette no. 76/1985). Pay is to continue during the instruction time, which is to be counted as working time.

For persons under the age of 15 years who are employed within the framework of a holiday internship or a compulsory internship (Section 2 Para. 1a nos. 2 and 3), Sections 11 and 12 apply with the following derogations (Section 13 *KJBG*):

- During school holidays lasting at least one week, the daily working time must not exceed seven hours and the weekly working time 35 hours. During such periods it is not admissible to distribute working time in any other way (Section 11 Paras. 2 to 3) or to extend working time through the addition of preparatory and concluding activities (Section 12 Paras. 2 and 3).
- If the period of instruction is at least seven hours on a school day or at least 35 hours during a school week, employment at a plant or business is no longer admissible. Where the instruction period is less than seven hours, the total of instruction time, the time required to travel between the business and school, and the time spent at the business must not exceed seven hours, and the time at the business must not exceed two hours.

The regulations on working time in the case of young persons employed in private households are specified in Section 5 of the Domestic Help and Domestic Employees Act (*Hausgehilfen- und Hausangestelltengesetz, HGHaG*), Federal Law Gazette no. 235/1962 as amended.

- Working time, including standby time when the employee waits to provide the services, must not exceed 80 hours within any two calendar weeks in the case of employees under the age of 18 years, and 100 hours in the case of such persons living in the employer's household (Section 5 Para. 1 *HGHAG*).
- An extension of the normal working hours by a maximum of 18 hours within any two consecutive weeks can be agreed in writing in the employment certificate (*Dienstschein*) where the members of the employer's household include small children (i.e. children up to age three) or where the employer or another member of the household has a physical disability requiring constant care and provision of such care cannot be ensured in any other way (Section 5 Para. 7 *HGHAG*).
- Any young person working extra hours beyond the maximum number specified in Section 5 Para. 1 *HGHAG* or working in exceptional cases on Sundays or statutory holidays is entitled to a pay supplement that is determined based on the minimum wage scheme, unless time off in lieu is given within the following two calendar weeks (Section 5 Para. 5 *HGHAG*).

No limit to the working time of young persons employed in private households has been specified to take into account the requirements of academic vocational training because no obligation to attend occupational school exists for this type of employment.

As far as young persons employed in agriculture and forestry are concerned, Section 109a Para. 1 in conjunction with Section 109 Para. 1 of the Agricultural Labour Act (*Landarbeitsgesetz, LAG*) and the agricultural labour regulations (at *Laender* level) require special consideration to be given to the health and physical development of young persons under the age of 18 years and of all others who continue to be in an apprenticeship or a training relationship lasting at least one year. They must also be provided with the time off required to attend occupational school (courses), without any pay reduction.

Section 109 Para. 7 of the law cited above prohibits young persons as defined in Para. 1 from being deployed for night work or overtime and, as specified in Para. 10, for work on Sundays and public holidays except in particularly urgent cases.

Pursuant to Section 109 Para. 2 of the law cited above, the regular weekly working time of young persons must not exceed 40 hours and daily working time nine hours.

Section 109 Para. 5 of that law requires young persons to be granted a daily rest period lasting at least twelve hours. Pursuant to Section 109 Para. 10, they must be accorded 41 hours of uninterrupted time off weekly, normally beginning on Saturdays at 1 pm. Young persons required to work during the weekly rest period are entitled to substitute rest as specified in Para. 11.

Instruction time is required to be counted towards working time.

Pursuant to Section 130 Para. 4 *LAG* and to the agricultural labour regulations, the person authorised to train apprentices is required to provide the apprentice with the time off needed to attend occupational school and any compulsory specialised courses, to encourage the apprentice to attend instruction, and to allow the monitoring of school attendance by notifying the school administration when the apprentice begins and stops attending school. During the period of school attendance the apprentice continues to be entitled to apprenticeship pay.

Section 236a *LAG* requires the employer to keep detailed records of the hours worked by young persons, of their pay and of the hours they work on Sundays and holidays.

The provisions of individual agricultural labour regulations require the person authorised to train apprentices to reimburse the apprentice for the actual costs incurred through the use of public transportation to travel to and from the place of instruction.

If in addition to such employment a young employee is in an employment relationship subject to the *KJBG*, as specified in Section 10 Para. 2 *KJBG* the provisions of Section 11 *KJBG* apply with the proviso that the total hours worked at the individual jobs does not exceed the maximum numbers of working hours specified in Section 11 *KJBG*.

Young employees working at a nursing home or hospital are not subject to the *HGHAG* but to the *KJBG*, regardless of the number of working hours.

The *HGHAG* applies to young persons working as domestic help or domestic employees who are employed with a legal entity. The *HGHAG* and the entailed provisions governing working hours do not apply to employment relationships regulated by a collective agreement. The latter case falls under the provisions of the *KJBG*.

Question 3

In **2012** there were 1,636 cases of violations of the specific provisions aimed at protecting young persons; **violations of the maximum working time accounted for 309 of the cases**, while 29 concerned breaches of prohibitions and restrictions of employment. The remaining violations related to: duties to keep records (493); breaks, rest periods, night rest, rest on Sundays and holidays, weekly time off (443); and evaluation (362).

In **2011** there were 1,461 cases of violations of the specific provisions aimed at protecting young persons; **violations of the maximum working time accounted for 318 of the cases**, while 24 concerned breaches of prohibitions and restrictions of employment. The remaining violations related to: duties to keep records (499); breaks, rest periods, night rest, rest on Sundays and holidays, weekly time off (472); and evaluation (148).

In **2010** there were 1,207 cases of violations of the specific provisions aimed at protecting young persons; **violations of the maximum working time accounted for 254 of the cases**, while 36 concerned breaches of prohibitions and restrictions of employment. The remaining violations related to: duties to keep records (341); and breaks, rest periods, night rest, rest on Sundays and holidays, weekly time off (576).

Paragraph 5 – Fair remuneration for young workers and apprentices

Questions 1 and 2

Section 17 of the Vocational Training Act (*Berufsausbildungsgesetz, BAG*), Federal Law Gazette no. 142/1969 as amended by Federal Law Gazette no. 563/1986, as revised by the 1978 amendment to the *BAG* in Federal Law Gazette no. 232, specifies the apprentice's entitlement to apprenticeship pay, required to be disbursed by the person authorised to train apprentices. For virtually every economic sector, the amount of apprenticeship pay is stipulated in collective agreements.

Where the pay due for an apprenticeship trade is not regulated by collective agreement, the amount is based on the agreement stipulated in the apprenticeship contract. In the absence of a collective agreement, the apprentice is unconditionally entitled to the same amount of apprenticeship pay due for the same, related or similar apprenticeship trades. In cases of

doubt, local practice is to be considered.

Apprenticeship pay must continue to be paid for the duration of instruction at the occupational school as well as for the duration of the final apprenticeship examination and the sub-exams as stipulated in the training regulations. This means that an apprentice who has completed training and takes the final examination during the period of further employment as specified in Section 18 *BAG* is entitled to continued apprenticeship pay until the apprenticeship examination is taken.

Most collective agreements stipulate separate wage groups for young workers who do not have an apprenticeship contract. Such wages, especially where unskilled jobs are concerned, are in many cases somewhat lower than those stipulated for adult workers. Yet many such contracts include a clause requiring young persons who perform jobs to the same extent as adult workers to also receive adult pay levels. Young persons under the age of 16 years and apprentices under the age of 18 must not be deployed for work paid by the piece, task or job.

The level of apprenticeship pay in agriculture and forestry is guaranteed by Section 125 Para. 6 of the Agricultural Labour Act 1984 (*Landarbeitsgesetz 1984, LAG*), Federal Law Gazette no. 287 as amended, and by Section 14 no. 1 of the Vocational Training Act for Agriculture and Forestry (*Land- und forstwirtschaftliches Berufsausbildungsgesetz*), Federal Law Gazette no. 298/1990 as amended, as well as by the corresponding implementing acts of the *Laender*.

In the public sector, individuals under 18 years of age cannot be instated as civil servants.

No derogations from the salary provisions exist for young persons employed as contractual employees in public service.

Question 3

The following definitions apply to the statistics on the next few pages (apprenticeship pay table for the major collective agreements): "Skilled workers with final apprenticeship examination" are young and adult employees having completed specialised vocational training.

"Workers without specific training (unskilled workers)" are young and adult employees not having completed specialised vocational training.

"Semi-skilled workers" are employees who have not completed specialised vocational training but have undergone comprehensive on-the-job-training for certain jobs or activities.

**Rates of pay for apprentices (blue-collar workers) determined by collective agreement,
minimum wage rates for young workers and initial wages for adults (blue-collar workers)
in selected occupations in important branches of the Austrian economy**

**Occupations, categories of work: Applicable to Burgenland, Carinthia, Lower Austria,
Upper Austria, Salzburg, Styria, Tyrol, Vorarlberg and Vienna**

MINING (monthly wages in EUR) as of 1 November 2013:

1 st year of apprenticeship	570.27
2 nd year of apprenticeship	764.62
3 rd year of apprenticeship	1,035.13
4 th year of apprenticeship	1,399.65
Skilled workers with final apprenticeship examination	1,988.10
Workers without specific training (unskilled workers)	1,688.71

PETROLEUM INDUSTRY (monthly wages in EUR) as of 1 February 2013

1 st year of apprenticeship	693.33
2 nd year of apprenticeship	924.43
3 rd year of apprenticeship	1,155.50
4 th year of apprenticeship	1,425.35
Skilled workers with final apprenticeship examination	2,095.90
Workers employed on simple tasks (unskilled workers)	1,735.04

CONSTRUCTION INDUSTRY AND BUILDING TRADE (*Bauhauptgewerbe*)
as of 1 May 2013 (monthly wages)

1 st year of apprenticeship	874.62
2 nd year of apprenticeship	1,310.24
3 rd year of apprenticeship	1,747.55
4 th year of apprenticeship, if learning two trades	1,966.20
Apprentices commencing apprenticeship after reaching the age of 18	1,747.55

Skilled workers employed in the trade learned	2,184.86
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Building labourers	1,859.42
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FERROUS AND OTHER METALLURGY AND METAL-WORKING INDUSTRY
as of 1 November 2013 (monthly wages)

1 st year of apprenticeship	570.27
2 nd year of apprenticeship	764.62
3 rd year of apprenticeship	1,035.13
4 th year of apprenticeship	1,399.65

Skilled workers with final apprenticeship examination	1,988.10
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Workers without specific training (unskilled workers)	1,688.71
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IRON AND METAL PROCESSING TRADE

Plumbers and heating fitters

as of 1 January 2013 (monthly wages, excluding board and lodging for apprentices)

1 st year of apprenticeship	534.44
2 nd year of apprenticeship	716.64
3 rd year of apprenticeship	964.22
4 th year of apprenticeship	1,295.35

Skilled workers with final apprenticeship examination	1,918.77
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Workers without specific training (unskilled workers)	1,620.37
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WOODWORKING TRADE as of 1 May 2013 (monthly wages)
(excluding board and lodging for apprentices)

1 st year of apprenticeship	539.35	Apprentices who commence their training after reaching the age of 20 or who continue their training after compulsory military service receive the rates of apprenticeship pay of the 3 rd year until the end of their 3 rd year of apprenticeship.
2 nd year of apprenticeship	685.88	
3 rd year of apprenticeship	812.64	
4 th year of apprenticeship	919.94	

Skilled workers with final apprenticeship examination in the first year after apprenticeship	1,577.85
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Unskilled workers	1,422.75
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SAWMILL INDUSTRY as of 1 June 2013 (monthly wages, excluding board and lodging for apprentices)

1 st year of apprenticeship	648.81	Young workers up to the age of 17 receive 80% of the rate for their wage group.
2 nd year of apprenticeship	926.88	
3 rd year of apprenticeship	1,297.63	

Skilled workers with final apprenticeship examination	1,853.76
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Unskilled workers	1,618.70
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TEXTILE INDUSTRY as of 1 June 2013 (monthly wages)

4-year apprenticeship:

1 st year of apprenticeship	570.00
2 nd year of apprenticeship	706.00
3 rd year of apprenticeship	911.00
4 th year of apprenticeship	1,132.00

2-year apprenticeship:

1st year of apprenticeship	570.00
2nd year of apprenticeship	796.00

Skilled workers with or without final apprenticeship examination	1,395.32
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Unskilled workers	1,246.95
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GARMENT-MAKERS Dressmaking trade

(Bespoke tailoring and dressmaking; men's and women's ready-made clothing)
as of 1 January 2013 (monthly wages)

1 st year of apprenticeship	513.00
2 nd year of apprenticeship	634.00
3 rd year of apprenticeship	742.00

Skilled workers in the first year after apprenticeship	1,253.97
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Unskilled work	1,177.76
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PAPER AND PAPERBOARD PROCESSING INDUSTRY

as of 1 March 2013 (monthly wages)

1 st year of apprenticeship	458.42
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2 nd year of apprenticeship	645.17
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3 rd year of apprenticeship	939.22
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4 th year of apprenticeship (two trades)	1,175.03
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Skilled workers with completed apprenticeship in the first year of work, varying according to branch	1,607.07 to 1,976.82
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Unskilled workers	1,470.77
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CHEMICAL INDUSTRY as of 1 May 2013 (monthly wages)

1 st year of apprenticeship	831.50
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2 nd year of apprenticeship	1,039.50
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3 rd year of apprenticeship	1,248.00
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4 th year of apprenticeship	1,455.00
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Workers with completed apprenticeship and up to one year's service in the enterprise	2,078.52
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Semi-skilled worker up to 6 months of service	1,783.84
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Unskilled workers	1,712.54
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FOOD, BEVERAGES AND TOBACCO TRADE – Bakers

as of 1 October 2013 (monthly wages, excluding board and lodging)

1 st year of apprenticeship	442.53
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2 nd year of apprenticeship	567.43
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3 rd year of apprenticeship	807.17
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4 th year of apprenticeship (two trades)	884.51
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Workers after completing apprenticeship in the retention period	1,259.64
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Unskilled workers)	1,350.71
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FOOD, BEVERAGES AND TOBACCO TRADE – Butchers
as of 1 July 2013 (monthly wages)

1 st year of apprenticeship	618.16 – 628.09
2 nd year of apprenticeship	795.95 – 807.52
3 rd year of apprenticeship	1,060.59 – 1,080.54

Skilled workers with completed apprenticeship in the first year	1,583.78 – 1,604.24
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Semi-skilled workers	1,598.79 – 1,619.13
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Unskilled workers	1,537.17 – 1,555.12
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BRICK-MAKING AND PREFABRICATED PRODUCTS INDUSTRY (applicable to all *Laender*)
as of 1 May 2013 (monthly wages)

1 st year of apprenticeship	788.85
2 nd year of apprenticeship	1,183.27
3 rd year of apprenticeship	1,577.69
4 th year of apprenticeship	1,774.91

Workers with completed apprenticeship	1,972.12
Semi-skilled workers	1,710.39
Unskilled worker	1,650.38

Minimum wages in Agriculture and Forestry

**Forestry workers in the private sector (all
Laender except Tyrol and Vorarlberg)**

Valid as of 1 January 2014

Category	Monthly wages in EUR
1 st year of apprenticeship	1,031.14
2 nd year of apprenticeship	1,256.43
3 rd year of apprenticeship	1,458.18
Vacation worker	1,145.51
Unskilled worker	1,535.44
Semi-skilled forestry worker	1,623.82

Skilled horticultural worker with examination	1,665.41
Foreman/Forewoman without skilled horticultural worker's examination	1,675.81
Foreman/Forewoman with skilled horticultural worker's examination	1,726.07
Foreman/Forewoman without skilled forestry worker's examination; skilled forestry worker with examination; forestry workers performing craftspeople's jobs, for the duration of such employment and truck and tractor driver and mechanics	1,852.58
Foreman/Forewoman with skilled forestry worker's examination and skilled craftspeople, e.g. bricklayers, mechanics tec.	1,906.32
Master foresters	1,965.22

Farming operations in Lower Austria

Valid as of 1 June 2013

Category	Monthly wages in EUR
1 st year of apprenticeship	575.80
2 nd year of apprenticeship	804.20
3 rd year of apprenticeship	1,034.20
Skilled worker	1,495.70
Farm workers for house, estates, field and barn	1,320.80

Farming operations in Vorarlberg

Valid as of 1 January 2014

Category	Monthly wages in EUR	
	Farm workers	Alpine dairy
1 st year of apprenticeship	483.02	892.38
2 nd year of apprenticeship	547.53	1,158.33
3 rd year of apprenticeship	734.52	1,357.17
Skilled worker	1,549.22	2,873.26
Farm worker older than 18 years:	1,354.34	-
Farm workers younger than 18 years:	1,175.24	-

Market gardening operations in Vienna, Lower Austria and Burgenland

Valid as of 1 January 2014

Category	Monthly wage in EUR
1 st year of apprenticeship	467.00
2 nd year of apprenticeship	534.00
3 rd year of apprenticeship	724.00
Horticultural worker	1,171.00
Skilled workers from 3 rd year	1,456.00

Estate and non-farm operations

Monthly wages in EUR

Category	Burgenland	Carinthia	Lower AT	Upper AT	Salzburg	Styria
Valid as of:	01.03.2013	01.05.2013	01.03.2013	01.03.2013	01.01.2013	01.01.2013
Estate, field and horticultural workers older than 18 years	1,466.12 to 1,542.37	1,153.00	1,466.12 to 1,542.37	1,257.00	1,381.00	1,212.01
Day labourers	-	-	-	1,263.36 to 1,371.00	-	1,211.37

UPPER AUSTRIA:

Farming operations (valid as of 1 September 2013)

Farm workers, monthly: EUR 1,187.00

Seasonal workers, monthly: EUR 1,058.00

Apprenticeship pay during 1st apprenticeship year, monthly: EUR 570.00

Apprenticeship pay during 2nd apprenticeship year, monthly: EUR 650.00

Apprenticeship pay during 3rd apprenticeship year, monthly: EUR 730.00

Apprenticeship pay during 4th apprenticeship year (second trade, *Anschlusslehre*), monthly: EUR 1,030.00

Agricultural estates (valid as of 1 March 2013)

Permanent workers, monthly: EUR 1,257.00

Day or hourly labourers (hourly rate): EUR 7.29 to EUR 7.94

1st year apprentices, monthly: EUR 570.00

2nd year apprentices, monthly: EUR 650.00

3rd year apprentices, monthly: EUR 730.00

4th year apprentices (second trade, *Anschlusslehre*), monthly: EUR 1,030.00

Forestry (valid as of 1 January 2014)

Unskilled workers (time wage/hour): EUR 8.86

Vacation workers (time wage/hour): EUR 6.61
 1st year apprentices (time wage/hour): EUR 5.95
 2nd year apprentices (time wage/hour): EUR 7.25
 3rd year apprentices (time wage/hour): EUR 8.57

Market gardening operations (valid as of 1 March 2013)

Unskilled workers (hourly wage): EUR 6.76
 Seasonal workers (hourly wage): EUR 6.53
 1st year apprentices, monthly: EUR 520.00
 2nd year apprentices, monthly: EUR 585.00
 3rd year apprentices, monthly: EUR 710.00

TYROL:

Forestry workers (valid as of 1 March 2014)

	Apprentice	Unskilled/vacation	Unskilled
Younger than 16 years	6.45	6.45	6.97
From 16 to 18 years	7.31	7.41	7.95
Older than 18 years	8.86	9.06	9.64

	Journeymen	Skilled workers	Master foresters
	10.75	11.60	13.07
After 5 years	11.21	12.09	13.58
After 10 years	11.55	12.52	14.06

Farm workers (valid as of 1 January 20014)

	Apprentice	Young persons and unskilled workers	
1st year	802.00	Aged 15	1,393.00 bis 1,438.00
2nd year	880.00	Aged 16-17	1,493.00 bis 1,545.50
3rd year	1,004.00	Aged 18+	1,520.00 bis 1,611.00

	Master craftsmen	Skilled workers	Other
House and field	1,909.00	1,876.00	1,688.00 bis 1,730.00
Estate and field	2,087.00	2,062.00	1,784.00 bis 1,860.00
Milkers	2,339.00	2,280.00	1,986.00 bis 2,074.00
Overseers	2,500.00	2,441.00	2,112.00 bis 2,241.00

Horticulture (valid as of 1 March 2014)

Vacation workers	369.00
1st year apprentices	445.00
2nd year apprentices	526.00
3rd year apprentices	641.00

Horticultural workers	(hourly rate) 6.43 bis 7.68
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Horticultural journeymen/skilled workers	1st year:	8.26
	2nd year	8.87
	3rd year	9.51
Master gardeners		10.70
Head gardeners with master's certificate		11.65

Professional gamekeepers (valid as of 1 April 2014)

1st year	624.00
2nd year	837.50
1st year after qualification	1,592.00
2nd and 3rd year after qualification	1,547.00
4th and 5th year after qualification	1,702.50 to 1,768.00

Cheese-making operations (valid as of 1 January 2014)

1st year	481.00
2nd year	636.00
3rd year	866.00
Unskilled	1,828.00
Drivers	2,019.00
Journeymen	2,182.00
Master craftsmen	2,426.00

Cooperatives (valid as of 1 April 2014)

	Blue-collar workers	White-collar workers
1st year	541.00	494.00
2nd year	725.00	624.00
3rd year	974.00	895.00
4th year	1,306.00	923.00

VORARLBERG:Valid as of 1 January 2014Farming operations

Gross amounts EUR/month

Skilled agricultural workers or farm workers	1,549.22
Unskilled workers older than 18 years	1,354.34
Unskilled workers younger than 18 years	1,175.24
Apprentices	
1st year of apprenticeship	483.02
2nd year of apprenticeship	547.53
3rd year of apprenticeship	734.52

Forestry

Gross amounts EUR/hour

Skilled forestry workers with examination	11.00
Skilled forestry workers without examination	10.11
Unskilled workers older than 18 years and casual workers	8.24
Unskilled workers younger than 18 years	7.44
Apprentices	
1st year of apprenticeship	5.02
2nd year of apprenticeship	5.41
3rd year of apprenticeship	6.07

Market gardening operations

Gross amounts EUR/hour

Skilled horticultural workers in their 1st year	8.25
2nd and 3rd year	8.63
4th year after examination	9.38
Horticultural workers	6.84

Apprentices

Gross amounts EUR/month

1st apprenticeship year	530.41
2nd apprenticeship year	608.29
3rd apprenticeship year	809.22

Alpine dairy operations

Gross amounts EUR/month

Unskilled sub-dairymen	2,654.81
Unskilled workers	1,577.76
Apprentices	
1st year of apprenticeship	892.38
2nd year of apprenticeship	1,158.33
3rd year of apprenticeship	1,357.17

Paragraph 7 – Annual holiday with pay of young persons under 18

Questions 1, 2 and 3

For all workers falling under the Annual Leave Act (*Urlaubsgesetz*), Federal Law Gazette no. 390/1976 as amended, the minimum annual holiday is specified as 30 working days (35 calendar days for caretakers). Equivalent provisions apply to groups of workers such as construction workers, homeworkers, farm and forestry workers, and public-sector employers who do not fall under the Annual Leave Act (refer to the comments on Art. 2§3 for more details). No special regulations exist for young persons.

At the young person's request, the employer must agree to allow at least twelve working days of annual leave to be taken between 15 June and 15 September (Section 32 Para. 2 *KJBG*).

Paragraph 8 – Prohibition of night work for young persons under eighteen

Questions 1, 2 and 3

In respect of this paragraph the Government refers to its previous reports on the implementation of the 1961 Charter and notes that the relevant legislation remained unchanged during the reporting period.

Statistics

In **2012** there were **1,636 cases of violations of the specific provisions aimed at protecting young persons**; violations of the maximum working time accounted for 309 of the cases, while 29 concerned breaches of prohibitions and restrictions of employment. The remaining violations related to: duties to keep records (493); **breaks, rest periods, night rest, rest on Sundays and holidays, weekly time off (443)**; and evaluation (362).

In **2011** there were 1,461 cases of violations of the specific provisions aimed at protecting young persons; violations of the maximum working time accounted for 318 of the cases, while 24 concerned breaches of prohibitions and restrictions of employment. The remaining violations related to: duties to keep records (499); **breaks, rest periods, night rest, rest on Sundays and holidays, weekly time off (472)**; and evaluation (148).

In **2010** there were 1,207 cases of violations of the specific provisions aimed at protecting young persons; violations of the maximum working time accounted for 254 of the cases, while 36 concerned breaches of prohibitions and restrictions of employment. The remaining violations related to: duties to keep records (341); **and breaks, rest periods, night rest, rest on Sundays and holidays, weekly time off (576)**.

Efficiency of the KJBG inspections

The efficiency of the KJBG inspections is described by looking at the development of the total number of violations per investigation and the company-specific rate of violations (i.e. companies that were found to have committed violations compared to the total number of companies).

This results in the following data for the years from 2009 to 2013:

Year	Violations identified in the course of investigations (A)	Investigations (B)	Ratio A/B	Companies found to have committed violations in the course of inspections (C)	Companies inspected (D)	Company-specific rate of violations (C/D)
2009	983	3.529	27,85%	490	2.835	17,28%
2010	949	3.558	26,67%	460	2.841	16,19%
2011	691	2.684	25,75%	441	2.151	20,50%
2012	862	3.781	22,80%	562	3.174	17,71%
2013	886	3.108	28,51%	510	2.587	19,71%

Source: Central Labour Inspectorate

Paragraph 9 – Regular medical examination

Question 1

Equally applicable to young persons and to adult employees are the provisions specified in Chapter 5 “Health monitoring” of the Workers Protection Act (*ArbeitnehmerInnen-schutzgesetz, ASchG*), Federal Law Gazette no. 450/1994 as amended, and in the supplementary Ordinance on Health Monitoring at Work (*Verordnung über die Gesundheitsüberwachung am Arbeitsplatz, VGÜ*), issued by the Federal Minister of Labour and Social Affairs, Federal Law Gazette II no. 27/1997, as amended.

Section 3a *VGÜ* allows employees under the age of 21 years to be employed in mining only on condition that an initial medical examination takes place prior to starting work and follow-up examinations are carried out at one-year intervals where the individual continues to work at the job.

Initial and follow-up medical examinations (Section 49 *ASchG*), hearing examinations in cases of noise exposure (Section 50 *ASchG*) and other specialised examinations (Section 51 *ASchG*) are to be performed by specifically authorised physicians. The results of the examinations are to be recorded in a medical report. The reports as well as evaluations resulting from initial and follow-up medical examinations must be immediately forwarded to the medical services of the competent Labour Inspectorate. The Labour Inspectorate issues an administrative decision on the individual’s medical fitness. Where the decision ascertains that the person is not medically fit, the employee must no longer be deployed to perform the tasks listed in the administrative decision.

The Ordinance on Prohibitions and Restrictions of Employment for Young Persons (*Verordnung über Beschäftigungsverbote und Beschränkungen für Jugendliche, KJBG-VO*), Federal Law Gazette II no. 436/1998, prohibits the employment of young persons at certain businesses or types of work that are associated with particular health or moral hazards, or subjects such activities to conditions.

Section 3 Para. 3 *KJBG-VO* specifically prohibits female young persons from performing tasks involving exposure to:

- Lead, lead alloys and compounds
- Benzene
- Nitrobenzene and aminobenzene compounds, members of the benzene homologous series and its derivatives
- Carbon tetrachloride
- Tetrachloroethane
- Carbon disulfide.

The prohibition is on condition that exposure is of a magnitude as to require initial medical examinations and follow-up examinations as specified in the *VGÜ*, Federal Law Gazette II no. 27/1997.

Provisions specifying the medical examination to be performed on young persons are also contained in Section 7 of the Domestic Help and Domestic Employees Act (*Hausgehilfen- und Hausangestelltengesetzes, HGHAG*), Federal Law Gazette no. 235/1962 as amended. General rules on health monitoring that are comparable to those of the *ASchG* are specified in Sections 92 and 109a Paras. 4 and 5 of the Agricultural Labour Act 1984 (*Landarbeitsgesetz 1984, LAG*), Federal Law Gazette no. 287 as amended. The agricultural labour regulations of the *Laender* specify these general rules in more detail.

Pursuant to Section 56 *ASchG*, the initial and follow-up medical examinations are to be performed by specifically authorised physicians. The *VGÜ* gives exclusive responsibility for other specialised examinations as specified in Section 51 *ASchG* to physicians who meet the requirements for occupational physicians as set forth in Section 79 Para. 2 *ASchG*.

Annex 1 *VGÜ* specifies the intervals of examinations, while Annex 2 sets forth guidelines applying to examination procedures.

<http://www.ris.bka.gv.at/GeltendeFassung.wxe?Abfrage=Bundesnormen&Gesetzesnummer=10009034>

Question 2

The Ministry of Social Affairs is not aware of any problems related to health monitoring of young workers. Consequently, no specific measures are currently being taken in this area.

Question 3

	2011 Figures as at 11 March 2014			2012 Figures as at 11 March 2014		
Most frequent examinations	Young persons	Total of all workers examined	Percentage of young persons [%]	Young persons	Total of all workers examined	Percentage of young persons [%]
Noise*	1,373	13,027	10.5	1,398	12,198**	11.5
Welding fumes	154	7,739	2	139	7,575	1.8
Xylols	142	8,876	1.6	128	8,573	1.5
Isocyanates (excluding MDI)	109	5,035	2.2	99	5,091	1.9
Toluene	55	4,296	1.3	43	4,109	1
Silica dust	33	3,980	0.8	41	3,817	1.1

Nickel and nickel compounds	28	3,311	0.8	37	3,691	1
Chromium VI compounds	29	2,506	1.2	32	2,809	1.1
Manganese and manganese compounds	13	1,606	0.8	21	1,695	1.2
Aluminium	22	1,969	1.1	17	2,124	0.8

Source: Labour Inspectorate

Note: Investigation results continue to be collected even after the reporting date.

* All examinations are carried out in the form of initial or follow-up medical examinations; in the case of noise, however, it is not compulsory to report results of repeated examinations (follow-up examinations) to the Labour Inspectorate. In this way the methods for collecting data differ from those applied in the case of chemical agents.

** Figures from the 2012 Activity Report of the Labour Inspectorate.

A rather small percentage of young workers are exposed to effects harmful to health. Depending on the particular risk, the share varies between 1% and 2% of the workers examined. The only exception are examinations of noise effects, which affected between 10.5% and 11.5% of the workers examined in 2010 and 2011. These figures should be considered in comparison with the overall share of young workers, which represent roughly 5% of dependently employed workers.

Dependently employed workers	2010	2011
Total	3,532,900	3,574,300
15 to 19 year olds	177,400	175,900
%	5%	4.9%

Source: Statistics Austria Micro Census 2010 and 2011

Relative to the share the dependently employed young persons account for, investigations of chemical agents are performed far less frequently among this group. The underlying reason is the prohibitions and restrictions of employment for young persons (refer to Question 1).

Paragraph 10 – Special protection against physical and moral dangers

Question 1

Protection against sexual exploitation

Reference is made to previous reports on the implementation of the 1961 Charter, in particular the 28th and the 22nd report.

The main developments in the reporting period from 1 January 2010 to 31 December 2013:

The Sexual Offence Amendment Act 2013 (*Sexualstrafrechtsänderungsgesetz 2013*), Federal Law Gazette I no. 116/2013, resulted in sweeping changes that serve to implement international legislation, including: Directive 2011/93/EU on combating the sexual abuse and sexual exploitation of children and child pornography, and replacing Council Framework Decision 2004/68/JHA; Directive 2011/36/EU on preventing and combating trafficking in

human beings and protecting its victims, and replacing Council Framework Decision 2002/629/JHA; the recommendations of the Council of Europe's GRETA Group of Experts concerning implementation of the Council of Europe Convention on Action against Trafficking in Human Beings; and the Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography, which is monitored by the UN Committee on the Rights of the Child.

Examples include the offences of serious sexual abuse of minors under 14 years (Section 206 of the Penal Code, *Strafgesetzbuch, StGB*) and of sexual abuse of minors (Section 207 *StGB*), which were supplemented with a clause that provides for a punishment of between five and 15 years imprisonment in cases where as a result of the offence the victim is subjected to agonising circumstances or to unusual humiliation for an extended period.

The age of legal protection specified in Section 207b Para. 2 *StGB* (sexual abuse of young persons) was raised from the previous 16 years to 18 years.

Section 208 Para. 2 *StGB* (moral endangerment of persons under the age of 16 years) specifies a term of imprisonment of up to one year for anyone who, with the intent of arousing or satisfying oneself or a third party sexually, incites a minor to witness a sexual act. A term of imprisonment of up to two years is specified for anyone who, with the intent of arousing or satisfying oneself or a third party sexually, incites a minor under 14 years to witness rape, sexual coercion or sexual abuse (Section 208 Para. 3 *StGB*).

To the end of implementing the Council of Europe Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse, Federal Law Gazette 130/2011 amended Section 208a *StGB* to include a penal provision against what is commonly known as "grooming", i.e. establishing sexual contacts with minors (in force since 1 January 2012). The amendment specifically provides for imprisonment of up to two years in cases where, with the intent of committing against a minor under 14 years any of the sexual offences enumerated in Sections 201 to 207a Para. 1 no. 1 *StGB* (rape, sexual coercion, sexual abuse of minors under 14 years and young persons, pornographic representation of minors pursuant to Section 207a Para. 1 no. 1 *StGB*), the offender proposes or agrees on a personal meeting through the use of telecommunications or another means of misrepresenting his or her intentions and takes concrete action in preparation. That offence was supplemented by the Sexual Offence Amendment Act 2013 to include punishable acts as specified in Section 207a Paras. 3 and 3a (possession, procurement of or consciously accessing pornographic representations of minors on the internet), for which cases imprisonment of up to one year is specified.

A new paragraph (2a) was also added to Section 215a *StGB*, which specifies imprisonment of up to one year in cases where an individual consciously views a pornographic performance in which minors aged 14 years and older play a role. The maximum punishment for cases in which minors under the age of 14 years play a role was increased to a maximum of two years imprisonment. The Sexual Offence Amendment Act 2013 has increased the penalties for promoting prostitution and pornographic performances of minors: from the previous maximum of three years imprisonment to between six months and five years for the basic offence, and from the former penalty of six months to five years to between one and ten years when committed under aggravated circumstances.

The scope of the employment prohibition set forth in Section 220b *StGB* has been widened to now include, in addition to jobs related to the teaching, education or supervision of

minors, other occupations entailing close contact with minors.

The changes introduced through the Sexual Offence Amendment Act entered into legal effect as of 1 August 2013.

As a result of the Sexual Offence Amendment Act 2013 (Federal Law Gazette no. 116/2013), which entered into force on 1 January 2014, Section 66 Para. 2 of the Code of Criminal Procedure (*Strafprozessordnung, StPO*) was modified to ensure that victims under the age of 14 years whose sexual integrity may have been injured are unconditionally provided with psychosocial assistance during court proceedings.

A separate unit for reporting suspected cases of child pornography and sex tourism involving children has been established at the Federal Criminal Police Office. As in previous years, one of the focus activities of the unit during the period under review was to broaden the network of contacts with other similar units within organisations in the other EU Member States and with Interpol and Europol.

Protection from domestic violence

As of 1 September 2013 the scope of protection provided to minors under the age of 14 years, as defined in Section 38a of the Security Police Act (*Sicherheitspolizeigesetz, SPG*), was broadened, expanding the prohibition to return order (*Betretungsverbot*) to cover schools and childcare institutions and authorising Austrian security authorities to inform the administration of the school or childcare institution that a prohibition to return order is in effect. The bodies of public security services are also obligated to immediately inform the private organisations responsible for children's and youth assistance when a prohibition to return order is imposed.

One of the goals of the Federal Children's and Youth Assistance Act 2013 (*Bundes-Kinder- und Jugendhilfegesetz 2013, B-KJHG*), which entered into force on 1 May 2013, is to better protect children and young persons from violence. This fundamental federal statute enshrines in law for the first time ever the procedures for assessing risk and planning assistance. Where objective suspicion of endangerment of children or young persons exists, children's and youth assistance organisations have the duty to assess as soon as possible the risk of endangerment. To this end the children's and youth assistance organisation is required to investigate the facts of the case in detail and to obtain background information that may be considered useful depending on the circumstances. Interviews with the affected children and young persons and with their parents and caregivers play an especially significant role here. Particularly in the case of young children, examinations by a paediatrician and visits to the home are frequently required. On completion of the investigations, at least two qualified professionals collaborate in the decision as to whether a risk exists. Following the risk assessment process, the organisation is required, jointly with the affected children and young persons and their families, to draw up an assistance plan. The plan is to entail defining objectives, such as strict compliance with the principle of non-violent parenting, or resolving relationship conflicts or addiction problems. Support measures to parents, which may include counselling, therapy or institutional care, are agreed in order to meet the objectives. Verification takes place in regular intervals to ascertain whether the objectives are in fact being achieved, or whether further measures may be required.

International penal law

To improve the protection provided to children against sexual exploitation, particularly in countries not having legal instruments equal to the task of combating related offences, the Austrian Penal Code provisions pertaining to international penal law were supplemented through the Penal Code Amendment Act 1996 (*Strafrechtsänderungsgesetz 1996*; in effect since 1 March 1997) to include the items listed in the following: Sexual offences against minors under 14 years (Sections 206 and 207 *StGB*), including in particular the criminal offence of child pornography (Section 207a *StGB*), that are committed in another country can be prosecuted under Austrian law and before an Austrian court, irrespective of the laws valid where the offence occurred, i.e. specifically where the offence is not punishable in the country of occurrence. The same applies to the offences of trafficking in human beings (Section 104a *StGB*), sexual abuse of young persons (207b *StGB*) and the promotion of prostitution and pornographic performances of minors (Section 215a *StGB*). The aforementioned applies on condition that the offender or the victim is an Austrian citizen or is lawfully resident in Austria, or the offence infringed other Austrian interests, or the offender was a non-Austrian citizen when the offence occurred and is a resident of Austria and cannot be extradited (Section 64 Para. 1 no. 4a *StGB*).

Protection against other forms of exploitation

The Sexual Offence Amendment Act 2013 supplemented Section 104a Para. 3 *StGB*, which lists the types of exploitation and now includes: sexual exploitation, exploitation through removal of organs, exploitation of labour, exploitation through forced begging and exploitation through forced commitment of punishable acts.

Trafficking of children

Section 104a *StGB* (trafficking of humans) specifies a prison sentence of up to five years for anyone who, with the intent of allowing the exploitation of a person of full age, uses unfair means against that person and solicits that person, gives the person accommodation or otherwise harbours the person, transports the person, or offers or passes the person on to another party. Only in the case of persons of full age is the use of unfair means the condition for the act to be punishable. The potential sentence increases if the offence was committed against a minor (imprisonment from one to ten years).

With regard to extra-territorial jurisdiction, Section 64 Para. 1 no. 4a *StGB* specifies that, irrespective of the criminal laws valid in the place of occurrence, Austrian criminal law also applies to the criminal offence of trafficking in humans. The offence is punishable in Austria on condition that either the offender or the victim is an Austrian citizen or is lawfully resident in Austria, or the offence infringed other Austrian interests, or the offender was a non-Austrian citizen when the offence occurred and is a resident of Austria and cannot be extradited.

In reply to the Committee's questions concerning the ECPAT priority actions required the following information is provided:

Section 104a of the Criminal Code (CC) on trafficking in human beings was amended by the Criminal Law Amendment Act 2013. The changes are:

- a more comprehensive enumeration of forms of exploitation (including now explicitly begging and criminal activities);

- an increase of the penalties for the basic offence in Section 104a para. 1 CC from up to three years of imprisonment to between six month and five years of imprisonment;
- an increase of the penalties for trafficking children between the age of 14 and 18 years from up to three years to one to ten years (Section 104a para. 5 CC);

Section 104a CC reads now as follows:

“Trafficking in human beings Sec 104a.

(1) A person who recruits, harbours, otherwise receives, transports or offers or transfers to another person an adult using dishonest means (para. 2) against this person with the deliberate intention of the person's exploitation (para. 3), is to be punished with a prison sentence of a minimum of six months up to five years.

(2) Dishonest means are the use of force or severe threats, the deception about facts, abuse of authority, a position of vulnerability, insanity or of defencelessness, intimidation and the receiving or giving of benefits for handing over control over the person.

(3) Exploitation includes sexual exploitation, exploitation through organ transplantation, labour exploitation, exploitation of begging and the exploitation to commit criminal activities.

(4) A person who commits the criminal act in the context of a criminal association, under the use of severe violence or in such a way that the life of the person is severely endangered deliberately or by gross negligence or in such a way that particularly serious harm is caused to the person, is to be punished with a prison sentence of a minimum of one year up to ten years.

(5) With a prison sentence of a minimum of one year up to ten years is also to be punished who recruits, harbours, or otherwise receives, transports or offers or transfers to another person a person under age [under the age of 18 years] with the deliberate intention of the person's exploitation.”

Der Nationale Aktionsplan zur Bekämpfung des Menschenhandels, inkl. des Kinderhandels, basiert auf einem umfassenden Ansatz, der alle Aspekte der sogenannten vier „Ps“ (Prevention, Protection, Prosecution, Partnership) beinhaltet. EPACK Österreich ist Mitglied der Task Force Menschenhandel, des österreichischen Koordinationsmechanismus, in welchem die nationalen Aktionspläne ausgearbeitet und deren Umsetzung überwacht werden, und der Arbeitsgruppe Kinderhandel.

The National Action Plan on combating human trafficking, including child trafficking, is based on the on the comprehensive approach which comprises all aspects of the so called four “Ps” (Prevention, Protection, Prosecution, Partnership). ECPAT Austria is a member of the Task Force on Combating Human Trafficking and in the Working Group on Child Trafficking. The Task Force is the Austrian coordination mechanism in this field. It elaborates National Action Plans and supervises their implementation.

In reply to the Committee’s questions concerning the GRETA observations the following information is provided:

The current National Action Plan has taken into consideration the GRETA recommendations. Training activities on the subject of trafficking of children were stepped up; numerous workshops were held during the period under review within the framework of basic and advanced training of police officers as well as for members of the Austrian Armed Forces to

prepare soldiers for tours of duty in other countries. The workshops were held in cooperation with ECPAT. The working group on the trafficking of children, under the Task Force on Human Trafficking, has published a booklet entitled “Trafficking of children in Austria. Background information and check list for youth welfare workers, police, immigration authorities, embassies and consulates, and justice officers to help identify victims of child trafficking”, which has gone through a number of editions (the most recent in 2013) and is made available to and used in training with the intended audience. A hotline for missing children (116 000) was established throughout the EU in 2013 and, to publicise it, information sheets were posted at locations suitable for reaching the target group. With the aim of facilitating the identification of victims of child trafficking among under-age asylum seekers, regular consultations have been set up with the recently founded Federal Office for Immigration and Asylum, with the subject of trafficking of humans taken into the training curriculum of that body’s staff.

The Federal Ministry of the Interior (BM.I) has additionally drawn attention to the current National Action Plan for Combating Trafficking in Humans for the period of 2012 to 2014, which, as in previous years, reflects the recommendations by the UN Human Rights Council (e.g. with respect to the UPR) and by the Council of Europe’s Group of Experts (GRETA). In this context the BM.I focuses on coordination, prevention, victim protection and international cooperation.

Activities related to prevention are committed to the goal of heightened sensitivity to the issue of human trafficking on the part of officers working in this area. Special attention is devoted to identifying suspected victims of human trafficking.

The subject of trafficking in humans receives in-depth treatment, both in the basic training of Austrian police officers as well as in advanced training for higher command levels (police chiefs and senior command).

A total of seven training units were held on child trafficking as part of basic police training between March and May 2013. The workshops were held jointly by ECPAT and family and parenting support organisations (as specified by the Federal Children’s and Youth Assistance Act 2013, Bundes-Kinder- und Jugendhilfegesetz 2013, B-KJHG) and the Federal Criminal Police Office (Bundeskriminalamt). In the first quarter of 2013, following a preparatory workshop at the Vienna Hernalser Gürtel police detention centre, staff members of detention centres took part in a module on the topic of “Human trafficking – an issue at detention centres”, which was offered by representatives of the Federal Chancellery, the non-government organisation LEFÖ-IBF and the BM.I.

Reference is additionally made to the NAP on Protection of Women Against Violence. By drawing up this NAP, Austria has complied with a recommendation made in the context of the CEDAW country review and with the Council’s conclusions of December 2012 related to combating violence against women, as well as with a long-standing demand on this subject raised by NGOs.

A specialist department for the protection of Victims at Highest Risk (VHR), with nationwide competence, was installed at the Federal Criminal Police Office in June 2010. The groups targeted by the measure include victims of human trafficking. The protection of victims at highest risk, and of any members of their families who might also be at risk, specifically involves implementing protection programmes or individual protection measures, and collaboration with authorities, government offices, public and private institutions for the

protection and support of victims and with similar organisations, the latter additionally as part of cooperation and administrative assistance at the European and international levels.

Protection against the misuse of information technologies

Within the context of the Convention on the Rights of the Child (CRC), the Coordination Body for the Protection of Children Against Sexual Abuse has been established at the Federal Ministry of Family and Youth (BMFJ); representatives of the relevant ministries, the *Laender*, the internet sector and of NGOs participate in this body. The Coordination Body has the remit to ensure that implementation of the international obligation arising from the CRC is coordinated and evaluated on a continued basis.

Concerning the issues of the sale of children, child prostitution and child pornography (refer to the Optional Protocol to the CRC), the BMFJ also set up, in 2009, a working group involving the relevant ministries, the *Laender*, the internet sector and NGOs, which discusses ways of improving the protection of children against sexual exploitation by means of new information technologies.

As mentioned above, comprehensive provisions covering pornographic representations of minors are in force; in implementing the Council of Europe Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse, a criminal offence was recently introduced that makes contacting children for sexual purposes (“grooming”) liable to prosecution.

Establishment of Media Youth Info

Alongside the legal framework and measures, including their enforcement and implementation, an important role in protecting children from all forms of exploitation and abuse related to information technologies is played by measures to strengthen media competence on the part of children and youth. In particular the risks posed by cyber-mobbing, grooming, sexting, sex scams or confrontation with content such as pornography which is harmful to youth can be mitigated considerably or avoided completely through competent user behaviours on the part of children and youth, and where those responsible for parenting have the corresponding media and parenting competences. As a consequence, Media Youth Info (Medien-Jugend-Info) was established at the Ministry of Youth in 2011, alongside the ongoing cooperative effort with saferinternet.at, the Austrian partner of the EU’s Safer Internet Programme.

The goal and mission of Media Youth Info is to impart and promote media competence across the entire spectrum and in this way encourage safe habits in using new technologies as well as build awareness of the risks and opportunities entailed in active media use. To achieve this goal, Media Youth Info develops together with outside partners ideas and plans for new workshops and courses in media education as well as publications, and directly provides these products, and also supports third parties in using the plans in the *Laender*, in this way enabling such offerings throughout Austria. The target group of Media Youth Info and its services includes young people as well as parents, teachers and other multipliers.

Liability of service providers

Section 3 no. 2 of the E-Commerce Act (*E-Commerce-Gesetz*) defines service providers as natural persons or legal entities or other legal subjects that provide a service of the information society (Section 3 no. 1). That includes all types of providers and search engine operators as well as operators of websites, forums, guest books or archives.

Therefore, where punishable acts are committed on the service platforms service providers operate, service providers are involved parties firstly in the sense of penal law.

The E-Commerce Act specifies liability exemptions in Sections 13 to 17, which pursuant to Section 19 Para. 2 also apply to non-payable services. The latter provisions apply with respect to both civil law and penal law. Section 18 sets forth the diligence requirements applying to such service providers; according to this section, they are not obliged to monitor in general the information they store, transfer or make available or to investigate on their own initiative any circumstances indicating illegal activity.

However, exemption from liability extends only as long as the service provider is not aware of the dubious content. The service provider must act immediately on receiving any indication and can under certain circumstances be held partially responsible for failing to do so.

<http://www.ris.bka.gv.at/GeltendeFassung.wxe?Abfrage=Bundesnormen&Gesetzesnummer=20001703>

Code of conduct

The “General Rules on the Liability and Information Obligation of the Internet Service Providers”, which is the code of conduct adopted in 2002 by the Association of Austrian Internet Service Providers (ISPA), is currently undergoing revision. Through their voluntary commitment to the Rules, the ISPs contribute to legal certainty and thus towards advancing the information society.

Questions 2 and 3

Trafficking of children

Within the framework of the Task Force on Human Trafficking (established through the resolution adopted by the Council of Ministers on 9 November 2004) the ministry responsible for family affairs (currently the Federal Ministry of Family and Youth, BMFJ) conducts a working group on the trafficking of children (established in 2007). The working group is composed of experts from various ministries (foreign affairs, interior, justice, family), the Austrian *Laender* governments, from international organisations (Unicef, IOM) and non-governmental organisations (ECPAT Austria, LEFÖ/IBF), and other groups.

The working group has published a booklet entitled “Trafficking of children in Austria. Background information and check list for youth welfare workers, police, immigration authorities, embassies and consulates, and justice officers to help identify victims of child trafficking”, which has gone through a number of editions (the most recent in 2013). A hotline for missing children (116 000) was established throughout the EU in 2013 and information sheets were posted to publicise it. A proposal for a “national referral mechanism” is currently being discussed.

As stated in the 2012 report of the working group on child trafficking, unaccompanied minors without a regular residence, who had been used by others for criminal purposes and incited to carry out crimes (mostly theft, but prostitution as well) in most cases in greater Vienna, were detained by the police. With a well-functioning basis of cooperation between the Federal Criminal Police Office and the Vienna Children’s and Youth Assistance Office on the one hand and authorities in the most prominent countries of origin – Romania and Bulgaria – on the other, there has been a striking drop in the number of cases handled by

Drehscheibe, an institution of the City of Vienna established to care for unaccompanied minors from other countries.

A total of 79 cases involving minors were investigated with respect to potential child trafficking in the period of 2010 to 2012, broken down as follows:

2010: 55

2011: 15

2012: 9

In Vienna, the Vienna Youth and Family Offices (MAG ELF) are involved in various programmes for the protection of under-age victims of sexual exploitation (Coordination Group on Sexual Exploitation, Task Force on Human Trafficking). The aim of these programmes is to heighten the sensitivity for this issue among staff at children's and youth assistance institutions, in this way allowing such professionals to identify victims at an early stage and offer them adequate protection. Victims receive help within the framework of various programmes offered by children's and youth assistance institutions, including, for example, psychotherapy for coping with trauma. MAG ELF also maintains the *Drehscheibe* crisis centre, a specialised institution for victims of child trafficking and sexual exploitation. *Drehscheibe* follows a cross-border model of cooperation (primarily with Romania and Bulgaria), pursuing aims that include arranging a return trip home in accordance with children's needs. Another goal of this model of cooperation is to ensure appropriate care for the children in their countries of origin after they have returned.

According to the 2012 report of the working group on child trafficking, Carinthia has up to now been confronted with potential victims of trafficking mostly in cases involving cross-border adoption. In Lower Austria, potential victims of child trafficking are suspected particularly among individuals at the initial reception centre (EAST) and care centre at Traiskirchen. Grounds for suspicion also emerge in Tyrol in cases of unaccompanied under-age aliens, in particular from Maghreb countries.

The report of the working group was submitted to the Austrian Council of Ministers and published (also in English) at www.kinderrechte.gv.at.

The third National Action Plan for Combating Trafficking in Humans, for the period of 2012 to 2014, was adopted by the Austrian federal government on 20 March 2012. The national action plans are based on a widely inclusive approach that takes in coordination, prevention, protection for victims, and criminal prosecution at the national level, as well as cross-border cooperation. Numerous activities concern child trafficking.

Domestic violence

The Ministry of Family and Youth actively opposes violence and supports a large number of projects in the interests of preventing violence and providing aid to victims. In the Platform Against Domestic Violence, existing since 1993, 45 recognised counselling institutions jointly work towards preventing violence. The institutions are specialised in fields such as violence against children, violence against women, violence against and among young persons, violence against the elderly, and gender-specific work with boys and men.

The roughly 400 family counselling centres supported by the Ministry of Family and Youth offer specialised counselling for a variety of problem situations, including support in cases of domestic violence.

As part of support for family counselling centres, child protection centres throughout Austria are provided with funding to additionally enable counselling specifically targeted at members of families with children affected by violence. In Vienna there are also centres providing specific counselling for girls in cases of sexual abuse; and, finally, funding is provided to counselling centres for men.

Building on a model project successfully conducted between 1998 and 2000, since 2000 a system for providing psychosocial and legal assistance in court is being installed in stages throughout Austria. This additional programme for victims of (domestic) violence is designed to protect such persons from any subsequent harm and secondary trauma as a result of reporting the offence and of proceedings in court. Court assistance is provided in accordance with standards defined by an inter-ministerial working group. To ensure consistent quality, a series of workshops for counsellors providing psychosocial and legal court assistance has been initiated nationwide, along with structures serving as the basis for regional cooperation.

Psychosocial and legal assistance in court proceedings is integrated with Austria's previously existing system of victim aid, encompassing: support from family counselling and crisis intervention centres, targeted measures by youth welfare institutions, barring orders and prohibition to return orders as enforced by police based on the Protection Against Violence Act (*Gewaltschutzgesetz*), interim injunctions handed down by the civil courts, and psychotherapy aimed at working through the experience of violence, which in some cases receives funding based on the Victims of Crime Act (*Verbrechensopfergesetz, VOG*). The Federal Ministry of Justice commissioned 46 institutions with providing psychosocial and legal court assistance in 2013. In that year 6,866 victims received court assistance services at no expense. 1,582 victims were minors. The expenditure of the Federal Ministry of Justice for court assistance was roughly EUR 5.3 million in 2013. Care measures for minors account for EUR 1.7 million of that figure. Numerous scientific studies have shown that working with perpetrators of violence decreases recidivism, thus preventing further violent acts. Work with perpetrators is increasingly being recognised as playing an important role in the protection of victims.

The ministry in charge of family affairs (BMWFJ) provides information on sexual education (the booklet "Love, Sex, etc.", in German) and the booklet "(Not) A Safe Place. Sexual Violence Against Children" (in German; fifth edition in 2010). The latter seeks to help potential victims and others who are professionally or otherwise confronted with the issue (e.g. teachers, youth group leaders and similar persons) to respond properly to any evidence leading to suspicions.

Guidelines for the health care professions have been developed to help general practitioners, gynaecologists, paediatricians and hospital staff recognise violence against children and women, and to enhance the skills of these professionals in dealing with victims of domestic violence.

The study entitled "Families – no room for violence! (?) – 20 years of prohibition of violence by Austrian law" (2009) was commissioned by the BMFJ to survey Austrian mothers and fathers on their parenting attitudes and behaviours, thereby improving available data. The 2011 study on the prevalence of violence investigated in detail the extent to which girls, boys, women and men are confronted with various forms of violence.

<http://www.bmfi.gv.at/familie/gewalt/forschung/untersuchung-20Jahre-gesetzliches-gewaltverbot.html>

<http://www.bmfi.gv.at/familie/gewalt/forschung/enquete-studie-gewaltpr-valenz.html>

Convictions

The figures given below were derived from the criminal court statistics compiled annually by Statistics Austria based on an excerpt from the register of criminal records.¹ Until the end of 2011, in cases involving convictions for more than one offence the criminal court statistics listed a conviction only with the offence receiving the highest penalty. Consequently, each conviction in the criminal court statistics was counted only once, regardless of the number of individual offences leading to one conviction. In other words, until the end of 2011 the criminal court statistics only provided information on the number of times a person was convicted, and not about how many and which offences led to that conviction or whether one person was convicted more than once.

The electronic criminal record project was implemented in 2011, putting the criminal court statistics compiled by Statistics Austria on a new footing and enabling the criminal records office for the first time to provide Statistics Austria with better quality data for the 2012 statistical year. The courts now report to the criminal records office the provision of law that was cited to determine the penalty and was thus decisive for the court in setting the severity of the sentence. In addition, each and every offence committed is listed separately, so that the items of information for the individual convictions include not only the provision cited to determine the penalty but the specific offences leading to a conviction as well.

In 2012, convictions for which (serious) sexual abuse of minors under 14 years (Sections 206 and 207 of the Penal Code (*Strafgesetzbuch, StGB*)) was the offence cited to determine the penalty decreased from the previous year. 129 persons were convicted primarily of sexual abuse of minors under 14 years in 2012, which represents the lowest figure in the last ten years and is far below average (158.7 convictions). The figures covering, for the first time in 2012, all offences leading to the convictions reveal that the number of convictions for committing sexual abuse of minors under 14 years is, at 225, much higher. Since it was first possible in the 2012 statistical year to list each and every offence leading to a conviction, the resulting statistics cannot be compared with those from the previous years. These figures are presented side by side in the table below.

Comparable figures are not yet available for 2013.

Convictions due to offences against sexual integrity

	2008	2009	2010	2011	2012	
Rape, Section 201 StGB	86	113	116	96	86*	201**
Sexual coercion, Section 202 StGB	21	20	30	28	46*	61**
Sexual abuse of an unprotected/impaired person, Section 205 StGB	13	20	24	25	20*	24**
Serious sexual abuse of minors under 14 years, Section 206 StGB	75	79	93	92	85*	110**
Sexual abuse of a minors under 14 years,	75	54	60	61	44*	115**

¹ Refer to www.statistik.gv.at.

Section 207 <i>StGB</i>						
Pornographic representations of minors, Section 207a <i>StGB</i>	205	179	208	167	252*	495**
Sexual abuse of young persons, Section 207b <i>StGB</i>	9	11	7	4	7*	10**
Sexual harassment and sexual acts in public, Section 218 <i>StGB</i>	87	69	69	87	70*	100**
Other	60	63	41	45	55*	167**

* Determinative for the penalty

** All



verurteilungen_nach
_delikten_seit_1975_

Neither from the number of convictions nor from the number of crimes can any conclusion be drawn concerning the number of criminal acts committed that led to the convictions. If for example an individual is convicted of five burglaries, that person still only committed one offence, namely theft by breaking and entering as specified in Section 129 *StGB*. In legal terms, an offence refers to the act committed by the accused which satisfies the elements of the crime as described in provisions of law. Therefore, the five criminal acts mentioned in the example are counted for statistical purposes as one offence. Where, however, the burglar steals cash as well as a bank card and a personal identity document, in addition to the crime of burglary that person has committed the offence of misappropriation of a non-cash payment instrument as specified in Section 241e *StGB* and the offence of suppression of documents pursuant to Section 229 *StGB*, so that the elements of three offences have been satisfied through one criminal act. The number of criminal acts committed can therefore differ widely from the number of crimes for which the elements are satisfied.

ARTICLE 8 – Right of employed women to protection of maternity

Paragraph 1 – Maternity leave

In respect of this paragraph the Government refers to its previous reports on the implementation of the 1961 Charter (28th and 22nd and earlier reports) and notes that the relevant legislation remained unchanged during the reporting period.

English version of the Maternity Protection Act:



Comparable regulations exist for public employees of the *Laender* and for the agricultural and forestry sector through sections 96a to 108 of the Agricultural Labour Act (*Landarbeitsgesetz, LAG*).

Paragraph 2 – Illegality of dismissal during maternity leave

Note: Austria has not ratified §2 as amended by the 1996 Revised Charter and is still bound by Article 8§2 of the 1961 Charter.

Questions 1, 2 and 3

In respect of this paragraph the Government refers to its previous reports on the implementation of the 1961 Charter and notes that the relevant legislation remained unchanged during the reporting period.

In reply to the Committee's questions concerning examples of case law where domestic courts using the different reasons foreseen in the Maternity Protection Act (MSchG, Section 12 Paras. 2 and 3) have granted or denied the employer the right to dismiss an employee on maternity leave, the following information is provided:

With regard to reasons for dismissal pursuant to Section 12 Para. 2 no. 1 MschG

Culpable breach of duty

If a pregnant employee is often late for work, finishes her work already half an hour before the end of official working hours and makes private phone calls despite previous warnings, a dismissal is not justified unless it is gaining increasing importance for the employer due to special circumstances so that he or she cannot be expected to continue the employment relationship (Vienna Regional Court (*Landesgericht Wien*), 23 September 1971, 44 Cg 110/71).

The dismissal of a pregnant employee due to her repeated absence from work without justified excuse and despite being warned constitutes a persistent breach of duty (Labour Court Vienna (*Arbeitsgericht Wien, AG Wien*), 30 September 1968, 5 Cr 205/68).

If a pregnant employee (waitress) sometimes forgets to enter drinks in the cash register or serves guests too slowly, this does not constitute a breach of duty justifying a dismissal (Vienna Higher Regional Court (*Oberlandesgericht Wien, OLG Wien*), 7 December 1990, 34 Ra 84/90).

Failure to perform work

A dismissal on these grounds does not only involve leaving work and/or the workplace without permission, but also any substantial non-compliance of the working time agreed upon with the employee which conflicts with and is in breach of the employee's obligations set forth in the contract of employment and is without legitimate cause (Supreme Court of Justice (*OGH*), 23 June 1981, 4 Ob 127/80 et al.).

The extent to which the employee is absent from work must be substantial in order to constitute a reason for dismissal. Absence from work is deemed substantial if further circumstances such aggravate the situation, including an extremely long period of absence from work, the urgency of the work to be performed and the lack of performance and results due to the absence (*OGH*, 23 June 1981, 4 Ob 127/80 et al.).

Failure to perform work is deemed to exist where the working hours specified in employment contracts and collective agreements or defined by law are not adhered to. If employees are not required to adhere to fixed attendance hours and if there are no agreements regarding the precise beginning and end of the daily working time, but working hours are recorded over a prolonged period of time within the scope of a flexitime scheme, an employee starting work only after 9 a.m. and finishing before 5 p.m. does not breach any duties due to the fact that the agreement established by company practice with regard to working hours does not specify any core work times to be mandatorily observed by the employee (Vienna Labour and Social Court (*Arbeits- und Sozialgericht Wien, ASG*) of 7 October 1997, 21 Cga 64/97).

In case a pregnant employee refuses to drive from one workplace to another because of a pregnancy-related condition and nausea arising during driving, a dismissal is considered unlawful. A dismissal of an employee is lawful in case she has violated her duties from an objective point of view and her behaviour cannot be excused according to the stipulations of Para. 2; the subjective view taken by the employer with regard to the employee's capability to work is not taken into account (*OGH*, 7 July 1981, 4 Ob 134/80).

Furthermore, a breach of duty can only be classified persistent if it has been committed regularly or if a one-off breach of duty involves a high degree of resistance against the employer's instructions; if the employee fails to comply in one case with an instruction of the employer to submit a sick note although the employer has already been notified of the sick leave by the hospital, this is consequently not considered a persistent breach of duty (Vienna Regional Civil Court (*Landesgericht für Zivilrechtssachen Wien, LGZ*), 12 December 1963, Arb 7887).

If a pregnant employee suffers from sudden bleedings, faces the danger of abortion and despite prior warnings fails to notify the employer on the first day after falling ill, there is no reason for dismissal (*OGH*, 4 October 1966).

With regard to reasons for dismissal pursuant to Section 12 Para. 2 no. 2 *MschG*

Breach of trust

Breach of trust is defined as an intentional violation of good faith by the employee; whether the employer suffers any specific harm or not is not relevant (*OGH*, 15 September 1981 Arb 10.010; *OGH*, 26 April 1983 Arb 10.264; *LGZ* Vienna, 14 September 1961 Arb 7423).

A reason for dismissal due to breach of trust is deemed to exist if a shop assistant sells things belonging to her in the shop of her employer without the latter's approval and without

notifying her employer thereof and if she forges the invoice issued for this purpose (*OGH*, 15 September 1981, 4 Ob 106/81 Arb 10.010).

Visiting a dance event after being sick and suffering infection with fever during pregnancy is considered careless; however, such negligent behaviour does not constitute an offence of breach of trust (Vienna Labour Court (*Arbeitsgericht Wien, ArbG*), 19 April 1962 SozM III B 99).

Accepting unjustified advantages

The acceptance of gifts of minor value which are appropriate within the scope of business relationships does not constitute a reason for dismissal due to the acceptance of unjustified advantages. However, the acceptance of 400 tins of vegetables is not deemed a gift of minor value. Whether the employer suffered damage or not is irrelevant (*OGH*, 14 October 1980, 4 Ob 120, 121/80).

Reasons for dismissal pursuant to Section 12 Para. 2 no. 3 *MschG*

Detrimental ancillary business

Within the meaning of the aforementioned provisions, ancillary business is defined as the actual work carried out by an employee outside the business activities of his/her employer, with the intention to carry out such business repeatedly or in a way that involves a lot of time and effort. In this context, it is irrelevant whether such work is carried out constantly or only occasionally, as a profession or during a specific period of time or whether it is supposed to provide a source of income to the employee. Furthermore, the following must be applicable: operating such ancillary business is detrimental to the position and activity of the employee in his/her employer's industry and, as a consequence, detrimental to the latter's business. For the employer, the disadvantage may in the first place be that the ancillary business represents an unacceptable impairment to the work performed by the employee so that she can no longer properly fulfil her duties within the scope of the employment relationship (*OGH* 8 November 2000, 9 ObA 218/00z, Arb 12.055).

In case a pregnant employee working as an insurance sales representative starts a commercial company without the employer's prior consent in spite of the fact that, according to her employment contract, any ancillary business is prohibited without the prior consent of the employer, and if she acts as a managing director under trade law (*gewerberechtliche Geschäftsführerin*) of this commercial company for 20 hours per week, the prerequisites for a dismissal are not deemed fully met. Despite a contractual agreement on the prohibition of any ancillary business, the dismissal of a pregnant employee who operates an ancillary business on a self-employed basis is only possible if the ancillary business operated by the employee is detrimental to the work in her employer's business. For the employer, the disadvantage - apart from competition which does not exist in the present case - may be that the ancillary business represents an unacceptable impairment to the work performed by the employee, leading to her duties within the scope of the employment relationship being no longer properly met. In principle, the burden of proof with regard to the existence of a reason for dismissal, however, rests with the employer. Neither the extent of 20 hours per week spent on the ancillary business nor the fact that the employee works as a sales representative constitute detrimental ancillary business; the general argument that the activity performed as a managing director under trade law (*Gewerbliche Geschäftsführerin*) is in any case detrimental is therefore not considered convincing without submitting additional findings (*OGH* dated 8 November 2000, 9 ObA

218/00).

Reasons for dismissal pursuant to Section 12 Para. 2 no. 4 *MschG*

Violence

Violence is any intentional offence objectively directed towards the body of the affected person. A reason for dismissal is not deemed to exist in the case of a spontaneous reflex movement or the existence of a reason exempting the wrongful act. The act of violence does not have to be of a substantial nature. Also, it is irrelevant whether the act is punishable or not. The implicit intention of the offence, such as having fun, being rude or hostile, abusing a person, etc. is not of crucial importance (Austrian Administrative Court (*Verwaltungsgerichtshof, VwGH*) of 29 April 1954, Arb 6028, and of 13 April 1961, Arb 7326).

Substantial defamation

According to a court ruling, the statement of a pregnant employee “I don’t give a damn about you and the head nurse” („*Ich scheiße auf sie und die Oberschwester*“) is not considered an expression of resentment related to the social environment of the employee, but a reason for dismissal. If the employee behaved unbearably and aggressively already prior to her pregnancy, she cannot excuse her conduct on which the dismissal is based by arguing that she is in an extraordinary emotional state due to her pregnancy (Vienna Higher Regional Court (*Oberlandesgericht Wien, OLG*), 6 September 1989, 32 Ra 76/89).

Substantial defamation is deemed to exist if an employee insults her employer in the presence of customers only because the latter has asked her to postpone a doctor’s appointment (*OGH* 28 September 1988, 9 ObA 195/88).

The mere fact that the employee does not greet the employer does not constitute substantial defamation (Linz Labour Court (*Arbeitsgericht Linz, ArbG*), 24 October 1962 Arb 7643).

Slapping somebody’s face is in each case considered substantial defamation (Innsbruck Regional Court (*Landesgericht Innsbruck, LG*), 9 February 1956 Arb 6387).

An employee’s statement that her employer is of no interest at all to her, scornfully turning away with the aim to give more weight to her statement and, in addition, telling the employer’s husband, who is trying to mediate between the parties, that he has no say at all is deemed a case of substantial defamation (*OGH*, 6 October 1964 SozM III B 135).

If an employee - who concludes that her employer wants to terminate the employment contract without notice and with immediate effect due to her pregnancy - calls said alleged circumstance “mean” (“*Gemeinheit*”), this is not deemed a reason for dismissal (*OGH*, 11 June 1968 SozM III B 177).

Referring to Section 12 Para. 3 *MschG*

Extraordinary emotional state

If an adolescent pregnant employee (as in the underlying case) is absent from work for a day, this has to be judged taking into account her extraordinary emotional state. Within the scope of the employer’s special duty of care, the employer can be expected during the pregnancy of an employee to excuse otherwise problematic behaviour to some extent and judge such behaviour more leniently (*OGH*, 11 April 1961, 4 Ob 45/61).

Dismissal is legally ineffective if a case of substantial defamation is caused by a pregnancy-

induced extraordinary emotional state (*ArbG* Vienna, 12 October 1961 SozM III B 89).

However, a pregnant employee cannot claim to be in an extraordinary emotional state due to her pregnancy in all cases (*LGZ* Vienna, 4 September 1958 SozM III B 51); the extraordinary emotional state is irrelevant if, for instance, it has been proven that the employee has always behaved aggressively and unbearably (*OGH*, 6 October 1964 SozM III B 135).

The existence of an extraordinary emotional state caused by pregnancy is not to be verified ex officio (*OGH*, 26 February 1992 Arb 11.014).

Para.2 also applies if the pregnancy is not yet far advanced (*LGZ* Vienna, 21 October 1963 Arb 7818).

Paragraph 3 – Time off for nursing mothers

In respect of this paragraph the Government refers to its previous reports on the implementation of the 1961 Charter and notes that the relevant legislation remained unchanged during the reporting period.

Paragraph 4 – Regulation of night work

Questions 1 and 2

Section 6 of the Maternity Protection Act 1979, Federal Law Gazette no. 221 as amended, sets forth:

Section 6. (1) Apart from the exemptions permitted pursuant to Paras. 2 and 3, pregnant employees and employees who are breastfeeding must not work between 8 p.m. and 6 a.m.

(2) Pregnant employees and breastfeeding employees who work in transportation, for music performances, theatre performances, public shows, amusements, festivities, film recordings and in cinemas or who work as nurses in hospitals, convalescent and nursing homes or welfare institutions or in multiple-shift businesses may work until 10 p.m. provided that they are granted an uninterrupted rest period of at least eleven hours after night work.

(3) At the employer's request, the Labour Inspectorate may, in individual cases, grant permission to employ pregnant employees and employees who are breastfeeding in the hotel and restaurant industry until 10 p.m. and in music performances, theatre performances, public shows, amusements, festivities and in cinemas until 11 p.m., if this is necessary for operational reasons and provided that the employee's health allows for it. This permission may only be given if the employee is guaranteed and granted an uninterrupted rest period of at least eleven hours after night work.

(4) The exemptions pursuant to Paras. 2 and 3 shall only apply if night work for female employees is not prohibited for other reasons.

With regard to Para. 4, Section 17 of the Austrian Young Persons Employment Act (*Kinder- und Jugendlichen-Beschäftigungsgesetz, KJBG*), for instance, sets forth that the exemptions stipulated in Paras. 2 and 3 do not apply to female adolescents working in the hotel and restaurant industry or in activities involving multiple shifts, unless they are older than 16 years.

The prohibition of night work for pregnant employees applies to female employees and homeworkers pursuant to Section 1 Para. 1 of the Maternity Protection Act. Female

employees who are subject to the Agricultural Labour Act (*Landarbeitsgesetz, LAG*) and/or have an employment relationship with an Austrian state (*Land*) or a municipality (*Gemeinde*) are exempted. However, they are bound by similar provisions.

Section 5 of the Domestic Help and Domestic Employees Act (*Hausgehilfen- und Hausangestelltengesetz, HGHAG*), Federal Law Gazette no. 235/1962 as amended, sets forth:

Employees of 18 years of age and older who reside in the employer's household must be granted a rest period of at least 10 hours, including the period between 9 p.m. and 6 a.m., and employees younger than 18 must be granted a rest period of at least 12 hours, including the period between 8 p.m. and 7 a.m. Employees not residing in the employer's household must be granted a rest time of at least 13 hours (if they are 18 years or older) and 15 hours (if they are younger than 18 years), including the period between 9 p.m. to 6 a.m. and/or the period from 8 p.m. to 7 a.m. (Section 5 Para. 4). An impairment of rest periods is only permitted in exceptional cases as stipulated by law.

Section 100 of the Agricultural Labour Act (*Landarbeitsgesetz, LAG*), Federal Law Gazette no. 287/1984 as amended, sets forth:

Pregnant employees and employees who are breastfeeding are prohibited from working in the time between 7 p.m. and 5 a.m.

With regard to Section 17 of the Austrian Employment of Children and Young People Act (*KJBG*), Federal Law Gazette no. 599/1987 as amended, reference is made to the comments regarding Art. 7§8.

Section 14 Para. 4 of the Homeworking Act (*HAG*) 1960, Federal Law Gazette no. 105/1961 as amended, stipulates that delivery deadlines have to be set in such a way that the orders can be carried out without working at night.

Austria has terminated the ILO Convention (No. 4) concerning Employment of Women during the Night and the Convention concerning Night Work of Women Employed in Industry within the specified period of notice.

In reply to the Committee's questions concerning women employed in the public sector the following information is provided:

The provisions of the Maternity Protection Act 1979 on maternity protection and regulations on night work for pregnant employees, women who have recently given birth and women who are breastfeeding apply equally to public federal employees and to employees in the private sector. Similar regulations exist for public employees who have an employment relationship with an Austrian state (*Land*) or a municipality (*Gemeinde*).

Paragraph 5 – Prohibition of the employment of pregnant women

Questions 1 and 2

Prohibition of employment of pregnant women

Sections 3 and 4 of the Maternity Protection Act 1979, Federal Law Gazette no. 221 as amended, set forth:

Section 3. (1) Pregnant women must not work during the last eight weeks immediately prior to the presumed date of confinement (eight-week period).

(2) The eight-week period (Para. 1) has to be calculated on the basis of a medical certificate. When the date of confinement occurs earlier or later than stated in the certificate, the period shall be shortened or extended accordingly.

(3) Furthermore, a pregnant employee must not be employed outside the eight-week-period (Para. 1), if she produces a certificate issued by a physician of the Labour Inspectorate or a medical health officer (*Amtsarzt*, employed by the public health authorities) stating that the life and health of the mother or child would be endangered if she continued to work.

(4) Pregnant employees shall notify their employers of their pregnancy as soon as they have learned about it, and shall at the same time specify the presumed date of confinement. Moreover, they shall be obliged to notify the employer of the commencement of the eight-week period (Para. 1) in the fourth week prior to it. At the employer's request, pregnant employees shall produce a medical certificate confirming the pregnancy and specifying the presumed date of confinement. The employer shall be informed about a premature termination of the pregnancy.

(5) Any costs incurred for providing additional proof of the pregnancy and the presumed date of confinement requested by the employer shall be borne by the employer.

(6) The employer shall be obliged to inform the competent Labour Inspectorate in writing immediately after having been notified of the pregnancy of an employee (homeworker) or, if the employer has requested a medical certificate of pregnancy (Para. 4), immediately after having received said certificate. If the business is not in the sphere of responsibility of the Labour Inspectorate, the employer shall address the notification indicating an employee's pregnancy to the competent authority pursuant to Section 35 Para. 1. The information provided has to include the name, age and activity of the pregnant employee.

(7) In addition, employers pursuant to Section 3 Para. 2 of the Temporary Agency Work Act (*Arbeitskräfteüberlassungsgesetz, AÜG*), Federal Law Gazette no. 196/1988, are obliged to notify the competent Labour Inspectorate about any change in a pregnant employee's user undertaking or the fact that there are frequent, short-term changes.

(8) If the pregnant employee is prevented from work due to necessary pregnancy-related ante-natal examinations, in particular those covered by the Mother-Child-Booklet Ordinance (*Mutter-Kind-Pass-Verordnung, MuKiPassV*), Federal Law Gazette no. 663/1986 as amended by Federal Law Gazette II no. 716/1992, which she cannot attend or cannot reasonably be expected to attend outside the working hours, she shall be entitled to continued remuneration.

Section 4. (1) Under no circumstances must pregnant employees perform heavy physical work or any work or working processes which are harmful to their organism or that of the unborn child due to the kind of the work process or the agents or work equipment used.

(2) Work as defined in Para. 1 shall in particular include:

1. Work entailing the regular manual lifting of loads with a weight of more than 5 kg or the occasional lifting of loads with a weight of more than 10 kg without any mechanical tools or the regular manual handling or moving of loads with a weight of more than 8 kg or the occasional manual handling or moving of loads with a weight of more than 15 kg without any mechanical tools; if bigger loads are lifted, handled or moved with the help of mechanical tools, the physical burdens must not be higher than in the case of the aforementioned activities;

2. Work performed by pregnant employees mainly in a standing position as well as work that entails corresponding static strain, unless there are seats for the employee to have a short rest; after the expiry of the 20th week of pregnancy all such work, if it is performed for more than four hours, even if there is a seat for the employee to have a short rest;
 3. Work entailing the risk of an occupational disease as defined in the relevant provisions of the General Social Insurance Act (*Allgemeinen Sozialversicherungsgesetz, ASVG*), Federal Law Gazette no. 189/1955, last amended by Federal Law Gazette no. 704/1976;
 4. Work where pregnant employees are exposed to the effects of harmful agents, no matter whether they are in a solid, fluid, dusty, gaseous or vaporous state, harmful radiation or the harmful effects of heat, cold or humidity, where damage cannot be ruled out;
 5. The operation of equipment and machines of all kinds, if it entails heavy strain on the feet;
 6. The operation of foot-operated equipment and machines, if it entails heavy strain on the feet;
 7. Working in or on means of transport;
 8. Peeling wood with hand knives;
 9. Piece-work, work similar to piece-work, assembly line work with a required work speed, performance-related work and other work where a higher pay can be achieved by an increased work speed, for example, work that is paid based on job evaluation (personality assessment) procedures, statistical procedures, data collection procedures, systems of predetermined times or similar pay determination methods, if the associated average output is beyond the pregnant employee's strength. After the expiry of the 20th week of pregnancy, piece-work, work similar to piece-work, performance-related work and assembly line work with a fixed work speed are prohibited in any case; work that is paid based on job evaluation (personality assessment) procedures, statistical procedures, data collection procedures, systems of predetermined times or similar pay determination methods may be forbidden by the competent Labour Inspectorate on a case-by-case basis;
 10. Work which is performed by pregnant employees in a sitting position, unless they are given the opportunity of short breaks during their work;
 11. Work with biological agents as defined in Section 40 Para. 4 nos. 2 to 4 *AschG*, in so far as it is known that these agents or the therapeutic measures necessitated by such agents endanger the health of the pregnant woman and the unborn child;
 12. Underground mining work.
 13. Work in a high-pressure atmosphere (air with a hyperbaric atmosphere of more than 0.1 bar), particularly pressurised enclosures and underwater diving.
- (3) Pregnant employees must not perform any work where they are exposed to special risks of accident considering their pregnancy.
- (4) In case of doubt, the Labour Inspectorate shall decide whether a job is subject to prohibition as defined in Paras. 1 to 3.

(5) Pregnant employees must not perform any work where they often have to excessively stretch or bend or where they often have to crouch or maintain a bent position; and where the body is exposed to excessive vibrations or where the employee is exposed to especially annoying malodours or particular psychological stress, if the Labour Inspectorate, at the employee's request or on the authorities' own initiative, decides that this work is harmful to the organism of the pregnant employee or to the unborn child, and if this is also confirmed by an expert opinion of a physician of the Labour Inspectorate or a medical health officer of the public health authorities in the case of Para. 3.

(6) Pregnant employees who do not smoke must not work in places where they are exposed to tobacco smoke, provided that this is feasible in the type of business. If no spatial separation is possible, the employer shall take appropriate measures to ensure that other employees working in the same room as the pregnant employee do not expose her to tobacco smoke.

Prohibition of employment of employees who are breastfeeding

Section 4a of the Maternity Protection Act 1979, Federal Law Gazette 221 as amended, sets forth:

Section 4a. (1) When returning to work, employees who are breastfeeding have to inform the employer that they are breastfeeding and have to produce a corresponding certificate issued by a physician or a parent-child centre (*Mutterberatungsstelle*) at the employer's request.

(2) Employees who are breastfeeding must in no case perform work or work processes pursuant to Section 4 Para. 2 nos. 1, 3, 4, 9, 12 and 13.

(3) In case of doubt, the Labour Inspectorate shall decide whether a job is subject to prohibition as defined in Para. 2.

(4) The employee has to notify the employer when she has stopped breastfeeding.

Prohibitions of employment after childbirth

Section 5 of the Maternity Protection Act 1979, Federal Law Gazette 221 as amended, sets forth:

Section 5. (1) Employees must not be employed during a period of eight weeks following childbirth. In the case of premature births, multiple births or Caesarian section births, this period shall be at least twelve weeks. If the portion of the eight-week period (Section 3 Para. 1) prior to childbirth was shorter, the missing time shall be added to the maternity leave period (*Schutzfrist*) after childbirth, which must, however, not exceed 16 weeks.

(2) After childbirth, employees must not be admitted to work after the periods stipulated under Para. 1 as long as they are incapable of work. The employee shall be obliged to notify her employer about her incapacity for work without delay and shall produce a medical certificate on the expected duration of the incapacity for work at the employer's request. If an employee fails to meet these obligations, she will not be entitled to remuneration for the duration of the delay.

(3) Employees must not perform work listed under Section 4 Para. 2 nos. 1, 2, 3, 4, 8, 9, 12 and 13 during a period of twelve weeks after childbirth.

(4) In addition to the provisions set out in Paras. 1 to 3, the competent administrative authority pursuant to Section 36 may instruct the employer to take the necessary measures

to protect the health of an employee who, according to a certificate issued by a physician of the Labour Inspectorate or a medical health officer of the public health authorities, is not fully capable of work during the first months following childbirth.

Compliance with these provisions is monitored by the Labour Inspectorate, the statutory interest group of employees and the works council. Sections 97 to 99 of the Agricultural Labour Act contain analogous provisions with regard to the agricultural and forestry sector. Individual implementing acts of the *Laender* also contain corresponding provisions.

ARTICLE 16 – Right of the family to social, legal and economic protection

Questions 1, 2 and 3

The notion of the “family”

The notion of the “family” as defined in Austrian civil law in Section 40 of the General Civil Code (*Allgemeines Bürgerliches Gesetzbuch, ABGB*), Law Gazettes No. 946/1811 as amended, is very broad in scope, as it includes all progenitors and their progeny, whereas parents are all relatives in ascending line and children are all relatives in descending line (Section 42 *ABGB*). The definition in Section 40 *ABGB* is not consistently maintained throughout the *ABGB*. Section 44 *ABGB* specifies that family relationships are established through a marriage contract. Section 137 *ABGB* specifies “children” as only the immediate progeny of the parents. Thus, “family” in the sense of civil law is normally understood to refer to parents, i.e. a mother and father, and their children, i.e. their sons and daughters. Yet “family” in the sense of civil law can also be understood to refer to forms of (extra-marital) cohabitation and registered partners.

Housing for families

The Austrian *Laender* (constituent states) are responsible for the legislation and enforcement in the field of direct support of housing construction and refurbishment through subsidised loans, annuity and interest subsidies, housing allowances, etc.. Various “accompanying” indirect subsidies (such as tax benefits, exemption from charges, contributions to building savings programmes) are granted by the Federal Government.

The primary goal of housing subsidies in Austria has always been and still is to resolve the discrepancy of demand and supply concerning available accommodation. Furthermore, the refurbishment of old buildings and flats and the idea of increasing energy efficiency have gained importance over the past few years. Subsidies mainly aim at reducing the required funding and energy expenditure, whereby families (depending on their size, the family income, whether they have a disabled child, etc.) are granted additional benefits.

In addition, funding provided by the European Investment Bank can be collected for building societies based in Austria, and these funds are made directly available at low interest to construct housing.

Statistics

For the first time since the housing statistics for 2002, which were previously the most recent, the current data covering the period of 2005 to 2009 were published. Due to missing reports, the results should be interpreted with caution, and it should be noted that Vienna was not taken into account. More recent data reflecting completed housing classified by legal form cannot be supplied.

Not counting Vienna, a total of 38,063 dwellings (flats) were completed in Austria in 2009; 4,421 of those dwellings were created through building additions or conversions. The housing construction rate in 2009 (i.e. completed dwellings per 1,000 residents) was 5.7 on average for all of Austria (excluding Vienna). A comparison of the housing construction rate among *Laender* results in the following picture:

Burgenland	4.6
Carinthia	5.5
Lower Austria	5.3

Upper Austria	5.7
Salzburg	6.9
Styria	4.1
Tyrol	8.1
Vorarlberg	7.5
<hr/>	
Austria	5.7

Amenities:

The categorisation of housing amenities that is used in the microcensus, which takes in dwellings serving as the primary residence, results in a classification of dwellings into the following categories:

- Category A: Dwelling with bathroom, WC and central heating
- Category B: Dwelling with bathroom, WC and individual heater
- Category C: Dwelling with WC and water supply
- Category D: Dwelling with running water or no installations

The following table shows a classification of dwellings used as primary residence, according to amenities category and *Land* (federal state) on average over 2012:

<i>Land</i>	Dwellings (primary residence) total	Amenities category			
		A	B	C	D
	in thousands	in %			
Burgenland	114.5	89.4	10.1	0.3	0.2
Carinthia	241.5	90.8	8.6	0.2	0.3
Lower Austria	678.1	91.4	7.5	0.5	0.6
Upper Austria	593.7	95.3	4.1	0.1	0.5
Salzburg	228.1	92.8	6.8	0.2	0.2
Styria	510.1	94.3	4.8	0.2	0.7
Tyrol	295.0	86.8	12.2	0.5	0.5
Vorarlberg	154.5	92.9	6.5	0.2	0.4
Vienna	862.7	91.8	3.4	0.3	4.5
Austria (in thousands)	3,678.1	3,391.8	222.6	10.5	53.2

Source: Austrian Microcensus, Annual Results 2012, Statistics Austria

Dwellings used as primary residence against a fee and housing expenditure (excluding garage and parking) by legal arrangement and *Land* in 2012

Land	Dwellings used as primary residence against a fee			Sub-category					
	In total (in thousands)	Expenditure (excluding garage and parking) in EUR per		Rented dwellings			Condominiums		
		Dwelling	m²	Total (in thousands)	Expenditure (excluding garage and parking) in EUR per		Total (in thousands)	Expenditure (excluding garage and parking) in EUR per	
					Dwelling	m²		Dwelling	m²
Total	1,972.9	417	5.75	1,474.7	458	6.61	377.8	289	3.47
Burgenland	22.2	375	4.48	18.0	402	4.86	2.1	249	2.89
Carinthia	104.6	371	4.88	81.1	409	5.67	17.1	243	2.79
Lower Austria	233.4	387	5.24	167.2	418	5.97	50.3	302	3.67
Upper Austria	260.4	403	5.46	190.6	439	6.33	47.8	311	3.58
Salzburg	122.6	448	6.53	77.8	525	8.21	34.1	304	3.97
Styria	223.2	384	5.35	149.9	426	6.31	56.9	296	3.70
Tyrol	147.0	419	5.50	91.2	503	7.15	45.0	275	3.22
Vorarlberg	73.1	447	5.93	46.8	563	7.73	21.0	226	2.76
Vienna	786.4	440	6.22	652.2	467	6.77	103.5	291	3.44

Source: Statistics Austria, Microcensus (yearly averages for 2012) Compiled on: 22 March 2013

Dwellings used as primary residence in 2012 by type of household and family and number of rooms living space

Type of household, family	Dwellings (primary residence) total	Number of rooms living space					
		1	2	3	4	5	6 or more
	Absolute (in thousands)						
Total							
Total	3,678.1	103.0	397.2	876.8	967.4	647.3	686.4
Family households	2,276.4	9.9	105.5	408.7	645.3	517.2	589.8
Single-family households	2,207.4	9.9	104.3	404.7	637.3	505.2	546.0
Married couple without children	872.4	6.3	67.8	217.5	268.5	168.8	143.4
Married couple with at least one child	1,076.9	1.5	21.8	128.3	284.0	289.5	351.8
Father with at least one child	38.5	0.3	2.2	7.2	10.4	7.1	11.4
Mother with at least one child	219.7	1.7	12.6	51.7	74.4	39.9	39.4
Multi-family households	69.0	-	1.2	4.0	8.0	12.0	43.8
Non-family households	1,401.7	93.2	291.7	468.1	322.2	130.1	96.5
Single households	1,341.1	92.2	284.5	450.4	303.6	120.8	89.5
Under the age of 30 years	179.2	21.4	61.4	64.5	23.7	6.2	2.0
30 to 59 years	579.3	49.6	137.0	195.2	121.1	47.2	29.2
60 years and over	582.6	21.3	86.1	190.7	158.8	67.4	58.3
Single men	578.3	49.4	131.7	187.2	121.6	52.2	36.1
Under the age of 30 years	89.9	9.2	29.0	33.8	12.5	4.3	1.2
30 to 59 years	323.9	30.3	78.2	104.9	65.0	28.0	17.5

60 years and over	164.4	10.0	24.5	48.6	44.1	19.9	17.4
Single women	762.8	42.8	152.9	263.2	181.9	68.6	53.4
Under the age of 30 years	89.3	12.2	32.4	30.7	11.2	2.0	0.8
30 to 59 years	255.4	19.3	58.8	90.3	56.1	19.2	11.7
60 years and over	418.1	11.3	61.6	142.1	114.7	47.5	41.0
Multi-person households	60.6	0.9	7.2	17.6	18.6	9.3	7.0
Households without persons under the age of 15 years							
Total	2,951.0	100.8	372.3	761.0	752.2	469.2	495.4
Family households	1,549.3	7.7	80.6	292.9	430.0	339.2	398.9
Single-family households	1,494.0	7.7	79.8	289.4	423.5	330.6	363.0
Married couple without children	872.4	6.3	67.8	217.5	268.5	168.8	143.4
Married couple with at least one child	454.0	0.3	3.5	39.4	102.4	129.0	179.5
Father with at least one child	31.5	0.3	1.9	5.4	8.5	5.7	9.7
Mother with at least one child	136.1	0.7	6.5	27.2	44.1	27.1	30.4
Multi-family households	55.3	-	0.8	3.5	6.5	8.5	35.9
Non-family households	1,401.7	93.2	291.7	468.1	322.2	130.1	96.5
Single households	1,341.1	92.2	284.5	450.4	303.6	120.8	89.5
Multi-person households	60.6	0.9	7.2	17.6	18.6	9.3	7.0
Households with one person under the age of 15 years							
Total	380.1	2.2	19.7	71.4	116.6	85.0	85.1
Single-family households	372.1	2.2	19.3	70.9	116.0	83.2	80.5
Married couple with at least one child	309.3	1.3	14.2	51.0	94.0	74.9	73.9
Father with at least one child	5.3	-	0.0	1.6	1.5	0.7	1.5
Mother with at least one child	57.6	1.0	5.1	18.3	20.4	7.7	5.1
Multi-family households	8.0	-	0.4	0.6	0.6	1.8	4.6
Households with two persons under the age of 15 years							
Total	270.4	-	4.0	36.2	79.6	72.5	78.1
Single-family households	266.3	-	4.0	36.2	78.8	71.2	76.1
Married couple with at least one child	243.4	-	2.9	30.3	70.4	67.1	72.6
Father with at least one child	1.5	-	0.2	0.2	0.4	0.5	0.2
Mother with at least one child	21.4	-	0.9	5.7	8.1	3.6	3.2
Multi-family households	4.1	-	-	0.0	0.8	1.3	2.0
Households with three or more persons under the age of 15 years							
Total	76.6	-	1.1	8.2	19.0	20.5	27.7
Single-family households	75.0	-	1.1	8.2	19.0	20.2	26.4
Married couple with at least one child	70.3	-	1.1	7.7	17.3	18.5	25.7
Father with at least one child	0.2	-	-	-	-	0.2	-
Mother with at least one child	4.6	-	-	0.5	1.8	1.6	0.7
Multi-family households	1.6	-	-	-	-	0.3	1.3

Source: Statistics Austria, Microcensus (yearly averages for 2012). Compiled on: 5 April 2013

In reply to the Committee's request for information on protection against eviction, the following information is provided:

Legal protection against planned (forced) evictions from housing is ensured principally as a part of the civil proceedings in which the enforceable title to carry out eviction is established. In order for any (forced) eviction to take place, a corresponding enforceable

title must always first be issued by a court. During such court proceedings, each of the parties has the opportunity to submit statements in writing or orally. Parties lacking the required means are entitled to legal aid, which may include being provided with a lawyer as legal counsel in the proceedings. The courts have the remit, irrespective of the facts of the case, to work towards achieving an amicable resolution or a settlement of the dispute. Each of the parties can file an appeal against the rulings handed down in the proceedings, which results in a review of the rulings by the superior courts. The request for a legal remedy normally suspends the legal effect and enforceability of a ruling.

If it is determined in the aftermath that a case of (forced) eviction occurred as a result of a culpable action by a judicial body that was in breach of law, in accordance with the principles defined in the Liability of Authorities Act (*Amtshaftungsgesetz, AHG*), Federal Law Gazette no. 20/1949 as amended, the injured party is entitled to assert public liability claims against the Republic of Austria. Parties lacking the required means can also obtain legal aid in order to conduct such public liability proceedings.

To avoid homelessness, Section 33a of the Landlord and Tenant Act (*Mietrechtsgesetz, MRG*), Federal Law Gazette no. 520/1981, requires the court to notify the particular municipality as soon as court action is filed for the purpose of obtaining an enforceable title to evict a tenant from living quarters, or where a court settlement is reached requiring a tenant to vacate living quarters. In cases of imminent loss of housing or homelessness, the municipality may provide information concerning filed court action or the reaching of a court settlement to social institutions that provide aid services.

Section 34 *MRG* specifies that in legal cases involving termination of, or eviction from, tenancy premises the court may set a longer period for vacating the premises than is specified by law if the tenant puts forward substantial grounds and if delaying the eviction does not cause any disproportionate disadvantage to the landlord. Such an extension may not be for more than nine months.

Where a tenancy agreement has been terminated with legal effect, if through forced eviction from the dwelling or room used for accommodation the tenant were to be faced with homelessness, pursuant to Section 35 *MRG*, enforcement of the eviction is to be delayed at the tenant's request if under consideration of the circumstances such a delay can be reasonably expected from the landlord. Any extension of the period for vacating the premises that is approved in such cases should not exceed three months. Under circumstances especially deserving of consideration, an additional delay may be approved, yet no more than twice and for no longer than three months each time.

Section 36 *MRG* requires the landlord to indemnify the tenant for the damage incurred through the loss of the rented property if the landlord does not subsequently use the property for the purpose stated as the underlying reason for terminating the agreement and circumstances have not changed in the meantime so as to give rise to such a differing use.

In enforcement proceedings, the obligor has time to negotiate with the creditor instigating the proceedings and to prevent the eviction from taking place. Section 569 of the Rules of Procedure for First and Second-Instance Courts (*Geschäftsordnung für die Gerichte I. und II. Instanz, GEO*) specifies that prior to eviction the obligor must be served the eviction order, which indicates the time of eviction.

In reply to the Committee's request to provide a full picture of the lengths of residence requirements for all different types of housing allowances, social housing and subsidies

and whether these requirements apply in the same way, irrespective of the nationality of the housing applicant, the following information is provided:

Burgenland

Housing subsidies are granted based on the 2005 Burgenland Housing Subsidies Act (*Burgenländisches Wohnbauförderungsgesetz, Bgld. WFG 2005*), State Law Gazette no. 1/2005 as amended by State Law Gazette no. 79/2013, and the 2005 Burgenland Ordinance on Housing Subsidies (*Burgenländische Wohnbauförderungsverordnung, Bgld. WFVO 2005*), State Law Gazette no. 20/2005 as amended by State Law Gazette no. 24/2012.

<http://www.ris.bka.gv.at/GeltendeFassung.wxe?Abfrage=LrBgld&Gesetzesnummer=20000316>

<http://www.ris.bka.gv.at/GeltendeFassung.wxe?Abfrage=LrBgld&Gesetzesnummer=20000327>

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The items subsidised by the *Land* include:

- Construction and refurbishing of owner-occupied homes, group dwellings, semi-detached homes, flats and residential homes;
- Purchase of a non-subsidised owner-occupied home or a non-subsidised condominium;
- Equity surrogate loans and housing allowances

Refer to <http://www.burgenland.at/wbf> for more details.

Individuals entitled to subsidies are those who have their primary residence legally established in Austria for a continuous period of more than two years and who receive an income subject to Austrian income tax or who as part of gainful employment have paid contributions to the Austrian social security system and receive benefits as a result. Income received on the basis of other regulations of the *Land* or the Federal Government are considered tantamount to the above-mentioned (e.g. unemployment or childcare benefit).

Individuals entitled to subsidies also include those who for at least five years have lawfully received an income subject to Austrian income tax or who as part of gainful employment have paid contributions to the Austrian social security system and receive benefits as a result.

Based on Council Directive 2003/109/EC, it has become possible for third-country nationals and for persons who have **equal status due to state treaties (Section 9 Para. 2 no 6 Bgld. WFG 2005)** to take full advantage of subsidies. Thus, access to accommodation provided by the public housing sector has been further facilitated.

Housing allowances (*Wohnbeihilfe*) are granted to Austrian citizens and the recently included groups of persons; however, applicants always have to provide evidence of a certain regular basic income for calculating the amount of the allowance.

Housing allowances are granted only where individuals are not entitled to rental assistance (*Mietzinsbeihilfe*) as specified in Section 107 of the Income Tax Act 1988 (*Einkommenssteuergesetz, EStG 1988*) or to means-tested minimum income as specified in Section 4 of the Burgenland Minimum Income Act (*Mindestsicherungsgesetz, MSG*), State Law Gazette no. 76/2010 as amended.

As a result of the amendment to the Burgenland Housing Subsidies Act, an even greater number of individuals are granted access to housing subsidies funds. Housing subsidies are to be seen in connection with other subsidies, all of which collectively aim to ensure the implementation of the intentions of the European Social Charter.

Carinthia

Housing subsidies are granted based on the Carinthian Housing Subsidies Act 1997 (*K-WBFG*), State Law Gazette no 60/1997 as amended by State Law Gazette no. 85/2013, and on the Act on the Housing and Settlement Fund of Carinthia (*Gesetz über den Wohn- und Siedlungsfonds für das Land Kärnten*), State Law Gazette no. 7/1972 as amended by State Law Gazette no. 79/2011.

<http://www.ris.bka.gv.at/GeltendeFassung.wxe?Abfrage=LrK&Gesetzesnummer=10000226>

<http://www.ris.bka.gv.at/GeltendeFassung.wxe?Abfrage=LrK&Gesetzesnummer=10000050>

To apply for a subsidy when acquiring property or building an owner-occupied home, applicants must have had their primary residence and the centre of their vital interests in Carinthia for a period totalling at least two years or they must have been employed in Carinthia for the previous two years and be subject to taxation without restriction in Austria and also be or have a legal status equal to Austrians citizens. Individuals considered to have a legal status equal to Austrian citizens are:

- foreign nationals who lost their Austrian citizenship after 6 March 1933, had to leave Austria on political, racial or religious grounds, have returned to Austria and intend to reside in Austria permanently;
- persons whose refugee status has been determined pursuant to the federal act published in Federal Law Gazette no. 126/1968 as amended by Federal Law Gazette no. 796/1974 and who are entitled to reside in Austria;
- nationals of another signatory state that is party to the Agreement on the European Economic Area (EEA) as well as persons who pursuant to the laws of the European Union or **on the basis of a state treaty** are entitled to the same rights as Austrian citizens in housing subsidy matters.

The above-mentioned conditions concerning primary residence and citizenship (or equal status) do not apply to tenants of subsidised rental housing.

Subsidies are granted only to individuals who, as demonstrated or is evident from the circumstances, intend to use the subsidised accommodation regularly and exclusively for the purpose of meeting their urgent year-round housing needs and whose income does not exceed a maximum annual level that is determined based on the number of household members.

Subsidies granted on the basis of the *K-WBFG* can take the form of subsidised loans, redemption subsidies, equity surrogate loans, grants for refurbishment work or housing allowances.

Lower Austria

In Lower Austria, funding from the state housing subsidies fund is available to nationals of other countries, irrespective of their citizenship, in the following cases:

- refurbishment work;

- acquisition of a dwelling subsidised through the old-building refurbishment programme of Lower Austria; and
- renting subsidised rental housing.

The requirement of a minimum residence period, criticised in the Conclusions, does not exist in Lower Austria.

There are no restrictions on renting dwellings owned by not-for-profit building companies or municipalities. Thus, the Social Charta's requirement for the necessary supply of housing has been met, and an adequate amount of living space is available for third-country nationals. There are similarly no restrictions on subsidies for the refurbishment of owner-occupied dwellings and housing.

Upper Austria

In Upper Austria, subsidies for the construction of new homes, housing refurbishment, acquisition and completion subsidies, subsidies for alternative energy systems, for the surroundings as well as the provision of housing allowances are regulated by the Upper Austrian Housing Subsidies Act 1993 (*Oö-WBFG*) as amended.

Pursuant to that act, subsidies are to be granted to Austrian citizens, citizens of an EEA member state and individuals who **on the basis of a state treaty**, in particular within the framework of European integration, are to be granted the same subsidies as Austrian citizens.

Other individuals may be granted subsidies only if they:

1. have had their lawful primary residence in Austria for an uninterrupted period of more than five years; and
2. receive an income subject to Austrian income tax or have as part of gainful employment paid contributions to the Austrian social security system and receive benefits as a result, and have received income or benefits as mentioned above for 36 months within the past five years.

Among the effects of this provision in the specific case is that subsidies are granted directly to these individuals (e.g. housing allowances).

In the case of newly erected multi-storey rental housing, this provision has no effect on how housing is awarded since the subsidies are granted to non-for-profit building associations and commercial building companies.

Section 7 Para. 2 *Oö-WBFG* allows housing to be awarded only to individuals eligible for subsidies. Section 2 Para. 13 *Oö-WBFG* defines this group of individuals as those who intend to use such housing exclusively for the purpose of meeting their permanent housing needs and whose annual household income does not exceed the levels specified in the ordinance on income limits.

Subsidised housing is awarded based on specific directives which require a basic knowledge of German as one of the conditions. The current directives on the awarding of housing have been in effect since 12 May 2014.

Salzburg

As specified in Section 1 Para. 1 of the Salzburg Housing Subsidies Act 1990 (*S-WBFG*) as amended, the goal of housing subsidies is to allow the population of the *Land* Salzburg to

procure, through financial aid (subsidies) and under affordable conditions, quality accommodation that is located in healthy surroundings designed to offer variety.

<http://www.ris.bka.gv.at/GeltendeFassung.wxe?Abfrage=LrSbg&Gesetzesnummer=10000658>

Pursuant to Section 1 Para. 2 of the law cited above, among other things the construction and acquisition of housing is to be subsidised in a manner commensurate with available funding. A prerequisite of granting subsidies as specified in Para. 3 is that the accommodation built using this aid is suitable for contemporary living. In keeping with this goal, compliance must be given with the principles and objectives listed in nos. 1-9, including the requirements to ensure that building projects meet functional quality standards, and to provide the housing applicants and residents with opportunities to participate in decisions related to planning, design and amenities of the flat, the building projects and the surrounding area. Ongoing information must be provided about the particular building project and the progress made.

In addition, income-dependent redemption subsidies are granted for owned property.

Both with regard to subsidised owned and rented accommodation, for determining income limits a growing family is equated with a four-person household. Single parents with one child are considered a three-person household, and those with two children a four-person household etc.

Young families, single parents and families with many children receive a supplement to the basic subsidy amount. Under certain conditions the Salzburg Government can grant a housing allowance in the form of a non-repayable subsidy to tenants of subsidised rental housing. Taken together, all of the cited measures contribute towards facilitating subsidised family housing in Salzburg.

Section 9 Para. 1 *S-WBFG* specifies that, in addition to meeting other requirements, only individuals having Austrian citizenship are eligible for subsidies; other requirements include: primary residence within the federal state of Salzburg for at least two years (this does not apply where a dwelling is rented; the requirement may also be waived where good reasons exist) and an annual household income not exceeding certain maximums.

Individuals considered equal to Austrian citizens are: foreign nationals who lost their Austrian citizenship after 6 March 1933, had to leave Austria on political, racial or religious grounds, have returned to Austria and intend to reside in Austria permanently; citizens of a state that is party to the Agreement on the European Economic Area (EEA) who are or have been independently or dependently employed in Austria and are entitled to residence; and refugees who under the Asylum Act 1991 (*Asylgesetz*) have been granted asylum and are entitled to reside in Austria as well as foreign nationals who on the basis of Section 25 Para. 3 of the Asylum Act are considered equal to the aforementioned.

Austrian citizenship is not a condition for individuals to be eligible for subsidies where such individuals are married to an Austrian citizen or to a person considered equal to an Austrian citizen **or where a dwelling established according to Section 31 sqq. *S-WBFG* (subsidies for providing rental housing) is rented out.**

Thus, Austrian citizenship or equal legal status is not required in order to obtain subsidised rental housing.

Section 34 Para. 1 specifies the **housing allowance** as a non-repayable subsidy that can be granted to those tenants of subsidised rental housing for whom the housing expense is an unreasonable burden; a housing allowance, while **available to tenants of subsidised housing regardless of their citizenship**, is tied to meeting other objective criteria (income limits in particular).

On the issue of discrimination of citizens of signatory states who are not EEA citizens, the Salzburg Government points out the need to consider that the housing subsidies granted by the *Laender* represent only a sub-area of Austria's housing policy and only a sub-area of housing subsidies in the specific sense.

For example, the housing subsidies that are granted to individual households as a result of applying the Income Tax Act benefit without distinction every individual liable to pay income tax in Austria; specifically, tax reductions result from taking into account the expense of procuring and refurbishing living space, in which case the number of children belonging to the household is also considered.

Furthermore, regardless of citizenship, every individual liable to pay tax in Austria is entitled to subsidies paid out for saving through building societies, both for themselves as well as on behalf of their family members, i.e. for children as well.

Styria

As of the amendment published in the State Law Gazette no. 81/2009, Section 7 Para. 5 of the Styrian Housing Subsidies Act 1993 (*Steiermärkisches Wohnbauförderungsgesetz, St-WBFG*) specifies the following groups as equal to Austrian citizens:

- foreign nationals who lost their Austrian citizenship after 6 March 1933, had to leave Austria on political, racial or religious grounds, have returned to Austria and intend to reside in Austria permanently;
- persons whose refugee status has been recognised by the authorities and who are entitled to reside in Austria;
- persons who are citizens of a state that is party to the Agreement on the European Economic Area (EEA) as well as persons who pursuant to the laws of the European Union or **on the basis of a state treaty** are entitled to the same rights as Austrian citizens in housing subsidy matters.

Tyrol

The Tyrolean Housing Subsidies Act 1991 (*Tiroler Wohnbauförderungsgesetz, T-WBFG*), State Law Gazette 55/1991 as amended, represents the basis for granting subsidies for the purpose of erecting and refurbishing housing.

The provisions governing subsidies are especially aligned with the goals of accurately allocating benefits, more heavily subsidising high-density residential construction, limiting costs, equal treatment of building companies, and family-friendliness. The aspect of family-friendliness is expressed in provisions such as those setting varying income limits and specifying varying subsidy amounts depending on the number of persons living in the household. Additional subsidies and higher allowances are also specified for families.

Within the framework of subsidies for new building projects, subsidised loans or non-repayable grants for the construction or purchase of housing are granted to individuals eligible for subsidies who have Austrian citizenship. For the purpose of granting such

subsidies, citizens of an EU or EEA member state who under the free movement of employees (as specified in Art. 39 of the EC Treaty or Art. 28 of the EEA Agreement) or under the freedom of establishment (as specified in Articles 43 and 48 of the EC Treaty or Articles 31 and 34 of the EEA Agreement) reside in Tyrol are considered equal to Austrian citizens. Individuals who have been granted asylum are also considered equal.

Housing allowances are granted to Austrian citizens and to individuals with equal legal status as well as to other individuals who have had their primary residence in Tyrol for at least five years.

For the purpose of refurbishing housing, the Tyrol Government grants subsidies for redemptions or for the invested equity. One condition is that the building to be refurbished is inhabited year-round and is a specified minimum number of years old.

Since available funding is limited, no plans currently exist to expand the scope of individuals eligible to receive housing subsidies. In this context, special attention is drawn to the following items:

- Irrespective of citizenship, citizens of the Parties to the European Social Charter have the option of applying for subsidised rental housing.
- Citizens of the Parties to the European Social Charter who have had their primary residence in Tyrol for at least five years also have the option of applying for a housing allowance.

In cases of social hardship the Housing Subsidies Committee may grant an exception.

- Priority is not currently being given to adapting the housing subsidy provisions related to subsidising condominiums since legislation governing property ownership continues to exclude citizens of the Parties to the European Social Charter from acquiring real estate or property in Tyrol.

Vorarlberg

The Vorarlberg Housing Subsidies Act (*Vorarlberger Wohnbauförderungsgesetz, V-WBFG*), State Law Gazette 31/1989 as amended, is the basis for granting subsidies for the purpose of erecting and refurbishing housing and for granting housing allowances.

Subsidies for new construction:

For the purchase or erection of an owner-occupied home or dwelling as well as for additions, installations or conversions, under certain conditions the Vorarlberg Government grants a subsidised housing loan. Rental housing built by not-for-profit building companies is also subsidised, with the budget now increased to allow 500 new flats rented out on a not-for-profit basis to be built each year instead of the 330 new low-rent flats erected annually in previous years. A condition for receiving subsidies is Austrian citizenship or equal status as set forth in the laws of the European Union or **on the basis of a state treaty**. Housing rented out on a not-for-profit basis is also open to citizens of third countries who are entitled to long-term residence. Applicants' income may not exceed certain limits defined relative to the size of the household and a housing need must exist.

The subsidy amount largely depends on construction density, the type of building, the floor area and household size as well as on energy efficiency and environmental standards. The

minimum dwelling size is 30 m². The amount of loans varies between EUR 350 and EUR 1,150 per m² of usable floor space. The amount of floor space able to be subsidised is 80 m² for one person, 100 m² for two persons, 120 m² for three persons, 130 m² for four or five persons, and 150 m² for six or more persons.

Refurbishment of old buildings:

For the purpose of refurbishing old buildings, the Vorarlberg Government grants one-off sums or low-interest loans (1% interest for a 20-year term). This is on condition that the building to be refurbished is inhabited year-round and original construction was approved at least 20 years earlier. It is important for household income to be below certain limits and for the applicant to qualify as being eligible for subsidy. The one-off grant in such cases is between 10 and 40% of the approved costs of refurbishing, while subsidised loans amount to between 20 and 85% of approved costs.

Housing allowances:

The housing allowance is a grant paid to supplement rental payments or repayment of loans for condominiums or owner-occupied homes, where the recipient's income is low relative to the burden of housing expense. This type of grant is not repayable. The amount is determined based on the difference between the apportionable housing expense and the reasonable housing expense. The decisive factors are the level of income, the amount of monthly rent payments or loan instalments, the family size and the size of the dwelling.

Prevention of evictions and community social work

To protect against loss of housing, the housing subsidies department (Vorarlberg housing fund) contributes to funding a programme aimed at preventing evictions and to community social work in cases of disputes arising within housing blocks operated on a not-for-profit basis.

Discrimination of nationals of other signatory states:

Housing subsidies were originally granted on condition of Austrian citizenship or of primary residence in Vorarlberg for three previous years.

In Vorarlberg, the regulations applying to housing subsidies have now been modified so that Austrian citizens and individuals with equal legal status, as set forth in the laws of the European Union or **on the basis of a state treaty**, receive subsidies for new construction and housing allowances if when moving into the subsidised housing they are subject to taxation without restriction in Austria (Sections 3, 4 and 15 *V-WBFG*).

The taxation requirement does not apply to the refurbishment of old buildings.

In the guidelines to be issued as set forth in Section 18 *V-WBFG*, the Vorarlberg Government can specify exemptions from the taxation requirement for cases involving subsidies for new construction and housing allowances, while the requirement for Austrian citizenship can also be waived in the case of subsidies for the refurbishment of old buildings.

In addition and of vital importance for families in particular, access to affordable housing rented out on a not-for-profit basis and to a housing allowance/housing supplement has been opened up to third-country nationals holding long-term residence permits.

Vienna

Pursuant to the Vienna Housing Subsidies and Housing Refurbishment Act (Wiener Wohnbauförderungs- und Wohnhaussanierungsgesetz, WWFSG), non-EEA citizens have the same status as Austrian nationals in the context of housing subsidies. This means that foreign and Austrian citizens can make use of housing subsidies for the purpose of housing construction or refurbishment on the same basis.

The same applies to equity surrogate loans (Eigenmittellersatzdarlehen). Both Austrian and foreign nationals may claim a 1% equity surrogate loan from the City of Vienna for making an advance payment of the proportionate land and construction costs upon the acquisition of a subsidised flat.

Pursuant to the WWFSG, housing allowances are also available for

- a) residential buildings constructed from public funds;
- b) old buildings refurbished with subsidies; and
- c) unsubsidised accommodation (general housing allowance).

ad a) and c)

Also non-EEA nationals with a legitimate minimum residence of five years in Austria may claim these housing allowances. Permanent legitimate residence for a minimum period of five years must be evidenced by a settlement or residence permit.

ad b)

Housing allowances for old buildings refurbished with subsidies are also available to persons who have a right to employment (holding an employment permit (Beschäftigungsbewilligung) or an unrestricted work permit (Befreiungsschein) pursuant to the Employment of Foreigners Act (Ausländerbeschäftigungsgesetz, AuslBG)).

Whether a housing allowance is granted or not always depends on family size, family income, size of the accommodation, housing costs as well as a minimum income based on the reference rate for the equalisation supplement.

Eligibility for a council flat in Vienna is tied to five basic prerequisites:

1. Minimum age of 17 years;
2. Austrian citizenship or application by EU or EEA citizens, Swiss nationals, recognised refugees or individuals with a "long-term residence right" according to the Austrian Settlement and Residence Act (Niederlassungs- und Aufenthaltsgesetz, NAG);
3. Falling below the maximum income limit (defined in Section 11 of the WWFSG 1989);
4. At the time of filing the application, the housing applicant must have had his/her address in Vienna registered as his/her primary residence (without any further registered residence) for at least two years;
5. Evidence that there is a need for accommodation (e. g. previous accommodation poses a health hazard, accommodation need due to illness or age; too many household members in previous accommodation (Überbelag), separated household, faultless termination of accommodation provided by the employer, pre-registration for young couples (Jungwienerinnenvormerkung), family splitting, accommodation for disabled persons).

If a housing applicant has been pre-registered for one of the reasons mentioned above, he/she will receive a reservation certificate (Vormerkschein) indicating the reason for pre-registration as well as the submission date.

Under certain conditions, individuals may also be awarded council flats in Vienna by the Municipal Department in charge of social housing (Soziale Wohnungsvergabe). This target group has to meet the basic requirements listed in items 1 – 4 above. Only the two-year primary-residence requirement at an address in Vienna may be replaced by a two-year stay in Vienna.

Additionally, under certain conditions (accommodation in the case of crisis or particular social hardship) emergency dwellings may be obtained by individuals with an advanced legal residence status (Aufenthaltsverfestigung, third-country nationals with legitimate residence in Austria for a minimum of five years and residence in Vienna for a minimum of two years).

In reply to the Committee's request to provide details concerning the housing of Roma families, particularly whether their situation has improved, the following information is provided:

Austria continues its efforts to improve the situation of the Roma in its territory. The measures to promote the effective equality and participation of persons belonging to the Roma minority in all spheres of public life focus mainly on the National Roma Integration Strategy up to 2020 (Roma Strategy 2020) in accordance with the EPSO Council's conclusions of 19 May 2011 on the EU Framework for National Roma Integration Strategies up to 2020, as endorsed by the European Council of 23-24 June 2012 and the Resolution of the Council of Federal Ministers of Austria on 3 January 2013.

Amongst other things, these conclusions require the member states of the European Union to:

- improve the social and economic situation of the Roma, especially in the areas of education, employment, housing and healthcare;
- develop national strategies for the inclusion of the Roma or integrated packages of political measures within the scope of a more broadly couched policy of social inclusion and to update their existing strategies and packages of measures, all under consideration of their particular circumstances;
- to appoint a national point of contact that should verify implementation of the national concepts for the inclusion of the Roma and to promote the exchange of proven processes for the inclusion of the Roma;
- promote the active incorporation of the entire Roma civil society and all other stakeholders – including at a regional and local level – into the strategies for promoting the inclusion of the Roma.

In all of these areas, Austria faces special challenges: the Roma in Austria are not a homogeneous, but rather a heterogeneous group and encompass not only the members of the autochthonous minority of the Roma (Roma ethnic group), but also immigrant Roma of more recent times and - in some instances - travelling communities, above all from other EU member states. They are also characterised by the different levels of education attained, professional and social anchoring and hence integration.

At the beginning of 2012, Austria submitted its report “EU Framework for National Strategies for the Integration of the Roma by 2020 - Political and Legal Measures in Austria” to the European Commission. This presentation of the existing policies and projects was prepared with the participation of the affected Austrian Federal Ministries and provincial governments, the Advisory Council for the Roma ethnic group and of civil society, especially of Roma associations.

The reports of the EU member states were evaluated by the European Commission and the results summarised in its Communication entitled “National Strategies for Integration of the Roma: First step towards implementing the EU Framework” to the European Council and the European Parliament of 22 May 2012.

This evaluation results in the need for Austria to take further action, primarily in the following areas:

- to design further measures in the four core areas of education, employment, housing and healthcare,
- to develop evaluation methods and verification mechanisms,
- to establish reference data, indicators and measurable objectives, and
- to allocate funds for the indicated measures.

In implementation of these requirements, the following measures have so far been taken:

The Austrian Federal Chancellery’s Constitutional Service acts - by extension to its competence in ethnic group affairs - as a “national point of contact”.

In order to disseminate information about and communicate the “Roma Strategy”, a website has been created on the website of the Austrian Federal Chancellery and an email address set up: see <http://www.bundeskanzleramt.at/site/7659/default.aspx>.

National monitoring in Austria is performed by a dialogue platform that includes representatives of the Federation and the states, civil society (Roma) associations and experts from the fields of science and research. The dialogue platform convened three times in 2012 on specific topics such as the presentation of the first Austrian report, the presentation of EU financing instruments and questions on employment and access to the labour market.

To further shape the Austrian Roma inclusion policies the following studies have been commissioned:

- Situation of Roma in Austria in employment, housing and other aspects of integration (presented on 30 April 2014)
- Education of Roma in Austria (results expected for October 2014)
- Access to health for Roma in Austria (results expected for January 2015)

A trustful approach towards the Roma (e.g. exchange meetings with Roma organisations) has been figured out as being the best measure to reach the communities and to get information about discriminatory experiences. In many cases, social workers contact equality and/or anti-discrimination bodies in order to point out discrimination against vulnerable groups.

Concerning the autochthonous Roma, a continuous dialogue is pursued with the Roma minority advisory council which meets with representatives from the Department for

National Minorities at least once a year to discuss inclusion policies and subsidizing. The advisory council's main task is to maintain and represent the cultural, social and economic overall interests of the national minorities. In particular, the council has a right to comment on any legal initiative affecting the interests of the autochthonous Roma and to deliver recommendations on the allocation of subsidies granted by the Federal Chancellery.

Examples for special measures for Roma people:

- THARA-projects: THARA is an initiative of "Volkshilfe Österreich" - established in 2005 as an EU-project - that actively supports the integration of Roma in the labour market. More than 1 000 participants and multipliers so far are the proof of the THARA-projects' importance.
- Verein Roma in Oberwart/Erba (Burgenland) helps Roma in social, economic, cultural and educational matters. Annually approximately 150 house visits are made in the south of Burgenland.
- RomBus – a mobile class room. Since 2005 RomBus serves as mobile class room in Burgenland and Lower Austria. The RomBus gives children who do not live in areas with a high percentage of Roma a chance to get instructions in Romanes. The RomBus annually reaches about 5000 people.
- „Roma SchulmediatorInnen an Wiener Schulen" – Roma school mediation in Vienna. The Romano Centro employs school mediators in Vienna in schools with a high percentage of Roma.
- "Lernhilfe und Elternarbeit"⁷ – Another Service of the Romano Centro which offers home visits from teachers to help children with homework and with finding a learning strategy.
- "Roma Lernhilfe"⁸ is organised by Volkshochschulen Wien (adult education centre) in cooperation with Kulturverein Vida Pavlovic. It shall help children in primary and secondary school.

Beyond that, Austria expects that all improvements in the field of education (for example free nursery schools, afternoon child care in schools, all-day classes; the new school type "new middle school"; teaching workshops) and in the social field (for example access to municipal housing in Vienna, also for persons without Austrian nationality, whenever applicants have a long-term residence permit; access to subsidised housing) will also result in a better living situation of the Roma population.

The Ministry for Education and Women's Affairs continually refines measures and strategies against Early School Leaving, which is particularly relevant for pupils with a migration background.



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Childcare facilities

In Austria, the following types of childcare services and facilities are available:

1. Day care centres operated by public bodies (Federal Government, *Laender*, municipalities) and private bodies (companies, associations, church organisations, private individuals):

- For children under the age of 3 years: crèches (*Krippe*) or baby/toddler groups (*Krabbelstube*)
- For children from 2.5 to 6 years: nursery schools (*Kindergarten*; incl. general nursery schools, integrated nursery schools also including children with disabilities, specialised nursery schools for children with disabilities, and trainee nursery schools)
- For children from 0 to 15 years: childcare facilities for wide age groups (e.g. day care centres, children's groups and similar facilities)
- For schoolchildren:
 - day homes, i.e. after school care (*Hort*; incl. general facilities, integrated facilities also including children with disabilities, specialised facilities for children with disabilities, trainee facilities and similar care facilities for school children; partly open all year round)
 - *Tagesheimschule* offering instruction in the mornings and lunch and
 - after school supervision (closed on school holidays)
 - All-day schools (*Ganztagsschule*; alternating instruction and supervision periods, closed during school holidays)

2. Alternatives to institutional care include childminders (mobile mothers/childminders also offer childcare in the children's homes), au pairs (childcare at home), babysitters ("Flying Nannies") and rent-a-grandma/grandpa services.

In 2012/2013 there were 8,322 childcare institutions (not counting seasonal day care facilities), including 4,688 nursery schools, 1,349 crèches, 1,200 after school care facilities and 1,105 mixed-age care institutions. Over the past five years the number of crèches has risen sharply by 41.1%. The relatively small 2.5% increase in nursery schools can be attributed to the fact that an increasing number of institutions are being operated as mixed-age care facilities. The number of mixed-age facilities increased by 42.0% over the past five years, with more and more childcare facilities also offering after school care.

81.5% of all three-year-olds were in childcare, while the rate was 94.3% for four-year-olds and 97.5% for five-year-olds.

Year	Number of crèches	Number of children
2008/2009	1,026	18,389
2009/2010	1,117	20,767
2010/2011	1,208	25,321
2011/2012	1,267	23,625
2012/2013	1,349	25,539

(Source: day care centre statistics 2012/2013, Statistics Austria)

Year	Number of nursery schools	Number of children
2008/2009	4,863	208,449
2009/2010	4,887	209,001
2010/2011	4,694	208,483
2011/2012	4,595	209,130
2012/2013	4,668	209,615

(Source: Day care centre statistics 2012/2013, Statistics Austria)

During the reporting period the Federal Government implemented the measures indicated below, with the aim of increasing the availability of childcare places, especially in regions and for age groups which were previously under-supplied.

The Federal Government has made co-financing offers to the *Laender* governments as the authorities responsible for the provision of childcare, in order to expand childcare facilities to meet current needs. In the years 2008 to 2010 a total of EUR 45 million was made available from federal funds. In order to collect these funds, the *Laender* raised an additional EUR 60 million for this purpose by 2010. This action made it possible to create 24,573 additional childcare places, including 12,080 for children under the age of three years and 12,493 for three to six-year-olds. The share of children under the age of three years in childcare rose from 14% to 19%. This percentage rose from 86.6% to 93.4% for three to six-year-olds, so that Austria has already achieved the Barcelona target of 90% in that age group.

The Federal Government is making an additional EUR 55 million, earmarked for expanding childcare, available to the *Laender* governments between 2011 and 2014. The *Laender* will likewise invest a total of EUR 55 million in expanding facilities. The focus will be on enhancing the availability of childcare for children under three by gradually increasing seasonal opening hours, with special emphasis being placed on the care offered by childminders.

Federal participation in the two aforementioned expansion measures resulted in 31,097 additional childcare places between 2008 and 2012, with 21,431 places added for the group under three years of age.

In 2012 the share of children under three in childcare was about 23% and roughly 93% for the three to six-year-olds.

The Federal Government plans to invest EUR 350 million within the next four years to step up the expansion of childcare availability. Details of the expansion programme are currently being agreed between the Federal Government, the *Laender* and the municipalities.

Accelerated expansion pursues the goal of increasing to 33% the share of children under three years of age in childcare (i.e. the Barcelona target) and of achieving a higher percentage in urban areas (e.g. Vienna). Further concerns are to fully cover needs in poorly supplied regions and to lengthen (especially seasonal) opening hours for the group of three

to six-year-olds. Plans also include improving the levels of training and social security among childminders, and supporting tailored, flexible childcare solutions.

Since 1 January 2005, EUR 700,000 has been earmarked each year within the Family Burdens Equalisation Fund towards promoting the reconciliation of work and family life. These funds will be used to support innovative, demand-oriented, private (i.e. also company-operated) childcare facilities with flexible opening hours as well as the training of childminders (for a maximum of three years). The goal is to create additional innovative childcare places that meet current needs and support flexibility through proximity to the workplace, and to initiate new, open childcare options outside the home. A wealth of additional offerings have been created in recent years, with existing availability being expanded. Funding could be extended to those non-for-profit organisations that respond closely to the special needs of working parents and single parents, that integrate the offerings of businesses as well as local and regional organisations and fully meet demand.

The Federal Government has implemented the measures indicated below in order to enable all children, regardless of their social and economic background, to obtain a pre-school education, thereby enhancing their opportunities when starting into working life:

In the period of 2008 to 2010 a total of EUR 15 million (EUR 5 million per year) was made available for early language instruction of children with a migration background in order to improve their German language skills already at the nursery school stage and before beginning elementary school.

In the period of 2012 to 2014 a total of EUR 15 million (EUR 5 million per year) will be made available for early language instruction of three to six-year-olds at childcare institutions. Here language instruction is given by nursery school teachers and other qualified staff members as part of the daily schedule, using methods involving play that are adapted to the age group as well as to the individual.

In the period of 2009 to 2015 the Federal Government will make available another EUR 70 million per year in order to enable free pre-school education at public and private nursery schools during the last year before beginning elementary school (compensating parents' contributions). In this way, since 2009 children in this age group throughout Austria have been able to attend nursery school for half a day free of charge, and attendance has been compulsory since September 2010.

Since 1 January 2009 parents may deduct childcare costs (e.g. for crèches, childminders and nursery schools) up to a maximum of EUR 2,300 per year and child from wage or income taxes. Deductibility is on condition that the child is under the age of ten years as of the beginning of the calendar year and that childcare takes place at an institutional facility complying with the regulations of the *Land* or is administered by an individual with studies or training in education.

The scope of deductible expenses was widened in mid-2011 to include all expenses for childcare during summer holidays (i.e. accommodation, sport activities, travel) as well as expenses for meals and handicrafts, with retroactive effect as of 1 January 2009.

Non-taxable subsidies paid to employees for childcare expenses are exempt to an unlimited extent from social security contributions. As of 2013 up to EUR 1,000 in such subsidies (EUR 500 until 2012) may be paid out tax-free.

In reply to the Committee's question concerning measures to monitor the quality of childcare facilities, the following information is provided:

All *Laender* regulations put the operation of childcare facilities under the monitoring of authorities.

The specific provisions of the Burgenland Child Education and Care Act (*Burgenländisches Kinderbildungs- und -betreuungsgesetz, Bgld. KBBG*) 2009 and in particular Sections 14, 29 and 30 are cited here by way of example:

<http://www.ris.bka.gv.at/GeltendeFassung.wxe?Abfrage=LrBgld&Gesetzesnummer=20000713>

The legal entity is responsible for appointing the necessary educational professionals, the assistants required for helping in the group, the educational professionals required for integration and the necessary facility staff. Staff members must be of full legal age and capacity and must be physically and personally suited to and professionally qualified for their particular work. Assistants are required to provide proof of having completed at least 200 hours of specific basic training in the field or of training as a childminder. The aforementioned condition must not be met by assistants who are at least 45 years of age as of 5 September 2005 and have been in an employment relationship as an assistant for 15 years (Section 14 Para. 2 *KBBG*).

Monitoring authority and powers (Section 29 *KBBG*).

- Operation of a childcare facility is subject to monitoring by an authority. The *Land* Government is the authority responsible for monitoring crèches, nursery schools, after school care facilities, special forms of care and pilot projects.
- The authority responsible for monitoring crèches, nursery schools, after school care facilities, special forms of care and pilot projects is required to carry out monitoring in such a manner that the legal operators fulfil their obligations as specified in that *Land* statute and comply with the legal requirements.
- The legal operators are obligated to allow the representatives of the monitoring authority to perform monitoring. These representatives are specifically required to be allowed to have contact with the minors and to access the buildings, rooms and other property belonging to the childcare facility as well as to observe operations and to examine records of operations, so that the representatives can obtain sufficient evidence of the children's well-being.
- The legal operators must provide the *Land* Government on request with any information concerning the childcare system that is required for statistical purposes.

Educational monitoring (Section 30 *KBBG*)

- For the purpose of performing the educational monitoring of crèches, nursery schools, after school care facilities, special forms of care and pilot projects, the *Land* Government is required to appoint specifically qualified representatives who have sufficient practical work experience in the field.
- The scope of monitoring includes:
 - The work of educational professionals as educators and teachers
 - Providing professional advice and continued training to the educational professionals
 - The equipment, furnishings and orderliness of the childcare facility

- To support the monitoring of childcare facilities where care is also provided to children in Croatian or Hungarian, the *Land* Government is required to appoint one professional advisor for each of these ethnic languages.

The legislation of the other eight Austrian *Laender* contains comparable regulations; examples follow.

Vorarlberg

Alongside expanding childcare and after school care capacities, efforts are focused on improving quality. In addition to achieving small groups, a special commitment has been made to the training of childcare providers and to the ongoing professional advising of childcare and after school care facilities. The training of childcare providers as childminders involves 122 instruction units; the district commissions are responsible for issuing the care approvals to personnel, ascertaining their suitability and monitoring them professionally. Professionals who are trained in education (i.e. in nursery school education or social pedagogy) are needed to run nursery school groups and to manage childcare facilities; in order to qualify as an assistant at a nursery school, childcare or after school care facility or as a leader of a play group, various training options are available (encompassing some 176 instruction units). The *Land* Government is responsible for the professional monitoring of nursery schools and childcare facilities. Alongside professional monitoring, ongoing professional advising takes the form of consultations, support in planning, organising basic and advanced training events and providing support to projects with the aim of raising quality standards.

Vienna

The prerequisites for employment as a teacher are specified in the statute defining the prerequisites for the employment of nursery school teachers and after school care facility teachers with the City of Vienna, State Law Gazette no. 01/1971 as amended; job candidates must fulfil these prerequisites. The staff group of assistants is required to attend a seminar for assistants following an initial induction period.

Quality management: The Vienna municipal department responsible for nursery schools (MA 10) has defined comprehensive measures that regulate quality management in operations. The Vienna Education Plan (*Bildungsplan*) serves as the basis for day-to-day educational activities. The Education Plan is a vehicle for conveying a clearly defined concept of education to professionals working in this area, requiring them to deal with both intramural and extramural quality standards while at the same time insisting on quality management at the nursery school level.

The nursery school analyses its current situation each year in terms of the factors of space, time and staff, and all educational activities that follow are based on the analysis. As a self-evaluation of compliance with their educational and care mandate, nursery schools under the MA 10 plan and evaluate educational activities as part of a PDCA (Plan-Do-Check-Act) cycle.

This framework additionally supports nursery school principals, as part of their management responsibilities, in reviewing and ensuring compliance with quality standards for education and care.

The MA 10 also has defined for its nursery schools quality assurance standards that apply with regard to teaching and operations, currently in these areas especially: movement,

facility design, gender-sensitive teaching, language, provision of meals, animal welfare education, and safety.

The quality levels of education and care at nursery schools under the Vienna municipal department as well as compliance with the department's standards are instructed and reviewed by regional management periodically.

Family counselling services

Austria operates a network of some 400 family counselling centres funded on the basis of the Austrian Family Counselling Promotion Act (*Familienberatungsförderungsgesetz, FBFG*) that offer free, anonymous counselling for those seeking advice.

A total of approximately 332,000 counselling hours was provided at the counselling centres in 2013, some 157,000 of which were provided by social workers and marriage and family counsellors, some 83,000 hours by psychologists, 45,000 counselling hours by educators and 30,000 hours by legal experts.

In 2013, 233,000 persons were recorded to have used family counselling services resulting in a total of 479,000 counselling sessions. Yet, due to the anonymity of the clients, it cannot be excluded that these figures entail double counting.

From the socio-demographic client data, a slight increase from the previous reporting period can be identified in the number of male clients at family counselling centres (2008: 28.9%; 2013: 30.7%).

Compared with the same period, the number of counselling centres and their specialisations have not changed. With respect to subject, further increases have been recorded for counselling in cases of separation/divorce (2008: 17.1%; 2013: 18.8%) and for counselling in cases related to domestic violence (2008: 8.4%; 2013: 9.3%) as well as counselling for psychological problems (2008: 10.4%; 2013: 11%), while there was a slight drop in cases related to parenting issues, childcare or school (2008: 15.6%; 2013: 14.3%), cases involving partnership conflicts, communication, role distribution or sexuality (2008: 15.6%; 2013: 13.9%), and cases in the area of pregnancy and related conflicts (2008: 6.2%; 2013: 5.9%).

The *FBFG* was amended in 2013. In addition to grants for personnel expenses, funding is available in the period of 2013 to 2015 to cover material expenses arising through implementing accessibility regulations at family counselling facilities.

At the same time the funding budget was increased from EUR 11.6 million to EUR 12.6 million effective as of 2013. The increase is intended for implementing measures within the 2013 to 2015 period to achieve complete accessibility. As of 31 December 2015 all family counselling centres receiving Federal Government funding are required to be completely accessible (currently about 230 of the 400 locations in total are accessible).

Parental education

The goal of parental education is to support parents in developing their competence and parenting skills, thereby avoiding conflicts in parent-child relationships. Consequently, parental education is also in the interest of preventing violence. As a form of adult education, parental education relies on voluntary participation. It is a guided and accompanied educational activity in a group setting.

The legal basis for providing funding for parental education programmes from the Family Burdens Equalisation Fund was established in 2000. This grant money is used to support the

not-for-profit organisations that provide parental education, to lower the threshold of access and allow parents to participate in events at minimal expense. The organisations providing parental education are educational institutions, parent-and-child centres, family organisations, public-sector providers and numerous private initiatives.

In 2013, 87 organisations all over Austria received funding for parental education projects.

The funded institutions recorded 99,659 participants (the majority of which was female) in parental education events in 2012.

During the first six months of 2014, a working group under the Ministry of Family and Youth met to plan the future progress of parental education. Here experienced parent educators from the provider organisations devised a strategy that encompasses more effectively reaching certain target groups (e.g. fathers), implementing appropriately adapted methods and presenting parental education to the public at large in future.

Towards the end of ensuring the quality of parental education programmes, a voluntary group of experts mandated by the Ministry of Family and Youth prepared a training curriculum, which serves as the basis for defining training standards that are comparable throughout Austria. Certification with a quality seal attests to the high standards met by parental education courses that follow the curriculum. Currently 18 courses in Austria carry the quality seal. These basic and advanced training programmes offered by the organisations are co-financed from parental education funds.

Since 2008 the Ministry of Family and Youth has also funded a two-day continuing education event for parent educators from the subsidised provider organisations. The programme for this conference is planned by experienced parent educators as part of a working group for continuing education.

In designing measures to heighten awareness for the option of parental education, the Ministry of Family and Youth considers the varying information needs and educational backgrounds of mothers and fathers.

Here is an overview of the measures aimed at heightening awareness:

Printing and distribution of the Parental Information Folders

Folders are available that cover the various developmental stages of childhood, from the first eight weeks to the tenth birthday and from age ten and up, as well as these special topics: single parenting, patchwork families, late parents, parents of a child with a disability, Turkish families (bilingual folder printed in Turkish in one direction and in German in the other).

The Parental Information Folders are distributed via a supplement to the Mother-Child Packet (presented by the gynaecologist when a pregnancy is identified), at family exhibitions and via the organisations providing parental education; folders may also be ordered free of charge through the Ministry's website.

Maintenance of the website www.eltern-bildung.at

The website provides parents with information on parental education and other topics related to parenting. The organisations providing parental education enter their events into the calendar available on the website. To encourage frequent visits, each month there is a different topic with articles by experts and parents, while reading and link suggestions complete the information offerings. The website recorded a total of 689,808 visits in 2013.

Apps on parenting under development for mobile devices

Apps providing information about the childhood developmental stages and other special topics should be available to the general public by early 2014.

Awareness campaign “Reading out loud and story-telling for healthy kids” (*“Vorlesen und Erzählen stärkt die Gesundheit”*) in cooperation with the “geschichtenbox” web search engine

Information about parental education programmes is provided when parents download stories from geschichtenbox.com and send stories for reading out loud via e-mail. The campaign runs from November 2013 until November 2014.

Media plan for future public relations

Parent educators and media experts participated in a workshop on this subject lasting several days in 2013. The resulting strategies for the use of new forms of media access in parental education will be implemented in the coming years by the Ministry of Family and Youth and integrated with publicity activities in the area of parental education.

Legal protection of the family

Rights and obligations of spouses

New developments in the reporting period: joint custody

The Act to Reform the Law of Parent and Child (*Kindschaftsrechts-Änderungsgesetz*) 2001, Federal Law Gazette I no. 135/2000, entered into force on 1 July 2001. The statute includes a provision providing both spouses with the option of retaining full custody of the child upon divorce, as during their marriage. This is possible on condition that the spouses submit to the custody court an agreement stipulating the parent with whom the child will mainly reside. Through this arrangement, both parents receive equal legal treatment even after separating. The joint custody of both parents, defined in the General Civil Code (*Allgemeines Bürgerliches Gesetzbuch, ABGB*) as an obligation and not just a right, is intended to reinforce awareness of the fact that parents, even after separating, nonetheless continue to be their common child’s parents in the fullest sense. As of the Act to Reform the Law of Parent and Child and Name Law 2013 (*Kindschafts- und Namensrechtsänderungsgesetz 2013, KindNamRÄG 2013*), the courts can entrust parents with joint custody even against one of the parents’ will, where it is ruled that this would be more in the interest of the child’s well-being than if one parent were to have sole custody. In such cases the parents are required to reach an agreement regarding the main household in which the child will be cared for.

In reply to the Committee’s request to provide information on legal arrangements to settle marital conflicts and in particular conflicts pertaining to children, the following information is provided:

In cases of divorce by mutual consent, which represent 90% of all divorces, the spouses are required to reach an agreement regulating: care of their children, custody, the exercise of the right to personal contact, maintenance obligations towards their common children as well as the relationships arising from laws governing maintenance and any legal claims based on property rights. In cases of non-mutual divorce, the items listed above can be clarified in separate proceedings, following the divorce proceedings and once the divorce has been pronounced. As specified in Section 181 *ABGB*, the court is required to respond to any risks to the child’s well-being that become known during divorce proceedings. Section 181 *ABGB*

specifically obliges the court, where the behaviour of the child's parents threatens the well-being of their minor child and regardless of the party calling on the court, to take the necessary measures to ensure the child's well-being, and in particular to fully or partially revoke custody or revoke any rights of consent and approval defined by law.

Mediation services

Currently (as of 24 February 2014) there are 2,434 registered mediators in Austria, 1,451 of whom are women and 983 are men. About 40% of the mediators (894 individuals) are registered in Vienna.

In reply to the Committee's question concerning the number of couples requesting subsidised mediation and the number of requests granted, the following information is provided:

The situation has not changed compared with the 28th report on the European Social Charter. There continue to be about 440 couples seeking divorce or separation each year who request subsidised mediation, which in almost 90% of the cases brings about a divorce by mutual consent.

Domestic violence against women

On 1 May 1997 the Protection against Violence within the Family Act (*Bundesgesetz zum Schutz vor Gewalt in der Familie, GeSchG*), Federal Law Gazette 1996/759, entered into force. The provisions contained in this Act were gradually amended and extended in the years 1999, 2002 and 2004, and in particular by the Second Protection Against Violence Act (*Zweites Gewaltschutzgesetz, 2. GeSchG*), Federal Law Gazette I no. 40/2009, which entered into force on 1 June 2009.

Where there is a threat of a person (the endangering person) committing (additional) violence, the *GeSchG* authorises the police to prohibit that person from entering the home where the endangered person resides and, if the endangering person refuses to leave the home voluntarily, to bar that person from the home. This puts into practice the rule that it is the offender who must leave, allowing the threatened person to remain in familiar surroundings.

If a minor under the age of 14 years is (also) threatened, the law additionally requires that the endangering person be prohibited from entering (or coming within 50 metres of) a childcare facility, school or after school care facility attended by the minor (this provision entered into effect as of 1 August 2013).

Where protection from the endangering person is needed for a longer period, the endangered person may petition the courts to issue an interim injunction. Depending on the situation involving violence or a related threat, the aim of the petition can be to ensure that the endangering person:

- does not enter the home or the immediate vicinity for a set period ("Protection from violence in homes", Section 382b of the Enforcement Code, *Exekutionsordnung, EO*); and/or
- does not visit certain places for a set period and does not contact the endangered person ("General protection from violence", Section 382e *EO*); and/or
- must refrain from violating the endangered person's privacy ("Protection from violations of privacy", Section 382g *EO*).

An interim injunction can be imposed irrespective of any prohibition to return order issued by the police and vice versa.

To provide threatened individuals with comprehensive protection, a violence protection centre – referred to in Vienna as an intervention centre against domestic violence – has been set up in every Austrian Land, and some have regional service points as well.

The following actions were taken during the reporting period to support women faced with domestic violence:

The violence protection centres were expanded and several regional service points were established. The violence protection centres are informed by the police immediately after a barring order is imposed and subsequently contact the victim (usually a woman) to offer comprehensive assistance.

	Increased funding for violence protection centres/intervention centres	Increase in %	Prohibition to return orders Barring orders according to statistics of the Federal Ministry of the Interior
2009	€ 6,179,740	+9.75%	6,731
2010	€ 6,384,000	+3.31%	6,759
2011	€ 6,384,000	+ 0.00%	No details – conversion to computerised statistics
2012	€ 6,607,440	+3.5%	7,748
2013	€ 6,765,888.12	+2.4%	7,810

In addition, a great number of women's service centres that also provide counselling to women affected by violence have been promoted, a nationwide free 24-hour hotline for women and a total of 30 battered women's shelters (providing accommodation for a total of 759 women) were established.

Women and girls who are the victims of sexual violence can contact one of the five specialised autonomous regional counselling centres (in Innsbruck, Linz, Salzburg, Graz and Vienna) or the City of Vienna's 24-hour women's emergency hotline.

In addition, a shelter for young women who are threatened with or the victims of forced marriage opened in Vienna as of 1 August 2013 (run by the private association Orient Express).

Training for staff members of women's facilities and for counsellors providing psychosocial court assistance also received regular funding during the reporting period.

Important publicised action during the period under review:

A two-year project co-financed by the EU, involving a wide range of activities aimed at making the public at large more sensitive to violence against women and girls, began in late 2013: "PROGRESS – Living non-violently" ("*PROGRESS – GewaltFREILEben*"), a campaign to

prevent (serious) violence against women and children. The project with a total budget of EUR 399,999 focuses on information, prevention and raising awareness.

The fem:HELP app was released for Android and iPhone devices in September 2013. The purpose is to support women who fall prey to violence, helping them document their experiences of violence as well as contact the police and aid organisations quickly and easily. The fem:HELP app is also available in Bosnian-Croatian-Serbian and Turkish versions.

A campaign to inform the public about knock-out drops was launched in 2012, and the initiative will be continued in future in cooperation with the Women's Affairs Department of the Federal Ministry of Education and Women's Affairs (BMBF), and with the Federal Ministry of the Interior/Federal Criminal Police Office. About 800 female and male prevention officers are involved throughout Austria, with a total of 80,000 information leaflets and 1,500 posters being distributed in the next few years to locations suited to reaching youth.

The folder entitled "Women are right, women have rights" ("*Frauen haben Recht(e)*") also went into a new edition in 2013, and important information and contact addresses are published on an ongoing basis in German and English on the website of the Women's Affairs Department of the BMBF at <http://www.bmbf.gv.at/frauen/gewalt/index.xml>

Coordination and cooperation

Also during the period under review, an inter-ministerial working group to protect women against violence was called into being, which is led and managed by the Women's Affairs Department of the BMBF. The group is currently working on an NAP to Protect Women Against Violence.

Statements by the individual *Laender*

Vienna

Vienna boasts one of the tightest victim protection networks nationwide and is internationally often mentioned as good practice example. Since 1996, the Women's Department of the City of Vienna has been running the 24-Hour Women's-Emergency-Helpline for women affected by violence, rape, etc. It offers 24hrs phone and face to face counselling, as well as companionship to court, hospital or police. In 2013, the 24-Hour-Women's Emergency Helpline of the City of Vienna had in total 8.219 counselling contacts. This number consists of 951 face to face counselling sessions, 7.156 counsellings by phone and 112 online counsellings. In Vienna, the Women's Department fully funds:

- four NGO-run women's shelters for women and children affected by violence (175 places; the first shelter founded was in 1978 and since then shelters have been fully supported by the City of Vienna),
- 54 transition apartments (if women after a stay at a shelter are safe, but still need assistance),
- a counselling center for women and children affected by violence.

Thus, with a population of 1.741.246 inhabitants (1 January 2013), Vienna fulfils the recommendation of the European Parliament (1987) of 1 shelter place per 10.000 inhabitants as well as the recommendation of the CoE Task Force against Violence on Women (2007) concerning 1 place per 7.500 inhabitants.

Additionally the Viennese Women's Department also offers core funding to 26 women's NGOs. Eight of those NGOs explicitly focus on the issue of violence prevention, assistance, counselling. The other NGOs also are sensitised in the topic of violence against women when working with migrant women, in the job market/promotion of women, girls counselling, regarding issues of health, homosexuality, prostitution, culture and education/training.

In Vienna, there are also women's NGOs and organizations working on violence against women which are not funded by the Viennese women's department, as for example the Viennese Intervention Center against Violence in the Family and the 24hrs Austrian Emergency Helpline (both fully funded by the Federal Chancellery). A list of services regarding violence in Vienna can be found for example on this webpage: <http://www.wien.gv.at/sozialinfo/content/de/10/Institutions.do?senseid=311>

Lower Austria

With reference to protection against domestic violence, the Government of Lower Austria can be seen to fund institutions that provide counselling and support to women and girls having psychological, social, health, legal, employment-related and financial issues, as well as when facing cases of divorce and child custody, and when they have experienced violence.

A network of ten women's counselling centres and seven branch offices covers all of Lower Austria. The centres are the initial contact points for women in crisis situations. Six battered women's shelters are available for the protection of women and children affected by violence. To ensure accessibility for women from other cultures, migrant women's counselling is offered and subsidies flow to a migrant women's counselling centre in the Lower Austrian capital of St. Pölten.

The women's hotline in Lower Austria is a low-threshold service, providing confidential initial counselling at no expense for women of any age who are suffering through a stressful situation. Counselling is provided in German, Croatian, Russian, Serbian, Chechen and Turkish.

Implemented by the women's counselling centres and funded by the government's women's affairs office, a continuing education project is focusing on domestic violence and its significance for the healthcare system. In this context workshops and information events are being held to sharpen awareness of violence against women and girls. About 4,500 physicians, nurses, nursing students, midwives and staff members at social and psychological service centres received training, one of the aims being to sensitise them towards all healthcare issues related to violence against women, and to encourage them in their professional activities. The list of topics includes: dimensions, forms and patterns of violence, the situation of women and children, acute and long-term effects on health, violence as a traumatic experience, effectively helping within the healthcare system, and secondary traumatisations among helpers. These groups of professionals are being especially trained to recognise violence, to conduct interviews with victims, apply methods of intervention, and understand the value of documentation and securing evidence. Efforts are also focused on establishing closer links between physicians at hospitals and in private practice and on expanding the training options for victim protection groups (Section 19g of the Hospital Act of Lower Austria, *NÖ Krankenanstaltengesetz*, State Law Gazette 9440-32).

As a result of ongoing PR activities (lectures, project presentations, participation in expert groups and similar events), to date an additional 4,200 individuals from the healthcare

sector, the police force and women's aid organisations have been directly involved. Refer to this link for more information:

<http://www.gewaltgegenfrauen.at/>

Salzburg

The *Land* Salzburg offers overall a well-structured, high-quality set of programmes for individuals threatened or affected by violence. Set at the interface of several institutions, the (outreach and residential) services and programmes are based on a broad spectrum of regulations and policy decisions, and responsibility for mandate and funding similarly diverges widely.

- Government adoption of a Master Plan to Prevent Domestic Violence: The plan is intended as an underlying holistic strategy to closely link and coordinate the action plans and goals of the government departments with responsibility in this area. It is aligned with the goal of planning, with an eye to synergies, the deployment of the financial and human resources that the service divisions (departments) have available for this purpose, and to closely link and further develop these resources. This also entails coordinating, in the interest of effectiveness, the services offered by the organisations receiving funding from the individual departments or from sub-departmental administrative units.
- Battered women's shelters in Salzburg: The Salzburg Government subsidises three women's shelters with a total of 32 residential units. This gives Salzburg a total capacity of 82 places for women and children, which makes Salzburg one of only three *Laender* that meet the international recommendations on the rate of care accommodation in terms of overall population (the Council of Europe Agreement recommends one place of accommodation per 10,000 residents, i.e. 53 for Salzburg). As part of effectiveness-oriented product planning, the Government Office for Equal Opportunity, Anti-discrimination and the Advancement of Women ensures both adequate service structures and an ample supply to the regions, while consistently striving for quality assurance and a close coordination of the core services provided by women's shelters, the latter through ongoing cooperation and monitoring.
- Counselling and violence-prevention measures in the *Land* Salzburg: Alongside the spectrum of resident services offered by the three battered women's shelters, a closely knit network of non-resident counselling services, covering all of Salzburg, provides support, care and psychological assistance in coping with experiences of violence. At the initiative of the Government Office for Equal Opportunity, Anti-discrimination and the Advancement of Women, structures previously existing in the individual regions have been supplemented in recent years with the addition of non-resident services aimed at prevention and heightened awareness. Such not-for-profit institutions play a key role in prevention and in providing victims with information about other social and healthcare offerings as well as public and court services. They also represent a valuable basis for measuring effectiveness and quality.

Tyrol

A website providing information, accessible in low-threshold form and in six languages (German, English, French, Italian, Turkish, Bosnian-Serbian-Croatian), has been made

available for those affected (women, children, young people, family members), also indicating institutions that offer counselling and support options.

www.gewaltfrei-tirol.at

Funding is also provided to counselling centres for women and girls that offer initial counselling for those affected.

Economic protection of the family

In the Austrian Federal Government's current work programme for the period of 2013 to 2018, the items given in the following have been stipulated:

The country of Austria is especially family-friendly and child-friendly. All children in Austria ought to be able to grow up carefree and have the best opportunities for the future. Parents should therefore be supported through educational and childcare programmes as well as through financial assistance and tax advantages. Both the availability and the quality of educational and childcare programmes for elementary schoolchildren should be improved in order to make a suitable place in a care facility available to every child for whom a place is sought. In this way children will receive the best possible preparation for their later school careers and the reconciliation of work and family life will be facilitated.

Financial support for families and children: reform and enhancement of family benefits, in particular of family allowance, and of tax benefits for children, with the aim of concentrating support for families, enhancing its transparency and making it broadly accessible for families. Family benefits should be increased in the medium term.

Family benefits

As regards the legal framework, reference is made to the previous reports on the implementation of the 1961 Charter, in particular to the 28th report.

Changes during the reporting period:

Eligibility for the receipt of family allowance is normally given in the case of minor children. For children of full age (the age of majority is attained in most cases at children's 18th birthday) the law specifies restrictions. Family allowance is then granted only where the prerequisites explicitly stipulated by law are met. The most important prerequisites:

- children must be undergoing vocational training and under the age of 24 years (in certain cases the period of entitlement may be extended until the age of 25 years); or
- children must not be expected to be able to permanently support themselves on account of a disability that has occurred prior to the age of 21 years or during later vocational training but no later than the age of 25 years.

Eligibility for family allowance is also given:

- in the case of children of full age and under the age of 24 years, during the period between completing school education and beginning later vocational training, provided that the individual begins such training at the earliest possible date;
- in the case of children of full age, during the period between completion of national service, national training service or alternative civilian service and the beginning or continuation of vocational training, provided that the individual begins or continues such training at the earliest possible date;

- in the case of children of full age and under the age of 24 years, during the period in which the individual participates in certain voluntary services as defined in the Volunteer Act 2012 (*Freiwilligengesetz 2012*; e.g. voluntary social year, voluntary environmental year, memorial service, peace and social services abroad).

The taxable income of a child above the age of 19 years must not exceed EUR 10,000. The amount of family allowance paid out is reduced by any amount exceeding that limit. The actual income is determined for this purpose by referring to the assessment base used to calculate payroll tax and/or income tax, excluding the 13th and 14th monthly payments. Any apprenticeship pay or orphan's pension is not taken into account.

The following amounts are applicable per child and month (status as of 1 January 2013):

- 0-3 years: EUR 105.40
- 3-9 years: EUR 112.70
- 10-18 years: EUR 130.90
- 19 years and older: EUR 152.70

The following amounts are added to the total family allowance per month:

- with two children EUR 6.40 per child
- with three children EUR 15.94 per child
- with four children EUR 24.45 per child
- with seven children EUR 35.40 per child
- with sixteen children or more EUR 50 per child

The supplement for a significantly disabled child is EUR 138.30 per month.

Multiple-child supplement:

A multiple-child supplement of EUR 20 per child and month is paid out as a supplement to family allowance for the third and each additional child.

The family's annual income during the previous year may not, however, have been more than EUR 55,000.

The multiple-child supplement has to be applied for each year when filing the annual income tax return.

In reply to the Committee's question concerning equal treatment of foreign nationals and stateless persons with regard to family benefits, the following information is provided:

Pursuant to the Family Allowance Act (*Familienlastenausgleichsgesetz, FLAG*) 1967, third-country nationals are generally eligible for family allowance if they have a valid residence title, their centre of vital interests is in Austria and their children's permanent place of abode is in Austria. There are no minimum requirements as to the period of prior residence or employment.

A person's centre of vital interests is in the country with which his/her personal and economic relations are closer. This prerequisite applies to Austrian and non-Austrian citizens alike.

An individual lawfully residing in Austria who is not an Austrian citizen is eligible for family allowance based on the same prerequisites as an Austrian citizen.

In reply to the Committee's question on the number of beneficiaries, the following information is provided:

About 1,080,000 individuals entitled to family allowance received the benefit on behalf of some 1,775,000 children in 2013. This amounts to EUR 3.2 billion in total annual benefits paid.

Childcare benefit

Legal framework: Childcare Benefit Act (*Kinderbetreuungsgeldgesetz, KBGG*), Federal Law Gazette I no. 103/2001 as last amended.

Childcare benefit is payable for children born on or after 1 January 2002. Generally, the following prerequisites must be met in order to be eligible for childcare benefit:

- Eligibility for family allowance for the child
- The parent applying for childcare benefit and the child have their centre of vital interests in Austria
- The parent applying lives with the child in one household
- The additional-income limit is not exceeded
- Legal residence in Austria

Childcare benefit is payable for the youngest child of each family. Childcare benefit is payable to biological parents, adoptive and foster parents.

The instrument applicable to EEA or EU citizens is Council Regulation (EC) No. 883/2004 on the coordination of national social security schemes to employed and self-employed persons and to members of their families moving within the Community. This regulation is based on the State-of-employment principle.

This means the primary responsibility for the payment of family benefits (including childcare benefit) rests with the Member State in which a parent is employed. Compensatory payments may become due in the State of residence if the family benefits of the State of employment are lower. If each of the parents is employed in a different State, childcare benefit has to be granted in the State of employment where the child lives with the parent (State-of-residence principle).

As of January 2010 parents can choose between two systems offering a total of five different options for having childcare benefit paid out.

The options available within the flat-rate system are as follows:

Option	Daily amount	Monthly amount
30 + 6	EUR 14.53	approx. EUR 436
20 + 4	EUR 20.80	approx. EUR 624
15 + 3	EUR 26.60	approx. EUR 800
12 + 2	33	approx. EUR 1,000

The option available within the **substitute income** system is as follows:

Option	Monthly amount
12 + 2	80% of most recent income, EUR 2,000 max.

The system and the related option must be selected when filing the initial application for childcare benefit and also apply to the other parent.

If only one parent claims childcare benefit, the entitlement lasts up to the 30th, 20th 15th or twelfth month of the child's life. If the parents alternately claim the childcare benefit, the entitlement period is extended, depending on the option selected, by six, four, three or two months (see table above). The idea behind the extra months "reserved" for the other parent is to encourage fathers to increasingly participate in childcare. Also, the relationship between children and their fathers is to be reinforced early, during infancy, and the children's mothers can return to work earlier if they wish.

Parents may alternate the receipt of childcare benefit twice, where each period as a recipient must last a minimum of two months.

With the flat-rate options, an individual additional-income limit has been in effect since 1 January 2010: while receiving a flat rate of childcare benefit, the parent may earn additional income amounting to as much as 60% of the most recent previous income but no more than EUR 16,200 per calendar year.

"Additional income" is generally defined as the total of all taxable income earned while receiving childcare benefit, with only the income of the parent actually drawing childcare benefit being counted. The income of the other parent is irrelevant in this case. If this annual additional-income limit is exceeded, the excess amount has to be paid back.

Income-related childcare benefit, which may be claimed for babies up to the age of twelve months (14 months where the other parent also takes parental leave), is 80% of the most recent previous income but no more than EUR 66 per day (totalling approximately EUR 2000 per month); apart from the general prerequisites that have to be met, the parent must have been gainfully employed for at least six months prior to the child's birth or to maternity leave. The income-related childcare benefit scheme gives income-oriented parents a better choice, primarily with the goal of reconciling work and family life, and more actively involving fathers in the care of children.

Since income-related childcare is an income substitute, only EUR 6,100 in additional income per calendar year is allowed (as of 2013).

For children born as of 1 January 2010, financial support in the form of an allowance is available as a supplement to childcare benefit for parents in a low-income bracket and single parents with small earnings. The allowance is EUR 6.06 per day (about EUR 181 per month). The eligible recipients are firstly single parents who are entitled to flat-rate childcare benefit and do not earn more than an additional EUR 6,100 per calendar year, and secondly non-married cohabiting parents, provided that the other partner does not earn more than EUR 16,200 per calendar year. Regardless of the flat-rate option selected, the allowance is payable for a maximum period of twelve months from when the application was filed.

The supplement specified in the *KBGG* for multiple births has also been modified as of 1 January 2010: the amount of flat-rate childcare benefit increases by 50% of the selected

option with the second and each additional child born through multiple birth. Recipients of income-related childcare benefit are not eligible for a multiple child supplement.

During periods of maternity benefit payments, childcare benefit is suspended. Yet, if the amount of the maternity benefit is lower than childcare benefit, the difference must also be paid.

For healthcare policy reasons, the payment of childcare benefit was tied to the examinations set forth in the Mother-Child-Booklet (five check-ups of the mother during pregnancy and five check-ups of the infant). Where mothers do not have the check-ups performed or fail to provide corresponding proof, only half of the childcare benefit is paid out as of a certain month (depending on the option selected), or the income-related benefit is reduced by EUR 16.50 per day.

The health insurance institutions are responsible for administrating the Childcare Benefit Act.

Parents receiving childcare benefit as well as the child are covered by health insurance during the entitlement period. No separate application is required.

As part of the reform to harmonise the pension systems in Austria, it became no longer necessary to receive childcare benefit in order to accumulate contribution periods for pension insurance. Parents born as of 1 January 1955 now have compulsory insurance within the pension insurance system for the first four years after the child's birth (for the first five years in the case of multiple births). This enables parents to accumulate contribution periods.

As at the end of December 2013, 130,849 individuals were receiving childcare benefit.

At that time 12,713 of them (or about 9.7%) were also receiving an allowance as a supplement to the childcare benefit. 2,384 childcare benefit recipients were receiving supplementary payments for multiple births.

Parents may select from among five different payment options. Among parents whose child was born in 2012, 43.5% chose the 30+6 option and 26.1% the 20+4 split, while 6.2% opted for each of the variants 15+3 and 12+2, and 18% decided on the income-related option (as of August 2013).

Citizens of non-EU or EEA countries having the centre of their vital interests in Austria and lawfully residing in Austria are entitled to childcare benefit, provided the other prerequisites are met as well. There is no minimum residence period requirement.

Family hospice leave – compensation for social hardship

Family hospice leave is the full release from work for the purpose of caring for and assisting either a member of the family near death or a seriously ill child while retaining employment and social security; individuals requesting such a leave can in the event of a resulting financial need situation be eligible for an income supplement from a special social hardship fund.

In this case the weighted monthly household income (with the exception of family allowance, any housing allowance, care benefit and childcare benefit) must not total more than EUR 850 per person.

The amount of the monthly benefit is limited to the income relinquished as a result of taking family hospice leave, with any care leave benefit (made available as of 1 January 2014) taken into account.

Families also receive assistance from all *Laender* in accordance with the provisions of law in the particular *Land*. Two examples are given in the following:

Upper Austria makes direct transfer payments amounting to about EUR 3.5 million in subsidies each year in situations representing a special financial burden, e.g. for expenses at the beginning of school, school events and payable childcare. Roughly EUR 2 million is made available from the budget of the family affairs department for organisations that support families – in addition to the childcare facilities that are funded based on the Upper Austrian Childcare Act 2007 (*Oö. Kinderbetreuungsgesetz 2007*). To promote parental education, parents and guardians receive training vouchers for parents. About 60,000 such vouchers (totalling EUR 180,000) are redeemed each year at the family affairs department via educational organisations.

Vorarlberg has a Family Support Act (*Familienförderungsgesetz*), State Law Gazette no. 32/1989 as amended, which sets forth the goals and principles of family support as well as related administrative procedures. The services ensured on the basis of the Family Support Act include: the family supplement, the Family Card, family holiday weeks, the family-friendly municipality etc.

The Vorarlberg family supplement is intended to enhance the general conditions for families: Ensuring that a child is raised and cared for by one of its parents nurtures the child's feeling of being sheltered in the family. In addition, a socially balanced system of supplements relieves the financial pressure on families and especially on single parents. The overall effect is to express greater recognition of the family as an important foundation of human society.

In 2013 a total of roughly EUR 3.41 million was paid out in family supplements to 1,238 recipients.

Due to annual inflation adjustment and a modification of the weighting factors, a new guideline on the future development of the family supplement entered into force as of 1 January 2014.

Finally, Vorarlberg has a comprehensive system of various subsidies for young people and families.

Vulnerable Families

In reply to the Committee's request for information on the situation of Roma families and, in particular, the steps taken to ensure they receive financial protection, the following information is provided:

Reference is made to the information already given in this report on the efforts to improve the situation of Roma families in Austria, in particular on the measures to improve their social and economic situation (pages 65ff.).

ARTICLE 17 – Right of minors and children to social and economic protection

In response to the general question of the Committee, whether unlawfully present children have access to shelter and medical care for as long as they are in the jurisdiction of the State Party concerned, and if so what is the legal basis, the following information is provided:

According to Section 2 Para.1 no.4 of the Basic Welfare Support Agreement (*Grundversorgungsvereinbarung*) - Art. 15a of the Federal Constitutional Law (*Bundes-Verfassungsgesetz, B-VG*), children illegally residing in the territory have access to basic welfare support in their capacity of “aliens without the right of residence” unless subject to “deportation on legal or factual grounds”.

According to Art. 6, basic welfare support comprises accommodation and medical treatment.

Art. 7 provides for additional services for unaccompanied minors, e.g. socio-educational and psychological support.

Hence, if the above conditions are met, welfare services are guaranteed.

Independently, medical emergency care is guaranteed in any case.

Health insurance

According to the social security provisions of the General Social Insurance Act (*Allgemeines Sozialversicherungsgesetz, ASVG*) and other social insurance acts (Commercial Social Insurance Act (*Gewerbliches Sozialversicherungsgesetz, GSVG*), Farmers Social Insurance Act (*Bauern-Sozialversicherungsgesetz, BSVG*) and Civil Servants Sickness and Accident Insurance Act (*Beamten-Kranken- und Unfallversicherungsgesetz, B-KUVG*)), relatives of persons paying health insurance contributions are entitled to insurance benefits, provided that their habitual place of residence is in Austria and are not part of a health insurance scheme according to federal law or within a healthcare institution under public law. Among others, children and adopted children, stepchildren and grandchildren are deemed eligible relatives or family members if they constantly reside with the insured person, as well as foster children if they are taken care of by the insured person free of charge or if the foster care was officially authorised (Section 123 ASVG and parallel provisions of other social insurance acts).

For interpreting the concept of “habitual place of residence” the definition of Section 66 Para. 2 of the Austrian Code of Judicial Jurisdiction (*Jurisdiktionsnorm, JN*) is used as a reference. Pursuant to Section 66 Para. 2 JN, the habitual place of residence of a person is determined “*exclusively by the actual circumstances; it depends neither on the permission nor on the voluntariness of the residence. When assessing whether a person’s place of abode meets the requirements of a habitual place of residence, its duration and consistency as well as other circumstances of a personal or occupational nature suggesting a permanent connection of a person with their place of residence shall be taken into consideration.*”

Paragraph 1 - Assistance, education and training

Questions 1, 2 and 3

In respect of this paragraph the Government refers to its previous reports on the implementation of Article 17 of the 1961 Charter, in particular to its 28th report.

Legislative change during the reporting period concerning **adoption**:

The different minimum age for adoptive mothers and fathers was repealed by the Act to Reform the Law of Parent and Child (*Kindschafts- und Namensrechtsänderungsgesetz 2013, KindNamRÄG 2013*) and replaced by a uniform age limit of 25 years. Additionally, the minimum difference in age between adoptive parents and their adoptive children was standardised and has been set at 16 years (Section 193 of the General Civil Code (*Allgemeines Bürgerliches Gesetzbuch, ABGB*)).

The 2013 Act to Reform the Law of Adoption lays down the right of registered partners to adopt the biological child of their partner (stepchild adoption). Regular joint adoption and successive adoption continue to be reserved for heterosexual spouses.

Education system

The Government refers to its previous reports on the implementation of Article 10 of the 1961 Charter, in particular to its 29th report.

School attendance is compulsory for all children who are permanent residents of Austria. Compulsory schooling starts on September 1 following a child's sixth birthday and lasts nine school years.

General information about the Austrian education system is provided on the following website: <https://www.bmbf.gv.at/enfr/school/schools.html> where the following specific information can be found:



Public and private schools in Austria



Part of the requested detailed data related to teaching staff can currently not be provided due to the fact that the specific data currently available are not adequately broken down by region in a way that allows an allocation according to the degree of urbanisation. In addition, the fact that teachers may be employed at two levels of education simultaneously (e.g. at lower and upper levels of academic secondary schools (*Allgemeinbildende Höhere Schule, AHS*)) makes the comparison with student numbers difficult; providing numbers on the "ratio between students and teachers" is therefore not possible at present.

Quality assessment

Since 2004, *QIBB* (*Qualitätsinitiative Berufsbildung*), the VET Quality Initiative, has been pursued as the strategy 'for vocational schools, adult education and school sports of the Federal Ministry of Education and Womens' Affairs (*Bundesministerium für Bildung und Frauen, BMBF*) with the aim of introducing a quality management system to the vocational school system in Austria.

The objective of *QIBB* is to incorporate systematic quality management (QM) for securing

and advancing the quality of schools and education and the quality of administrative services at the federal and *Laender* level as well as at the level of schools. It is the aim of *QIBB* to encourage and enhance the ability of those involved to work in a responsible and professional way at each system level. The QM instruments offered within the scope of *QIBB* are designed to support systematic observation, evaluation and reflection of the quality of processes and results in order to be able to implement well-founded (evidence-based) measures.

QIBB comprises all types of vocational schools and the QM systems of these types of schools:

- vocational schools (*ÖBS*) and “*Q-ÖBS*” (quality management system for vocational schools);
- schools for engineering, arts and crafts (*HTL*) and “*HTL Q-SYS*” (quality management system for schools for engineering, arts and crafts);
- schools with a focus on business (*HAK* and *HAS*) and “*HAK Q-SYS*” (quality management system for schools for the business sector);
- schools for the social and services sector (*HUM*) and “*Q-HUM*” (quality management system for schools for the social and services sector);
- upper-level schools for the agriculture and forestry sector (*HLFS*) and “*Q-HLFS*” (quality management system for upper-level schools for the agriculture and forestry sector) as well as
- educational institutions for nursery school teacher education and social education (*BA*) and “*QBA*” (quality management system for educational institutions).

Within the scope of *QIBB*, quality assurance and development are performed as an objective-oriented processes of continuous improvement on the basis of the four-step Deming cycle (plan-do-check-act). The processes are controlled, supported and structured by means of specific QM instruments and aligned with quality priorities agreed at federal level (e.g. transparent performance appraisal, individualisation of instruction, etc.).

The following QM instruments are used in *QIBB*:

- mission statement;
- quality objective matrix;
- definition of key processes;
- work/school programme incl. development and implementation plan;
- agreement of objectives;
- evaluation: individual feedback, system feedback, peer review in *QIBB*
- quality report: school quality reports, quality reports at *Laender* and federal level;
- staff development: training and further education for managers, teachers and employees.

The aim of School Quality in General Education scheme (*Schulqualität Allgemeinbildung, SQA*) is to optimise the learning environment by developing and assuring pedagogical quality at all levels of schools of general education. An elevated level of education is to be reached by pupils studying independently, guided by respectful and qualified teachers. Development

plans, evaluations and the agreement of objectives constitute the core elements of a high-quality development.

The main objective of the Federal Ministry of Education and Womens' Affairs (*BMBF*) with regard to schools of general education for the period between 2012 and 2016 is further developing learning and teaching towards individualisation and competence-orientation.

Further information regarding SQA can be found at <http://www.sqa.at/> (in German).

Children in public care

In principle, parents have child custody for their minor children.

If parents put at risk their children's well-being by mistreating, neglecting or abusing them, their child custody rights have to be revoked by court. If parents are not able to exercise their child custody rights, the responsibility of making foster family arrangements and taking care of young persons in socio-pedagogical institutions usually resides with the child and youth assistance services (*Kinder- und Jugendhilfe*, formerly youth welfare (*Jugendwohlfahrt*)).

Pursuant to Section 12 *B-VG*, it is the federal government's responsibility to pass fundamental laws in the field of child and youth welfare, while implementation laws are within the competence of the *Laender*. The Federal Children's and Youth Assistance Act (*Bundes-Kinder- und Jugendhilfegesetz, B-KJHG*), Federal Law Gazette I 69/2013, entered into force on 1 May 2013, repealing the Youth Welfare Act (*Jugendwohlfahrtsgesetz, JWG*) 1989.

According to the Act, it is the responsibility of the public children and youth welfare services to investigate whether foster parents are able to provide supportive care and education to their foster children. In this respect, the mental and physical health, parenting attitude, parenting skills, the age and reliability of foster parents as well as the resilience of the family system have to be taken into account in particular.

Foster parents are obliged to participate in special training. For the care and education of their foster children they receive a lump-sum reimbursement, the amount of which is stipulated by the *Laender*. Both foster parents and socio-pedagogical institutions are subject to supervision by the child and youth assistance services (formerly youth welfare).

In those cases where parents have a limited capability of educating their child and the child's or young person's well-being is not likely to be put at risk while staying with the family, the child and youth assistance services have to provide parenting support within the family, in particular by, e.g. offering mobile services, home visits or limiting the contact to persons representing a risk to the child's well-being.

In 2012 (latest statistics available at federal level) 26,857 minors were provided with parenting support within the family; 4,507 minors were taken care of by foster parents and 6,542 minors were placed in child and youth assistance institutions.

In reply to the Committee's request for information concerning the criteria for the restriction of custody of parental rights, the extent of such restrictions, procedural safeguards and the possibility to lodge an appeal against a decision, the following information is provided:

According to Section 181 of the Austrian General Civil Code (*ABGB*), the court is authorised - where the behaviour of the child's parents threatens the well-being of their minor child-

regardless of the party calling on the court, to take the necessary measures to ensure the child's well-being, and in particular to fully or partially revoke custody or revoke any rights of consent and approval defined by law. The full or partial revocation of care or education or the right to manage the child's assets includes the revocation of the right to legally represent the child in the respective field; legal representation rights in these matters may be revoked independently if the child's parents or the specific parent concerned meet all other requirements. Section 182 *ABGB* stipulates that child custody rights shall be restricted by means of a court order (*Verfügung*) as set forth in Section 181 *ABGB* only to the extent required for guaranteeing the child's well-being.

Pursuant to Section 211 *ABGB*, the youth assistance office has to file motions for court orders within the scope of child custody required to ensure the minor child's well-being. In case of imminent danger, the youth assistance office may preliminarily decide itself upon the required measure with regard to care and education, which will be valid until the court ruling is issued; a motion for such ruling has to be filed without delay by the youth assistance office, but no later than within eight days.

According to Section 107a of the Non-Contentious Proceedings Act (*Außerstreitgesetz, AußStrG*), in the proceedings initiated by a motion of the youth welfare office pursuant to Section 211 Para. 1 second sentence *ABGB*, the court has to - at the child's request or at the request of the person whose child custody rights are affected - issue a ruling without delay, if possible within four weeks, on whether the measure taken by the youth welfare office is inadmissible or temporarily admissible. Such motion has to be filed within four weeks after the measure was taken.

In the course of such proceedings, the persons whose custody rights are affected are heard and they have the right to appeal to court decisions under Section 181 *ABGB* as well as Section 107a *AußStrG* by means of a *Rekurs* pursuant to Section 45 *AußStrG*.

In accordance with established case law, the revocation of a person's child custody rights is *ultima ratio* (last resort) within the meaning of cited Section 181 *ABGB*.

Statements by the individual *Laender*

Burgenland

With the introduction of the Federal Children's and Youth Assistance Act (*Bundes-Kinder-und Jugendhilfegesetzes 2013, B-KJHG*) 2013, Federal Law Gazette I no. 69/2013 as of May 2013 and the Burgenland Children's and Youth Assistance Act (*Burgenländisches Kinder-und Jugendhilfegesetze, Bgld. KJHG*), State Law Gazette I no. 69/2013 as of 1 December 2013, requests and calls voiced by public children and youth welfare for many years with a view to practical child protection work were enshrined in law, including e.g. introducing the four-eye principle, extending reporting obligations in cases where the children's and young persons' well-being is suspected to be at risk, a fundamental framework for planning help, the participation of children and young persons and parents in that process, proper documentation, strengthening children's rights, the right to receive information as well as modern support and assistance services such as day-care facilities for children and young persons.

In order to promote and support care and non-violent education, to prevent problems in bringing up children and avoid developmental disorders and with the aim to be able to cope with everyday family life, the *Land* of Burgenland as the legal entity responsible for the youth assistance institution offers mobile, outreach, residential and day-care services. These

include in particular:

- mobile counselling and support for families, children and young persons;
- mobile counselling and support for (expectant) parents, families, children and young persons;
- assistance for families, children and young persons in problem and crisis situations;
- day-care services for families, children and young persons;
- education and training for persons providing care and persons applying for adoption;
- placement of children and young persons in residential care facilities (socio-pedagogical institutions);
- residential care provided for crisis intervention.

(Expectant) parents, families, children and young persons can make use of mobile, non-residential and day-care services at their own discretion.

If, on the basis of legally required reports, obligations laid down by rules of professional conduct of persons involved or credible reports by third parties, the well-being of children or young persons is suspected to be at risk, the District Administration Authorities (*Bezirksverwaltungsbehörden*) have to initiate a risk assessment (*Gefährdungsabklärung*) without delay, duly taking into account the urgency of the case, in order to be able to evaluate the potential risk.

This involves investigating the facts which are essential for evaluating the suspected risk and providing an assessment on whether or not the well-being of the child is at risk. The assessment of whether the well-being of the child is at risk has to be made in a well-structured procedure, taking into account professional standards and the type of risk to be expected. Findings may be based on talks with the children and young people concerned, their parents or other persons entrusted with their care and upbringing, persons who regularly look after the children and young persons, on visits of the children's and young persons' home or place where they are staying, on statements, reports and expert opinions as well as written notifications on the risk involved.

If, for the assessment of the risk, it is necessary to talk to the children and young persons concerned or to the persons who regularly look after the children and young persons and the approval of the legal guardians cannot be obtained or if obtaining the approval requires a disproportionately high effort, the child and youth assistance office is entitled to conduct talks immediately. In such case, the approval of the legal guardians has to be obtained retrospectively. The four-eye principle laid down by law, i.e. the requirement that the risk assessment is carried out in cooperation of at least two experts, is an important instrument for guaranteeing the child's well-being and reduces the vulnerability of the children concerned.

If the child's well-being is at risk and the risk can be expected to be eliminated although the child or young person stays with the family or in his/her previous living environment, children and young persons have to be granted parenting support (*Unterstützung der Erziehung*). This includes in particular the use of non-institutional, mobile and day-care services, regular home visits and medical consultations as well as a limitation of the contact to persons endangering the child's well-being.

If the child's well-being is at risk and the risk can be expected to be eliminated only if the child or young person leaves the family or his/her previous living environment, children and young persons have to be granted full residential care (*volle Erziehung*), provided that the children and youth assistance institution have full responsibility for care and education. In particular, full residential care comprises placement with close relatives, other persons providing care and in residential facilities.

There are currently 28 residential care facilities for children and young persons (socio-pedagogical institutions and institutions with a psychotherapeutic focus) in Burgenland. These facilities provide care for children and young people who were taken out of their families due to the families' inadequate or lacking resources.

Such facilities may only be established and operated with the approval of the *Land* Government. The *Land's* approval may only be granted if the following requirements are met: existence of a socio-pedagogical and/or psychosocial as well as an established organisational concept, availability of a sufficient number of qualified employees for the management of the facility and the provision of care and upbringing for the children and young persons, suitability of the premises, adequate funding for the provision of care in accordance with the responsibilities of public child and youth assistance services. Residential care facilities are subject to the supervision of the Land Government and have to be inspected at appropriate intervals, but at least annually.

Socio-pedagogical child and youth welfare institutions and groups in a Children's Village (*Kinderdorf*) may not provide care for more than 16 children and young persons. The required ratio of children/young persons to pedagogical staff (excluding management) is 2.5:1. If fewer than 12 children/young persons are accommodated in such institutions, the pedagogical staff has to comprise at least five persons. Institutions with a psychotherapeutic focus may accommodate 12 children and/or young persons at most, the ratio of caregivers to children/youth is 2:1. The employees are mostly paid according to the applicable collective agreement (*BAGS*).

The staff who provides care for children/young persons must have adequate training and qualifications. They must not have any previous convictions for offences which may endanger the children's/young persons' well-being, and they must not have any psychological or mental deficiencies which might impair the children's/young persons' physical and/or psychological-mental development.

One third of the pedagogical staff has to consist of certified social education workers (*DiplomsozialpädagogInnen*) or have undergone equivalent recognised training. The other staff providing care must have basic psychosocial training. Persons without specific professional training may be employed if they attend appropriate training in parallel. They have to commence such training in the first year of their employment in that field and successfully complete it within five years. The organisation running the facility is responsible for ongoing training of the staff, with the authority responsible for child and youth assistance (i.e. the *Land*) stipulating the number of hours of further training to be attended each year.

As regards complaint management in connection with those institutions, it should be pointed out that complaints may also be submitted to the youth assistance departments of the corresponding district commissions (*Bezirkshauptmannschaft*) and with the municipal authorities as well as at the competent department at the Office of the *Land* Government of Burgenland. There are no age limits and all complaints will be immediately reviewed.

The law does not provide for any restrictions concerning personal contacts of the children or young persons and the facilities are encouraged to work closely with parents and foster mutual contacts. In individual cases, however, restrictions on the contact may be imposed if the child's well-being might be put at risk by such contacts.

At the end of 2013, 234 children and young persons were taken care of in places other than their family homes. 132 children lived in foster care. 1041 children and young persons received parenting support.

Carinthia

Reference is made to the 28th report on the 1961 Charter.

In addition to the previous report and in reply to the Committee's questions the following information is provided:

Pursuant to Section 7 Para. 1 of the Carinthia Children's and Youth Assistance Act (*Kärntner Kinder- und Jugendhilfegesetz, K-KJHG*), State Law Gazette no. 83/2013, child and youth assistance services are granted to expectant parents, children, young persons and young adults whose primary residence or, in the absence of such primary residence, whose habitual place of residence or - in case they do not have a habitual place of residence either - whose place of residence is in Carinthia.

Eligibility is independent of nationality or residence status. For providing the services it is essential that the specific circumstantial prerequisites are met. However, persons who do not intend to stay but only transit the country are not to be granted any services, except for cases of imminent danger.

According to Section 207 *ABGB*, the youth welfare institution (now child and youth assistance institution) is entrusted with child custody by virtue of the law, for cases where the minor child is found in Austria and his or her parents are unknown.

Pursuant to Section 1 Para. 2 *K-KJHG*, the care and education of children and young persons is primarily the obligation and right of their parents or other persons entrusted with their care and education. According to Para. 5 of this provision, family-related rights and relationships are allowed to be interfered with to the extent necessary for guaranteeing the child's well-being and as stipulated by said Act or by civil law. Existing relationships and social relations have to be taken into account. Important social relationships beneficial for the child's well-being have to be maintained and strengthened where possible.

According to Para. 6, the well-being of the child has to be put at the centre of attention when performing duties and providing services in accordance with said Act. Reasonable efforts have to be taken to cooperate with the legal guardians. The provisions of the Convention on the Rights of the Child (*Übereinkommen über die Rechte des Kindes*), Federal Law Gazette no. 7/1993, have to be taken into account. The activities of child and youth assistance have to be carried out taking into account individual differences as well as cultural and socio-economic diversity. Section 2 no. 5 *K-KJHG* specifies the explicit objective of re-integrating children and young persons within their family in the interest of the child's well-being, especially in cases where parenting support is provided. According to Section 42 Para. 1 of said law, parenting support shall be granted in the individual case as

- parenting support within the family (*Unterstützung der Erziehung*) or
- full residential care (*volle Erziehung*).

Pursuant to Para 2 of this provision, parenting support can be either based on a voluntary agreement or be given contrary to the legal guardian's wishes.

Compared to full residential care, parenting support within the family represents a lower degree of interference with the family life and child custody rights of the parents and other persons; this is why it is to be preferred, provided that the situation representing a risk to the child's well-being can be eliminated. A decision on how to proceed in the future is to be made in the course of planning the support measures, duly in accordance with the relevant professional standards.

Full residential care is the preferable option if the child cannot remain in the family because it was established that the child's well-being is potentially at risk.

Measures of parenting support are provided in mutual agreement with the child's parents or other persons entrusted with their care and education on the basis of a written agreement concluded between them and the child and youth welfare office. Concluding, amending and terminating this agreement must be effected in writing. If the child's parents or other persons entrusted with the custody of the child revoke their approval in writing, it has to be reviewed if the measure of parenting support should be continued against the parents' wishes; however, this is only permissible on the basis of a court decision (Section 181 ABGB).

In case of imminent danger, the child and youth assistance office has to grant the required measure of parenting support immediately and file the necessary motions with the court (Section 211 ABGB).

The corresponding appeals may be lodged against such court decisions, cf. Section 107 a *AußStrG* - review through the parents or the child as to whether the measure taken by the child and youth welfare office was permissible - which additionally enhances legal protection. Regulations on contact rights are issued by family courts.

Lower Austria

In general, the right of children to information on their descent is accommodated by counselling and guidance within the scope of child and youth assistance services in Lower Austria. Adoptions are mostly "open", which means that the child's biological mother and the adoptive parents know each other and deal with this situation and knowledge individually.

"Anonymous births" in hospitals, however, bear particular challenges. In these cases, the expectant mother/woman giving birth, who is in a psycho-social emergency situation, may opt to remain anonymous, while granted full medical and psycho-social counselling/services. The child who was born anonymously and who is adopted half a year later does not know his or her mother's name; however, all perceptible circumstances are recorded and handed over to the child when he/she is of full legal age and capacity. The documentation may comprise statements of the child's mother given to qualified employees in the hospital upon questioning as well as observations made by the attending social workers and midwives, including notes on outward appearance and impressions about the mother's motivation. The documented information and, if applicable, a sealed letter left behind by the child's mother are stored centrally and handed over to the child at a later point in time; the child is also given psychological support as needed. Due to the fact that anonymous births have been possible only since 2010 (in Lower Austria), no practical experience is available so far as regards children of full legal age and capacity trying to find out about their descent. To present, 65 anonymous births have been registered.

The transfer of a child into public care is mostly based on an agreement concluded between the child's legal guardians and the local organisational unit of the child and youth assistance office (*Kinder- und Jugendhilfeträger, KJHT*); in rare cases, such transfer into public care is based on measures taken due to imminent danger and a subsequent court decision through which custody rights are transferred to the youth welfare office.

If the measure of full residential care including the placement with persons providing care (foster parents) is based on a written power of attorney under private law, the youth assistance office is responsible for the transfer. Children are only placed with (transferred to) persons who were found to have the required qualification prior to the transfer. This is not a procedure within the scope of sovereign administration, but a process of expert investigations requiring in-depth training. It results in registration as foster parents with the Lower Austria youth assistance office.

As the number of children placed with foster parents fluctuates in the course of a year, the following figures only provide an overall picture. Due to the increased expansion of mobile and non-institutional services, both an increased use by families and the use of such services instead of a measure of full residential care have been observed. About 3,000 children benefit from such services each year.

If full residential care is provided, foster care is given priority over institutional care in the case of small children. On average, there are about 800 foster children in Lower Austria. Persons providing care receive compensation in the form of foster child care benefit (child care contribution), the amount of which is determined on the basis of reference rates.

On the other hand, children are placed in institutions if the age of the child or specific, particularly qualified care is required. In the period under review, approximately 900 to 1,000 children and young persons annually were placed in institutions.

In Lower Austria, there are several institutions operated by the *Land*, providing some 60 places and many private institutions offering flat-sharing accommodation with one to three groups of four to eight children and young persons in each group. These institutions are subject to monitoring of both the *Land* Government (conditions, concept quality, progress of individual cases) and the OPCAT Committee. Beyond that, the independent Children and Youth Ombuds Office has been established as a contact point where complaints can be filed and advice can be sought by children and young persons on their rights.

Provided that they are capable of giving structured statements, the young persons concerned may report their observations to both the monitoring bodies and the skilled social workers within the scope of regular contacts. The children's relatives may file complaints with the local District Administration Authorities competent for the case and the *Land* Government. If the measure was imposed by court, complaints may also be filed with the custody court. Any agreements on the contact between children and any persons close to them must be made before the beginning of the placement and an expert review of such contact arrangements has to be carried out regularly in interim progress meetings of the institution and the child and youth assistance office; if applicable, talks with persons close to the child have to be arranged and appropriate agreements have to be made.

Concerning the additional questions submitted recently and in the past by the Committee of Social Rights, the following information is provided:

- Youth workers and instructors (social education workers) in institutions (homes and other institutions that are capable of providing "full residential care" and authorised to

do so) and/or the management of such institutions are granted a written power of attorney under private law for providing care and education.

- Uniform provisions are applicable to the training and qualification of social education workers in such institutions at *Laender* and federal level. Wage levels are governed by the collective agreement for health and social professions (*BAGS*) and hence subject to federal regulation.
- The residential units in such institutions are permitted to comprise four to eight places. This number of places must not be exceeded in Lower Austria.
- Young persons from third countries illegally residing in Austria and applying for asylum are granted accommodation and medical treatment as well as legal advice and legal representation by the child and youth assistance authorities within the scope of basic welfare support (*Grundversorgung*, based on an agreement in the field of asylum between the federal government and the *Laender*).
- Parents' custody rights are restricted exclusively if the child's well-being has been found and confirmed to be at risk due to the parents' behaviour or due to other significant circumstances or ongoing; such restrictions are always limited only to the absolutely necessary extent as regards the legal and factual cooperation rights of the child's parents.
- Procedural safeguards for taking minors out of their parents' educational environment are provided by the option/requirement of bringing non-contentious legal proceedings before the custody court and have a the restriction of the parents' rights reviewed by such court.
- Decisions on both the restriction/total revocation of custody rights and contact rights between parents and children may be brought before an independent judiciary (custody court).

Upper Austria

Reference is made to the 28th report on the 1961 Charter.

In addition to the previous report the following information is provided:

Since January 2011, children who are temporarily or permanently separated from their family have been guaranteed special protection and assistance under Section 2 of the Austrian Federal Constitutional Law on the Rights of Children.

The well-being and the participation of the child concerned have to be taken into account already during legal proceedings regarding child custody. Since July 2010, it has been possible to appoint a children's assistant (*Kinderbeistand*, Section 104a Non-Contentious Proceedings Act (*Außerstreitgesetz*, *AußStrG*)). In highly contentious and emotional proceedings, the Austrian Children and Youth Ombuds Offices have been increasingly encouraging in the children's interest the appointment by judges of persons acting as children's assistants.

For young persons in care other than in their family environment, such as socio-pedagogic institutions, access to external and independent persons of trust providing confidential support suitable for their age - e.g. in conflicts with educators or authorities - is particularly important. All over Austria, Children and Youth Ombuds Offices are open to children and young persons who do not live with their families. One of the aims being violence

prevention, this offer is supposed to guarantee that the children's and young persons' allegations are reviewed at an early stage.

Since July 2012, the Austrian Ombudsman Board and the human rights commissions established by the Ombudsman Board have been required to inspect socio-pedagogic institutions for children and young persons *ex officio*, record any deficiencies found and issue recommendations and submit reports to the Austrian Parliament. Against this background, the Ombudsman Board has concluded a cooperation agreement with the Upper Austria Children and Youth Ombuds Office (*KiJA OÖ*).

In Upper Austria, there are 90 offerings providing 770 places in full residential care, mother-child groups, intensive, crisis and integration assistance. These offerings are operated by 15 youth assistance offices.

Children who cannot stay with their families due to the families' lack of resources are placed in such socio-pedagogical institutions by the Youth Assistance Office to receive full residential care (*volle Erziehung*) as a measure of parenting support. A prerequisite for full residential care is that the youth welfare organisations are entrusted with the overall care and upbringing of the children concerned, either based on a voluntary agreement reached with the parents/guardians or, if against the parents'/guardians' wishes, on the basis of a court order. The Youth Assistance Office then passes on the actual tasks of care and upbringing to the legal entity responsible for the residential care facility. In these institutions, trained and qualified socio-pedagogical professionals are in charge of the actual care and education of the children and young persons, providing needs-oriented structured daily routines and a safe setting. In this way, a comfortable and safe environment is provided to the children and young persons placed in such residential care institutions, offering guidance and support duly aligned with their skills and needs.

In 2013, a total of 838 children and young persons were accommodated in homes and flat-sharing communities within the scope of full residential care. According to the guidelines for full residential care applicable in Upper Austria, each group may consist of a maximum of nine children or young persons; in exceptional cases, this number may be slightly exceeded. About 3,300 families with children and young persons received qualified assistance within the scope of parenting support within the family. The labour market for qualified socio-pedagogical professionals in all fields of youth assistance in Upper Austria comprises a total of about 900 persons.

Salzburg

Two types of parenting support are provided: Parenting support within the family (*Unterstützung der Erziehung*) and full residential care (*volle Erziehung*). Both types may be provided on a voluntary basis or against the wishes of the parents/guardians. In each individual case, the youth assistance services have to opt for the mildest means of intervention possible and choose the measure of parenting support which is deemed to be suitable for the respective minor's personality and living conditions and which can be expected to be successful. Parenting support within the family aims to improve the minor's upbringing in the setting of his/her own family.

If this kind of support is not sufficient, the minor will be placed in full residential care outside his/her own family in a foster family or in an institution (e.g. socio-pedagogical facilities).

The Land Salzburg recorded the following numbers of parenting support measures (as of December of the year indicated):

- 2010: 1,777 (1,098 of which non-residential);
- 2011: 1,926, (1,179 of which non-residential);
- 2012: 2,065, (1,358 of which non-residential).

“Socio-pedagogical accommodation” comprises the following types of facilities:

- flat-sharing communities;
- assisted living facilities;
- the SOS Children's Villages.

Target groups: Such socio-pedagogical residential facilities accommodate children and young persons

- whose parents are unable (or unwilling) to provide adequate care and education;
- who are victims of violence/abuse;
- who need support for their social and vocational integration.

Socio-pedagogical accommodation aims to help young people lead an independent life. It is an important supplement to the placement in foster families. Its key objectives are:

- reducing relationship and socialisation deficits;
- coping with the demands of everyday life in a manner which is appropriate for the age group;
- social integration – reintegration of the child in his/her family;
- de-escalation of crisis situations;
- helping minors become independent and assume personal responsibility – stabilisation in mental and social terms;
- support for the school and job career.

Socio-pedagogical accommodation offers 24-hour care with a permanent staff of carers. Core services include:

- providing accommodation;
- help cope with everyday life (school, leisure activities);
- help cope with violence and abuse;
- intensive psychosocial relationship building and care, with the parents being permanently involved;
- help lead an independent life (social and vocational integration).

Styria

Reference is made to the 28th report on the 1961 Charter.

Tyrol

On 21 March 2013, the Federal Children's and Youth Assistance Act (*Bundes-Kinder- und Jugendhilfegesetz, B-KJHG*) 2013 was adopted by the National Council and entered into force on 1 May 2013 (Federal Law Gazette I no. 69/2013). The Tyrol Children's and Youth

Assistance Act (*Tiroler Kinder- und Jugendhilfegesetz, TKJHG*) entered into force on 19 December 2013 to implement the aforementioned federal act.

Guaranteeing the child's well-being is a major concern required by law to be provided by children and youth assistance services and thus constitutes the primary motivation factor for them to act. An assessment of what is beneficial or harmful to the child's well-being, whether and to what extent the well-being of the child is at risk and whether a specific measure is more advantageous for the child's well-being than another is to be made on a case-by-case basis. Principles of child psychology, pedagogy and social work play a vital role in this assessment, in which the child's well-being is never understood as a constant value.

Pursuant to Section 3 Para. 3 *TKJHG*, the child and youth assistance services are responsible for the protection of children and young persons against violence and other risks the family represents to the child's well-being. The child and youth assistance office may receive information suggesting the existence of a risk posed to the child's well-being via different channels: third persons may, on the basis of statutory reporting obligations or otherwise, provide information to the authorities, the minors or parents affected may report such information, or any persons employed within the scope of child and youth welfare support may report relevant observations made as part of their professional tasks.

If minors themselves turn to the child and youth assistance office, the underlying situation mostly involves serious conflicts with their parents. The aim and principle of the clarification procedure as set forth in Section 37 *TKJHG* is to determine whether the minor child's well-being is at risk, so that appropriate measures and/or assistance can be initiated for the minor.

Professional standards must be adhered to, the procedural steps must be documented and the extent of the risk must be estimated, so that the protection of the minor child is guaranteed while using the most moderate measure.

If the risk assessment reveals that the child's well-being is at risk and the child's well-being cannot be guaranteed by using other means, e.g. by establishing contact to counselling centres, Section 37 *TKJHG* sets forth that a support scheme for both the minors and families concerned has to be drawn up as a next step. After clarification and consultation with all persons involved, the situation is analysed from a professional point of view and objectives and appropriate forms of assistance are laid down in the support scheme drawn up according to Para. 2. The forms of assistance have to be selected in line with the family's resources. In this concerted effort, it has to be specified whether short-term or long-term assistance is appropriate, such as the placement in a socio-pedagogic institution or with foster parents, or mobile assistance for families or provision of social services is promising and required in the individual case.

The overall support scheme thus specifies the general guidelines and framework for the assistance required, which is to be followed by defining the subsequent small steps aligned with the anticipated pedagogical process enabling effective support in the medium term.

Vorarlberg

The relevant provisions implementing Article 17 are set forth in the Vorarlberg Children's and Youth Assistance Act, State Law Gazette no. 29/2013.

The aim of said Act is to support the children's and young persons' development towards becoming responsible and socially competent members of society. Towards reaching this

aim family structures are optimally suited, as they take into account the children's and young persons' needs and wishes in a way appropriate for their age, while at the same time providing a framework, and setting limits, in order to protect them from danger.

For this reason, the child and youth assistance services try in the first place to support parents or other persons entrusted with the upbringing of the child by providing general and customised assistance (taking into account their very personal capabilities) to them and fostering their sense of responsibility. In order to strengthen the families in the upbringing of their children, they have to be given information on age-appropriate development, supportive educational styles, reflection of their own goals of education as well as the opportunity to exchange experience; furthermore, they have to be provided with specific advice on coping with education in everyday life and on approaches to support the children or young people with regard to their skills, aptitudes and interests. In cases where parents or other persons entrusted with the upbringing are not able to meet their duties, the aim of child and youth assistance is to protect the children or young persons (also by interfering with parents' custody rights) against their (continued) exposure to various forms of violence or neglect and other risks for their well-being with regard to care and education. Appropriate services help create beneficial living conditions and support well-functioning family structures. Reintegration of children and young persons into their families has to be encouraged and promoted wherever this is reasonable and possible according to experts.

With regard to parenting support, the Children's and Youth Assistance Act stipulates that the most moderate measure possible to achieve the required objective in each case has to be taken. Consequently, full residential care is provided in cases where the degree of impairment of the child's well-being requires so (i.e. if protection of the minor child cannot be ensured using other measures); another significant factor is the forecast with regard to guaranteeing the child's well-being in his or her family in the future. The individual procedural steps (clarification of risk, support planning, case management) are specified in more detail in a pertinent ordinance. However, the Children's and Youth Assistance Act itself does not establish a legally enforceable claim or a statutory basis for interfering with child custody rights and/or the fundamental right to private and family life. In this respect, the corresponding provisions of the General Civil Code (*ABGB*) are relevant.

The following services and offerings are available in Vorarlberg: a flat-sharing community for mothers and children, a crisis intervention group, institutions for family-like flat-sharing groups, other flat-sharing communities, a socio-pedagogic boarding school, assisted living facilities for young persons as well as facilities for full residential care that are not bound to a specific location.

Institutions for the care and education of minors require an approval as stipulated in the Children's and Youth Assistance Act and are subject to supervision and monitoring by the public child and youth assistance office.

Complaints in the context of parenting support may be submitted - without meeting specific form requirements or following a special procedure - at the youth assistance departments of the district administration authorities, the Office of the *Land* Government and the Children and Youth Ombudsperson.

The Act on the Children and Youth Ombuds Office sets forth that the tasks of a Children and Youth Ombudsperson include the following responsibilities: counselling of minors, legal guardians and legal representatives; providing assistance in case of conflicts between minors

and guardians on the one hand and authorities or children and youth institutions on the other hand and/or between minors and guardians; if necessary, establishing contact between minors/guardians and authorities/institutions; advice to the *Land* Government with regard to planning, research and public relations within the scope of youth assistance and annual reporting.

In Vorarlberg, about 2,200 minors received support within the family in 2012. By 31 December 2012, 554 minors were living in settings other than their family environment, 278 minors were living in institutions and 276 minors were living with foster families.

Vienna

Legal basis: Section 30 of the Vienna Children's and Youth Assistance Act (*Wiener Kinder- und Jugendhilfegesetz, WKJHG*) 2013, State Law Gazette no. 51/2013 as amended.

The focus of the past few years has been to expand care services for children and young people with disabilities. Within the framework of the social assistance scheme an increasing number of mobile, short-term and partial and full residential care services are offered. These services aim to support parents of children with particularly comprehensive needs.

In the field of social education, a new prevention model referred to as "family coaching" has been developed, in the framework of which families are given extensive support by social education workers with the aim of avoiding children to be placed in residential care. Furthermore, the implementation of principles of gender-sensitive education and diversity has been given special attention in the field of social education.

The total number of children and young people taken care of within the scope of pertinent schemes was 3,480 at the end of 2013, 1,762 of whom were living in foster families (288 of whom with relatives).

In the field of social education, Vienna (*MAG ELF*) operates 15 crisis intervention centres, one mother-child-facility for minor-age mothers, 83 socio-educational flat-sharing communities, 87 socio-educational assisted-living facilities (*betreute Wohnungen, BEWO*), three low-threshold care facilities (*KIG*), one socio-educational (small) home as well as a special institution for the victims of child trafficking and sexual exploitation ("*Drehscheibe*"). In addition, 1,005 places at care facilities, predominantly within the area of intensive socio-educational care, are offered by independent institutions as well as ten low-threshold care places (emergency accommodation, "*Notschlafstelle*"). Independent youth assistance institutions mainly offer care services in the form of socio-educational flat-sharing communities.

In the context of a measure of full residential care, social education workers will provide care and education (including legal representation in this field) on behalf of children and young people, i. e. they are responsible for the entire care and education; the same applies to foster parents pursuant to the Vienna Children's and Youth Assistance Act 2013. Pursuant to Section 6 of the Vienna Children's and Youth Assistance Act 2013, only individuals with valid qualifications in social education/pedagogy may be entrusted with socio-educational tasks; foster parents have to complete a specific training programme. Groups at socio-educational institutions in Vienna may comprise eight children at most as a general rule.

Young offenders

As regards the legal framework, reference is made to the previous reports, in particular the 28th report on the 1961 Charter.

Legal changes during the reference period:

Section 25 of the Juvenile Court Act (*Jugendgerichtsgesetz, JGG*), Federal Law Gazette no. 599/1988 as amended, which contained provisions on the special competence for criminal cases involving young offenders and young adults that had been reserved to court departments for youth protection cases according to Sections 198, 199 of the Penal Code (*Strafgesetzbuch, StGB*) (infringement of maintenance obligations where the dependent child is a minor; neglect of care, education and attendance), was revoked.

As a mitigation measure, Section 36 Para. 2 *JGG* stipulates that transfers to special institutions for young persons is possible now already before a judgment has been issued by the court of first instance; hence the Gerasdorf penitentiary, a prison for juvenile offenders, is increasingly used for such transfers.

Section 58 Para. 7 *JGG* sets forth that juvenile prisoners may be visited for one hour at least once a week. As this practice has proven successful over many years, those serving a sentence exceeding four weeks have now been granted the subjective right to see visitors at least once every six months in a penal institution close to their place of residence.

Section 60 of the Juvenile Court Act governs the costs of the penal system. This statute has not undergone any amendment with regard to its content, but was worded more precisely because it had given rise to misunderstandings in practice in the past.

In reply to the Committee's question concerning the maximum length of pre-trial detention for young offenders, the following information is provided:

According to Section 35 *JGG* the maximum duration of pre-trial detention for young offenders is three months; in case of a suspected crime falling within the competence of the regional court sitting as a panel including lay judges or with a jury (*Schöffengericht*), the maximum pre-trial detention period is one year. However, this maximum detention duration only refers to the period before the trial itself. However, the aforementioned maximum duration of one year is restricted, i.e. pre-trial detention can only be retained or continued for more than six months if this is inevitable in view of the severity of the applicable grounds for pre-trial detention due to special difficulties or particularly comprehensive investigations.

Where the danger of collusion is the only reason for pre-trial detention, the maximum length of detention is two months (this also applies to offenders who are not juvenile).

In reply to the Committee's question whether young offenders have a statutory right to education, the following information is provided:

According to Section 58 Para. 5 *JGG*, regular schooling and instruction has to be provided to young prisoners in special penal institutions. In other penitentiaries where juvenile offenders are detained, instruction and training has to be offered to young inmates as far as possible and practicable.

Development of convictions according to groups of persons:

In 2012, Austrian courts issued 35,541 legally effective convictions under the Austrian Penal Code or other criminal laws. Of all convicted persons, 85.4% were male and 14.6% female. They included 7.2% young persons, 13.8% young adults and 79.0% adults.² 66.8% were

² The age categories given refer to the offenders' age at the time of committing the offence. Pursuant to Section 1 no. 2 *JGG*, juveniles are defined as young persons who have completed their fourteenth but not yet

Austrians and 33.2% were foreign nationals. Comparable figures for 2013 are not available yet.

Compared to 2011, convictions decreased by 2.5%. Convictions of men decreased by 2.2%, those of women went down by 4.3%. Convictions of foreign nationals increased by 1.5%, those of juvenile offenders declined by 6.7%. While in the last decade a new all-time high of 45,691 convictions was reached in 2005, the number of convictions in 2012 was the lowest ever.

Compared to 2003, the number of convictions decreased by 14.8%; compared to 2005, it dropped by 22.2%. In the last decade, the percentage of women among the convicted persons remained at about the same level (between 14% and 15%), the percentage of juvenile offenders fluctuated between 6.5% (2005) and 8.3% (2009) and, at 7.2%, was at an average level in 2012. Since 2002, the age category of criminal young adults has been included in the statistics. In the beginning, the percentage of this group rose sharply before levelling off at around 14% over the past few years.³

The percentage of convicted foreign nationals rose from 23.6 to 30.8% between 2001 and 2005, was slightly below 30% between 2006 and 2009 and reached a peak of 33.2% in 2012.

53,624 offences and crimes were ruled upon in a total of 35,541 convictions, i.e. each judgment involved 1.5 offences on average. For young offenders this number is slightly higher (1.7 offences per judgment).

A conclusion on the number of criminal acts committed that ended in a conviction cannot be derived from the number of judgments or from the number of offences.



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Convictions according to persons and groups of offences:

If we look at the convicted persons by sex, age or nationality, the number of convictions involving certain offences and groups of offences is different. 85.4% of all persons convicted in 2012 were male. They committed 86.0% of all the offences ending in convictions. The offenders who were found guilty of offences against sexual integrity are almost exclusively male (98.0%), as is the case for offences against the person (90.9%), while the percentage of men who committed offences against property was below average (81.4%). Comparable figures for 2013 are not available yet.

In 2012, young offenders (7.2% of the convicted persons) were convicted for 8.1% of the offences. They are slightly overrepresented in the category of offences against property (9.9%) and offences against the person (9.0%); however, in the other offence categories, especially in connection with convictions under the Narcotic Substances Act (*Suchtmittelgesetz, SMG*) and offences against sexual integrity, the proportion of young offenders is below average. Adults are convicted for sexual offences in an above-average number of cases. In the group of young adults, the number of convictions for drug offences,

eighteenth year of age. Pursuant to Section 36 *StGB*, young adults are persons who committed an offence prior to completion of their 21st year of age.

³ This information seems to be incomplete in the years before 2004. The inclusion of the additional age category of young adults has resulted in a decrease of the percentage of convicted adults in the past decade.

but also for offences involving aggressive behaviour, is above average, whereas the proportion of offences against sexual integrity committed by young adults is comparably low.



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Comparable figures from previous years are not available for the offences ending in convictions. A conclusion on the number of criminal acts committed cannot be derived from the number of judgments or from the number of offences.

The number of convictions is of course lower than the number of the offences ending in convictions. However, the percentages of the individual groups of offences and persons are almost identical.

Convictions of young offenders

In 2012, 2,562 young offenders were found guilty in final (non-appealable) judgments. Compared to the previous year, this is a decline of 6.7%. A total of 4,358 offences ending in convictions were committed by young offenders. 43.5% of these were offences against property, 21.9% were offences against the person. While no figures from previous years are available for comparison with the above figures (they were first provided in this form for 2012), the statutory provisions indicated in the judgments as decisive for the sentence imposed (referred to as “leading offence” or “sentence-relevant offence”) largely correspond to the allocation made by Statistics Austria in the past to the offence with the highest sentence. If these figures are compared to those of previous years, offences of young offenders have shifted only insignificantly. A slight decrease for offences against the person and property can be observed, while the percentage of convictions involving other “sentence-relevant” offences increased moderately. Convictions for drug offences also increased slightly (from 7.9% to 8.2%), while the absolute figure declined slightly (209 compared to 217 convictions).

Since 1990, convictions of young offenders were within a range of 3,815 in 1992 to 2,747 in 2011. The lowest number of convictions of young offenders was recorded in 2011 but declined even more in the following year. When looking at these figures in long-term comparison, it has to be borne in mind, however, that the statutory age to be deemed a young person or juvenile before the law was reduced from 19 to 18 years of age on 1 July 2001. Additionally, alternative types of settlement (e.g. diversion) developed and stipulated in juvenile penal law are to be pointed out: in such cases of minor offences the juvenile accused persons are not prosecuted and sentenced in the traditional way and the proceedings do not result in a criminal record.

In 2012, there were 209 cases of juveniles where the relevant or leading offence was an offence under the Narcotic Substances Act (*Suchtmittelgesetz, SMG*). This corresponds to 8.2% of all convictions of juveniles. A total of 187 of these juvenile offenders (89.5%) were convicted for offences according to Section 27 *SMG* and 22 (10.5%) were convicted for offences according to Sections 28 and 28a *SMG*. Consequently, convictions of juvenile offenders for drug offences were slightly below the previous low in 2009 and thus were below one-third compared to the record high of 2004 (809 convictions).

A conclusion on the number of criminal acts committed that ended in a conviction cannot be derived from the number of judgments or from the number of offences.

Convictions of young adults

Young adults are persons who have completed their 18th, but not their 21st year of age. As in previous years, the percentage of convictions for offences against third-party property committed by young adults was significantly lower in 2012 than the corresponding percentage of juveniles (juvenile offenders: 43.5%, young adults: 31.5%). Comparable figures for 2013 are not available yet. In 2012, the percentage of convictions for criminal offences against the person committed by juveniles was 21.9%, whereas the percentage of young adults was at 24.4%. In comparison, only 19.7% of all offenders were convicted for offences against the person. While no figures from previous years are available for comparison with the above figures (they were first provided in this form for 2012), the statutory provisions indicated in the judgments as decisive for the sentence imposed (referred to as “leading offence” or “sentence-relevant offence”) largely correspond to the allocation made by Statistics Austria in the past to the offence with the highest sentence. If these figures are compared to those of previous years, offences of young adults have shifted only insignificantly.

In 2012, the number of convictions committed by young adults in general, and the number of convictions for criminal offences against the person, against property and drug offences, in particular, declined compared to the previous year.

There were 876 cases of young adults where the relevant or leading offence involved drugs, i.e. an offence under the Narcotic Substances Act. Compared to the previous year, this is a decrease by 5.8%. Altogether, young adults were convicted for 1,493 drug offences. 80.8% of these drug offences involved criminal offences under Section 27 *SMG* and 18.0% offences under Sections 28 and 28a *SMG*.

A conclusion on the number of criminal acts committed that ended in a conviction cannot be derived from the number of judgments or from the number of offences.

Further reference:

http://www.statistik.at/web_de/statistiken/soziales/kriminalitaet/verurteilungen_gerichtliche_kriminalstatistik/ (in German)

Paragraph 2 – Free primary and secondary education

Questions 1, 2 and 3

For information on the general legal basis for compulsory education, which comprises nine years in Austria, please see

<http://www.ris.bka.gv.at/GeltendeFassung.wxe?Abfrage=Bundesnormen&Gesetzesnummer=10009576&ShowPrintPreview=True> (in German)

(applicable legislation on the Compulsory Schooling Act 1985 (*Schulpflichtgesetz, SchPflG*) as amended on 27 June 2014).

Vocational school is compulsory for all apprentices within the meaning of the Vocational Training Act (*Berufsausbildungsgesetz, BAG*) (Section 20).

Parents or other legal guardians are obliged to ensure that their children complete

compulsory schooling and, in particular, that they attend school regularly, comply with the school's code of conduct and/or take exams at their school as required. With regard to these duties, school-age minors take over the same responsibilities as their parents or legal guardians after completion of their fourteenth year of age. Students of full age who are subject to compulsory schooling at vocational schools have to meet these duties themselves.

Depending on the resources available, the parents or guardians of a child subject to general compulsory education are obliged to provide the means for their child to be able to duly attend school, especially the required school books, learning and working materials, unless where these means are provided by entities established under public law. Furthermore, they are obliged to make notifications and provide the information required for keeping the register of all children subject to compulsory education (*Schulpflichtmatrik*) (Section 16).

Section 24 governs the violation of compulsory education laws ("school absenteeism") by means of the

Five-step plan for preventing violations of compulsory education laws

In order to prevent the violation of compulsory education laws already at an early stage, the legal basis for a package of measures to combat the violation of compulsory education laws was created in 2012, following a decision taken by the Austrian Council of Ministers. After having been reviewed, the five-step plan for preventing violations of compulsory education laws entered into force on 1 September 2013 (Section 24a of the Compulsory Schooling Act 1985). The aim of the new five-step plan is to identify the causes of violations against compulsory education laws and to take appropriate steps. The term "violation of compulsory education laws" (*Schulpflichtverletzung*) is enshrined in law.

The concept of "violation of compulsory education laws" refers to

- five days of absenteeism within one semester without providing excuses and/or
- 30 hours of absenteeism within one semester without providing excuses and/or
- three successive days of absenteeism without providing excuses.

The set of measures initiated to combat the violation of compulsory education laws comprises the following:

Measures to be introduced at all schools at the beginning of the school year include a communication code and a code of conduct. In case of a violation of compulsory education laws, a gradual implementation plan defined by law enters into force, the aim of which is to avoid further violations of compulsory education laws. Interventions on the part of the school - ranging from the first appointment to discuss the situation to court proceedings - are regulated in a five-step plan. If it becomes clear that the efforts made on one step are not successful, the next higher step applies.


1. Appointment to discuss the situation, in which participation of the student, the guardians and the teacher is required; the aim is to agree on further steps and to define responsibilities for improving the situation.
2. The school management involves school counselling facilities (student counselling, counselling teachers, school psychologist) in order to mediate between the parties involved.
3. Supervisory bodies summon the student, the guardians and the teacher for another meeting in order to explain the legal consequences.

4. The involvement of the children's and youth assistance office and the exchange of information between school and children's and youth welfare office are regulated in the Federal Children's and Youth Assistance Act (*Bundes-Kinder- und Jugendhilfegesetz, B-KJHG*).

5. Proceedings according to Section 24 of the Compulsory Schooling Act: The maximum penalty for guardians for violating compulsory education laws has been adapted and amounts to EUR 440 now.

2) This includes the **five-step plan for preventing violations of compulsory education laws** and statistical surveys on the violations by means of ongoing education documentation (*Bildungsdokumentation*).

3) Number of young persons failing to complete compulsory schooling

<div style="display: flex; justify-content: space-between; align-items: center;"> <div style="writing-mode: vertical-rl; transform: rotate(180deg);"> Institut für Höhere Studien Institute for Advanced Studies </div> <div style="text-align: right;">  <small>employment · qualification · innovation</small> </div> </div>	
1a. Anteil ohne PS-Abschluss	
2011/12	Ohne PS-Abschl
Steiermark	2,6%
Burgenland	2,6%
Kärnten	3,1%
OÖ	3,5%
NÖ	3,7%
Salzburg	3,7%
Tirol	3,9%
Vorarlberg	5,4%
Wien	5,6%
Österreich	3,9%

Quelle: Statistik Austria, Schulstatistik

Große Unterschiede im
 innerösterreichischen Vergleich: bis Faktor 2.

In 2011/2012, the percentage of young persons who had not completed compulsory schooling was 3.9%. Within the framework of the **Initiative for Adult Education** (*Initiative Erwachsenenbildung*), programmes are provided to and offers are made for those who want to complete compulsory schooling at a later time (<https://www.initiative-erwachsenenbildung.at/foerderbare-programmbereiche/pflichtschulabschluss/>) (in German).

Compulsory education up to the age of 18

The implementation of compulsory education up to the age of 18 was enshrined in the government programme for the current legislative period; it aims to give all persons under 18 years of age the opportunity to undergo education or training beyond compulsory schooling. This goal should be reached primarily by providing sufficient low-threshold offerings, by restricting unskilled work by juveniles and, in addition, by imposing an administrative penalty, with effect from the school year 2016/17.

Furthermore, a summary of the statistical data on students who have finished lower secondary education published by Statistics Austria is provided, which indicates the number

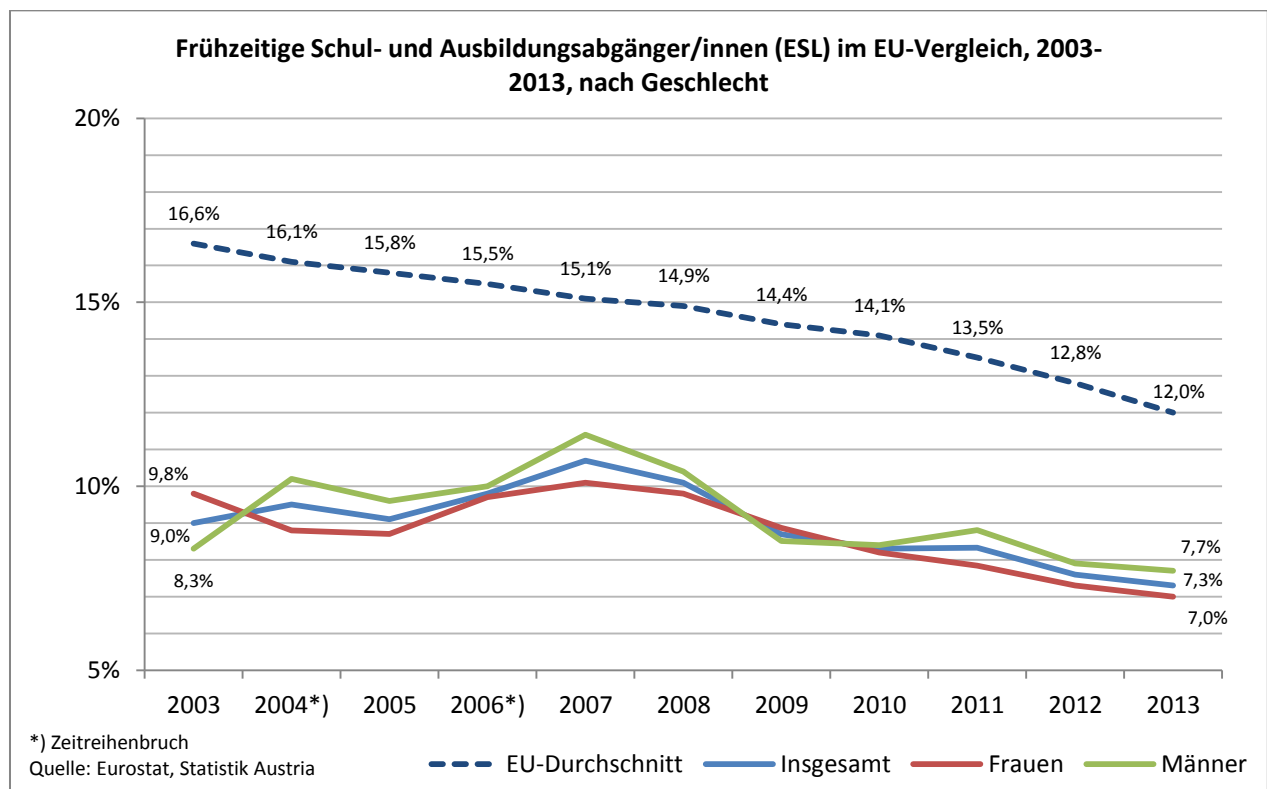
and/or percentage of students of a cohort who failed, several years after completing compulsory education, to successfully complete their lower secondary education, which would make them eligible to admit further training pursuant to Section 28 Para. 3 *SchUG*



Lower secondary education completed.

Compared to the **ESL benchmark** (persons aged 18 to 24 years), Austria has a relatively low rate of early school leavers. The calculation is based on a sample drawn from the Labour Force Survey (*Arbeitskräfteerhebung*). According to the Europe 2020 strategy, early school leavers are persons aged 18 to 24 who have not finished upper secondary education or an apprenticeship and do not undergo education or training.

In 2012, a national strategy was drawn up with the aim to prevent early school leaving and steps were taken to raise awareness at schools.



Early school leavers

The issue of early school leavers has been gaining in importance over the past few years. Early school leavers are defined as those who exit the educational system without completing upper secondary education.

With a share of 8.3%, Austria is positioned relatively “well”. However, this comparatively low percentage of early school leavers in Austria does not suggest that there is no or only little need for action in our country, because an analysis of the risk distribution of early school

leavers shows that, on the one hand, the families' social and educational background is crucial factor and, on the other hand, there are massive implications on the labour market.

Thus, early school leavers are twice as likely to become unemployed as young persons who have completed upper secondary education. If early school leavers manage to find employment, they are at risk of being in a transition period from education to work for more than two years, which is four times the transition period of young persons who have completed their education. If they finally manage to find employment after the long transition period, they often do not perform work beyond auxiliary work, because in this regard, their risk is also four times as high as that of successful graduates of upper secondary education.

The greatest risks are early school leaving, child care obligations as well as sickness.

In Austria, about 78,000 young persons (8.6%) between 16 and 24 years of age have a NEET status (fourth lowest rate in Europe after NL, L and DK).

Therefore, labour market policy for young people focuses in particular on the completion of education and training.

Under a scheme referred to as "training guarantee" (*Ausbildungsgarantie*), each 19 year old in Austria who wants to undergo apprenticeship training is offered an apprenticeship place either at a company or within the scope of apprenticeship training above company level provided by the Public Employment Service (*AMS*).

Preventing early school leaving and supporting as many young people as possible in completing education beyond compulsory schooling is one of the main objectives of the youth coaching initiative (*Jugendcoaching*), which has been offered all over Austria since 2013 and provides counselling for young persons, guidance for juveniles in matters of further education, etc. starting from their last year at school.

In Austria, a great number of initiatives have been taken to prevent school and training dropouts and problems when entering employment, for instance, "Youth Coaching" (*Jugendcoaching*), "Apprentice Coaching" (*Lehrlingscoaching*) or the "Getting Ready for Education and Training" programme (*Ausbildungsfit*).

Youth Coaching

Students attending their individual ninth year of school as well as young persons with a NEET status are supported by youth coaches directly at their schools; they are provided counselling with regard to issues they are concerned about, they are encouraged to continue school or to undergo apprenticeship training and they are assisted in doing so.

By the end of 2013, a total of 27,000 young persons was part of the Youth Coaching initiative.

For 2014, some 30,000 young persons are expected to participate in the initiative, funded with approximately EUR 22 million in total.

Getting Ready for Education and Training

This is a low-threshold, standardised service provided throughout Austria to disadvantaged young people that systematically aims at integrating young people into the vocational education system or the labour market by offering individual support.

Young people are assisted in overcoming problems at an early stage and provided basic information and skills indispensable for their integrability into vocational school and the working world.

Production schools

“Learning by doing” for disadvantaged young people with learning and motivation problems who could not (yet) be reached by existing schemes.

Contents: Stabilisation and personal development (socio-educational care), basic qualification (basic technical and school knowledge), vocational orientation (workshops, internships) and integration into the labour market (outplacement, aftercare).

At present, there are 24 Production Schools (four of which are being expanded) for 3,000 participants per year.

For the 2014 pilot phase, some 700 participants are expected and funding of approximately EUR 11 million has been earmarked.

Apprentice Coaching

Within the scope of this initiative, support is provided to both apprentices and companies offering apprenticeship training; its objectives include increasing the number of apprentices who successfully complete their final apprenticeship examinations and reducing the number of persons failing to complete their education or training.

Article 19 – Right of migrant workers and their families to protection and assistance

Paragraph 1 – Assistance and information on migration

Questions 1 and 2

Reference is made to the previous reports, in particular the 28th report on the 1961 Charter.

Developments during the reporting period:

To better utilise the existing qualifications and skills of migrant workers, four centres for the recognition and evaluation of qualifications acquired outside Austria (ASTs) were established and funded by the Ministry of Social Affairs in 2013. The low-threshold regional centres provide information, advice and support to all individuals with questions concerning the recognition of their formal qualifications from other countries and the potential applicability of such qualifications for employment; the aim is to facilitate integration into the employment market in jobs matching training. Interest in the counselling services exceeded expectations in all *Laender* already during the first year, with 4,600 individuals receiving assistance through 7,200 personal sessions in 2013.

The Public Employment Service has budgeted a total of EUR 4.87 million in funding in 2014 for 16 counselling centres throughout Austria to support migrant workers and one centre for the Roma ethnic group.

Free services and information for migrant workers

In reply to the Committee's questions concerning the initiatives taken at federal level to inform migrant workers without qualifications or with low-level qualifications on job and training opportunities and on online publications helping migrants to integrate into the social and working life in different languages, the following information is provided:

In September 2011, the Federal Government introduced the website <http://www.migration.gv.at>, which is available in English as well as in German. It provides a vast amount of information for people interested in immigrating to Austria. On the one hand, several types of immigration (like fixed-term or permanent) are explained, and especially the new Red-White-Red Card system based on specific criteria is illustrated; there is even a tool (the "points calculator") that helps people gauge their eligibility. In addition to information on the system, requirements, and the process itself, the application forms, the relevant laws and provisions, and further useful links are provided.

On the other hand, the website also provides useful information on living and working in Austria: In the section "Austria at a glance", basic information on Austria is provided, like its geography and population, politics, economy, transportation, social security system, income and taxes, and labour market data. The section on "integration and citizenship" provides information on the integration agreement and on the Austrian citizenship. The section on "working" provides information on the most important aspects of the different forms of employment and on working relations (e.g. work contracts, wages and salaries, and the protection of employees). The section on "children and education" explains the Austrian education system and additionally offers advice concerning suitable schools and child care. The section on "housing" explains how to find an apartment, house or flat and what to bear in mind when concluding a lease contract. The section on "health" provides information on

Austria's healthcare system. The section on "language" explains the significance of language acquisition for successful integration and gives an overview of funding opportunities.

Since its inception, the website has seen greatly increasing use (2012: 176.010 visitors per year, 2013: 432.036 visitors per year), and also the contact form is frequently used: Via the easy-to-use forms, interested persons can directly reach the participating ministries.

The Federal website <https://www.help.gv.at> provides information for all potential visits to the authorities and other areas of life, such as working, housing, education, family, free time, living in Austria, social affairs and emergencies, and tax and financial matters. All Federal Ministries provide information for this joint website, and it is available in German and English.

The Public Employment Service Austria (AMS) funds and works closely with advisory organisations, e.g. the advisory centre for migrants in Vienna. Their website <http://www.migrant.at> is available in the main migrant languages, in particular Bosnian, Serbian, Croatian, Spanish, English, Polish, Slovenian, Turkish, Armenian, Arabic, and Hindi.

Certain federal states also provide information on their websites in languages other than German, namely Vienna (English, Bosnian/Serbian/Croatian, and Turkish), Lower Austria (English), Upper Austria (English, French, and Czech), Tyrol (English, Italian), Vorarlberg (English), Salzburg (English), and Carinthia (English, Italian, and Slovenian).

As one **example from the Austrian *Laender***, the City of **Vienna's** policy aligned with integration objectives is described in the following:

The City of Vienna has pursued an integration-oriented diversity policy since 2004. This means, on the one hand, providing immediate, comprehensive support and assistance to recently arrived migrants in order to enable these individuals and their children to get a good start and to subsequently give them equal opportunity and equal access to all areas of society (measures for integration). Alongside intensive German instruction programmes that are aligned with this target group's needs, the emphasis at this stage is on providing information and services in the individual's mother tongue or first language. The City of Vienna is, on the other hand, concerned with recognising the strengths, potential and opportunities represented by Vienna's population with its very wide socio-cultural diversity; the aim is to communicate this diversity to the city's public at large and to utilise it to the benefit of all (diversity policy and management). Another concern is to engender awareness and recognition of the fact that a large share of the Viennese population is multilingual.

The responsibilities for this new direction within city administration were laid down in 2004, with the required structures being put in place:

- firstly, diversity orientation has since been communicated as a horizontal responsibility that concerns all business units, departments and administrative offices;
- secondly, a separate department was established (MA 17 – Integration and Diversity), which in addition to integration responsibilities has the role of service provider and competence centre, supporting the city administration as it continues to develop in the area of diversity management.

The two central objectives of Vienna's diversity orientation policy:

- Equal quality of services for all Vienna residents (provide services with intercultural competence)

- Equal opportunity in enlisting and advancing as an employee of the City of Vienna; increased percentage of city employees with a migration background

Examples of the major projects brought forth by this policy orientation are presented in the following.

“Start Wien”:

Project objective, target group and content: effective settlement support in line with target group needs; well-informed and well-supported start after migrating to Vienna, for these groups:

- “Third-country nationals” having arrived in Vienna since 1 October 2008 as part of family reunification
- Individuals from EEA member countries and their families having received confirmation of registration or a registration certificate since January 2011

The “*Start Wien*” project provides a settlement support programme in the new arrivals’ first language that is unique in all of Austria. It was restructured and newly implemented in October 2008 to combine personally tailored initial counselling (start coaching) with a variety of general workshops on subjects of importance for living in Vienna (info modules) and with counselling as well as facilitated group discussions, for the purpose of sharing experiences, in the participants’ first language (second-level start coaching). The topics discussed include: the right of residence, the integration agreement, German courses offered, the health and education systems, social law issues, childcare, entering employment and the world of work, counselling centres and organisations in Vienna, and topics related to community living. During start coaching, the Vienna Education Booklet including the Vienna language vouchers is handed out to participants, who then are assisted in identifying a German course suited to their individual needs.

The project is offered by Municipal Department (MA) 17 – Integration and Diversity, in cooperation with MA 35 – Immigration and Citizenship, the Vienna Employment Promotion Fund (WAFF), *Perspektive* – recognition and further educational counselling for persons entitled to asylum and new immigrants in Vienna, the Vienna Public Employment Service (AMS), the Vienna Economic Chamber and the Vienna Chamber of Labour.

<http://www.startwien.at>

Basic education courses for adults

MA 17 – Integration and Diversity funds numerous basic education courses with accompanying childcare, for the target groups listed in the following:

- Basic education courses with an emphasis on German and literacy for individuals with reading and writing deficiencies or who achieved literacy in another alphabet;
- Basic education courses for recipients of means-tested minimum income, with an emphasis on German and literacy/math/computer skills/citizenship;
- Basic education courses with an emphasis on German as well as supplementary modules for women wishing to consolidate their proficiency in German and to acquire additional skills in ICT (information and communication technologies) and math.

<http://www.wien.gv.at/menschen/integration/deutsch-lernen/basiskurse.html>

Language and education plan for migrants

Project objective, target group and content:

- Enable low-threshold access to German courses (literacy to German A2 and B1) as well as to basic education and continued training for migrant mothers of pre-school children who have little formal education;
- At low-threshold course venues, e.g. the child's (nursery) school or the city library,
- break down psychological barriers to the institutions, improve communication;
- Encourage through basic education the independence and self-confidence of the women participating; inform women participating in and graduates of the "Moms learning German" courses about WAFF's women's programmes, and support women with advanced language proficiency in entering or re-entering the employment market.

The programme, developed by MA 17 in 2011, is divided into three stages:

- Literacy and German courses for women with reading and writing deficiencies (literacy needs);
- "Moms learning German" and other German or basic education courses, to consolidate literacy and/or achieve basic German skills;
- Women's college for advanced courses, to develop German skills from the A2 level upwards, including additional basic skills/subjects providing a basis for entering an occupation.

In addition to German classes, "integrative education modules" are offered to allow mothers with little education to cope with everyday urban life. The focus of the integrative education modules is aligned with the social setting in which mothers live. The basic education programme of the women's college bridges the gap between "Moms learning German" and other programmes offered by WAFF (e.g. NOVA for women after parental leave), providing women with the basis for utilising programmes leading to job market entry, as well as basic skills such as math and computer literacy. The programme is conducted by MA 17 (the coordinator) in collaboration with the Vienna School Board, WAFF, the Vienna libraries and the organisations offering courses, including Interface, adult education institutions (VHS), Station Wien and *Integrationshaus*.

<http://www.wien.gv.at/menschen/integration/deutsch-lernen/migrantinnenkurse.html>

Opportunities for youth through German and education projects

Project objective and content:

- Acquisition of solid proficiency in German (B1 level) and basic education;
- *StartWien* for young people;
- Enhance employability through educational and vocational counselling (youth college);
- Support in transitioning from school to the job world;
- Develop self-confidence and independence.

For young newly arrived migrants:

The project supports newly arrived young people in entering or transitioning to schooling or vocational training, through German courses and orientation. 15 to 25-year-olds receive in-depth language training. German instruction is combined with orientation skills, educational and vocational orientation, computer skills, social and creative support, outings, and educational and vocational counselling, to meet specific needs. Participants attend up to 20

hours of instruction weekly. The project is conducted by Interface GmbH and the VHS, and funded by MA 17.

www.interface-wien.at/view/content/2-jugend

Diversity management in the Vienna City Administration

Objective and content:

- Introduction and implementation of strategic and operative diversity management (DM) within the organisational units/departments of the Vienna City Administration;
- Reflection of the actual situation of the organisation with respect to diversity, along the dimensions of: clients and services, employees and competencies, and organisation and strategy;
- Development of measures for the three dimensions to ensure sustained implementation of integration-oriented diversity management.

The social, ethnic and cultural diversity of Vienna's population is reflected to a great extent in the structure of the clientele served by the Vienna City Administration. Such diversity raises the question as to how well the City Administration is succeeding in adapting its structures and processes to this changed reality, including the potential and challenges it represents. The more the City of Vienna is perceived as providing services for everyone and the better its work processes are adapted to clients' needs, the greater the satisfaction of both clients and employees and the more these groups will be able to positively identify with the City. In the sense that it contributes to achieving a form of administration that is client and effectiveness-oriented, integration-oriented diversity management is part of quality management. The Vienna City Administration's competence in diversity issues needs to be developed and expanded in order to make its services and products accessible at the same quality level to all residents.

<http://www.wien.gv.at/menschen/integration/diversitaet/>

Perspektive – recognition and further educational counselling for persons entitled to asylum and new immigrants in Vienna

Project objectives and content:

- Preparation for employment market (re-)entry and support for employment mobility through access to education and training; preparation for and assistance in entering training courses offered by educational institutions;
- Support for accelerated entry into areas of employment matching the client's training;
- Enhancing the visibility of qualifications, informing clients (i.e. migrants, individuals entitled to asylum or to subsidiary protection) about and making them aware of their resources and potential in terms of the Austrian employment market.

Counselling, encompassing a wide array of service and support offerings, takes place within the setting of individual sessions and group sessions if required, and in part as counselling and assistance in clients' first language or in more than one language. The focus is on individual counselling, information and support on issues related to recognition of qualifications obtained in other countries. Other services offered:

- Specialised counselling on employment and further education;
- General information on the Austrian employment market, specific counselling on employment and entering fields of work;

- Information on offices and authorities in Austria responsible for (formal) recognition of scholastic, academic and vocational qualifications;
- Assistance during procedures towards partial and full recognition;
- Placement in preparatory and assistance programmes (referred to as “supplementary courses and programmes”) as part of recognition procedures;
- Information on and support in applying for grant programmes to subsidise supplementary vocational training;
- Information on the programmes, courses and grants offered by the Vienna Public Employment Service (AMS) and placement in courses;
- Support for accelerated entry into areas of employment matching the client’s training.

<http://www.migrant.at/homepage-2006/perspektive/perspektive.html>

In reply to the Committee’s request for information concerning specific information on the measures taken to provide free service and assistance to nationals wishing to go abroad, the following information is provided:

Individuals planning a lengthy stay in another country can obtain information about any permits required for the host country from the authority in Austria representing that country.

Main items of information can also be viewed at this website provided by the Ministry of Foreign Affairs:

<http://www.bmeia.gv.at/aussenministerium/buergerservice/laengerer-auslandsaufenthalt.html>

To receive effective support quickly, Austrians residing in another country for a lengthy period have to have first contacted the competent Austrian embassy or consulate general. The representing authority in the particular country can be notified by registering online, by email or fax or by personal appointment; individuals should give precise details if possible concerning items such as the place of residence in the foreign country, the length of their stay, contact information and phone numbers in the host country, and addresses of relatives in Austria.

While no obligation whatsoever exists for such a “registration” with the competent authority representing Austria in the other country, it is in the interests of the individual citizen and can also ensure that efficient support can be provided in the event of a crisis or disaster.

In many countries Austrian citizens living abroad have founded associations, and the authority representing Austria there will provide the address on request.

Other useful information concerning service points, associations of Austrians in other countries, issues related to citizenship, voting rights of Austrians abroad and social benefits can be viewed at <http://www.bmeia.gv.at/botschaft/auslandsoesterreicher.html> (in German).

Measures against misleading propaganda relating to emigration and immigration

Individuals interested in immigrating to Austria can obtain advice from the authorities representing Austria in the particular country.

Special work and migration attachés have been appointed to the Austrian embassies in Budapest, Prague and Warsaw, whose duties include providing detailed information on conditions applying to settlement and employment rights in Austria, to individuals with a visa or entitlement to residence (i.e. residence or settlement permit) before immigrating.

A general, relatively effective precautionary measure against misleading propaganda in other countries is provided by conditions of Austrian law: all non-EEA citizens wishing to stay in Austria for more than two to three months, and a large share wishing only to enter the country, require a visa or residence title, while those wishing to work in Austria must present a residence permit and a work permit from the very first day of their stay in Austria onwards.

Misleading propaganda aimed at potential immigrants is prohibited only in the context of the smuggling of persons as specified in Sections 114 and 120 Para. 3 of the Aliens' Police Act (*Fremdenpolizeigesetz, FPG*) 2005 (basic offence) and Section 70 of the Penal Code (*Strafgesetzbuch, StGB*) or where another criminal offence is committed.

In reply to the Committee's request for information on the impact of the training of law enforcement officials and security administration staff on the reported discriminatory behaviours on the part of the police vis-à-vis migrant workers, as well as on any additional measures taken to counter such discriminatory behaviour, the following information is provided:

A continuously high standard of all training measures and events conducted by the General Directorate of Public Security is guaranteed by continuing evaluations of all training measures and projects, including the involvement of external experts.

Human rights training within the police aims primarily at promoting an attitude towards police interventions in line with human rights and consequently at influencing the personal conduct of the individual police officers.

Comprehensive measures have also been implemented in the training offers or programmes of the Federal Security Academy (.SI/AK). The Federal Security Academy has developed a structural concept for human rights training geared towards establishing the trans-sectoral perception of law enforcement officers as an interdisciplinary human rights organisation.

There is an increased sensitivity for problems in this field (racism, xenophobia, anti-Semitism, intolerance and similar phenomena), which are addressed by various training courses and initiatives. This sensitivity and awareness has triggered numerous activities in the training of police officers designed to provide them with in-depth information and raise awareness.

There are a number of different approaches concerning the entire subject. Increasing awareness with respect to racism and xenophobia has been of particular importance already in the past. Yet, the recommendations of the Austrian Human Rights Advisory Council and NGOs have given additional impetus to including even more comprehensive information with specific focuses into existing training measures.

The curriculum of the basic training of police officers (24 months) provides 56 teaching units in human rights, 48 teaching units in communication and conflict management, 12 teaching units in vocational ethics, 50 teaching units in social studies and 40 in applied psychology.

The project "Police action in a multicultural society" ("*Polizeiliches Handeln in einer multikulturellen Gesellschaft*") deserves particular attention. It promotes close contacts

between police officers and minorities and/or persons with origins outside of Austria through confidence-raising measures.

Since 2001 seminars entitled “A World Of Difference” have been organised in cooperation with the Anti-Defamation League in the framework of training for police officers.

These seminars aim at raising police officers’ awareness concerning racism and discrimination. Attendance is mandatory in the course of both basic and further training.

One of the major principles of these training seminars is the promotion of empathy and understanding of human beings and their interrelations. Solution approaches and alternative forms of conduct are developed in interactive individual and group work, role plays, case studies, films and simulation games.

The systemic approach as defined in the structural concept of human rights education is realised by imparting legal standards in the course of basic and continuous training of police officers.

Under the central theme of “Human Rights, Ethics and Police Action” a multi-faceted range of topics and issues, which have been focussed on time and again in basic and further training programmes in the past years, is presented on an even broader basis. The entire subject field has been designated as a “temporary core issue”, which clearly emphasises its importance in ongoing training, where the related contents are implemented through various forms of training measures. This core issue addresses the enormous conflict potential between human rights and police intervention in a multi-faceted approach and also includes the topic of racism in general and within the executive forces.

Furthermore, the structural concept of human rights education is realised within the Austrian Federal Ministry of the Interior, among others, by implementing a human rights manual compiled by a member of the Human Rights Advisory Council.

The fact that specialised training is successful in practice is demonstrated by the example of deportation training: focussed further education and training over the past few years has yielded definite improvements and positive developments in the handling and conduct of police officers when involved in deportations.

Officers with special interest are offered the additional opportunity to expand their social and professional competencies with respect to human rights.

The project “Police and Africans” (*“Polizei und Afrikaner”*) aims at fighting possibly arising prejudices and counteracting potential generalisations.

The course of studies for police instructors was modified in 2011 and elevated to university level. The two-semester course, offered by the Wiener Neustadt University of Applied Sciences, consists of 60 ECTS credits as defined within the Bologna process.

The topic of human rights receives much more detailed attention than previously. Students also receive instruction, based on research findings, in subjects such as sociology, political science and intercultural competence.

The whole Federal Ministry of the Interior is aiming at interesting as many women and persons with a migration background for the work as a police officer as possible. Information campaigns and events are being organised to attract especially second generation migrants – who have the Austrian citizenship, which is a pre-condition for joining the police force - with the aim of increasing the percentage of police officers with migration backgrounds in a

medium to long term timeframe. A career with the police is open to all applicants with Austrian citizenship – regardless of their ethnic origin – who pass a relevant selection procedure. Over the last years the important model project, “Wien braucht dich” – “Vienna needs you” – a targeted police recruitment initiative for Austrians with migration background is now being integrated in the normal recruitment process for Vienna. However, collecting statistical data on the migration background or ethnic origin of police officers is prohibited due to dataprotection reasons. No statistics are being made on the reasons why Austrians apply for the police force. Also no information regarding religious affiliation is required, thus conclusions about a possible migration background in the existing police force could at best be drawn from linguistic proficiencies.

Measures taken against racist, anti-semitic or xenophobic attitudes and behaviours concerning migrant workers

Reference is made to the information contained in the attached “Information by Austria for ECRI’s 5th monitoring cycle report” scheduled ECRI visit in Austria 3-7 November 2014:



Information Austria
for ECRI.pdf

Question 3

The 2013 annual average of citizens from all over Europe and from signatory countries to the European Social Charter in particular legally employed in Austria (source: Main Association of Austrian Social Security Institutions) is listed in the following:

Dependently employed Austrian citizens: 2,926,258

Europe (ESC signatory countries with the exception of Austria, with the addition of: Belarus, former Czechoslovakia, Faeroe Islands, Gibraltar, Kazakhstan, Kosovo, Liechtenstein, Monaco, San Marino, Serbia and Montenegro, former Soviet Union, Svalbard, Switzerland, Vatican City, former Yugoslavia): 509,109

ESC signatory countries only (without the additional countries mentioned above): 417,645

Signatory countries with the addition of former Czechoslovakia, Serbia and Montenegro, former Soviet Union, former Yugoslavia: 503,949

Note: These figures include both those non-Austrian citizens from signatory countries to the European Social Charter who hold work permits as well as those who have free access to the labour market.

The Main Association records nationality data only in the case of new registrations, which is why about 86,304 employment relationships are still registered with the nationality as former Czechoslovakia, Serbia and Montenegro, former Soviet Union or former Yugoslavia (85,977 excluding the former Soviet Union). As such individuals possess the citizenship of the successor country in each case, which are similarly signatory countries, their number needs to be included in the figure for the ESC signatory countries (giving the ESC total of 503,949).

Paragraph 2 – Departure, journey and reception

Questions 1 and 2

Austria has no agreements concluded under government supervision that pertain to group migration. Departure and entry of migrants take place individually, by train, car or plane. Trains, planes, airports and motorway rest areas are very well organised and offer exceptional hygiene conditions, and such areas are kept up to the most current standards.

With regard to emigrating from Austria, the provisions of the Passport Act (*Passgesetz, PassG*) 1992, Federal Law Gazette no. 839, ensure that the Austrian travel documents required for leaving the country are issued very quickly. Specifically, Austrian citizens are legally entitled to the issue of a passport, valid for ten years and for all countries of the world, regardless of the reason for travel abroad. The issue of a passport can be refused only in the few cases enumerated in the Act.

Normally it suffices to present the previous passport in order to be issued a new one.

The prospective emigrant is personally responsible for seeking employment. Austria is not, however, a country from which citizens typically emigrate.

The authorities representing Austria support Austrians in other countries in emergency situations (return transportation home, monetary support, loans).

The reception formalities are set forth in the Settlement and Residence Act (*Niederlassungs- und Aufenthaltsgesetz, NAG*), Federal Law Gazette I no. 100/2005 as most recently amended by Federal Law Gazette I no. 68/2013, which is the legal basis for periods of residence lasting more than six months.

Access to the Austrian labour market

At the outset it should be noted that, since Austria joined the EEA, citizens of an EEA member state enjoy free movement in the Austrian labour market. This applies as well to others related to EEA citizens permanently or at least regularly residing and working in Austria, even if the relative is not an EEA citizen; this group includes: spouses, partners registered on the basis of the *EPG*,⁴ relatives in direct descending line (children, adopted children, stepchildren, grandchildren under the age of 21 years or older if support is provided) as well as relatives in direct ascending line (parents, grandparents, parents-in-law).

This group of persons does not fall (any longer) under the Employment of Foreigners Act, the statute governing the conditions of access of foreign national employees to the Austrian labour market.

In addition, family members of Austrians with a residence title “family member” or a residence title “long-term resident – EU” are also exempted from the Act Governing the Employment of Foreign Nationals (*AuslBG*). Consequently, they have the right to employment due to the exception from the Act.

The Act Governing the Employment of Foreign Nationals (*AuslBG*) covers several different types of labour immigration.

Fixed-term employment includes the posting of workers (foreign employers sending their workers to Austria to fulfil an assignment), the transnational hiring out of workers (foreign employers hiring out their employees to Austrian companies), and seasonal workers (in tourism and agriculture as well as harvest helpers in agriculture). By way of regulation, the Federal Minister of Labour may set quotas for the employment of seasonal workers and harvest helpers. The potential employer must apply for the employment permit for the

⁴ Registered Partnership Act (*Eingetragene Partnerschaft-Gesetz, EPG*), Federal Law Gazette I no. 135/2009

intended seasonal worker with the regional public employment service. The permit will be granted if the quota has not yet been exhausted, the employer adheres to applicable wage and working conditions, and a labour market test is passed. Thus, the foreign worker is protected and wage dumping is prevented.

Since 1 July 2011, a new immigration scheme was introduced to regulate **permanent immigration**: the Red-White-Red Card system. It aims to facilitate the immigration of qualified third-country workers and their families with a view to permanent settlement in Austria, based on personal and labour market-related criteria. A regular **Red-White-Red Card** is issued for a period of twelve months and entitles the holder to settlement and employment by a specific employer. This card may be issued to very highly qualified workers, skilled workers in shortage occupations, other key workers, graduates of Austrian universities and colleges of higher education, and self-employed key workers. There are minimum wage requirements for other key workers (2014: € 2,718 for key workers over 30 years of age and € 2,265 for key workers under 30 years of age) and university graduates (2014: € 2,038.50). These figures constitute gross salaries, which include full social insurance coverage (unemployment, health, accident, and pension insurance).

Applicants for Red-White-Red Cards need to indicate their intended employer and present a binding job offer at the application. The applicant as well as the intended employer may submit the application with the competent authorities. If all conditions are met, the public employment service confirms this to the residence authorities, who will issue the title, provided other settlement-related requirements are also met (such as locally customary accommodation and health insurance coverage). Very highly qualified workers have to reach a minimum of 70 points according to a list of specific criteria (like language skills, work experience, age, studies in Austria, and education). Skilled workers in shortage occupations have to be trained in a specific shortage occupation under the ordinance for skilled workers (*Fachkräfteverordnung*) issued by the Federal Minister of Labour in consultation with the Federal Minister of Economics each year in accordance with labour market developments and reach a minimum of 50 points according to a list of specific criteria (like language skills, age, work experience, and qualification). Other key workers have to earn at least the prescribed minimum wage mentioned above, pass a labour market test, and reach a minimum of 50 points according to a list of specific criteria (like language skills, work experience, qualifications, and age).

A **Red-White-Red Card plus** entitles the holder to settlement and free access to the labour market (without a labour market test). It may be issued to holders of a Red-White-Red Card if they were employed in accordance with the requirements decisive for admission for a minimum of ten months within the preceding twelve months, family members of Red-White-Red Card holders and holders of EU Blue Cards, integrated foreigners, and family members of foreign citizens permanently settled in Austria (family members are defined as spouses, registered partners, minor children including adopted children and stepchildren, up to the age of 18).

Based on the EU Blue Card directive (2009/50/EC), the **EU Blue Card** was introduced. It is issued to third-country nationals if the applicant can prove the completion of a course of study at a tertiary educational institution with a minimum duration of three years, provide a binding job offer for a highly qualified employment for at least one year, prove he/she will earn an above-average gross annual income (2014: €55,975.50), and a labour market test is performed.

As indicated above, a **labour market test** is required for certain titles, such as the Red-White-Red Card for other key workers or the EU Blue Card. These titles will be granted if the labour market test shows that there is no Austrian or integrated foreign worker registered with the public employment service (AMS) available for the job. For many groups, a labour market test is not required, such as the following: pupils and graduate students whose employment does not exceed ten or twenty weekly hours, respectively, skilled workers in jobs suffering from labour shortages according to the ordinance for skilled workers (*Fachkräfteverordnung*), foreign nationals enjoying special protection, and seasonal workers enjoying facilitated re-entry because of repeated legal employment in Austria during a certain period. Federal and provincial maximum numbers which had been used for limiting the admission of foreign labour in the last two decades were abolished.

With 1 January 2014, the **EU Single Permit Directive** (2011/98/EU) was transposed into national law and the possibility of combined (“single”) residence and work permits created. The Red-White-Red Cards already anticipated this system, which was expanded after the transposition to include further groups of people; additional examples of single permits are the EU Blue Card or the “residence permit – artist”. Holders of a Red-White-Red Card, an EU Blue Card, or a residence permit – artist have the **right to be employed by a specific employer**; holders of a Red-White-Red Card plus, a residence title – family member, a residence title – long-term resident EU, or a residence entitlement plus have **free access to the labour market**.

The residence title “long-term resident – EU” allows for long-term settlement, free access to the labour market, and is issued for the duration of five years. Third-country nationals may be issued this residence title if they had the right to reside in Austria during the last five years without interruption, have German language skills at the B1 level (completion of module 2 of the Integration Agreement), and have adequate means of subsistence, health insurance coverage, and adequate accommodation according to local standards.

In accordance with the treaty of accession, **transitional regulations** apply to Croatian workers. As they have rights of free movement like other EEA citizens, they do not need a residence title, but merely an employment permit, which is granted if certain conditions are fulfilled (e.g. wage and working conditions, labour market test). Croatian workers enjoy preferential labour market access compared to third-country workers (“community preference”), and in particular, there are facilitated possibilities for highly qualified workers, skilled workers in shortage occupations, qualified healthcare personnel, and seasonal workers in tourism and agriculture. Croatian workers who were employed in Austria for twelve months without interruption enjoy free access to the labour market and are issued a confirmation certificate on free movement (*Freizügigkeitsbestätigung*). The same applies for their spouses or registered partners and their relatives in direct line of descent who have not yet completed their 21st year and thereafter, provided they receive maintenance, and who reside in Austria.

Question 3

See Article 1 Paragraph 1, question 3 above.

Paragraph 3 - Right of migrant workers and their families to protection and assistance

Reference is made to the 28th report on the 1961 Charter. The situation remained unchanged during the reference period.

Paragraph 5 – Equality regarding taxes and contributions

Questions 1, 2 and 3

Section 1 of the Income Tax Act (*Einkommensteuergesetz, EStG*) 1988, Federal Law Gazette no. 400 as amended, states that the citizenship of a person subject to taxation is irrelevant for determining income tax (payroll tax). Unlimited tax liability only requires that individuals have their domicile (*Wohnsitz*) or ordinary residence (*gewöhnlicher Aufenthalt*) in Austria, or their residence (*Aufenthalt*) for more than six months. Where individuals do not meet these conditions, they are considered to be subject to limited tax liability. Whether individuals are citizens of Austria or of another country has no bearing on either unlimited or limited tax liability.

Likewise, taxable individuals with non-Austrian citizenship and those with Austrian citizenship are equally entitled to take legal action as specified in applicable provisions of taxation law.

The laws governing social security in Austria are based on the principal of compulsory insurance, meaning that anyone taking up employment at a level of pay superseding the minimum set for social security is normally included in the social security scheme. Here Austria makes no distinction, neither along the lines of the personal law applying to individuals nor their citizenship nor the type of employment pursued (i.e. self or dependently employed). Duties to pay contributions or to register, as well as later entitlement to benefits, may arise even in the case of individuals who do not meet all requirements for legal residence.

Where Austria has international agreements with other countries regulating the mutual recognition of social security schemes, Austria also recognises insurance periods accumulated in other countries and counts them towards entitlement to benefits, e.g. to retirement or disability pension benefits.

Paragraph 6 – Reunion of the family

I. Introduction of the Settlement and Residence Act

As a result of the Aliens' Law Package 2005 (in force as of 1 January 2006), the structures having competence for enforcing aliens' police matters were separated from those responsible for administering settlement (formerly regulated by the Aliens Act 1997). This was achieved by enacting separate laws for the two areas to be regulated, specifically the Settlement and Residence Act (*Niederlassungs- und Aufenthaltsgesetz, NAG*) and the Aliens' Police Act (*Fremdenpolizeigesetz, FPG*).

Since then aliens residing in Austria for up to three months fall under the provisions of the *FPG*, while the *NAG* regulates the residence and settlement of aliens for periods lasting more than six months.

The European Union used its legislative competence for the immigration of third-country nationals and passed relevant directives; the latter entered into force successively and had to be transposed into national law. The administration of settlement and residence therefore had to be revised and restructured in depth.

This additionally resulted in a revision of the system of residence titles for third-country nationals as well as of the documents certifying the right of residence and settlement according to EU law; these changes were also in response to the requirements of EU law.

II. Aliens' Law Reform Act 2009

The Aliens' Law Reform Act (*Fremdenrechtsänderungsgesetz, FrÄG*) 2009, effective as of 1 January 2010, further amended the *FPG* and the *NAG*. Some of the changes also concerned the reunion of families. The residence status of family members holding a settlement permit was clarified by specifying that such family members are independently entitled to settlement, so that they no longer derive entitlement during the first five years (refer to Section 27 *NAG*).

III. Aliens' Law Reform Act 2011

The Aliens' Law Reform Act (*Fremdenrechtsänderungsgesetz, FrÄG*) 2011, effective as of 1 July 2011, introduced additional changes to the *NAG* that included the provisions governing family reunification, specifying conditions that facilitate the reunion of families. An example is the provisional residence title known as the "Red-White-Red Card plus", which is granted to certain family members and allows immediate and unlimited access to the job market upon arrival. In addition, certain family members have been since required to provide proof of basic proficiency in German (i.e. A1 level in German in accordance with the Common European Framework of Reference for Languages) prior to immigrating ("German prior to arrival" – Section 21a *NAG*).

The *NAG* provides for the following types of residence titles (Section 8 Para. 1 *NAG*):

- "Red-White-Red Card" residence title entitling to settlement for a limited period, including the option of later receiving a "long-term resident – EC" title
- "Red-White-Red Card plus" residence title entitling to settlement for a limited period, including the option of later receiving a long-term resident – EC title
- "EU Blue Card" residence title entitling to settlement for a limited period, including the option of later receiving a "long-term resident – EC" title
- "Settlement permit", entitling to settlement for a limited period, including the option of later receiving a "long-term resident – EC" title
- "Settlement permit (excluding employment)", entitling to settlement for a limited period, including the option of later receiving a "long-term resident – EC title"
- "Settlement permit – family member", entitling to settlement for a limited period, including the option of later receiving a "long-term resident – EC" title
- "Long-term resident – EC" title, certifying entitlement to settlement for an indefinite period that is independent of the document's validity
- "Family member" residence title entitling to settlement for a limited period, including the option of later receiving a "long-term resident – EC" title
- "Residence permit" for a temporary, limited stay in Austria for a specific purpose (Sections 58 to 69)

The *NAG* also specifies the following types of documents certifying entitlement to residence according to EU law:

- Registration certificate for EEA citizens residing in Austria for more than three months;
- Residence card for third-country nationals who are family members of EEA citizens

eligible for residence according to EU law (from 1 January 2010);

- Permanent residence certificate for EEA citizens who have acquired entitlement to permanent residence (from 1 January 2010);
- Permanent residence card for third-country nationals who are family members of an EEA citizen who has acquired entitlement to permanent residence.

IV. Amendment to the humanitarian residence law

The *FrÄG 2011* (Federal Law Gazette I no. 38/2011) also amended provisions of law governing humanitarian residence, specifically by substituting residence titles as follows: “settlement permit – unlimited” pursuant to Section 43 Para. 2 *NAG* with the “Red-White-Red Card plus” pursuant to Section 41a Para. 9 *NAG*; and “settlement permit – limited” pursuant to Section 44 Para. 3 *NAG* with the “settlement permit” pursuant to Section 43 Para. 3 *NAG*.

As previously, the two residence titles, i.e. pursuant to Section 41a Para. 9 and Section 43 Para. 3 *NAG* in conjunction with Section 44a and Section 44b *NAG*, are granted to conform with Art. 8 ECHR.

As with the former residence titles, both of the new titles are not subject to the quota system and each corresponds to the previous scope of entitlement. The “Red-White-Red Card plus” as specified in Section 41a Para. 9 *NAG* includes unlimited access to the labour market. The prerequisite for employment under the “settlement permit” specified in Section 43 Para. 3 *NAG* is an employment permit.

The prerequisites and procedures are the same for both residence titles, with the exception that evidence of German proficiency as specified in Section 41a Para. 9 no. 3 *NAG* in conjunction with Section 14a *NAG* is required for being granted a “Red-White-Red Card plus”, while the applicant must be employed when the decision granting the title is passed. Without evidence of corresponding proficiency in German or of employment, the only title that may be granted is the “settlement permit” specified in Section 43 Para. 3 *NAG*.

V. The following regulations currently apply to reunion of families (including the changes introduced by the *FrÄG 2011*)

The requirements for family reunification of third-country nationals depend on the legal residence status of the sponsor in Austria. In this context we can distinguish between three different situations based on EU law:

1. The sponsor is an Austrian, EEA or Swiss citizen exercising their right to free movement (Section 54 *NAG*);
2. The sponsor is an Austrian, EEA or Swiss citizen not exercising their right to free movement (Section 47 *NAG*);
3. The sponsor is a third-country national (Section 46 *NAG*).

Ad 1.: The sponsor is an Austrian, EEA or Swiss citizen exercising their right to free movement

The provisions applying to the residence of EEA citizens and their family members (as defined in Section 52 Para. 1 *NAG*) for a period of more than three months are specified in Chapter 4 of Part 2 *NAG* (Sections 51 et seq. *NAG*). These provisions implement Directive 2004/38/EC.

EEA citizens are entitled to residence for more than three months if they are employed or self-employed in Austria or have sufficient financial means to support themselves and their family members, and have comprehensive health insurance, so that they require neither social assistance benefits nor any equalisation supplement during their stay. Such individuals may also remain for the purpose of education and training if they have sufficient financial means and comprehensive health insurance (Section 51 NAG). Pursuant to Section 53 NAG the right of residence based on EU law is to be documented by means of a registration certificate, issued upon application. Following five years of lawful and uninterrupted residence, EEA citizens are entitled to permanent residence and may apply for a permanent residence certificate (Section 53a NAG).

Third-country nationals who belong to the families of EEA citizens entitled to residence based on EU law (Sections 51 and 53a NAG) are also entitled to stay for more than three months. They are to be issued a residence card upon application (Section 54 NAG). Following five years of lawful and uninterrupted residence, they are entitled to permanent residence as certified by a permanent residence card.

The documents mentioned above (registration certificate, permanent residence certificate, residence card, permanent residence card) evidence entitlement to residence based on EU law and are therefore not subject to the quota system.

Ad 2.: The sponsor is an Austrian, EEA or Swiss citizen not exercising their right to free movement (Section 47 NAG)

Section 2 Para. 1 no. 9 NAG defines family members as spouses, registered partners or minor children (including adopted children and stepchildren; i.e. nuclear family); minority age is defined according to national law. Spouses and registered partners must be at least 21 years of age when the application is made.

The general requirements for obtaining a residence title (Section 11 NAG) have to be met (the alien's stay must not conflict with the public interest; normal local accommodation must be available as well as adequate health insurance; the alien's stay must not put a financial burden on a territorial corporate body –*Gebietskörperschaft* etc.); in addition, the third-country national must provide evidence of proficiency in German to the A1 level of the Common European Framework of Reference for Languages (refer to Item VI).

Family members pursuant to Section 2 Para. 1 no. 9 NAG are to be issued the residence title "family member", while certain other relatives may be granted a "settlement permit – family member" upon request (Section 47 Para. 3 NAG).

The quota requirements do not apply when granting any of the residence titles mentioned above.

Ad 3.: The sponsor is a third-country national (Section 46 NAG)

Section 2 Para. 1 no. 9 NAG defines family members as spouses, registered partners or minor children (including adopted children and stepchildren; i.e. nuclear family); minority age is defined according to national law. Spouses and registered partners must be at least 21 years of age when the application is made.

According to the provisions of the NAG, ascertaining the legal residence status of the sponsor is the starting or reference point for any procedures for the purpose of reunifying families from third countries.

Third-country family members may immigrate on condition that they meet the general requirements for obtaining a residence title (Section 11 *NAG* – the alien’s stay must not conflict with the public interest; normal local accommodation must be available as well as adequate health insurance; the alien’s stay must not put a financial burden on a territorial corporate body etc.) and provide evidence of proficiency in German at the A1 level of the Common European Framework of Reference for Languages (refer to Item VI).

The sponsor must also meet certain requirements: they must hold a “long-term resident – EC” title, a “Red-White-Red Card plus” or another type of “settlement permit”.

Where the anchor person holds a residence permit, the possibilities for family reunification are more restricted. In this case family reunification is only possible on specific grounds: workers in job rotation, artists, special cases of dependent employment, students, researchers and Section 69a *NAG* (special protection). Furthermore, a derived residence permit may be granted if the family did not exist in the home country but has been created in Austria.

The quota requirements do not apply when granting a residence permit – to family members as well.

The *FrÄG 2009* and the accompanying amendment of Section 27 *NAG* already resulted in additional improvements to the legal residence status of family members holding a settlement permit. In the case of family reunification a potential immigrant refers to another individual who is a permanent resident of Austria: the sponsor (for this reason ascertaining the legal residence status of the sponsor is the starting or reference point for any procedures for the purpose of reunifying families); nonetheless, family members are independently entitled to settle. When applying for extension, family members must therefore be granted an appropriate residence title, provided they meet the general requirements, even if the prerequisites for family reunification no longer exist (Section 11 Para. 2 *NAG*). It is thus no longer necessary for them to derive the purpose of their stay during the first five years. Consequently, where a family member meets the requirements for obtaining a permit as specified in Section 11 Para.2 *NAG* and no obstacle for obtaining the permit exists, a settlement permit is to be granted on the same grounds as the previous purpose of residence.

VI. “German prior to arrival” (Section 21a *NAG*)

As of the *FrÄG 2011*, third-country nationals must provide evidence of very basic proficiency in German prior to immigrating in the course of family reunification (Section 46 *NAG* and Section 47 Paras. 2 and 3 *NAG*).

Evidence of the required proficiency in German, which corresponds to the A1 level of the Common European Framework of Reference for Languages, must be provided in the form of a generally recognised language certificate or a course transcript, dated no earlier than one year of the date when presented.

The Federal Minister of the Interior has issued an ordinance that defines the language certificates and course transcripts issued by the institutions listed below as being considered evidence of the required basic proficiency in German:

- Austrian Language Certificate in German (*Österreichisches Sprachdiplom*);
- Goethe-Institut e.V.;

- Telc GmbH;
- Austrian Integration Fund (ÖIF).

Section 21a NAG specifies that the Federal Minister for European and International Affairs, in agreement with the Federal Minister of the Interior, can by ordinance nominate for other countries other institutions than those named above; the local authority professionally representing Austria in the particular country (embassy or consulate) is to make public such institutions on its official notice board, while the language certificates and course transcripts issued by those institutions are also considered evidence of German skills.

Exceptions from the requirement to provide evidence of proficiency in German prior to arrival include individuals not yet 14 years of age when application is made and third-country nationals who because of their state of physical or mental health cannot be reasonably expected to provide such evidence.

The requirement can also be waived if the applicant is an unaccompanied minor (to protect the child's well-being) or if necessary in order to respect private and family life as specified in Art. 8 ECHR.

VII. V. Quota system (Section 12 NAG):

Certain residence titles can be exempted from the quota system (as already described above).

Some of the residence titles, however, are subject to the quota system, i.e. a title may only be granted if the quota places for the particular federal state and calendar year have not already been filled.

The quotas for each calendar year are specified in the annual Settlement Ordinance (*Niederlassungsverordnung*, Section 13 NAG). This ordinance is issued by the Federal Government in agreement with the Main Committee of the National Council.

As a basis for further consultations, the Federal Ministry of the Interior obtains an expert opinion from the Austrian Institute of Economic Research (*Wirtschaftsforschungsinstitut*, WIFO) prior to taking any decision.

Here the Federal Government is charged with ensuring that the labour market develops in an orderly manner and that, based on the ordinance, the permits are distributed among the *Laender* according to their needs and requirements.

Before the ordinance is issued, the Federal Government is required to hear the opinions of: the Austrian Federal Economic Chamber, the Austrian Federal Chamber of Labour, the Presidential Conference of Austrian Chambers of Agriculture, the Austrian Association of Municipalities, the Austrian Association of Cities and Towns, the Austrian Trade Union Federation, the Federation of Austrian Industry, and the Austrian Institute of Economic Research.

The *Laender* must be given the opportunity to propose the specific number of settlement permits they require.

In issuing the ordinance, the Federal Government is obligated to consider the integration capacities of the domestic labour market as well as the proposals made by the *Laender*. Only under consent by the particular federal state may the Federal Government exceed the number of permits proposed (constitutional provision).

Residence titles subject to the quota system may only be awarded if the quota places allotted to the particular federal state in that calendar year have not yet been filled.

Authorities are not permitted to refuse an application for a title for the purpose of family reunification, as specified in Section 46 Para. 1 nos. 2 and 4 NAG, if all conditions have been met but no title can be granted due to a lack of quota places. The decision (issue) has to be postponed until a quota place becomes available.

In addition it should be noted that, as described above, EEA and Swiss citizens entitled to free movement enjoy the right of residence according to EU law, and this fact is merely certified by document. The issue of such documents is not subject to any quota.

Furthermore, some residence titles are exempt from the quota system (see Section 47 Paras. 2 and 3 NAG – i.e. in cases where the sponsor is an Austrian, EEA or Swiss citizen who permanently resides in Austria).

The issue of residence permits to family members is also exempt from the quota.

On the other hand, applicants that cannot be granted a title due to a lack of quota places are not rejected; rather, the decision (issue) has to be postponed until quota places are again available. Three years following the date of application, no further postponement is permitted. The quota requirement no longer applies, i.e. the family member is to be granted a residence title after no more than three years (regardless of whether a quota place is available). This provision is in conformity with EU law (see Art. 8 of Directive 2003/86/EC of 22 September 2003 on the right to family reunification).

It is also possible – on grounds of Art. 8 ECHR – to apply for the residence title “Red-White-Red Card plus” specified in Section 41a Para. 9 NAG as well as the “settlement permit” pursuant to Section 43 Para. 3 NAG. **Both titles are not subject to the quota system.** (Application may be made in Austria in these cases.)

In summary, the possibility of family reunification is sufficiently safeguarded and, as described above, the relevant provisions conform with EU law.

Access to the Austrian labour market

Third-country nationals’ family members who intend to reside or settle in Austria for a period of more than six months require a residence title corresponding to their residence purpose. For stays of up to six months, a visa may be applied for.

Third country family members of holders of a Red-White-Red Card or an EU Blue Card or family members of third-country nationals with a long-term residence title in Austria may obtain the residence title “Red-White-Red Card plus” (provided they meet the general requirements), which grants its holders free access to the labour market (without a labour market test). According to the Act Governing the Employment of Foreign Nationals, no further permissions are required for any employed activity.

Third country family members of Austrian nationals may obtain the residence title “family member”, provided they meet the general requirements (adequate means of subsistence, health insurance coverage, and adequate accommodation). As a consequence, they are exempted from the Act Governing the Employment of Foreign Nationals (AuslBG) and they have the right to employment due to this exception.

In reply to the Committees additional questions and conclusions of non-conformity for the first time, the following information is provided:

With regard to the family reunion of children of migrant workers, the situation is in conformity with the Revised Charter. The **age limit** of family reunion in respect of children is the age of majority, which is 18 years. Austria ratified the Revised European Social Charter on 20 May 2011

With regard to the **other topics (waiting period** for family reunion of up to 3 years, **exclusions of social assistance benefits** from the calculation of the worker's income and requirements of the **Integration Agreement**), reference is made to the **written information** submitted by Austria on the conclusions of non-conformity for the first time **in the report of the Governmental Committee** concerning conclusions XIX-4(2011) of the 1961 European Social Charter, **GC(2012)31, para. 156** (pages 76 to 80).



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In addition, the following information is provided:

Family members who are third-country nationals and intend to reside in Austria for more than six months or to settle require a corresponding residence title, while the type of residence title depends on the legal residence status of the sponsor. No residence title can be granted for periods of residence up to six months, rather a visa may have to be requested.

In the following are the requirements to be met in order to obtain any residence title (general requirements for obtaining a title):

- Sufficient financial means: Third-country nationals must have a regular, fixed personal income that allows them to live without having to claim any social assistance benefits provided by the territorial corporate bodies; the amount of such income must also correspond to the reference rates specified in Section 293 of the General Social Insurance Act (*Allgemeines Sozialversicherungsgesetz, ASVG*).
- Health insurance coverage: Third-country nationals must be covered by a health insurance policy that is obligated to pay benefits in Austria.
- Accommodation according to local standards: Third-country nationals must provide evidence of legal entitlement to accommodation (e.g. by presenting a rental agreement) that is considered to meet the local standards for a comparable family.

Even where one of the above-mentioned conditions is not met, the residence title is nonetheless to be granted if required in order to respect private and family life as specified in Art. 8 ECHR (cf. Section 11 Para. 3 *NAG*, Section 19 Para. 8 *NAG*, Section 21a Para. 5 *NAG* and other provisions).

Thus, the specific circumstances of the individual case always need to be considered; failure to meet one of the general conditions, such as an appropriate accommodation, does **in no case** automatically lead to rejection of the application for the issue of a residence title, rather, the case is always reviewed in the light of Art. 8 ECHR (as expressly specified in Section 11 Abs. 3 *NAG*).

The provision of the *NAG* requiring that an accommodation according to local standards be available is based on provisions of EU law. We refer here to Council Directive 2003/109/EC of 25 November 2003 (concerning the status of third-country nationals who are long-term

residents) and Directive 2004/38/EC of the European Parliament and of the Council of 29 April 2004 (on the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States – the “Free Movement Directive”) as well as in particular to Council Directive 2003/86/EC of 22 September 2003 (on the right to family reunification – “Family Reunification Directive”); the latter sets forth the conditions for granting a residence title to family members who are third-country nationals.

Specifically, Art. 7(1) lit. a of Directive 2003/86/EC specifies that the sponsor may be required to provide evidence of accommodation regarded as normal for a comparable family in the same region and which meets the general health and safety standards in force in the Member State concerned.

Specific examples of such evidence include rental and sub-rental agreements, preliminary property agreements and evidence of ownership (Section 7 of the Ordinance implementing the NAG). Other appropriate forms of evidence include confirmation of accommodation, agreements on entitlement to accommodation and documentation of entitlement to joint use free of charge. Entitlement to joint use of accommodation based on private law can arise from provisions of family law. However, accommodation options that can be revoked at any time do not constitute legal entitlement and hence cannot be used as evidence of normal local accommodation. Competent authorities are required in all cases to issue a decision presenting in a clearly recognisable and intelligible way the main reasons for judging the accommodation as suitable or not.

Statistical data on rejections of applications for family reunion based on the criteria with respect to the accommodation requirement:

In this context, no specific statistical data are available (e.g. relating to applications that were rejected on grounds of failure to meet the requirement of **normal local accommodation**). Yet, the Federal Ministry of the Interior, as the appellate authority in settlement and residence matters, **is aware of no cases** where an application for the issue of a residence title was refused due to failing to meet the requirement of normal local accommodation. As previously mentioned, prior to any rejection, a review takes place that is based on Art. 8 ECHR and considers the special circumstances of the individual case.

Statistical data on rejections of applications for family reunion based on the criteria relating to available means, state of health or in the framework of the “Integration Agreement”:

To grant any residence title, the applicant is required to be **covered by a health insurance policy** obligated to pay benefits in Austria as well as to provide evidence of **sufficient financial means** and of normal local accommodation (general requirements for obtaining a permit).

Yet, even where one of the above-mentioned conditions is not met, the residence title is nonetheless to be granted if required in order to respect private and family life as specified in Art. 8 ECHR (cf. Section 11 Para. 3 NAG, Section 19 Para. 8 NAG, Section 21a Para. 5 NAG and other provisions).

Thus, the specific circumstances of the individual case always need to be considered; failure to meet one of the general conditions does **in no case** automatically lead to rejection of the application for the issue of a residence title, rather, the case is always reviewed in the light of Art. 8 ECHR (as expressly specified in Section 11 Abs. 3 NAG).

With regard to the **state of health**, it should be recognised that none of the conditions for granting a residence title that are specified in legislation are related to the state of the applicant's health. Consequently, in keeping with the current legal situation, no review of the individual's state of health takes place within the framework of proceedings for granting a residence title.

The **Integration Agreement** is aimed at integrating aliens who have already legally settled in Austria, for the purpose of helping them acquire greater proficiency in the German language. The terms of the Integration Agreement consequently become applicable only **once the family has been reunified**, and thus the option of refusing family reunification merely on grounds of failing to comply with the Integration Agreement does not come under consideration.

There is no statistical information concerning rejections of applications for reunion of families, e.g. on grounds of failing to provide evidence of normal local accommodation or sufficient financial means. In general, no statistics are kept on rejected applications.

Paragraph 7- Treatment no less favourable in respect of legal proceedings

Questions 1, 2 and 3

Regarding access to legal protection by the courts, no distinction whatsoever is made in Austrian civil proceedings legislation between Austrian citizens, EU nationals and third-country nationals.

Parties lacking means are granted legal aid, here once again without regard to their citizenship. Legal aid may include being provided with an attorney-at-law as legal counsel in the proceedings, with the Republic of Austria bearing – at least initially and normally until the end as well – both the attorney fees as well as all other procedural costs owed by the party concerned.

Legal aid also comprises the cost of translating any documents required as well as the cost of interpreting services during the hearing of the parties and during legal counselling sessions between the party and the attorney-at-law provided as legal counsel.

Paragraph 9 – Transfer of earnings and savings

Questions 1, 2 and 3

The system of freely convertible currencies is in effect in each and every country belonging to the Council of Europe. Migrant workers can transfer any income from employment to their countries of origin, without the Austrian Central Bank or any other institutions that trade foreign currencies requiring on the basis of foreign currency laws identification to be presented.

Section 2 of the Foreign Exchange Act (*Devisengesetz*) 2004 specifies capital flows to and from other countries as not being subject to any limitations, with the exception of the relevant limitations set forth in EU legislation (Articles 64 to 66, 75 and 215 TFEU) and in Articles 3 and 4 of the Foreign Exchange Act (sanction measures). The only items to be considered are the reporting requirements specified in the reporting ordinances issued by Oesterreichische Nationalbank (OeNB). In addition, the money laundering reporting unit, established within the Federal Criminal Police Office, has the power to prohibit or postpone the completion of any transaction where it is suspected or there are reasonable grounds for assuming that the transaction is connected to money laundering or terrorist financing.

Thus there are no general limitations or legal constraints on transferring income from employment.

Paragraph 12 – Promotion and facilitation of the teaching of migrant workers' mother tongues to their children

Questions 1, 2 and 3

Teaching of the mother tongue

All schoolchildren who in their family groups speak a language other than German or are being raised bilingually are eligible to participate; this applies regardless of citizenship, legal residence status, country of birth, proficiency in German and previous periods of school attendance in Austria. The schoolchildren with a first language other than German outnumber those with foreign citizenship by about twice as many. Children of “migrant workers” are therefore not the main target group, rather the majority are children and young people who are second and third-generation descendants of immigrants.

Curricula for teaching of the mother tongue

Teaching of the mother tongue is based on Austrian curricula. Three non-language-dependent curricula, i.e. curricula that can be applied to *any* language, currently exist; this offers the advantage of allowing new languages to be added as need arises.

- Primary schools and the lower level of schools catering to special needs, since 1992/1993
- Lower secondary level (lower secondary schools, new middle schools, lower level of academic secondary schools, upper level of schools catering to special needs and pre-vocational schools) since 2000/2001. At general compulsory schools (APS), this curriculum replaces the previous one from 1992.
- Upper level of academic secondary schools, since 2004/2005

All curricula may be downloaded as PDF documents (in German) at http://www.schule-mehrsprachig.at/fileadmin/schule_mehrsprachig/redaktion/Hintergrundinfo/info6-2014.pdf (pages 28ff.).

Basis in school law

Teaching of the mother tongue is part of the regular school system in Austria. Like all other teachers, instructors teaching another mother tongue are employed by and paid by Austrian school authorities.

Teaching of the mother tongue is provided at primary schools as an optional exercise (with participation voluntary and no grades given), while at other schools it is offered as an elective subject (with participation voluntary and grades given) or also as an optional exercise.

Organisational framework

Teaching of the mother tongue can either be added to regular classes (e.g. after the last instruction period or in the afternoon) or be integrated in regular instruction, through team-teaching with the class instructor or subject instructor.

When not integrated into regular instruction (and held as a course), the minimum number of pupils for starting and dividing classes apply as to other elective subjects and optional exercises: a minimum of 12 at academic secondary schools; the minimum number for starting and dividing classes at APS schools varies between *Laender*. Groups can also be set

up for pupils from several classes, school levels, schools and school types.

Teachers

The majority of instructors teaching another mother tongue received their initial education in another country and are consequently employed under special contracts, which usually imply a lower employment classification and lower pay.

A 30 ECTS course of studies for all of Austria entitled “Mother-tongue instruction: teaching first languages in the context of migration” was held at the Vienna Teacher Training College from August 2012 to September 2013. In response to the tremendous interest and need, a second course of studies began in August 2014.

To assure the quality of instruction, teachers are required to keep instruction records.

<http://www.schule-mehrsprachig.at/index.php?id=313>

Instruction materials

For Turkish and in part for Bosnian-Croatian-Serbian and Albanian, the school book list includes suitable materials that can be obtained free of charge as part of the free school book programme. Each pupil can also order one bilingual dictionary. All books and other instruction materials are listed in the PDF document below:

www.schule-mehrsprachig.at/fileadmin/schule_mehrsprachig/redaktion/Hintergrundinfo/info4-13-14-hellblau.pdf

Due to the rather small number of participants, the required quantity of school books for the other languages is purchased by the department of the Federal Ministry for Education and Women’s Affairs (BMBF) responsible for school and migration, and made available to the teachers for distribution to the pupils.

The mother-tongue teachers also have the option of posting their exercise sheets and suggestions for instruction on this website:

www.schule-mehrsprachig.at

Direct link: http://www.schule-mehrsprachig.at/index.php?id=276&no_cache=1

Number of teachers and pupils (2012/2013 school year)

a) By language

	Language	Number of teachers	Number of pupils
1	Albanian	25	2,379
2	Arab	11	1,075
3	Bosnian-Croatian-Serbian	147	10,778
4	Bulgarian	3	168
5	Chinese	3	77
6	French	2	46
7	Italian	1	8
8	Kurdish (Kurmanji)	3	64
9	Kurdish (Zazaki)	2	36
10	Pashto	1	41

11	Persian (Farsi-Dari)	5	493
12	Polish	8	851
13	Portuguese	3	94
14	Romani	3	128
15	Romanian	3	239
16	Russian	9	336
17	Slovak	5	152
18	Slovene	2	23
19	Somali	1	32
20	Spanish	6	129
21	Czech	3	67
22	Chechen	6	428
23	Turkish	154	14,911
24	Hungarian	9	202
	Total	415	32,757

b) By federal state

	Federal state	Number of teachers	Number of pupils
1	Burgenland	5	194
2	Carinthia	8	662
3	Lower Austria	21	2,302
4	Upper Austria	46	4,183
5	Salzburg	18	1,667
6	Styria	37	2,440
7	Tyrol	19	1,567
8	Vorarlberg	23	2,406
9	Vienna	238	17,336
	Total	415	32,757

Detailed statistics for the 2011/2012 school year can be viewed at http://http://www.schule-mehrsprachig.at/fileadmin/schule_mehrsprachig/redaktion/Hintergrundinfo/info5-13.pdf. The current statistical analysis of mother-tongue education is available online at http://www.schule-mehrsprachig.at/fileadmin/schule_mehrsprachig/redaktion/Hintergrundinfo/info5-13-14.pdf (in German))]

All schools offering instruction in another mother tongue during the 2012/2013 school year are listed at:

http://www.schule-mehrsprachig.at/fileadmin/schule_mehrsprachig/redaktion/muttersprachlicher_unterricht/schulen-muttunt1213.pdf.

In many other European countries that host migrants, embassies or migrant associations facilitate the promotion of migrants' first languages; Austria, in contrast, has committed itself to taking care of this need as part of the regular school system.

Mother-tongue teachers

- are employed by and paid by Austrian school authorities;
- are inspected by Austrian school supervisory bodies;
- teach according to Austrian curricula;
- are required to keep teaching records (similar to the *Klassenbuch* in normal classes);

- like all other teachers, are required to attend school conferences and further-training events;
- work as a team with class and subject teachers in many cases and in this way are well-integrated into the teaching staff;
- receive their teaching materials from the book list for Austrian schools or from the BMBF;
- are in the majority (70%) Austrian citizens.

Article 27 - Right of workers with family responsibilities to equal opportunities and equal treatment

Paragraph 1 - Measures

Questions 1, 2 and 3

Chances of workers with family responsibilities to remain in employment and to re-enter employment after an absence due to those responsibilities:

There are several approaches enabling workers to reconcile vocational and family-related responsibilities.

Pursuant to Section 14 of the Employment Contract Law Adaptation Act (*Arbeitsvertragsrechts-Anpassungsgesetz, AVRAG*), Federal Law Gazette no. 459/1993, workers with not only temporary care duties for close relatives, which result from the duty to provide assistance to family members, may opt to negotiate a reduction of standard weekly working time with their employers.

In businesses that have a works council responsible for the employee, said works council has to be included - at the employee's request - in the negotiations.

Employees have the right to return to the original standard working time no earlier than two months and no later than four months after their care duties have ended. Additionally, employees must not be terminated on grounds of taking part-time work (*Motivkündigungsschutz*).

Sections 14a et seq. *AVRAG* stipulate that employees may take full-time or part-time family hospice leave.

For the purpose of providing end-of-life care to close relatives or accompanying seriously ill children living in the same household, employees can re-schedule and/or reduce their working time or take leave from work. Leave for providing end-of-life care can basically be requested for a maximum period of three months, which may be extended to a maximum total of six months on a case-by-case basis, however. Accompanying a seriously ill child is basically possible for five months, which may be extended to a total of nine months. If the reason that required end-of-life care or accompanying a seriously ill child does no longer exist before the agreed care period has expired, the employee has the right to return to the original standard working time. If employees take full-time or part-time hospice leave, they are protected against notice of termination of employment and dismissal up to four weeks after their leave has ended.

Section 16 of the Paid Annual Leave Act (*Urlaubsgesetz, UrlG*), Federal Law Gazette no. 390/1976, sets forth the employees' entitlement to paid time off for caring for a close relative living in the same household who has fallen ill (care leave). Employees are also entitled to paid time off in order to care for their own child (adopted or foster child) and/or the biological child of their spouse, registered partner or cohabiting partner if the person who used to care for the child is permanently unable to do so for material reasons (care leave for a child). Employees have a right to paid time off from work to accompany a child under the age of ten to an in-patient hospital stay. Each of these three types of leave can be taken for a total of one week per working year. In addition, employees are entitled to another week of care leave in order to care for children under the age of twelve.

In the event that salaried (white-collar) employees need to be absent from work due to family responsibilities, they are also entitled to paid time off under the provisions of Section 8 Para. 3 of the Salaried Employees Act (*Angestelltengesetz, AngG*), Federal Law Gazette no. 292/1921. Blue-collar workers are entitled to such paid time off under the provisions of Section 1154b of the General Civil Code (*Allgemeines Bürgerliches Gesetzbuch, ABGB*), Law Gazettes no. 946/1811 as amended.

According to these provisions, workers are entitled to continued pay if they are unable to perform their work for other material reasons related to them personally without their own fault for a relatively short period of time (up to one week). According to court rulings under labour law and prevailing theory, this includes reasons that are family-related which result from the duty to provide assistance under family law and which are deemed more important than the obligation to work.

Employment conditions

With respect to the employment conditions for workers with family responsibilities as specified in Para. 1 lit. b, the Labour Constitution Act (*Arbeitsverfassungsgesetz, ArbVG*) also comprises provisions obligating business owners to offer guidance to workers on measures regarding the promotion of women at work and/or the reconciliation of care duties and work (Section 92b *ArbVG*). Related measures concern primarily recruitment practices and further education and training courses aimed at reducing any underrepresentation of one sex in the company and/or in particular positions or to eliminating any other existing forms of discrimination. It also refers to measures which are designed to allow a better reconciliation of work and family responsibilities and other care duties.

The *ArbVG* authorises entering into a works agreement on measures for the promotion of women at work (promotion programmes for women) and on measures for improved reconciliation of care duties and work (Section 97 Para. 1 no. 25 *ArbVG*).

Equal Treatment Act

The Equal Treatment Act (*Gleichbehandlungsgesetz, GlBG*) lays down that in connection with an employment relationship, nobody may be discriminated against, directly or indirectly, due to their sex, in particular with reference to their marital status or the fact whether someone has children. This special emphasis makes clear that discrimination in the working world in spheres that are protected under the Equal Treatment Act is prohibited regardless of whether a person is unmarried, married, living in a registered partnership, divorced or widowed or whether he or she is a surviving registered partner, the marriage has been annulled or declared void, the registered partnership has been dissolved or declared void, he or she has children or not.

This prohibition of discrimination set forth in Section 3 *GlBG* applies in particular to

- establishing an employment relationship;
- determining remuneration;
- granting fringe benefits that do not constitute remuneration;
- training, further training and retraining measures;
- career opportunities, especially promotions; and
- the termination of an employment relationship (including the initial trial period);
- and in any other labour context, i.e.:

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

Direct discrimination occurs when someone is treated less favourably than another person in a comparable situation.

Indirect discrimination occurs where an apparently neutral provision, criterion or practice puts persons of a particular sex or marital status, or due to the fact whether or not they have children, at a disadvantage, unless the differentiation can be objectively justified.

Discrimination also occurs if individuals are instructed to discriminate or if individuals are discriminated against due to their close relationship with a person of a certain sex, marital status or persons who, for example, have children.

Harassment and sexual harassment are also deemed forms of discrimination.

If the principle of equal treatment is violated, the affected person is - depending on the type of discrimination - entitled to:

- compensation for financial losses, i.e. actual harm caused (*positiver Schaden*) and loss of profit; or
- creating/restoring a discrimination-free situation and, in both cases, additionally
- compensation for the immaterial damage and the personal impairment suffered.

The claims must be asserted before a court of law.

In detail, Section 12 *GIBG* includes the following stipulations:

If an employment relationship is not established for discriminatory reasons, Section 12 Para. 1 *GIBG* specifies an entitlement to compensation for the financial loss and non-material damages for the personal impairment suffered. The applicant who would have got the job in a non-discriminatory recruitment process is entitled to receive minimum damages in the amount of two monthly salaries. An applicant who would not have got the job but whose application was not considered for discriminatory reasons is entitled to damages of up to EUR 500. In both cases, applicants have no claim to actually get the job.

If the principle of equal treatment is violated in connection with career advancement, employees are entitled to compensation for the financial loss (actual harm and loss of profit) and for the personal impairment suffered (Section 12 Para. 5 *GIBG*). Compensation is due regardless of whether an employee was seeking or had applied for a promotion. The fact alone that an employer acts in a discriminatory manner when it comes to promotions establishes the unlawfulness of the behaviour. Similar to discriminatory recruitment, the amount of damages depends on whether the person affected would have received the job if the recruitment process had been non-discriminatory.

If an employee receives lower pay than an employee of the opposite sex for the same or equivalent work due to discrimination on grounds of sex, the employee is entitled to payment of the difference and compensation for the personal impairment suffered (Section 12 Para. 2 *GIBG*). The obligation to pay the difference applies not only to the past but the entitlement continues into the future.

Upon termination of an employment relationship, a discriminatory termination or dismissal can be contested before the Labour and Social Court. The person affected may opt not to challenge the discriminatory termination but to claim damages. The same applies to the discriminatory termination of a probationary employment relationship, i.e. employment during an initial trial period, and failure to convert a limited into an unlimited employment relationship on grounds of sex (cf. Section 12 Para. 7 *GIBG*).

In the event of harassment and sexual harassment, the person affected is entitled to claim compensation from the offender and/or employer for material and non-material damage in the amount of at least EUR 1,000 (Section 12 Para. 11 *GIBG*).

Section 12 Para. 14 *GIBG* finally sets forth that the amount of compensation for the personal impairment suffered is to be determined in an amount as to actually and effectively compensate for the impairment; additionally the amount has to be appropriate for the impairment suffered and reasonable to prevent further discrimination.

The *GIBG* also governs equal treatment in areas other than the employment relationship (cf. Sections 30 et seq. *GIBG*). Its objectives are gender equality as well as the elimination of any other types of discrimination.

Nobody must be discriminated against, directly or indirectly, with regard to access to and supply with goods and services that are available to the public, including housing, on grounds of their sex, in particular with reference to their marital status or the fact whether or not they have children. These provisions make it clear that the discrimination of women on grounds of pregnancy or motherhood constitutes direct discrimination.

Harassment and sexual harassment are deemed to constitute discrimination also outside an employment relationship and the affected person is entitled to a minimum compensation of EUR 1,000 from the offender. In case of other types of discrimination the affected person is entitled to compensation for the financial loss and the personal impairment suffered.

Housing that is made available must be advertised in a non-discriminatory manner unless a close relationship is established by providing housing. Non-compliance with this obligation entails an administrative penalty.

Positive measures laid down in laws or regulations or in any other way which aim to promote equal treatment are not considered discrimination as defined in the *GIBG*.

Persons affected by discrimination can turn to the Equal Treatment Ombuds Office. This public entity was established to enforce the right of equal treatment and equality and provide protection against discrimination. Its tasks include providing information to and raising awareness among the public and to support people in enforcing their right to equal treatment. To this end, people are advised and informed and accompanied to pre-trial talks and proceedings before the Equal Treatment Commission.

Compensation for violations against the prohibition of discrimination as defined by the *GIBG* can be sought by asserting claims under civil law. This means that persons who feel discriminated against must bring a violation against the prohibition of discrimination before a court of law. Alternatively, the Equal Treatment Commission may be addressed. The Equal Treatment Commission deals with all issues related to discrimination and can, in particular, prepare expert opinions and carry out case reviews. Claims for damages or performance, however, cannot be asserted; this lies within the exclusive jurisdiction of the courts. The

Equal Treatment Commission and the courts can be addressed independently from one other.

The establishment of a lower-threshold institution (compared to courts) such as the Equal Treatment Commission, characterised by informal proceedings, provides (apart from having recourse to the courts, which is possible anytime) easy access for filing complaints concerning discrimination, even if, eventually, no claims will be asserted or granted as this is a function that is reserved to the courts.

Many of the individuals affected avoid legal action in court but consider the proceedings before the Equal Treatment Commission suitable to argue the discrimination they are or were subject to. In this context, the Commission's arbitration function is of great importance too.

Vocational training following a period of absence due to family responsibilities:

Sections 11 et seq. AVRAG allow workers to agree with their employers on educational leave without remuneration or with reduced working time (part-time educational leave). To be eligible, workers must have maintained an employment relationship for an uninterrupted period of six months. Educational leave can be taken for a period from two months to one year, whereas part-time educational leave can be taken for a period from four months to two years. Within the scope of part-time educational leave, working time must be reduced by at least 25% but may be reduced by no more than 50% of the previous regular working time. The weekly working time during part-time educational leave must not be less than ten hours. As in the case of educational leave, workers must not be terminated during part-time educational leave on grounds of taking part-time work (*Motivkündigungsschutz*).

If educational leave or part-time educational leave is taken after a period of the employee's absence due to family responsibilities, this may substantially facilitate easier reintegration into the labour market.

Active labour market policy for persons re-entering the labour market

The framework and related conditions of the labour market are constantly changing and pose a complex challenge for people re-entering the labour market. An active and supportive attitude as well as low-threshold information offers are important to enable women and men to return to the labour market as quickly as possible after a family-related interruption.

In addition to support programmes and grants provided by the Public Employment Service (AMS) within the scope of its active labour market policy (see below for statistical data), persons re-entering the labour market receive special support through the "Return-to-Work" ("*Wiedereinstieg unterstützen*") initiative. Early information, individual counselling and specific training programmes are offered to enable persons re-entering the labour market to

- use the AMS offerings more efficiently;
- plan their career objectives; as well as
- be aware of the consequences of the decision whether and to what extent they resume work (providing for their own subsistence, impact on future pension level, etc.).

In all regional AMS offices, returnees are advised by specially trained consultants, and special information events take place to prepare them for re-entering the labour market. The framework for programmes offered to returnees is defined by nationwide minimum

standards. Provided that these standards are adhered to, regional needs can be addressed in a flexible way.

Furthermore, the AMS offers a course called "Re-entry with a future", which is tailored to women re-entering the labour market. After women's careers have been interrupted for family-related reasons, long-term perspectives are to be developed to assist those women in returning to employment that secures their subsistence. The programmes offered go beyond vocational guidance and address the specific conditions and problems of the target group.

The focus is placed on the reconciliation of work and family life, an analysis of the potential and a competence record, and the discussion of the career and/or a possible re-orientation. In addition, the training programmes offered to enhance returnees' qualification are of importance.

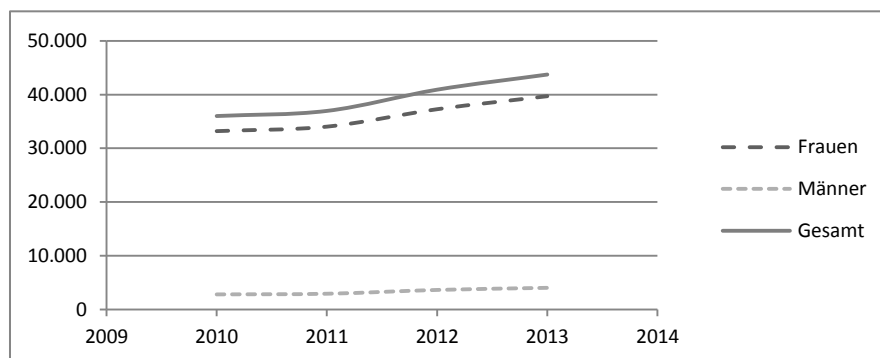
With the aim of intensifying the services offered to the target group of women re-entering the labour market, the AMS co-operates closely with women's counselling centres and advises clients individually with regard to specific questions related to their return to work. The primary objective of these counselling services is to provide support in organising childcare and to resolve other family-related or personal issues in connection with re-entering the labour market.

Data on active labour market policy for persons re-entering the labour market

In the past few years, active labour market policy has been heavily expanded as regards the target group of persons re-entering the labour market. In 2013, some 43,700 people were assisted by means of AMS support measures and grants, which is an increase of 6% over the previous year, and of 20% over 2010.

Supported persons	2010	2011	2012	2013
Women	33,194	34,027	37,272	39,694
Men	2,811	2,931	3,637	4,032
Total	36,003	36,956	40,907	43,724

AMS support measures and allowances for persons re-entering the labour market by sex, unique counting of persons



Development of AMS support measures and allowances for persons re-entering the labour market by sex, unique counting of persons; 2010 to 2013

The focus for persons re-entering the labour market was put on improving their skills in all the years covered. From 2010 to 2013, more than 75% of the persons supported by the AMS participated in a skills training measure to enhance their qualification.

The budget for persons re-entering the labour market was raised by some 6% in 2013 over the previous year. More than 90% of the financial resources earmarked for persons re-entering the labour market are used for women.

Support budget	2010	2011	2012	2013
Women	85,026,656.44	81,188,917.32	83,731,401.23	88,682,987.65
Men	6,381,320.41	6,162,153.81	7,612,668.56	8,340,250.52
Share of women/Total	93.02%	92.95%	91.67%	91.40%
Total	91,407,976.85	87,351,071.13	91,344,069.79	97,023,238.17

AMS support budget for persons re-entering the labour market by sex; 2010 to 2013

With the federal act Federal Law Gazette I no. 3/2006, the Familie & Beruf Management GmbH was established in 2006 as a limited liability company (GmbH) which is fully owned by the Federal Government.

The company's business objective is to manage measures for reconciling family life and work as well as to co-ordinate research promotion on behalf of the Austrian Institute for Family Studies and/or its legal successor.

In the course of their employment and their re-entry into the labour market, workers with family responsibilities are supported by means of the audit procedures audit *berufundfamilie* (target group: companies), audit *hochschuleundfamilie* (target group: higher-education institutions) as well as audit *pflgeundfamilie* (target group: hospitals and nursing care facilities). The individual audit procedures are based on guidelines.

Public service

Similar to employees in the private sector, federal employees may take family hospice leave in order to provide end-of-life care to close relatives or to care for seriously ill children (e.g. Section 78d of the Civil Service Act (*Beamtendienstrechtsgesetz, BDG*) 1979). It is possible to either reduce the working time or to take unpaid leave. Likewise, employees in public service can take care leave in order to care for close relatives.

As a measure designed to facilitate re-entry into the labour market, federal employees on leave can request the appointment of a fellow employee who will keep them updated and support them with regard to new work-related matters, the re-integration into the department and building internal and external networks. By means of a personalised e-mail system fed with the birth date and the scheduled return date, customised information (including relevant statutory provisions, interesting links) can be provided.

Finally, the Federal Equal Treatment Act (*Bundes-Gleichbehandlungsgesetz, B-GlBG*), Federal Law Gazette no. 100/1993, should be mentioned, which prohibits discrimination on grounds of sex in employment relationships with the biggest employer of the Republic of Austria, i.e. the Federal Government, in general, and on grounds of motherhood or parenthood, in particular.

Corresponding legislation at *Laender* level lays down similar provisions for employees working in entities at *Laender* level and municipalities.

Agreement pursuant to Article 15a of the Federal Constitutional Law (*Bundes-Verfassungsgesetz, B-VG*) on the expansion of institutional childcare facilities (Federal Law Gazette II no. 478/2008; Federal Law Gazette I I no. 120/2011)

Reconciling family life and work is one of the most important concerns in economic and socio-political policy, which concerns families, companies, organisations, institutions and the society and for which all of them are responsible.

From 2011 to 2014, the Federal Government provided a total of EUR 55 million in funding for childcare facilities, which were co-financed by the competent *Laender* with the same amount. In the period from 2012 to 2014, grants and subsidies of EUR 15 million per year were available.

The expansion initiative focused on expanding childcare facilities for children under three, promoting childminder services, and extending opening hours throughout the year. Accordingly, the *Laender* are allowed to use only up to 25% of the funds for children aged three to six, but up to 100% for children under three. The quota of those children in care is supposed to increase from currently 22% to 28% (including the services provided by professional certified childminders). In doing so, the EU's Barcelona target (33%) is gradually to be approximated. Among children aged three to six, the Barcelona target has already been reached at 90.6% (92.3% including children in the care of professional certified childminders), which is why in this age group childcare is expanded only for the purpose of closing regional gaps. Government funds are also used to extend opening hours. Full-day care that is flexible and can be reconciled by parents in full-time employment is particularly supported.

In June 2013, the Council of Ministers confirmed the further expansion of childcare facilities in its basic principles both in terms of quantity and quality. The Federal Government's work programme 2013 to 2018 specifies that these targets are to be implemented accordingly. The Barcelona target of 33% is to be reached as quickly as possible in all the *Laender*. Furthermore, uniform quality standards as well as a uniform quality assurance system are to be established in Austria. To this end, the Federal Government will provide EUR 350 million in the next four years.

Statistical data: See *daycare centre statistics by Statistics Austria*:

http://www.statistik.at/web_de/statistiken/bildung_und_kultur/formales_bildungswesen/kindertagesheime_kinderbetreuung/index.html (in German)

See also the information given in the report on the topic of childcare facilities under Article 16.

Paragraph 2 – Parental leave

Questions 1, 2 and 3

Parental leave

The obligation defined in Article 27 Para. 2 to allow each parent to take parental leave in order to care for a child within a period subsequent to maternity leave is met by the provisions under Sections 15 et seq. of the Maternity Protection Act (*Mutterschutzgesetz, MSchG*) 1979, Federal Law Gazette no. 221, and Sections 2 et seq. of the Parental Leave for

Fathers Act (*Väter-Karenzgesetz, VKG*), Federal Law Gazette no. 651/1989 as amended, as well as by the pertinent provisions of the Agricultural Labour Act (*Landarbeitsgesetz*) 1984, Federal Law Gazette no. 287.

Accordingly, parents may take - subsequent to maternity leave - parental leave for a minimum period of two months up to the end of the 24th month of the child's life. Parents can alternate when taking parental leave. They can split this parental leave period twice amongst themselves. Except for the first alternation for a one-month period, it is not allowed for both parents to take parental leave at the same time. One parent, however, can also take parental leave without splitting it. The employer's approval is not required for taking parental leave; the unilateral declaration of intent of the leave-taking parent is sufficient. Living in the same household with the child, however, is a prerequisite for taking parental leave.

The mother who takes parental leave subsequent to maternity leave has to notify her employer while on maternity leave, the father has to do so within eight weeks after the child's birth. If parents split parental leave, the father has to notify his employer thereof no later than three months prior to the expiration of the mother's leave period (or vice versa).

If parental leave is taken, the protection against notice of termination of employment or dismissal will be effective upon notification of the employer, four months prior to starting leave at the earliest, but not before the child is born. It will expire four weeks after the end of the respective parental leave period.

Since spring 2004, parents have been entitled to part-time employment (Sections 15h to 15r *MSchG*). This option is available up to the child's seventh birthday or up to the child's later entry into school in companies with more than 20 employees, if the employee has maintained the employment relationship for an uninterrupted period of at least three years at the time of taking up part-time employment. The conditions (beginning and duration of the part-time employment, number and scheduling of working hours) has to be agreed upon with the employer. In smaller companies such entitlement may be laid down in a works agreement.

If no agreement can be reached between the employer and the employee, neither out of court, nor within a court-supported attempt at a settlement, the employer may file an action with the Labour and Social Court. The employee is entitled to commence working as previously intended by him/her if the employer fails to apply for a settlement or file an action with the court. After careful consideration of the interests of the two parties involved, the court has to make a final decision concerning the conditions of part-time work.

If there is no entitlement to part-time employment, it can be mutually agreed (including the beginning and duration of part-time employment, number and scheduling of working hours) with the employer up to the child's fourth birthday. If no agreement is reached, the employee can (as previously) file an action with the court seeking her employer's agreement to part-time employment.

Part-time employment is only possible if the child lives in the same household; if this prerequisite is not met, at least child custody rights as defined by family law are required. Additionally, the child's other parent must not be on parental leave at the time of part-time employment. The duration and admissibility of part-time employment no longer depend on the parental leave taken. Part-time employment is not permissible, however, if the child's other parent is on parental leave at the same time.

Part-time employment can start after the maternity leave period at the earliest.

It must be agreed for a minimum duration of two months. The child's parents can work part-time simultaneously. Each parent may claim a period of part-time employment for each child only once (modifications during this period are possible).

During the part-time employment period the employee is granted protection against notice of termination of employment and dismissal until up to four weeks after the child's fourth birthday at the latest; after that, the employment relationship must not be terminated on the grounds of the employee taking part-time work (*Motivkündigungsschutz*), which is applicable until the end of the part-time employment period. If the employee takes up another job during the part-time period, the protection against notice of termination of employment and dismissal is suspended. The employee is entitled to the same number and scheduling of working hours as prior to the part-time employment (or prior to the parental leave).

An information campaign was launched in November 2012 by the Federal Minister for Women to promote the option for fathers to take parental leave. In its re-launch, the information campaign focuses on comprehensive counselling of fathers (and their partners). More information is available on the website www.maennerinkarenz.at (in German).

Public service

The provisions of the *MSchG* and the *VKG* governing the entitlement to parental leave and part-time employment for mothers and fathers are - with minor adaptations to public-sector employment law (e.g. with respect to procedural rules) - also applicable to federal employees in public service.

In addition to the option of part-time employment under the *MSchG* and the *VKG*, public-sector employment law (e.g. Section 50b *BDG* 1979) sets forth a legal entitlement to reduce the working time until the child starts school, in case of children with disabilities, even beyond that. Furthermore, the working time can be reduced for other reasons (e.g. Section 50a *BDG* 1979).

In order to increase the participation of fathers in after-birth childcare, a leave period referred to as "daddy's month" ("Papamonat") was introduced in the public service sector.

Under this measure, fathers are entitled to take unpaid (early) parental leave of up to four weeks during the maternity protection period (*Schutzfrist*) (cf. Section 78d *BDG* 1979).

Fathers are free to choose the starting date and the duration of this kind parental leave within the period from childbirth until the expiry of the mother's prohibition of employment (usually eight weeks). This type of leave does not reduce the parental leave pursuant to the Parental Leave for Fathers Act.

Early parental leave is only allowed if the father lives in the same household with the child and the mother. The father must notify his employer of the start and duration of parental leave no later than one week prior to the planned starting date and submit without delay the circumstances establishing the entitlement as well as those terminating the entitlement.

Social insurance protection remains in effect throughout this period, with the employer paying all contributions.

Altogether, 745 fathers took advantage of the possibility of taking "daddy's month" leave in the period from early 2011 until 31 December 2013; in 2013, the number of fathers taking

such leave was 297.

Public-service employees may also take unpaid parental leave under public-sector employment law for other reasons, e.g. in order to care for a child until school entry. Public service employees are entitled by law to paid leave (e.g. Section 75c *BDG* 1979) in order to care for children with disabilities until their 40th birthday or for relatives in need of long-term care who are entitled to long-term care benefits of level 3 at least.

After taking parental leave under the *MSchG* or the *VKG*, public-service employees are entitled to return to the position they had before starting parental leave.

As a measure designed to facilitate re-entry into the labour market, federal employees on leave can request the appointment of a fellow employee who will keep them updated and support them with regard to new work-related matters, the re-integration into the department and building internal and external networks. By means of a personalised e-mail system fed with the birth date and the scheduled return date, customised information (including relevant statutory provisions, interesting links) can be provided.

Corresponding legislation at *Laender* level lays down similar provisions for employees working in entities at *Laender* level and municipalities.

Childcare benefit

Alongside the general framework under labour law, the Childcare Benefit Act (*Kinderbetreuungsgeldgesetz, KBGG*), Federal Law Gazette I no. 103/2001 as amended, also contains stipulations to allow parents to remain in employment and/or to re-enter the labour market. As of 2010, the *KBGG* has provided for two systems with a total of five childcare benefit schemes (flat-rate system with four schemes and one income-related benefit scheme) to choose from, which gives parents an even bigger choice; the diverse and flexible childcare benefit options allow parents to plan their lives individually according to their wishes and ideas and thus contribute to better reconciliation of family life and work.

The income-related childcare benefit scheme (parents in employment relationships receive 80% of their latest salary in childcare benefit, until the child has completed its 14th month at the most) is particularly favourable for mothers and fathers with higher incomes, and they have to interrupt their careers only for a short period of time. Besides, this replacement of income increasingly encourages fathers to take a brief time-out to care for their child; after all, it is not only the children who benefit from an increased participation of fathers, but indirectly also the women, as they can better concentrate on their careers. Since income-related childcare is an income substitute, only EUR 6,100 in additional income per calendar year is allowed (as of 2013).

With the flat-rate options, an individual additional-income limit has been in effect since 1 January 2010: while receiving a flat rate of childcare benefit, the parent may earn additional income amounting to as much as 60% of the most recent previous income but no more than EUR 16,200 per calendar year. The possibility to earn an additional income while receiving childcare benefit facilitates an earlier re-entry into the labour market especially for mothers; additionally, by generating additional income, mothers and fathers can contribute more to their own retirement provision and, in doing so, reduce the risk of poverty in old age.

As parents receiving childcare benefit are automatically covered by health insurance, their social protection is also provided for.

Depending on the scheme, the share of fathers is between some 12% and 30%. The percentage of fathers is higher for the schemes with shorter alternate leaves. One in three recipients of childcare benefit under short-term schemes is a father.

For more information on childcare benefits and, in particular, statistics, reference is made to the respective information on Article 16.

ANNEXES

- The Government's reports of 2014 on the implementation of ILO Conventions No. 138 (Minimum Age Convention) and No. 182 (Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour)
- The Government's report of 2013 on the implementation of ILO Conventions No. 183 (Maternity Protection Convention, 2000)
- Information by Austria for ECRI's Fifth Monitoring Cycle Report
- Comments of the Austrian Chamber of Labour regarding Articles 7, 8, 17, 19 and 27.