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## Committee on Economic, Social and Cultural Rights

### Implementation of the International Covenant on Economic, Social and Cultural Rights

**Fourth periodic reports submitted by States parties under  
articles 16 and 17 of the Covenant**

**Austria\*\***

[28 July 2010]

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\* In accordance with the information transmitted to States parties regarding the processing of their reports, the present document was not edited.

\*\* Annexes can be consulted in the files of the Secretariat.

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## I. Introductory remarks

1. The present report was drawn up in accordance with the reporting guidelines issued by the Economic and Social Council of the United Nations. It supplements and/or updates information contained in previous reports, but does not repeat any information already provided in those reports. The answers to questions regarding, for example, maternal and paternal leave, the support of families or social security have been provided in the Third and Fourth Periodic Report. The main text contains basic information, whereas the Annex contains mostly specific information such as statistics and project descriptions. Where applicable, the most recent recommendations of the Committee are addressed in the main text pertaining to the individual articles of the CESCR, otherwise in a separate section at the end of the Annex.

## II. General remarks

2. The CESCR itself is not directly applicable in Austria, but it can be assumed that the rights granted in this document have to a large extent been put into legislation in Austria.

3. Therefore, courts and administrative authorities are obliged to ensure, in their jurisdictions, the implementation of the rights established in the CESCR.

4. Generally, it should be mentioned that the Austrian legal system provides for clearly defined individual legal protection. In addition, pursuant to sec. 18 of the Federal Constitution (*Bundes-Verfassungsgesetz*) (Federal Law Gazette No. 1/1930 as amended), a strict principle of legality is applicable in Austria which stipulates that the entire public administration be based on law.

### Article 1

5. Austria assumes that none of Austria's ethnic groups is an indigenous people within the meaning of the CESCR.

### Article 2

#### 1. Cooperation

6. Austria is part of the international community of donors and, pursuant to its international obligations as well as on the basis of the resources available, provides both multilateral and bilateral development co-operation. These services are rendered on the basis of the Development Co-operation Act (*Entwicklungszusammenarbeitsgesetz*), Federal Law Gazette Vol. I No. 49/2002 as amended, which came into force in 2002 and pursues the reduction of poverty, the maintenance of peace and human security as well as the preservation of the environment and the protection of natural resources as its highest objectives. In pursuing these objectives, Austria's development policy is guided by four fundamental principles:

(a) The targets of the governments and of the population concerned in the partner countries determine the speed and fashion of the development process

(b) All measures have to be integrated into the social environment of the partner countries, with special attention being paid to cultural aspects and suitable technology being applied

(c) Gender equality

(d) Meaningful consideration of the needs of children and persons with disabilities

7. The compulsory contributions and voluntary funds provided for multilateral purposes are predominantly managed by the United Nations, the European Commission and the international financial institutions. At a bilateral level, Austria focuses on a limited number of partner countries in Southern and South Eastern Europe as stipulated by the Paris Declaration on Aid Effectiveness and the EU Code of Conduct.

8. In addition to six aspects (water and waste water, rural development, energy, private-sector development, education and science co-operation as well as good governance, including human rights and maintenance of peace), the priorities include the two cross-cutting issues of gender as well as environment and climate.

## 2. Prohibition of discrimination

9. Initially, it is to be mentioned that the regulations for the private sector described below are basically equivalent to those laid down for the public-service sector (by means of the Federal Equal Treatment Act (*Bundes-Gleichbehandlungsgesetz*) for the federal sector and corresponding provincial laws for provincial and municipal service).

10. As far as substantive provisions on the protection against discrimination are concerned, it can be reported that discrimination on grounds of sex, ethnic origin, religion or belief, age and sexual orientation has now been included in the Federal Equal Treatment Act, Federal Law Gazette Vol. I No. 66/2004, amended by Federal Law Gazette Vol. I No. 98/2008. Due to the necessity of implementing the Directives 2000/43/EC, 2000/78/EC, 2002/73/EC and 2006/54/EC, protection from discrimination at the workplace is sufficiently comprehensive.

11. Outside the workplace, however, there is a certain hierarchy. Protection from discrimination on grounds of ethnic origin is ensured in the fields of social protection including social security and health care, social benefits, education, and access to and supply of goods and services which are commercially available to the public, including housing. In transposition of Directive 2004/113/EC, the 2008 amendment laid down provisions on the protection against discrimination based on sex outside the workplace. Like the directive, which only provides for minimum standards, this protection comprises access to and supply of goods and services which are commercially available to the public.

12. At present, expert talks are taking place regarding another amendment of the Equal Treatment Act. The draft on which the talks are based provides for the obligation to prepare annual company-specific income reports for companies of a certain size (gradual introduction) in order to improve the transparency of women's and men's incomes.

13. Regarding the comment in Item 9 of the Concluding Observations of the Committee on Economic, Social and Cultural Rights on the Third and Fourth Periodic Report, which deplores racist and xenophobic attitudes in some sectors of the population, it can be reported that the Equal Treatment Act does not allow anybody to be discriminated against, directly or indirectly, on grounds of ethnic origin. This legal basis and the Equal Treatment Ombudsperson and the Equal Treatment Commission, which were established to enforce it, give Austria a tool to combat existing racist and xenophobic attitudes. Details on these institutions are provided in the comments on Art. 3.

14. Claims (compensation of financial loss or non-pecuniary damage; establishing non-discriminating conditions) arising from the Equal Treatment Act can be asserted in court.

15. With respect to the prohibition of discrimination, it is also to be pointed out that the rights of persons with disabilities were clearly reinforced by the equality package for disabled persons, which came into force on 1 January 2006. Direct or indirect discrimination based on disability is now explicitly prohibited.

16. In addition, sign language has been enshrined in the constitution (Art. 8 para. 3 of the Federal Constitution) and, by extension, discriminating legal provisions, in particular in the fields of service-regulations law and professional law, were abolished by the Federal Concomitant Act on the Equality of Disabled Persons (*Bundes-Behindertengleichstellungsgesetz*), Federal Law Gazette No. 90/2006 as amended. As a consequence, career opportunities opened up for persons with disabilities which had not been previously available to them due to the statutory requirements.

17. The Professional Law Amendment Act of 2008 (*Berufsrechts-Änderungsgesetz 2008*), Federal Law Gazette Vol. I No. 11/2007, clearly restricted the obligation of persons with sensory disabilities to obtain notarial deeds for legal transactions.

18. In May 2008, improvements for the victims of discrimination regarding financial aspects and procedural law were introduced as a result of a modification of the Federal Disability Equality Act (*Bundes-Behindertengleichstellungsgesetz*), Federal Law Gazette Vol. I No. 82/2005, and the Disability Employment Act (*Behinderteneinstellungsgesetz*), Federal Law Gazette No. 22/1970. On the one hand, minimum damages were raised, and on the other hand, protection against discrimination in the field of labour law was expanded.

19. Statistical data regarding gainfully employed women, people beyond the age of 50, foreigners and persons with disabilities are available (see the tables provided in the Annex). On reducing discrimination, see also the specific comments on the following Articles (in particular Art. 3).

### Article 3

#### 1. Equal rights and Item 23 of the recommendations on the third and fourth periodic report

20. Pursuant to the Federal Act on Federal Government Reports about Reducing Discrimination against Women (*Bundesgesetz über Berichte der Bundesregierung betreffend den Abbau von Benachteiligungen von Frauen*), Federal Law Gazette No. 837/1992, the federal-service sector is committed to reducing existing discrimination against women in order to achieve effective equal opportunities for women and men with respect to adjusting the different age limits in the statutory social security scheme. For the purpose of monitoring the implementation of this objective, the federal government has to submit a report to the National Council every other calendar year, by 30 June at the latest, about the measures taken in the reporting period with respect to reducing existing social, family-related and economic discrimination of women (<http://www.frauen.bka.gv.at/site/5556/default.aspx>).

21. In the period of 2002 to 2010, four reports were submitted to the National Council. The report for the period of 2009 to 2010 is to be submitted by 30 June 2011. See the Annex for the Women's Report 2010 and other topics on women's rights.

22. The Equal Treatment Act, which governs (among other things) protection against discrimination on grounds of sex (see also the comments under article 2, heading 2), was amended several times in the past few years, mostly because of Community-law requirements (in particular Directives 2002/73/EC and 2004/113/EC, with respect to discrimination on grounds of sex). The Federal Equal Treatment Act applies to the federal public-service sector, whereas provincial laws, which largely correspond to the substantive

provisions of the Equal Treatment Act, apply to the regional and municipal public-service sector.

23. The Federal Act on the Equal Treatment Commission and the Equal Treatment Ombudsperson (*Bundesgesetz über die Gleichbehandlungskommission und die Gleichbehandlungsanwaltschaft*), Federal Law Gazette No. 108/1980 as amended, governs the institutions which were created to enforce the right of equal treatment and which are intended to give the people concerned as easy access as possible. At present, there are regional offices in Styria, Carinthia, Tyrol and Upper Austria. The Equal Treatment Commission and the Federal Equal Treatment Commission, which was established on the basis of the Federal Equal Treatment Act, Federal Law Gazette No. 100/1993 as amended by Federal Law Gazette Vol. I No. 153/2009, have been set up in the Federal Chancellery. See also the details on Art. 3 provided in the Annex and the comments under article 2, heading 2.

**(a) Gender budgeting**

24. Another important aspect for equal rights of men and women with respect to economic, social, and cultural rights is gender budgeting, which has been implemented in Austria since 2005 by taking into account gender-related aspects of the ministries' budgets through individual projects or measures.

25. The budgetary law reform of 2007, which is to be carried out in two stages (2009 and 2013), lays the basis for the comprehensive integration of gender budgeting into budgetary management: The Austrian Parliament unanimously decided to add the equality of women and men as a budgetary target into the federal constitution, when it adopted the budgetary law reform in December 2007. The unanimous decision demonstrates the high political acceptance of the new system and provides an important basis for the future integration of gender budgeting in all stages of budgetary management, in its planning, drafting, implementing and monitoring.

26. As a result, pursuant to Art. 13 para. 3 of the Federal Constitution, the federal state, the federal provinces and the municipalities are obliged to aim at effective equality of women and men in budgetary management issues. Within the scope of the budgetary law reform, gender budgeting will be integrated into the overall budgetary management of the federal state as of 1 January 2013. At this point, Art. 51 paras. 8 and 9 of the Federal Constitution will come into force, which specify performance budgeting, in particular with regard to the objective of effective equality of women and men, as one of the four principles of budgetary management.

27. The objective here is to make gender-specific consequences of budgetary decisions transparent in the form of an analysis and control tool which creates justice for women and men through modified budgetary management and budgetary policy. To this extent, as of 2013, gender budgeting of the federal state will represent the finance-policy tool of the equality strategy of gender mainstreaming. Gender budgeting will be integrated into both medium-term and annual budgetary planning and also taken into account in enforcement and in connection with reporting and information requirements.

28. In order to adjust to the system which will be in place as of 2013, the gender aspects of the budget will be outlined more comprehensively than before both in the Strategy Report (accompanying document on the draft of the Framework Act on Federal Finance [*Bundesfinanzrahmengesetz*]) and in the comments on the federal budget estimate.

29. As of the 2013 budget, the principle of performance budgeting, taking equality into account, will be implemented by integrating equality-relevant performance objectives and measures into the federal budget estimate. In this context, all ministries and the highest authorities will be obliged to specify at least one equality-relevant performance objective as

well as related measures in the federal budget estimate. Subsequently, in the course of enforcement, a report will have to be submitted to the National Council on an annual basis, providing information about the results and/or success or failure in reaching the performance objectives and measures, including equality.

30. See the Annex for the relevant measures.

**(b) Equality in the labour market**

31. Austria ratified the ILO Discrimination (Employment and Occupation) Convention (No. 111) of 1958.

32. Different opportunities in the labour market, the difficulty of reconciling work and family life, and the salary gap between women and men continue to give evidence of discrimination against women in the labour market. Women's participation in the labour market has strongly increased in the past few decades, but, to this day, is still considerably lower than that of men. With an employment rate of 66.4% for women (76.9% for men), however, Austria is above the EU average and has already clearly exceeded the Lisbon target (60% employment rate for women by 2010).

33. The Equal Treatment Act prohibits unequal treatment of women and men in the labour market as well as unequal treatment based on ethnic origin, religion or belief, age and sexual orientation (for details see Art. 2). For the most part, the Federal Equal Treatment Act contains equivalent regulations for the public-service sector, while the corresponding provincial laws apply for the regional and municipal public-service sector.

34. The Public Employment Service Act (*Arbeitsmarktservicegesetz*), Federal Law Gazette No. 313/1994 as amended, obligates the Public Employment Service (*Arbeitsmarktservice*) to counter, in particular, the gender-specific divide of the labour market and the discrimination of women in the labour market by providing appropriate services (sec. 31 of the Public Employment Service Act).

35. Since 2003, gender mainstreaming has been a major guideline in labour market policy and strategy. Both the long-term plan and the current concept of the Public Employment Service provide for active "promotion of equal opportunities". The main equality targets in the labour market are to equally integrate women and men in jobs that guarantee a safe existence and economic independence, to give them equal access to all occupations and professions, and to ensure that they are equally distributed at all levels of the labour market. In the process, the following gender principles are adhered to:

(a) All labour market-relevant measures, plans and decisions are evaluated with respect to their (different) consequences for women and men and/or their contribution to gender equality, and all labour market data are broken down and analysed according to gender. In addition, specific measures for the advancement of women are taken to counterbalance structural discrimination and to create a state of equality more quickly.

(b) Offering more options of education and further training as well as career choices for women is a major focus of equality-oriented labour-market policy.

(c) Evaluations of the effect of labour-market advancement programmes on equality have found that especially women benefit from these measures. They are able to stabilise their employment integration and achieve higher income.

(d) Regarding the budget for active labour market policy, 50% of the expenses need to be allocated to measures for the benefit of women (*cf.* data in the Annex).

36. With respect to Item 11 of the recommendations of the Concluding Observations on the Third and Fourth Periodic Report it can be mentioned that, if certain requirements are met, a right to 25% additional pay for extra work carried out by part-time employees was

introduced by law in the amendment to the Hours of Work Act (*Arbeitszeitgesetz*), Federal Law Gazette Vol. I No. 61/2007, as a measure to improve the income situation of part-time employees. Thus, the conditions under labour law for part-time work, which are governed by sec. 19d of the Working Hours Act, were upgraded (*cf.* also the response to Item 24 of the recommendations on the Third and Fourth Periodic Report regarding part-time work).

37. Sec. 19d para. 6 of the Hours of Work Act stipulates that part-time employees must not be discriminated against in comparison with full-time employees on grounds of their part-time employment, unless technical reasons justify a different treatment. Furthermore, voluntary social benefits are to be granted at least to the extent that corresponds to the proportion of working hours done on a regular basis compared to the regular statutory working hours or working hours under a collective bargaining agreement. In the event of dispute, the employer has to prove that discrimination does not occur on grounds of part-time employment.

## **Articles 4 and 5**

38. Austria did not express any reservations or comments on this Covenant.

## **Article 6**

### **1. General remarks**

39. In order to adapt to the increasingly difficult framework conditions arising from the financial crisis, the federal government is pursuing a consistent, active and demand-oriented employment and labour market policy. Therefore, the aim of the Public Employment Service is to integrate job seekers into the labour market quickly and on a long-term basis. Swift (re-)integration into the labour market, measures to improve the qualification of job seekers for the benefit of the location and in order to improve the opportunities on the labour market of those concerned, more career information and target-group-oriented advancement of job seekers take priority.

40. Targeted measures promote integration into the labour market especially in the cases of young people, older employees, poorly qualified people, job returners, persons with disabilities, migrants and people on social welfare. For example, women are to be actively encouraged and supported to obtain professional qualifications with promising career and income opportunities.

41. As a general indication, please refer to the reports in connection with the ILO Discrimination (Employment and Occupation) Convention (No. 111) as well as the ILO Employment Policy Convention (No. 122) ratified by Austria. See the Annex for further details.

### **2. Employment programmes for disadvantaged persons**

#### **(a) Programmes for young people**

42. In 2009, the actual expenditure for labour-market policies for young people amounted to as much as EUR 523 million, and for 2010 a record budget of EUR 566 million has been earmarked in order to continue the successful path of intense labour-market policies for young people.

43. Some 40% of each age group take part in the dual system of apprenticeship training; at the end of 2009, nearly 132,000 apprentices were being trained in close to 260 skilled trades. The support schemes for companies that train apprentices had already been



considerably expanded in 2008, in order to increase both the number of apprentices and the quality of apprenticeship training in the companies.

44. Young people who wish to do an apprenticeship but do not find an apprenticeship position in a company benefit from the education guarantee given by the federal government. Every young person who wishes to do an apprenticeship is guaranteed an apprenticeship position – if not in a company, in a non-company-based apprenticeship programme provided by the Public Employment Service. Within the scope of the Vocational Training Act (*Berufsausbildungsgesetz*), a uniform training type was established in 2008 for non-company-based apprenticeship. In addition to initial vocational orientation modules and accompanying support programmes, courses providing the skills and knowledge related to the relevant skilled trade constitute the core of non-company-based apprenticeship training. These courses take place in training facilities in co-operation with training workshops and/or in co-operation with actually operating businesses. The provision of apprenticeship positions in companies continues to have priority, as better integration into the labour market is to be expected as a result. If, however, repeated attempts by the Public Employment Service to integrate the young person into an apprenticeship position in a company for the remaining apprenticeship period fail, the apprentice can spend the entire apprenticeship period in a non-company-based apprenticeship and take a final examination that is recognised as equivalent.

45. So-called production schools (*Produktionsschulen*) represent an especially successful option specifically for young people who have dropped out of school and apprenticeship programmes as well as for young people with special difficulties and special educational needs. As at the end of 2010, 19 such facilities will be available for up to 2,000 young people all over Austria.

**(b) Apprenticeship training for people disadvantaged in the labour market**

46. In 2003, a flexible model for people disadvantaged in the labour market was created in the field of apprenticeship training on the basis of the Vocational Training Act, i.e. integrative vocational training. It aims to enable these people to obtain vocational training and to enter the labour market. See the Annex for details on integrative vocational training.

**(c) National Action Plan (NAP) for Gender Equality in the Labour Market**

47. In accordance with the government programme 2008 to 2013, a National Action Plan for Gender Equality in the Labour Market was drawn up. Experts from the ministries, the federal provinces (*Länder*) and the social partners, NGOs, companies and scientists participated in its preparation, which was co-ordinated by the Federal Minister for Women. On 30 June 2010, the NAP was presented to the public.

48. The NAP's superordinate goal is to improve the situation of women in the labour market, reduce gender-specific differences in employment, both in terms of quantity and quality, and make progress in achieving effective equality of women and men in the labour market. For details regarding the NAP and gender equality policy in the labour market see the Annex and the website <http://www.frauen.bka.gv.at/site/6746/default.aspx>.

**(d) Support of migrants**

49. Austria's labour market policy supports migrants by offering specific options which build on existing skills and, if necessary, provide further training. The Public Employment Service applies diversity management as a labour-market policy instrument which advocates respectful behaviour within a diverse social environment (gender, special needs, ethnic origin, sexual orientation, religion, etc.). This includes, among other things, hiring

people with immigrant backgrounds and offering special training for employees. See the Annex for more examples of the support of migrants.

**(e) Persons with disabilities and persons with other health problems limiting their employability**

50. The Public Employment Service Act stipulates special support and care for disadvantaged persons. Thus, the Public Employment Service has to ensure a higher degree of equal opportunities in the labour market within the scope of this statutory mandate. In the support and care of unemployed persons with health problems that limit their employment options, it orients its activities not primarily on disabilities determined by statutory standards, but on the actual possibilities for integrating the person concerned into the labour market.

51. Of the total number of people who took part in support programmes of the Public Employment Service in 2009, some 46,000 had health problems that limited their employment options; this is equivalent to 10% of all people supported (see the Annex for examples of measures).

52. On 1 January 2006, the so-called disability equality package (*Behindertengleichstellungspaket*), Federal Law Gazette Vol. I no. 82/2005, amended by Federal Law Gazette Vol. I No. 67/2008, came into force. It governs the prohibition of discrimination on grounds of disability, thus establishing a milestone in Austria's disability policy. The package includes, in particular, the Federal Disability Equality Act (prohibiting discrimination in everyday life), a comprehensive amendment to the Disability Employment Act (prohibiting discrimination at the workplace), and an amendment to the Federal Disability Act (*Bundesbehindertengesetz*) (provision of an autonomous lawyer for equality issues for persons with disabilities to counsel and support persons with disabilities). He/She is also a member of the Federal Disability Advisory Board).

53. This comprehensive package was created, on the one hand, on the occasion of the required transposition of the EU Framework Directive for equal treatment in employment and occupation for persons with disabilities. On the other hand, in a unanimous decision of all parliamentary parties, the federal government was asked to send a draft law for a disability equality act covering all areas of life to the National Council.

54. The Disability Equality Act obligates the federal state in particular not to discriminate against anybody in its sphere of action and, furthermore, to take adequate and specifically required measures to give persons with disabilities access to its services and programmes offered. After a hearing with the Austrian Working Group for Rehabilitation, the federal state drafted a plan to remove constructional barriers in the buildings it uses and stipulated the step-by-step implementation thereof (step-by-step plan for federal buildings).

55. As the situation of persons with disabilities in the labour market is difficult, the federal government has, for a number of years, been carrying out a special employment campaign to integrate this group of people into the labour market. This includes measures such as integration subsidies and job security subsidies, or concomitant measures such as a service for companies as employers, in the form of counselling on the best types of position for employees with disabilities. The provincial offices of the Federal Social Welfare Office (*Bundessozialamt*) are in charge of implementing the labour-market policy targets. See the Annex for results of the employment campaign.

**(f) Measures regarding persons aged 50 and older**

56. At the end of February 2010, the number of gainfully employed persons aged 50 and older amounted to 639,840, which is 14,396 or 2.3% higher than the previous year. At the

end of February, the age-specific unemployment rate (Austrian definition) was 9.0% (+0.2%; overall rate: 8.6%; +0.3%).

57. Further education and training is an important factor in securing employment for older people, thus maintaining the working capacity of older employees by helping them adapt to the required qualifications; another is the provision of subsidies for keeping older people employed. See the Annex for measures to combat unemployment of older people.

### **3. Re-entry into the labour market and Item 28 of the recommendations of the concluding observations on the third and fourth periodic report**

#### **(a) Women returners**

58. For women, childcare duties continue to represent a break in their career with a long-term effect. Therefore, another focus of labour-market policy is being put on the strong support of women returning to the workplace. "Re-entry with a future" is a programme designed especially for women after an employment hiatus for family reasons, with a view to ensuring a successful career. In addition to re-orientation modules, an individual further training schedule is drawn up and women are coached during the application process.

59. In 2009, some 29,100 women returners (+6.3% over the previous year) took advantage of an advancement programme offered by the Public Employment Service.

#### **(b) Long-term unemployed persons**

60. Preventing long-term unemployment is another focus of the Public Employment Service. In this context, the early intervention strategy is particularly important. The primary goal of early intervention is to agree with the job seeker on specific steps about starting to work as early as possible and, if necessary, to use support instruments as soon as possible. Overall, the percentage and the number of long-term unemployed dropped in the past few years (except in 2009: +17.7%). The share of long-term unemployed in total unemployment amounted to 2.6% in 2009, in 2004 to 8.37%. In 2009, 3,416 long-time unemployed took up employment. This is 15.5% more than in the previous year.

### **4. Informal employment relationships**

61. Statistics Austria estimates the shadow economy ("Non-observed economy in Austria's national accounts") to account for approximately 7% of GDP. The full extent of informal employment cannot be determined, obviously. According to the Anti-Fraud Report of the Federal Ministry of Finance, a total of 64,623 employees in 26,787 companies were checked in 2009. It was found that 10,557 employees were not registered with social security and thus, due to their employment relationship, had neither health and accident insurance nor old-age pension insurance (see also the comments under article 8, heading 7) For 11,890 foreign employees no work permits could be produced.

62. Informal employment is prevalent in the field of tourism and in the construction industry, in each of which 25% of all violations were detected.

63. In early 2008, an amendment was made to the General Social Security Act (*Allgemeines Sozialversicherungsgesetz*), Federal Law Gazette No. 189/1955 as amended, which stated in clear terms that employees have to be registered with social security before they start working. This provision and corresponding checks helped to lower the number of unregistered employees.

64. The federal tax authorities combat moonlighting by checking employment relationships. This is for the protection and benefit of the employees who want to be legally employed and insured (*cf.* also the comments under article 8, heading 7).

## 5. Protection against termination of the employment relationship

65. The following comments refer mainly to employment relationships, but similar regulations apply for employment contracts under private law with the federal state, provinces and municipalities. Public-service employment contracts (employment contracts of civil servants) can basically not be terminated; a dismissal would represent a disciplinary measure.

66. Austrian labour law differentiates between dismissal (*Entlassung*), which ends an employment relationship immediately, and termination (*Kündigung*). In the event of termination, the employment relationship ends with certain notice periods and dates being observed. For white-collar workers, the relevant periods and dates are based on the Salaried Employees Act (*Angestelltengesetz*), Federal Law Gazette No. 292/1921 as amended; for blue-collar workers, who are subject to the Industrial Code (*Gewerbeordnung*) Imperial Law Gazette No. 227/1859 as amended, they are based on the latter, and for other blue-collar workers on the General Civil Code (collection of legal administration legislation No. 946/1811). If the termination does not comply with notice periods or dates, the employee is entitled to damages in the form of termination compensation.

67. Generally, no reasons need to be given for termination, and there are no provisions stipulating the need to state a cause or material reason for termination.

68. However, the termination can be contested in court pursuant to the Labour Constitution Act (*Arbeitsverfassungsgesetz*), Federal Law Gazette No. 22/1974 as amended, if the employer terminated the employee on grounds of an inadmissible motive (the so-called *Motivkündigung*). The relevant provision (sec. 105 of the Labour Constitution Act) contains a list of inadmissible motives (in particular activities in the run-up to works council elections or activities in a trade union).

69. A termination can also be contested if it is socially unjustified and the terminated employee has been employed for at least six months. Each termination which adversely affects the material interests of the employee is deemed socially unjustified unless the company owner can prove that the termination is substantiated:

- By conditions that are related to the personality of the employee and that negatively affect the company's interests
- By company requirements which are incompatible with a continued employment of the employee

70. If the court allows the action for avoidance, the termination is void, the existing employment relationship is not deemed terminated and continues to exist without any interruption.

71. If the employment relationship ends (termination, dismissal, termination of probationary employment, discriminating failure to transfer a fixed-term employment relationship which was intended to be transferred into an unlimited employment relationship into an unlimited employment relationship) in a discriminating manner on grounds of an aspect specified in the Equal Treatment Act, the provisions of the Equal Treatment Act apply (see the comments on Art. 3). The person affected can choose either to contest the termination, or to sue for a declaratory judgement of the unlimited existence of the employment relationship, or to let the termination stand and claim damages. A termination can also be contested before the Labour and Social Court because it is *contra bonos mores*.

72. A dismissal is only admissible in the event of a material reason. The reasons which give the employer the right to dismiss someone have to be of such grave a nature that continued employment of that employee is — from an objective point of view —

unacceptable even for the duration of the notice period. For white-collar workers, Austria's labour law gives examples of the reasons that justify a dismissal within the meaning of the Salaried Employees Act, whereas for blue-collar workers, it exhaustively states the reasons within the meaning of the Industrial Code. The general clause of sec. 1162 of the General Civil Code generally states that each contracting party to an employment relationship has the right of early termination for a material reason. In the event of unjustified dismissal, the employee is entitled to receive a compensation just as in the event that the termination does not comply with notice periods or dates.

73. Certain groups of employees enjoy special protection against termination and dismissal, in particular pregnant women, employees on parental leave or in part-time employment for parents (see also Art. 10 on these groups), or employees with disabilities. A termination or dismissal issued despite special provisions for the protection against termination and dismissal is void.

## Article 7

### 1. Minimum wage and Item 25 of the recommendations of the concluding observations on the third and fourth periodic report

74. In Austria, there is no statutory minimum wage (except for the wages in the public-service sector established by law). There is, however, a minimum wage under collective bargaining agreements agreed by the social partners (see also the comments under article 8, heading 2). Legislation stipulates only the framework conditions.

75. As the wages and salaries are established autonomously between the parties to collective bargaining agreements, usually within each respective industry, the necessary amount of flexibility can be ensured by taking into account the economic situation of the specific industry. As a result, the social partners are responsible for making sure that the economic development of the businesses and companies of an industry is considered and, at the same time, that the employees receive the share in productivity growth that they deserve, all the while taking the overall social policy targets of subsistence protection and more prosperity for everyone into account.

76. On 2 July 2007, the Austrian Trade Union Federation (*Österreichischer Gewerkschaftsbund; ÖGB*) and the Austrian Federal Economic Chamber (*Wirtschaftskammer Österreich; WKÖ*) entered into a framework agreement on the implementation of a monthly minimum wage of EUR 1,000 in the industry-specific collective bargaining agreements. The established collective bargaining agreements show that, as of 1 January 2009, the EUR-1,000 limit was mostly reached or exceeded.

77. Two statutory provisions which ensure adequate remuneration need to be mentioned: Sec. 1152 of the General Civil Code stipulates for all employees that, if no remuneration has been specified in the employment contract and unpaid work has not been agreed upon either, the employee is entitled to adequate remuneration. Likewise, sec. 6 para. 1 of the Salaried Employees Act stipulates that adequate remuneration — if no agreement exists — is determined by the practice customary for the location in question for the type of work concerned. If no such practice exists, then remuneration that is adequate for the given circumstances is to be paid.

### 2. Working conditions

#### (a) Working time

78. Since the last reporting period, the Hours of Work Act, Federal Law Gazette No. 114/1969 as amended, the Rest Breaks Act (*Arbeitsruhegesetz*), Federal Law Gazette No.

144/1983 as amended and, with regard to more flexible working time, also the Work in Agriculture Act (*Landarbeitsgesetz*), Federal Law Gazette No. 287/1984 as amended, were amended several times, taking the EU Working Time Directive into account.

79. Flexible working-time models, which are in the interest of both parties to an employment contract, were simplified and, at the same time, the enforcement of working time protection was improved for the benefit of health protection. For the first time, a statutory claim for additional pay for extra work carried out by part-time employees was established.

80. In summary, working time under the Hours of Work Act is governed as follows: The basic rule continues to be the 8-hour day and the 40-hour week. Deviations, however, are possible. The maximum number of working hours including overtime is limited to 10 hours per day and an average of 48 hours per week within a calculation period of 17 weeks. In addition, working time including overtime in one single week must not exceed 50 hours.

81. Pursuant to sec. 10 of the Hours of Work Act, overtime is to be remunerated with 50% additional pay or time off in lieu. When assessing time off in lieu, the wage supplement is to be taken into account or paid out separately.

**(b) Reconciliation of professional, family and personal life**

82. Not least due to the demographic development, EU requirements (e.g. the Lisbon Strategy) and processes of social change, the issue of reconciling family life and work has become increasingly important. Currently, Austria's reconciliation policy is based on several pillars: financial support of families, the creation of adequate framework conditions under labour and social law, the expansion of adequate and high-quality childcare facilities, and the advancement of family-friendly framework conditions, e.g. through co-operation with the business world.

83. Several federal provinces, including, for example, Vienna and Styria, have put the model of "Free Kindergarten" (day care for preschool-age children) into practice in order to promote and improve the reconciliation of family and professional life and to support families in an economic sense. Since 1 January 2009, families can assert childcare expenses as extraordinary expenses within the scope of the annual tax declaration, which reduces their income tax and thus constitutes financial relief. See the Annex for examples of reconciling family and professional life.

84. Measures for the benefit of better reconciliation of professional and family life worth mentioning are, in particular, legislation concerning child-leave periods and part-time employment for parents, nursing leave, and family hospice leave. In this context, we also refer to the comments on Art. 10.

**(c) Reconciliation of professional, family and personal life in the federal-service sector**

85. As regards general working conditions in the federal-service sector and, in particular, legislation on working time applicable in this field, reference is made to the comments in chapter 3 (page 13) in particular of the ILO Decent Work Country Profile – Austria, [http://www.ilo.org/integration/resources/pubs/lang--en/docName--WCMS\\_120187/index.htm](http://www.ilo.org/integration/resources/pubs/lang--en/docName--WCMS_120187/index.htm). Additionally, it is mentioned that the Federal Service Regulation Law contains a number of rules for the benefit of better reconciliation of professional, family, and personal life. Next to provisions on the reduction of regular weekly working time (for any reason or for childcare purposes) pursuant to secs. 50a and 50b of the Service Regulation Law for Civil Servants (*Beamtendienstrechtsgesetz*), Federal Law Gazette No. 333/1979 as amended, if applicable, in conjunction with sec. 20 of the Public Contract Agents Act (*Vertragsbedienstetengesetz*), Federal Law Gazette No. 86/1948 as amended, this includes all provisions allowing for a leave of absence in the broader sense (leave of

absence, parental leave, sabbatical, etc.). In this context, reference is made to the overview of parental leave and leave of absence in the public-service sector in the Annex. It should also be mentioned that the sabbatical (sec. 78e of the Service Regulation Law for Civil Servants) is a measure that involves a pro-rata reduction of salary, whereas the paid general leave of absence (sec. 78c of the Service Regulation Law for Civil Servants) represents a leave from work with continuing payment of salary.

86. For details, see also pages 814 to 820 of the Fifth Austrian Family Report, <http://www.bmwfj.gv.at/Familie/Familienforschung/Documents/Familienbericht%202009/Band%20II%20-%20Familienpolitische%20Akzente.pdf>.

### **3. Equal pay for work of equal value**

87. Austria ratified the ILO Convention (No. 100) concerning Equal Remuneration (1951). In Austria, the prohibition of direct and indirect discrimination of women and men in establishing remuneration is enshrined in sec. 3 no. 2 of the Equal Treatment Act as amended in Federal Law Gazette Vol. I No. 98/2008. No one may be discriminated against, directly or indirectly, in establishing remuneration in connection with an employment relationship, on grounds of a feature specified in the Equal Treatment Act. However, both international and EU reports show that there is still a big remuneration gap which can only be explained by discrimination based on sex. The Equal Treatment Commission is confronted with many cases of discrimination in the field of remuneration. Further information and suggestions for improvement can be found in the regularly published activity reports of the Equal Treatment Commission (see the website <http://www.gleichbehandlungsanwaltschaft.at/site/6447/default.aspx>).

88. Remuneration legislation of the regional authorities (federal state, provinces, municipalities) provides for position-related pay. Remuneration is based on the assessment of the job, which is to be carried out in accordance with statutory criteria and which is therefore independent of the sex of the person who actually holds this job.

89. Regarding Item 24 of the recommendations of the Concluding Observations on the Third and Fourth Periodic Report, it is to be mentioned that the federal government is working on the improved enforcement of the equal pay requirement. Despite numerous statutory and other measures, the gender pay gap continues to be wide. In 2007, the average gross annual pay of women working full-time throughout the year was 22% lower than that of men (general income report of the Austrian Court of Audit 2008). One of the reasons is a lack of information and transparency regarding the remuneration situation. Therefore, since May 2009, the social partners have been meeting in the Federal Ministry of Labour, Social Affairs and Consumer Protection to discuss measures to promote income transparency in companies. Regarding the results of the discussion up to now, reference is made to the comments on Art. 3.

### **4. Sexual harassment**

90. Regarding discrimination by sexual harassment at the workplace, reference is made to secs. 6 and 7 of the Equal Treatment Act, which prohibit both sexual as well as sex-related harassment. The provisions govern, on the one hand, the duty of employers to remedy the situation if they are aware of sex-related/sexual harassment; on the other hand, they create the possibility of claiming compensation for financial losses and personal detriment suffered as a result of sexual harassment or a lack of remedy thereof. The minimum compensation was set at EUR 720. In order to guarantee comprehensive protection, action can be taken not only against employers but also against harassment by third parties (customers, business partners). Compensation amounts that have been claimed and awarded currently range between EUR 1,000 and EUR 4,500.

91. For federal employees, the Federal Equal Treatment Act governs sexual harassment in sec. 8, and the legal consequences, including the time limits for filing a motion, in the event of sexual harassment are set down in secs. 19 and 20. A motion for determining the occurrence of discrimination has to be filed with the Federal Equal Treatment Commission and/or the administrative office, or, in the event of public-contract agents, in court. Compensation will be awarded for financial loss and non-pecuniary damage.

92. Austrian and EU legislation is very comprehensive as regards sexual harassment and covers any discriminating behaviour that can be attributed to the personal (sex-related) sphere. The amendment to the Federal Equal Treatment Act, Federal Law Gazette Vol. I No. 97/2008, also stipulates the punishment of the intention of sexual harassment, irrespective of whether it “achieved its goal”.

93. In addition, there are corresponding provincial laws applicable to public-sector employees in the federal provinces and municipalities (*cf.* e.g. sec. 7a of the Vienna Equal Treatment Act, Provincial Law Gazette No. 18/1996).

## **5. Health and safety at the workplace**

94. The Employee Protection Act (*ArbeitnehmerInnenschutzgesetz*) was amended in 2006. The Annex includes statistics on accidents at work and occupational diseases.

95. As regards the protection of employees in the federal authorities, reference is made to the Federal Employees Protection Act (*Bundes-Bedienstetenschutzgesetz*), Federal Law Gazette No. 70/1999 as amended. For employees of provincial and municipal authorities, corresponding provincial laws apply.

## **Article 8**

96. As a general indication, please refer to the reports regarding the ILO Convention (No. 87) on the Freedom of Association and Protection of the Right to Organise (1948) and the ILO Convention (No. 98) on the Right to Organise and Collective Bargaining ratified by Austria.

### **1. Trade unions**

97. The Austrian Trade Union Federation underwent structural changes and reduced the number of specialised trade unions by means of consolidation.

#### **(a) Conditions for membership**

98. There are no separate rules for founding or joining a trade union. The Austrian Trade Union Federation is an association within the meaning of the Association Act (*Vereinsgesetz*). With respect to its establishment and membership, both the general subsidiary provisions of the Association Act as well as the bylaws of the Austrian Trade Union Federation apply.

#### **(b) Freedom of association**

99. The freedom of association is covered in the constitution by Art. 12 of the Basic Law on the General Rights of Nationals (*Staatsgrundgesetz*) of 21 December 1867 on the general rights of the citizens for the kingdoms and countries represented in the Reichsrat, Imperial Law Gazette No. 142/1867 (freedom of assembly and association) and Art. 11 of the European Convention on Human Rights (ECHR). Furthermore, reference is made to the comments in the reports regarding the ILO Convention (No. 87) on the Freedom of Association and Protection of the Right to Organise.



## 2. Collective bargaining

100. In Austria, in addition to comprehensive legislation for the protection of employees, major areas of labour law (in particular provisions on remuneration, flexible working-time models, additional pay) are governed and negotiated by means of collective bargaining agreements between representatives of employees and employers. This is to establish certain minimum wages and minimum standards for other important working conditions without the government's interference. The Labour Constitution Act defines only the scope of the areas to be negotiated and some framework conditions (e.g. capacity to enter into a collective bargaining agreement, equal treatment principle).

101. The legal nature of the statutory standards is decisive for the interplay of collective bargaining agreement and statutes: A collective bargaining agreement must not deviate from bilaterally (absolutely) compelling law, otherwise it is void; it may deviate from unilaterally (relatively) compelling law only to the benefit of the employee, and in the case of law that is subject to disposition it may deviate also to the detriment of the employee. Relatively compelling standards are predominant, as it is in the nature of the idea of protection under labour law to set minimum working conditions, which must not be undercut but may be improved by any subordinate legal source.

102. As a rule, collective bargaining agreements are entered into — for the employers — by the Austrian Federal Economic Chamber, the statutory interest group of all persons entitled to conduct a business in the field of industrial trade, industry, mining, commercial trade, finance, banking and the insurance industry, the transportation industry, traffic, communications, tourism and the recreational industry, and — for the employees — by the Austrian Trade Union Federation. Due to the “effect on outsiders” (*Außenseiterwirkung*) (employees who are not members of the representative body concluding the agreement) laid down by law, collective bargaining agreements apply to all employees whose employers are bound by collective bargaining agreements. As a result, collective bargaining agreements entered into by the Federal Economic Chamber on behalf of the employers are applicable to all employees in the respective field, irrespective of whether they are a union members or not. As not all gainfully employed persons are members of a trade union, this “effect on outsiders” of the collective bargaining agreements plays an important role in avoiding the exertion of wage pressure and an ensuing divide of employees.

103. Overall, in Austria, the majority of gainfully employed persons are subject to the provisions of a collective bargaining agreement (the remainder are mainly employees of the public-service sector, who are subject to statutory provisions). Thus, a large percentage of employees are subject to collective bargaining agreement provisions, which to some extent replace statutory minimum requirements by more favourable regulations and/or include agreements that go beyond statutory claims.

104. As the collective-agreement provisions on wage and working conditions have the effect of standards, they are directly legally binding. These provisions can neither be repealed nor restricted by works agreements or individual agreements. Special agreements are usually only valid if they are more favourable for the employee or concern issues not governed by the collective bargaining agreement (*Günstigkeitsprinzip*). This means that in relation to the employment contract, the collective bargaining agreement has an effect similar to a law.

105. In addition to collective bargaining agreements at non-company-based level, works agreements represent another instrument for constituting collective labour law. Basically, works agreements can only be concluded on issues that, under the law or the relevant collective bargaining agreement, the employer and the works council are permitted to regulate between themselves. In relation to the individual employment contract, works agreements are basically also compelling.

106. Regarding Item 26 of the recommendations of the Concluding Observations on the Third and Fourth Periodic Report it is to be stated that the amendment Federal Law Gazette Vol. I No. 4/2006, effective as of 14 January 2006, extended the eligibility to run in works council elections to all employees, irrespective of their nationality (modification of sec. 53 para. 1 and sec. 126 para. 5 of the Labour Constitution Act as well as of sec. 20 of the Chamber of Labour Act (*Arbeiterkammergesetz*) 1992, Federal Law Gazette No. 626/1991 as amended by Federal Law Gazette Vol. I No. 4/2006.

### 3. Right to strike

107. The report on the ILO Convention No. 87 from 1996 contains, in particular, comments on the right to strike in Austria. Since then, the legal situation regarding the right to strike has not changed. The Annex includes a table on strikes that have taken place. Unlike the situation in other countries, the right of industrial conflict and thus the right to strike — including its restrictions — in Austria have still not been systematically incorporated into laws or collective bargaining agreements. In Austrian legislation, there are only sporadic and problem-specific ordinary-law rules that expressly refer to industrial conflict.

108. For example, the criminal liability for leading a strike and participating in a strike was repealed by the Coalition Act (*Koalitionsgesetz*), Imperial Law Gazette No. 43/1870. Pursuant to sec. 9 of the Unemployment Insurance Act (*Arbeitslosenversicherungsgesetz*), Federal Law Gazette No. 609/1977 as amended, employment in a company affected by strike is deemed unreasonable, and pursuant to sec. 13 of the same Act, the claim for unemployment benefits becomes void if unemployment is a direct consequence of a strike or a lock-out of employees who do not participate in the strike by the employer (*Defensivaussperrung*). In addition, pursuant to sec. 9 of the Temporary Employment Act (*Arbeitskräfteüberlassungsgesetz*), Federal Law Gazette No. 196/1988 as amended, hiring out workers to companies affected by strike or lock-out is prohibited. Pursuant to sec. 10 of the Employment of Foreigners Act (*Ausländerbeschäftigungsgesetz*), Federal Law Gazette No. 118/1875 as amended, no work permits may be issued for such companies.

109. Reference is to be made to the court rulings of the ECJ relevant for Austria. In its judgment of 11 December 2007, Case C-438/05, Viking Line, the ECJ expressed the opinion that the right to take collective action, including the right to strike, must be recognised as a fundamental right, which forms an integral part of the general principles of Community law. The ECHR judgment in the case of *Enerji Yapi-Yol Sen vs. Turkey* of 21 April 2009, application no. 68959/01, also needs to be mentioned. In this judgment, the ECHR recognised the right of trade unions to strike as being protected under Art. 11 of the (European) Convention for the Protection of Human Rights and Fundamental Freedoms, which is part of the Austrian constitution.

## Article 9

110. In general, it can be stated that the system of social security in Austria comprises all the benefits and spheres mentioned. In addition, the following information is provided.

### 1. Assistance for families

111. A comprehensive data basis regarding family benefits and developments relating to family policy can be found in the Fifth Austrian Family Report (*5. Österreichischer Familienbericht*) in the chapter on family-policy highlights 1999-2009. This report is available for download at: [http://www.parlament.gv.at/PG/DE/XXIV/III/III\\_00157/pmh.shtml](http://www.parlament.gv.at/PG/DE/XXIV/III/III_00157/pmh.shtml) and <http://www.bmwfj.gv.at/Familie/Familienforschung/Documents/Familienbericht%202009/Band%20II%20-%20Familienpolitische%20Akzente.pdf>.

**(a) Regulations regarding child-leave periods/child-leave benefits**

112. Mothers and fathers are separately entitled to receive child-leave benefits up to their child's second birthday. The decision on the length of the child-leave period (and thus the model chosen) no longer has to be announced immediately upon the birth of the child, which makes it easier to plan the child-leave period. In 2010 the current rate of maternity benefits for self-employed parents is EUR 25.95 per day.

**(b) Childcare benefits**

113. The introduction of childcare benefits (*Kindergeld*) in 2002 by means of Federal Law Gazette Vol. I No. 103/2001 led to a fundamental change in the system of financial support for families with infants. The claim to benefits now arises irrespective of the parents' gainful employment prior to the birth of the child.

**(i) Amount, commencement and payment period**

114. When they were introduced in 2002, childcare benefits amounted to EUR 14.53 per day (around EUR 436 per month). Provided that benefits were claimed by both parents, payment started upon childbirth and ended when the child reached the age of 36 months at the latest. The law provided for a suspension of childcare benefits while the mother received maternity benefits (i.e. compensation for loss of income during the period of strict prohibition of employment before and after childbirth). If childcare benefits were claimed by one parent only, the parent's entitlement ended when the child reached the age of 30 months.

115. Parents were not entitled to both claim childcare benefits at the same time. However, it was possible for the parents to take turns in drawing childcare benefits, with two alternations (for at least three months each) per child being admissible. The entitlement to such benefits ended upon the birth of another child, for whom a new application had to be filed. *For details on the new regulations regarding childcare benefits see below (models).*

**(ii) Medical examinations under the Mother/Child Pass**

116. The introduction of childcare benefits rendered the Mother/Child Pass bonus (one-time payment of EUR 145.40) obsolete. Instead, the entitlement to childcare benefits was made dependent on whether the mother provided proof of five medical examinations as required under the Mother/Child Pass programme during her pregnancy and five medical examinations of the child up to age of 14 months. If no relevant proof was furnished, which had to be done before the child reached the age of 18 months, payments were reduced from the time the child exceeded the age of 20 months.

**(iii) Restriction on earning money in addition to drawing benefits**

117. The law provided that parents were entitled to earn up to EUR 14,600 per calendar year while receiving childcare benefits. If this limit was exceeded, repayment of the entire sum paid for the respective calendar year could be claimed. (Exception: In the case of an unforeseeable minor violation of such limit [max. 10%] the claim for repayment could be waived – Ordinance on Financial Hardship Cases [*Härtefallverordnung*]). At the same time, the option of waiving the right to the payment of benefits for individual calendar months was created in order to exclude income generated during such non-payment periods from the calculation. This was to enable parents who earned a particularly high income in exceptional cases, for instance during one month only, to nevertheless receive childcare benefits.

**(iv) Supplement**

118. Parents with a low income could apply for a supplement to childcare benefits in the amount of EUR 6.06 per day. These payments were a kind of loan, repayable to the financial authorities within 15 years.

(v) *Health insurance*

119. Health insurance coverage was introduced for recipients of childcare benefits for the period during which they received such benefits.

(c) **Framework conditions under labour law and social law which were changed and/or introduced simultaneously with the introduction of childcare benefits**

120. The introduction of the Childcare Benefits Act (*Kinderbetreuungsgeldgesetz*) gave rise to the amendment of a series of laws governing framework conditions under labour and social law. These laws included, *inter alia*, the General Social Security Act, Federal Law Gazette No. 189/1955 as amended; the Maternity Protection Act of 1979 (*Mutterschutzgesetz 1979*), Federal Law Gazette No. 221/1979 as amended; the Paternity Leave Act (*Väter-Karenzgesetz*), Federal Law Gazette No. 651/1989 as amended; and the Unemployment Insurance Act of 1977, Federal Law Gazette No. 609/1977 as amended. The most important innovations regarding family law can be summed up as follows:

(i) *Maternity Protection Act/Paternity Leave Act*

121. The amendment to the Maternity Protection Act/Paternity Leave Act provided for the opportunity to agree on employment beyond the marginal earnings threshold for a maximum period of 13 weeks in a calendar year with the employer of the mother/father on leave. This created more leeway for parents with respect to the newly introduced limit for earning money in addition to drawing childcare benefits.

(ii) *Unemployment Insurance Act*

122. The Unemployment Insurance Act provided that, in principle, receipt of unemployment benefits and relief benefits should be possible while receiving childcare benefits. However, such entitlement was limited to people who were prepared to take up reasonably acceptable employment usually offered to them, i.e. who were available to the labour market. While receiving childcare benefits this was only the case if child care was provided by another family member or a third party (e.g. by institutions such as crèches and kindergartens or childminders). Creating the option of receiving childcare benefits and unemployment benefits at the same time was a necessary step, since the childcare benefits, in contrast to child-leave benefits, no longer constituted an insurance benefit arising from unemployment insurance (Federal Law Gazette Vol. I No. 103/2001).

(iii) *General Social Security Act*

123. The introduction of childcare benefits gave rise to separate health insurance coverage on the one hand and, on the other hand, resulted in fundamental changes in the field of pension insurance: For the first time, the first 18 months of receiving childcare benefits were taken into account when calculating the period of contributions creating an entitlement to an old-age pension; the remaining time period (max. up to the child's fourth birthday) was still considered a substitute period (Federal Law Gazette Vol. I No. 103/2001).

(d) **The most important amendments of the Childcare Benefits Act**

124. Since the introduction of childcare benefits, the act has been amended several times. Important innovations since the introduction of the act until the end of the reporting period can be summed up as follows:

- (i) *Multiple-birth allowance (Item 29 of the recommendations of the concluding observations on the third and fourth periodic report)*

125. The regulation according to which childcare benefits could only be drawn for the youngest child was suspended in the case of multiple-birth children. In order to compensate parents of multiples for the extra burden as compared to parents of children born in succession, the amendment Federal Law Gazette Vol. I No. 58/2003 provided for an entitlement to a daily allowance of EUR 7.27 for the second and each additional multiple-birth child. In the same amendment, the limit for earning money while receiving a supplement to childcare benefits was raised from EUR 3,997 to EUR 5,200 per calendar year.

126. The amendment Federal Law Gazette Vol. I No. 97/2006 provided that the supplement to childcare benefits paid to parents in the case of multiple-births should not end upon the birth of another child, but that the entitlement to such supplement should continue until the multiple-birth children reached the age of 36 months at the latest. The purpose of this provision was to mitigate financial hardship in families with at least three infants under the age of three.

- (ii) *Abolition of the surcharge on repayments of the supplement*

127. Originally, the supplement to the childcare benefits, which is designed as a loan, had to be paid back to the financial authorities with a surcharge of 15%. With the amendment Federal Law Gazette Vol. I No. 34/2004 to the Childcare Benefits Act, this surcharge was abolished retroactively as of 1 January 2002.

- (iii) *Adjustment of the Ordinance on Financial Hardship Cases*

128. The so-called Ordinance on Financial Hardship Cases, which was introduced simultaneously with the childcare benefits, governed the criteria for hardship cases and the relevant repayment modalities. The amendment of the Ordinance on Financial Hardship Cases raised the threshold for a minor violation of the limit for earning money while receiving benefits, in the case of which no repayment was to be claimed, from 10% to 15%.

- (iv) *Adjustment of the law relating to aliens*

129. In the wake of the so-called Alien Law Package of 2005 there was a need for change in the field of family benefits. The childcare benefits were adjusted to the new Settlement and Residence Act (*Niederlassungs- und Aufenthaltsgesetz*) by providing a more detailed definition of the group of people entitled to such benefits. For instance, having one's centre of vital interests in the federal territory of Austria and having a legal residence status pursuant to secs. 8 and 9 of the Settlement and Residence Act were added to the requirements for entitlement. By linking the residence permits under the Settlement and Residence Act to the requirements for entitlement to family benefits (Federal Law Gazette Vol. I No. 100/2005) the criterion of uninterrupted gainful employment and/or five years of residence in Austria in the case of third-country nationals — which used to be required for any entitlement to family allowance and thus indirectly also to childcare benefits — was no longer necessary (these comments are also of relevance for the response on non-contributory social benefits for foreigners).

130. The amendment Federal Law Gazette Vol. I No. 168/2006 improved the conditions for receiving childcare benefits for members of third countries (this also applies to non-contributory social benefits for foreigners). This amendment guaranteed that children of foreigners with a residence permit under the Settlement and Residence Act who were born after the residence permit was granted and/or children of persons entitled to asylum under the Asylum Act of 2005 (*Asylgesetz 2005*), Federal Law Gazette Vol. I No. 100/2005 as amended, who were born after asylum was granted, could receive the childcare benefits with retroactive effect from the time of birth as soon as evidence of the child's or children's

residence permit was furnished. Persons under subsidiary protection under the Asylum Act of 2005 were added to the group of people eligible for benefits and since then have been entitled to childcare benefits under certain conditions – provided that they do not receive any basic services and are either gainfully employed or self-employed.

(v) *Introduction of short-time models (Item 28 of the recommendations of the concluding observations on the third and fourth periodic report)*

131. To provide parents with a greater range of choices, to make re-entry into the labour market easier and to increase the participation of fathers, the amendment Federal Law Gazette Vol. I No. 76/2007, which took effect on 1 January 2008, introduced two new models in addition to the existing “30 plus 6” model providing monthly benefits of around EUR 436:

- *20 plus 4 model*: approx. EUR 624 per month for each child up to the age of 20 or 24 months
- *15 plus 3 model*: approx. EUR 800 per month for each child up to the age of 15 or 18 months

132. In addition, the limit for earning money while drawing benefits was raised to EUR 16,200 per calendar year and a new regulation (*Einschleifregelung*) regarding claims for repayment was introduced. Consequently, in the case of a violation of the respective limit it is no longer necessary to pay back the entire amount of childcare benefits received during the respective calendar year but only the amount exceeding the limit; this also rendered the Ordinance on Hardship Cases obsolete.

(vi) *Change in modalities regarding repayment and supplements*

133. With the amendment Federal Law Gazette Vol. I No. 24/2009, the period in which the obligation to pay back the supplement to the childcare benefits to the financial authorities had to be met was shortened from 15 to seven years and the thresholds for repayment were raised. The risk of hardship cases resulting from the repayment obligation was thus reduced considerably.

(vii) *Introduction of income-related childcare benefits and an additional lump-sum model*

134. In order to assist parents in reconciling family and career, two additional models for drawing benefits were introduced for children born after 1 October 2009: Mothers and fathers who are gainfully employed in Austria and contribute to social insurance for a period of six months directly preceding the birth of their child are now entitled to 80% of their previous income, but not more than EUR 2,000 per month, until the child reaches the age of 12 (or, if shared, 14) months. A lump-sum model “12 plus 2” with benefits amounting to approximately EUR 1,000 per month was introduced for all parents. Up to EUR 5,800 per year, which roughly corresponds to the marginal earnings threshold, may be earned in addition to drawing the income-related childcare benefits. What all lump-sum models have in common is that 60% of the income earned in the calendar year prior to the child’s birth (while no childcare benefits were paid), but at least EUR 16,200 per year, may be earned. The minimum drawing period for all models has been set at two months (Federal Law Gazette Vol. I No. 116/2009).

135. For details on childcare benefits see pages 796-803 of the Fifth Austrian Family Report: <http://www.bmwfj.gv.at/Familie/Familienforschung/Documents/Familienbericht%202009/Band%20II%20-%20Familienpolitische%20Akzente.pdf>.

(e) **Other framework conditions under labour law and social law**

(i) *Parental part-time work (Maternity Protection Act, Paternity Leave Act)*

136. On 1 July 2004, a legal claim to part-time employment was introduced for parents provided that they work in businesses with more than 20 employees and their employment, including the child-leave period, has lasted for at least three years without interruption. In smaller businesses this entitlement may be agreed upon in the employment agreement. Part-time employment with an entitlement to return to full-time employment is limited until the child's seventh birthday or the child's entry into school if this takes place later (Federal Law Gazette Vol. I No. 64/2004).

- (ii) *New severance pay rules (Act on Severance and Retirement Funds for Salaried Employees [Betriebliches Mitarbeitervorsorgegesetz] or Act on Severance and Retirement Funds for Salaried Employees and Self-Employed Persons [Betriebliches Mitarbeiter- und Selbständigenvorsorgegesetz])*

137. In 2003 the severance pay system was changed fundamentally. In the course of these changes, a family-law component was introduced by creating a legal entitlement to severance pay at the expense of the Family Expenses Equalisation Fund (*Familienlastenausgleichsfonds* – a fund made up of employee contributions and general tax money) in the amount of 1.53% of the childcare benefits drawn for (former) employees for periods during which childcare benefits were received (Federal Law Gazette Vol. I No. 100/2002). With effect as of 1 January 2008, quasi-freelancers were integrated into the new severance pay system as well and granted a claim to contribution payments at the expense of the Family Expenses Equalisation Fund (Federal Law Gazette Vol. I No. 10 2/2007).

- (iii) *Child-raising periods (General Social Security Act, Social Security (Commerce, Trade and Industry) Insurance Act [Gewerbliches Sozialversicherungsgesetz], Social Security (Farmers) Insurance Act [Bauern-Sozialversicherungsgesetz])*

138. The pension reform of 2005 (Federal Law Gazette Vol. I No. 142/2004) provided that, starting in 2005, child-raising periods of a maximum of 48 months (in the case of multiple births up to 60 months) from the child's birth would be taken into account as contribution periods for pension insurance. It was agreed that the contributions for the years 2005 to 2009 would be paid in equal shares by the Family Expenses Equalisation Fund and the federal government and that from 2010 onwards 75% would be funded by the Family Expenses Equalisation Fund.

- (iv) *Minimum availability (Unemployment Insurance Act)*

139. In order to have a realistic chance of finding a new job, minimum periods of availability of the employee are indispensable. Given that around 90% of all jobs offered require working hours of at least 20 hours, sec. 7 para. 7 of the Unemployment Insurance Act as amended by Federal Law Gazette Vol. I No. 104/2007 provides for a minimum availability of 20 hours. Persons with care commitments for children up to the age of 10 or for disabled children need to be available for 16 hours only, i.e. they have to be prepared to take up employment with a normal working time of at least 16 hours. This special regulation was introduced to make sure that the lack of necessary childcare facilities with longer opening hours for younger children (up to the age of 10) would not be to the detriment of the parents concerned. The minimum availability of 16 hours is also in line with the practice of the administrative authorities prior to the amendment Federal Law Gazette Vol. I No. 104/2007.

140. In practice, the advisers of the Public Employment Service Austria are also instructed to assist their clients in finding a place in a childcare institution.

**(f) Family allowance and child deductible**

141. Information on family allowance and the amount per child deductible from taxes is provided in the comments on Art. 10.

## 2. Safety and health protection for self-employed persons

142. A government bill regarding the amendment of the Industrial Code of 1994 (*Gewerbeordnung 1994*) was submitted to the Austrian parliament on this issue. The bill is available for download at: [http://www.parlament.intra.gv.at/PG/DE/XXIV/I/I\\_00780/pmh.shtml](http://www.parlament.intra.gv.at/PG/DE/XXIV/I/I_00780/pmh.shtml).

143. Art. 10 of Directive 92/57/EEC expands the scope of application of a multitude of employee protection provisions listed in said Directive to self-employed persons personally engaged in work activity on a construction site without employing staff. In order to make sure that provisions of the Construction Site Directive already transposed into Austrian employee protection law do not have to be repeated in the Industrial Code, a proposal envisaging transposition in a single paragraph has been prepared.

## 3. Pension systems

144. The Pension Harmonisation Act (*Pensionsharmonisierungsgesetz*), Federal Law Gazette Vol. I No. 142/2004, provided for a uniform pension law for all gainfully employed persons. The General Pension Act (*Allgemeines Pensionsgesetz*) applies to people born after 1 January 1955 and governs the so-called “pension account”, the entitlement to and scope of old-age pension and the scope of invalidity pension benefits (occupational disability pension, total disability pension) and survivor pension.

145. Regarding the main characteristics, type and amount of the benefits as well as the financing modalities of the Austrian social security system, reference is made to the 2009 MISSOC Report on Social Protection in the Member States of the European Union in 2009 issued by the European Commission.

146. As in the field of health insurance, virtually the entire gainfully employed population is subject to compulsory statutory pension insurance (the only exceptions being lawyers and civil engineers who are protected under special pension systems) or, in the case of civil servants, protected by the pension schemes of public-law employers. As a consequence, in 2010 (as was already the case in 2000) virtually 100% of the population had social insurance cover. In addition, it is to be pointed out that all people living in Austria are entitled to take out voluntary insurance.

147. See also the comments under article 11, heading 1 (a) *et seq.*

## 4. Non-contributory social benefits

### (a) Care services and benefits (*Pflegevorsorge*)

148. The main purpose of the care services and benefits currently in effect is to ease the financial burden on people in need of care and on their family members by providing them with a direct monetary benefit, and to enable them to lead a self-determined, needs-oriented life and improve their participation in social life by providing various social services. As the majority of recipients of care benefits come from lower income brackets, such benefits also contribute to combating poverty.

149. The demand-oriented care benefits are paid irrespective of income, financial situation and the reason why care is needed and result in noticeable financial relief for those concerned and their families and provide them with more options for making arrangements. In April 2010, care benefits were paid to 363,272 persons under the Federal Law on Care Benefits (*Bundespflegegeldgesetz*), Federal Law Gazette No. 110/1993 as amended, and to 63,679 recipients under the respective provincial acts on care benefits (as at December 2008 – 2008 Austrian Report on Care Benefits). In 2005, care benefits were raised by 2.0%



and in 2009 by 4% in levels 1 and 2, by 5% in levels 3 to 5 and by 6% in levels 6 and 7. The table specifying the amounts of the monthly care benefits is included in the Annex.

**(b) Amendment of the Federal Law on Care Benefits and of the Ordinance on Care-Benefit Categories**

150. Providing care for those in need is a topic of central importance for the future of the Austrian social system. Thus, with effect as of 1 January 2009, additional measures — such as the increase of care benefits, an improved classification of care benefits for children with severe disabilities and dementia patients, as well as the expansion of support options regarding short-time care — were taken in order to find solutions ensuring the highest level of satisfaction among those concerned and to guarantee availability of high-quality care benefits in Austria.

151. As a result of the introduction of lump-sum hardship allowances for persons classified as persons with severe mental or psychological disorders, primarily dementia, and children and adolescents with the most severe disabilities, a total of 7,601 persons have been receiving increased care benefits under the Federal Law on Care Benefits since 1 January 2009. See also the table in the Annex.

152. Ensuring that the procedure of determining care-benefit entitlements is as short as possible facilitates a quick improvement in the situation of people in need of care and the family members providing that care. The target value for the length of such procedures is 60 days. See also the tables and additional information provided in the Annex.

**(c) Social compensation**

153. Social compensation refers to measures taken by the state to provide non-contributory financial cover for damage suffered by people in connection with state measures (federal armed forces, military service, persecution during the NS era) or in cases where the state has a special responsibility (vaccination damage, crime victims). Basically, social compensation provides for income-independent annuities, income-dependent additional payments (guaranteeing a minimum income) and care-related benefits as well as medical care, orthopaedic care and rehabilitation benefits. These benefits are granted to the victims and their survivors, with men and women having totally equal entitlements. In particular, EU citizens and members of third countries are included in the compensation schemes relating to damage caused by current or recent circumstances. See also the additional information provided in the Annex.

154. See also the comments under article 11, heading 1 (b) (Combating poverty).

**5. Personal pension plans**

155. Austrian income tax law provides for several instruments encouraging personal pension plans:

(a) Financial benefits of up to EUR 300 per year paid by employers for the purpose of ensuring their employees' retirement provisions are tax-free for the recipients. This instrument is used to accumulate pension capital through life insurance.

(b) Contributions and insurance [www.personaltrainergeneva.com](http://www.personaltrainergeneva.com) premiums for the following types of insurance are deductible (to a limited extent) from the assessment basis for income tax as special expenses:

- Voluntary insurance for sickness, accident or pension
- Life insurance

- Voluntary widow's/widower's pension funds, orphan pension funds, pension funds and funeral expenses funds
- Pension funds
- Occupational collective insurance

(c) As an alternative to deduction from tax as special expenses, people with personal pension plans are eligible for the following bonus payments which are independent from the recipient's income:

- Additional pension insurance, pension fund or occupational collective insurance (maximum assessment basis: EUR 1,000; bonuses range between 8.5% and 13.5%)
- State-supported life insurance (the maximum assessment basis is subject to change and in 2010 amounts to EUR 2,263.79; bonuses range between 8.5% and 13.5%)

Bonuses may be granted for both categories at the same time; their amounts are limited.

These fiscal instruments serve the primary purpose of promoting personal pension plans; special expenses for voluntary contributions to health insurance and accident insurance may be deducted from tax as well. The best-accepted and most wide-spread product is state-supported life insurance.

(d) In addition to the income tax relief granted, the insurance tax rate payable on private health insurance products (1%) as well as on old-age, survivor, and invalidity pensions within the meaning of the Pension Fund Act (*Pensionskassengesetz*) (2.5%) is extremely low as compared to the general insurance tax rate of 11%.

## **6. Equal status of men and women in the pension law system**

156. The current pension insurance system provides for a guaranteed old-age pension for women on the basis of their own gainful employment or through the survivor pension derived from their marriage to a gainfully employed husband.

157. In order to improve the pension rights for women even further, the crediting of child-raising periods towards pension payments was gradually established: Now child-raising periods of up to 48 months, and in the case of a multiple birth up to 60 months, starting from the birth of the child are taken into account when calculating pension entitlements. Contributions for such periods are paid by the Family Expenses Equalisation Fund.

158. A major innovation regarding pension harmonisation is the voluntary "pension splitting" for child-raising periods. Parents are entitled to agree on transfers of credits to the pension account for years spent on child raising after 2005: The gainfully employed parent may have up to 50% of his/her partial credit for the first four years (the first five years in the case of multiple-birth children) transferred to the pension account of the parent spending most of his/her time on child raising. The current retirement age for women — which is 60 years — will be gradually adjusted to that for men — 65 years — starting with 1 January 2024 (until 2033: increases of six months per year).

## **7. Protection of informal workers**

159. In principle, the provisions regarding social insurance also apply to "informal workers". Employment under the law on social insurance exists completely irrespective of a valid contract entered into or an effective obligation undertaken. In order to be counted for inclusion in the social insurance system, the work must serve a gainful purpose and the proceeds from employment may not be refused. That means that any person employed for

remuneration in personal and economic dependence is an employee subject to compulsory social insurance (*cf.* also the comments on informal employment relationships).

## 8. Non-contributory social benefits for foreigners

160. The following examples should be mentioned:

(a) Means-tested guaranteed minimum income (for details see under article 11, heading 1 (b) and the Annex). This instrument is available not only for citizens but also for people who are to be placed on an equal footing with citizens according to obligations under international law (e.g. recognised refugees, EEA citizens, citizens of third countries after five years of lawful residence, people under subsidiary protection with a view to the core benefits).

(b) Payments under the Disability Employment Act and under the employment campaign of the Federal Social-Services Office for so-called “eligible disabled persons” (*begünstigte Behinderte*) may be granted to citizens of Contracting Parties of the EEA, Switzerland and Turkey, provided that they are legal members of the Austrian labour market, as well as to refugees who have been granted asylum. With a few exceptions, benefits are also available to citizens of third countries with disabilities, provided that they are legally engaged in the Austrian labour market.

(c) Benefits under the Federal Disability Act: Citizens of the EU and/or EEA who have their principal residence in Austria are eligible for benefits. No specific duration of residence is required. Citizens of third countries are eligible for benefits provided that they have had their permanent place of abode in Austria for at least one year and provided that it can be expected that their residence permit will be extended. Asylum seekers may receive benefits after having stayed in Austria for at least one year, if their asylum residence permit is valid. Refugees officially recognised as Convention refugees are granted the same rights as Austrians.

(d) Care benefits (see article 9, heading 4 above): Care benefits under the Federal Law on Care Benefits are, in principle, available to all people with their habitual abode in Austria if they receive payments under the statutory pension insurance scheme or similar benefits (e.g. retirement pay for civil servants, accident annuity, war victims annuity).

(e) Benefits under the Federal Law on Care Benefits: Under certain conditions, persons providing care to family members are entitled to benefits under the benefit fund (sec. 21a of the Federal Law on Care Benefits). Austrian citizenship is not required (the applicant’s habitual abode in Austria is sufficient). In order to promote 24/7 in-house care within the meaning of the Home Care Act (*Hausbetreuungsgesetz*), Federal Law Gazette Vol. I No. 33/2007, benefits from the Benefit Fund for People with Disabilities may be granted to people in need of care or to their family members (sec. 21b of the Federal Law on Care Benefits). Again, Austrian citizenship is not required (the applicant’s habitual abode in Austria is sufficient).

(f) Social compensation benefits (see article 9, heading 4 above): In principle, foreigners are entitled to benefits under the Crime Victims’ Act (*Verbrechensopfergesetz*), Federal Law Gazette No. 288/1972 as amended and the Vaccination Damage Act (*Impfschadengesetz*), Federal Law Gazette No. 371/1973 as amended.

(g) Family allowance: Family allowance (for details see article 10, heading 3, and the Annex) is available not only to Austrian citizens but also to citizens of the EU and/or EEA and third-party nationals who are living in Austria on the basis of a residence permit entitling them to a permanent stay, as well as to recognised refugees.

## Article 10

### 1. Entering into marriage with full and free consent

161. Several legal instruments guarantee that the consent of both parties is required when entering into marriage.

162. According to sec. 39 para. 1 of the Marriage Act (*Ehegesetz*), German Reich Law Gazette Vol. I p. 807/1938 as amended, either spouse may bring an action for annulment of a forced marriage before a court if he/she was “unlawfully coerced into marriage under threat”. As in the case of a divorce, an annulment becomes effective *ex nunc*. It does not affect consequences of the marriage such as one spouse’s taking the other’s name or obtaining citizenship. The circumstances on the basis of which a residence permit was granted do not cease to exist with retroactive effect, either. According to sec. 42 of the Marriage Act, the effects of the annulment are equivalent to those of a divorce, with the spouse who made the threat or was aware of the threat being deemed to be the party at fault. According to sec. 10 para. 2 of the Marriage Act, an action for annulment becomes time-barred within one year after the situation of duress has ceased to exist.

163. Given that in the case of a married minor it can hardly be expected that the parents, who are the child’s legal representatives but who have also initiated the forced marriage, would bring an action for annulment themselves, a court-ordered limitation of parental custody according to sec. 176 of the General Civil Code (*Allgemeines bürgerliches Gesetzbuch*) and the appointment of another legal representative may be effected. In the event that it would take too long to obtain assistance from the court, the competent youth welfare institution is entitled, in cases of imminent danger, to take measures regarding the minor’s care and education (including legal representation in such matters) pursuant to sec. 215 para. 1 of the General Civil Code; such measures will be temporarily valid until the court has made its decision.

164. According to sec. 17 para. 1 of the International Private Law Act (*Internationales Privatrechtsgesetz*), Federal Law Gazette No. 304/1978 as amended, the criteria for entering into marriage and for declaring its nullity or annulment are to be assessed for each person individually on the basis of such person’s personal statute. However, this may only result in the application of another legal system – in particular if foreign nationals are involved – if the application of such system is compatible with the basic values under the Austrian legal system (sec. 6 of the International Private Law Act) which, according to the practice of the Austrian courts, also includes the freedom of marriage.

165. Austria is also a signatory state to the Convention concerning the Powers of Authorities and the Law Applicable in respect of the Protection of Infants (Federal Law Gazette No. 446/1975).

166. Under sec. 106 para. 1 (3) of the Criminal Code (*Strafgesetzbuch*), Federal Law Gazette No. 60/1974 as amended, coercion into marriage is a punishable offence.

### 2. General remarks

#### (a) Family counselling

167. A network of nearly 400 family counselling centres has been in place in Austria since 1974. These centres are supported under the Act on the Promotion of Family Counselling (*Familienberatungsförderungsgesetz*), Federal Law Gazette No. 80/1974 as amended, and offer free anonymous counselling to everyone seeking advice on family and partnership issues. The main focuses lie on counselling for pregnant women, counselling on domestic violence, divorce counselling, advice on cults, counselling for families of persons with disabilities and job returners, as well as men’s counselling. Details can be found on

pages 808–812 of the Fifth Austrian Family Report: <http://www.bmwfj.gv.at/Familie/Familienforschung/Documents/Familienbericht%202009/Band%20II%20-%20Familienpolitische%20Akzente.pdf>.

168. See also the infobox and the table on family counselling in the Annex.

**(b) Accompanied visits**

169. Accompanied visits serve the purpose of maintaining, establishing or restoring personal contact between a parent with visiting rights and his/her minor child in the presence of a neutral person who is suitably trained to provide assistance in the exercise of the right to personal access. In 2010, 37 organisations offering accompanied visits in a total of 155 “visit cafés” all over Austria are being subsidised. The funds earmarked for this purpose in the budget — amounting to EUR 600,000 in 2010 — are intended to guarantee that the demand for accompanied visits, primarily for socially disadvantaged parents, is met and sustainably financed. In order to make such service available for as many families with low incomes as possible, as of 2010 a social component has been added to the funding of accompanied visits, which is to be based on the reference value for compensation grants pursuant to sec. 293 of the General Social Security Act.

**3. Children**

**Childcare and Item 28 of the recommendations of the concluding observations on the third and fourth periodic report**

170. The statutory regulation, funding and establishment of childcare options falls within the competence of the provinces and municipalities (Art. 14 para. 4 of the Federal Constitution; sec. 2 of the Fiscal Constitutional Law of 1948 (*Finanz-Verfassungsgesetz 1948*), Federal Law Gazette No. 45/1948 as amended). In order to improve the availability of childcare places, which varies considerably due to regional circumstances and political aims, in particular for underserved regions and age groups, the federal government has launched several co-financing projects with provinces and municipalities in the past. In 1997/1998 and 1999/2000 the provinces were provided with earmarked grants from federal funds for the expansion of childcare facilities, in a total amount of EUR 87.2 million, within the context of financial compensation (“childcare billion”). As the provinces and municipalities were obliged to at least double this amount, during this period at least EUR 174.4 million was invested in creating 32,188 additional childcare places for children of all ages, and the education and further training of childminders was improved considerably in terms of both quantity and quality.

171. Since 2005, the annual amount of EUR 700,000 from the Family Expenses Equalisation Fund has been made available for the support of innovative childcare options and since 1 January 2006 has been awarded by the newly founded company Familie und Beruf Management GmbH. This financial support is intended to create an incentive for launching pilot projects in the field of private child care as well as for structural adjustments. Since August 2009, childcare options offered by companies and training for childminders have been subsidised as well.

172. In order to meet the demand for additional childcare facilities and to be able to improve the language skills of children with deficits in the command of the German language before they start school, the federal government invested a total of EUR 45 million in the demand-oriented expansion of childcare facilities and EUR 15 million in early childhood language development between 2008 and 2010. The provinces have added another EUR 60 million for the same purposes for the period until 2010. These funds are being spent on expanding the range of institutional childcare facilities for preschool-aged children as well as on the training of childminders (*cf.* agreement pursuant to Art. 15a of the Federal Constitution on the expansion of institutional childcare options, the introduction of

obligatory early childcare language promotion in institutional childcare facilities and the preparation of a country-wide preschool education plan (*Vereinbarung gem. Art. 15a B-VG über den Ausbau des institutionellen Kinderbetreuungsangebots und über die Einführung der verpflichtenden frühen sprachlichen Förderung in institutionellen Kinderbetreuungseinrichtungen sowie Schaffung eines bundesweiten vorschulischen Bildungsplanes*), Federal Law Gazette Vol. II No. 478/2008).

173. To provide all children, irrespective of their socio-economic backgrounds, with access to the best possible educational options and a good start into their future professional life, half-day kindergarten has been free of charge since the kindergarten year 2009/10 — and will be mandatory starting from 2010/11 at the latest — for all children in their last year before starting school. To this end, the federal government will contribute EUR 70 million to the additional costs arising therefrom in each of the years 2009–2013.

174. Details on childcare options are available on pages 820-823 of the Fifth Austrian Family Report <http://www.bmwfj.gv.at/Familie/Familienforschung/Documents/Familienbericht%202009/Band%20II%20-%20Familienpolitische%20Akzente.pdf>. See also the statistics provided in the Annex.

**(a) Family allowance**

175. Family allowance is paid irrespective of the recipient's income or gainful employment. Since 2008, family allowance has been paid for a total of 13 months, as the total amount of family allowance for the month of September (including basic amount, age-related supplement, supplement for siblings and increased family allowance for disabled children) was doubled (13<sup>th</sup> family allowance instalment).

176. Details on family allowance are available on pages 890-894 of the Fifth Austrian Family Report: <http://www.bmwfj.gv.at/Familie/Familienforschung/Documents/Familienbericht%202009/Band%20II%20-%20Familienpolitische%20Akzente.pdf>.

177. See also the table provided in the Annex and Art. 9.

**(b) Multi-child bonus and Item 29 of the recommendations of the concluding observations on the third and fourth periodic report**

178. As a countermeasure against the elevated risk of poverty faced by families with several children, a multi-child bonus of EUR 36.40 per month is paid for the third and each further child living in Austria or on EU/EEA territory, provided that family allowance is received for such child. Families are only eligible for such bonus if the taxable family income did not exceed a certain threshold in the calendar year preceding the calendar year for which the application is filed.

179. See also the overview provided in the Annex.

**(c) Child deductible**

180. The amount deductible from tax is the same for children of all ages and is paid out together with the family allowance. For details, see the table provided in the Annex ad Art. 9.

**(d) Maintenance deductible for parents liable to pay maintenance**

181. Every parent not sharing a household with his/her child who pays maintenance and does not receive family allowance for such child is entitled to the following maintenance deductibles: EUR 29.20 per month for the first child (until 1 January 2009: EUR 25.50); EUR 43.80 for the second child (until 1 January 2009: EUR 38.20) and EUR 58.40 for each additional child (until 1 January 2009: EUR 50.90).

**(e) Single-earner deductible**

182. The single-earner deductible is available to all persons who:

(a) Have been married or registered as partners for more than 6 months in the respective calendar year and do not live permanently separated from their spouse or registered partner. If the marriage or registered partnership is valid, the single-earner deductible is also available if no child lives in the spouses' or registered partners' shared household.

(b) Have been cohabiting with at least one child and a person subject to unlimited taxation for more than six months. If the child lives in the shared household, the persons do not need to be married or registered partners. For this purpose, a child is any person for whom family allowance is received for more than six months in the respective year.

183. A single-earner is only entitled to a single-earner deductible if his/her partner's income does not exceed a certain limit:

(a) If the single earner shares a household with a spouse or registered partner but not with a child, the partner's total income must not exceed EUR 2,200

(b) If the single earner shares a household with a spouse or registered partner or with a cohabiting partner and with at least one child, the partner's total income must not exceed EUR 6,000

184. See also the overview provided in the Annex.

**(f) Single-parent deductible**

185. The single-parent deductible is available for taxpayers with at least one child who have not shared a household with a spouse/partner for a period of more than six months in the respective calendar year and amounts to EUR 494 per year for one child and EUR 669 for two children. This amount is supplemented by EUR 220 for the third and each further child. If the parent's income is so low that the income tax calculated is a negative amount, the single-earner deductible or the single-parent deductible is paid out directly, with the amount thereof being limited to the "negative tax amount" calculated.

**(g) Children's tax allowance**

186. In order to equalise the tax burden on families with children and on persons without children on a horizontal level, a new children's tax allowance was introduced in the course of the tax reform of 2009. In principle, an allowance of EUR 220 per child and per year may be asserted. As an incentive for gainful employment, both income-earning parents are eligible for such tax allowance, in which case they are entitled to 60% each of such allowance, i.e. EUR 132 per year each. The prerequisite for the children's tax allowance is that the child deductible is received for the child concerned during more than six months within the respective calendar year.

**(h) Amount deductible for childcare costs**

187. Since 1 January 2009, childcare costs in the maximum amount of EUR 2,300 per child per calendar year may be deducted from tax as extraordinary expenses. This applies to children who have not reached the age of 10 at the beginning of the respective calendar year and who are in the care of qualified institutions/individuals. Another criterion is that the parent be eligible for child deductible or maintenance deductible for the child during more than six months within the respective calendar year and that the child's permanent abode not be outside the EU, the EEA or Switzerland.

(i) **Tax-exempt childcare supplement**

188. Since 1 January 2009, childcare supplements of up to EUR 500 per year for each child granted by an employer to all or certain groups of employees have been exempt from payroll tax. Child care has to be provided by public or private institutional childcare facilities or by a professional with pedagogical qualifications.

(j) **Examples of family benefits at provincial level**

189. See the overview provided in the Annex.

**4. Home care for persons with disabilities and/or elderly persons**

190. In Austria, on the basis of the intrastate allocation of competences, mobile and/or outpatient, day-care and in-patient services for elderly persons with disabilities or in need of care and assistance fall within the sphere of competence of the provinces. In an agreement pursuant to Art. 15a of the Federal Constitution between the Federal Government and the Provinces on Joint Measures for Persons in Need of Care (*Vereinbarung gemäß Art. 15a B-VB zwischen dem Bund und den Ländern über gemeinsame Maßnahmen für pflegebedürftige Personen*), Federal Law Gazette No. 866/199 as amended, the provinces undertook to ensure the decentralised and comprehensive establishment and expansion of benefits in kind as well as to ensure adequate professional quality and supervision of such services.

191. In 2008 the working group on the reorganisation of care-related services and benefits, in consultation with the provinces and recognised organisations and providers of benefits in kind, prepared a catalogue of “assistance and care” services, which contains the mobile, out-patient, day-care and in-patient services as well as a definition of the individual benefits in kind broken down by service characteristics. The catalogue lists a total of 38 benefits in kind, 14 of which are available in all provinces.

192. The government programme 2008–2013 provides for the government’s obligation — depending on the available budget — to support the further expansion of social services, in particular the following: mobile services on weekends, day-care services, short-term care in homes, care and case management and alternative dwelling forms. Support of these social services is provided only if uniform quality standards, transparency and comparability of the care options are guaranteed in spite of the province-specific particularities.

193. For details on the benefits and expenses of the provinces see the table provided in the Annex.

**5. Maternity protection and atypical employment and service contracts**

194. It should be stated that the provisions regarding the protection of employees listed in the following are also included in the service-regulations law for public servants employed with federal, provincial or municipal authorities.

195. Pregnant women engaged in atypical work in an employment relationship (part-time employment, fixed-term employment, temporary employment) are covered by the provisions of the Maternity Protection Act.

196. The following provisions apply to pregnant women in fixed-term employment: In principle, fixed-term employment contracts are terminated upon expiry of the period specified even if the employee is pregnant. If, however, the option to terminate the contract early was expressly agreed upon or if the employer intends to end the fixed-term contract by dismissal of the employee prior to its expiry, the employer has to observe the provisions of secs. 10 and 12 of the Maternity Protection Act. However, pursuant to sec. 10a of the Maternity Protection Act, expiry of employment contracts entered into for a fixed time



period is suspended from the notification of the pregnancy up to the beginning of the strict prohibition of employment prescribed by law or an individual prohibition of employment imposed by a medical doctor unless the time limit on the employment contract is objectively justified or provided by law. Pursuant to sec. 10a para. 2 of the Maternity Protection Act a time limit is objectively justified, *inter alia*, if it is in the interest of the employee or if the employment is entered into for a period of replacement in which other employees are unavailable, for training purposes, for seasonal periods or for trial periods if, due to the qualifications needed for the intended use of the employee, longer trial periods than those provided by law or collective bargaining agreement are required.

197. The provisions of the Maternity Protection Act do not apply if atypical work is provided without an employment relationship being created.

## **6. Various maternity protection measures**

### **(a) Parental leave and parental part-time work for the purpose of child care**

198. The amendment Federal Law Gazette Vol. I No. 64/2004 introduced fundamental changes in part-time work options in order to provide care to a child. For details see the comments on Art. 9.

199. In the event that an employee has no entitlement to parental part-time work because he/she is employed in a business with fewer than 20 employees or employment has not yet lasted three years at the time the part-time employment is to be started, part-time employment up to the child's fourth birthday at maximum may, as prior to the amendment, be agreed upon with the employer.

200. The law provides that both the right to parental part-time work and the right to agreement with one's employer on parental part-time work may only be exercised on the condition that the employee lives in the same household as the child or is entitled to parental custody under the General Civil Code. In addition, the other parent must not be on parental leave under the Maternity Protection Act or the Paternity Leave Act at the same time. However, it is admissible for both parents to work part-time at the same time. Part-time work may commence no earlier than after expiry of the (fictitious) period of protection of the mother. Parents enjoy special protection against termination and dismissal for a period of four weeks after the end of the parental leave or, at the most, four weeks after the child's fourth birthday. After that period, they are protected against termination of employment on grounds of an inadmissible motive.

201. Simultaneously with the introduction of the new childcare benefits model "12+2", the minimum duration of parental leave and parental part-time work was lowered from previously three months to two by the amendment Federal Law Gazette Vol. I No. 116/2009.

202. Regarding the modalities of part-time work, see the overview provided in the Annex.

### **(b) Providing nursing care to family members**

203. In the course of the introduction of the legal concept of registered partnerships for same-sex couples through Federal Law Gazette Vol. I No. 135/2009, the scope of persons for whom sick-care leave may be taken was expanded to include the registered partner and, in the case of public service employees, also the registered partner's children. The same expansion was made for the statutorily provided possibility of agreeing on a reduction of working hours with the employer for the purpose of providing care to a close family member who is ill and needs more than just temporary care.

(c) **Family hospice leave**

204. An evaluation of the concept of family hospice leave showed that the maximum period allowed for providing care to seriously ill children provided for by law was not sufficient, as certain forms of therapy for children take more than six months. The amendment Federal Law Gazette Vol. I No. 36/2006 therefore provided for an extension of the total duration of family hospice leave to provide care to seriously ill children to a maximum of nine months.

205. At the same time, the scope of persons for whom family hospice leave may be taken was expanded. Leave to provide terminal care may now also be taken for adoptive and foster parents and registered partners. In addition, family hospice leave may also be taken to provide care to step children (i.e. the spouse's biological children), children of the cohabitating partner and, under certain conditions, the children of the registered partner.

(d) **Protection against termination and dismissal during pregnancy**

206. For information on the termination of employment contracts (analogous provisions apply to public-service employment contracts) see the comments under article 6, heading 5. Pregnant employees are protected against both termination of their contracts and dismissal (secs. 10 and/or 12 of the Maternity Protection Act).

207. As a rule, employees must not be *given notice* during their pregnancy and during a period of four months after giving birth unless the employer is not aware of the pregnancy and/or childbirth. Termination of employment is also legally ineffective if the employer is notified of the pregnancy and/or childbirth within five working days after notice is given or, if notice is given in writing, within five working days of service of the notice. In order to terminate the employee's contract with legal effect in such cases, the employer needs to obtain prior court approval, which is only to be granted if the employer is not in a position to maintain employment due to a reduction or closing down of the business, or of individual divisions thereof, without causing damage to the business, or if the employee agrees to the termination. No court approval is necessary for a termination if the business has been closed down.

208. The *dismissal* of employees with legal effect during their pregnancy and during a period of four months after delivery requires prior court consent, which may only be given if the employee has violated her obligations under the employment relationship through serious fault, including, without limitation, the following: failure to perform work duties, unjustified acceptance of privileges from third parties in the performance of work duties without the knowledge of the employer, disclosure of business or company secrets or operation of a sideline business detrimental to the employee's function in the business (household), acts of physical violence or serious libel against the employer, his/her family members or employees of the company, commission of an offence that can only be committed with intent and is punishable by terms of imprisonment of more than one year, or commission of an offence with the intention of enrichment.

**7. Protection of children in employment**

209. The amendment Federal Law Gazette Vol. I No. 79/2003 to the Federal Law of 1997 on the Employment of Children and Adolescents (*Bundesgesetz über die Beschäftigung von Kindern und Jugendlichen 1987*), Federal Law Gazette No. 599/1987 introduced integrative vocational training. Under this scheme, disadvantaged adolescents who are not under an apprenticeship contract but are being trained under a special training relationship within the meaning of sec. 8b of the Vocational Training Act, Federal Law Gazette No. 142/1969 as amended, are subject to the same working conditions as apprentices. This provides

disadvantaged juveniles with access to adequate training which clearly improves their occupational opportunities.

210. In the past years, measures regarding the protection of children against sexual exploitation in tourism were taken, focusing primarily on sensitisation and awareness raising among students, workers in the tourism industry and travellers. The purpose of such measures was to accelerate the implementation of the tourism industry's Code of Conduct for the Protection of Children against Sexual Exploitation in Travel and Tourism at the national level. The code had been developed by ECPAT (End Child Prostitution, Child Pornography and Trafficking of Children for Sexual Purposes) Sweden, within the framework of an EU project and with the support of the World Tourism Organization and signed by the umbrella associations of Austrian travel agencies, the Association of Austrian Travel Agents (*Österreichischer Reisebüroverband*) and the Austrian Association for Tourism (*Österreichischer Verein für Touristik*). For details see the Annex.

## 8. Protection of economic, social and cultural rights of older persons

211. The Equal Treatment Act (*Gleichbehandlungsgesetz*) currently prohibits any direct and indirect discrimination at the workplace, including on the basis of age (see also comments on Art. 2). However, an expansion of the scope of protection to include access to and supply with publicly available goods and services, including housing space, is planned (levelling up – see also comments regarding Art. 2). In addition, pursuant to the Labour Constitution Act, special regulations protecting older employees against termination apply. Regarding the general provisions on the protection against termination, reference is made to the comments under article 6, heading 5. In the case of older employees, when assessing whether the termination of employment is unjustified from a social point of view, factors worthy of special consideration are the employee's having been employed with the business, or the company to which the business belongs, for many years without interruption, as well as the difficulties the employee can be expected to face in reintegrating into the labour process, due to his/her advanced age. Grounds for termination referring to the employee's personality, which are due to the advanced age of the employee — who has worked for the business, or company to which the business belongs, for many years — only justify the termination of the older employee's contract if a continuation of his/her employment would be considerably detrimental to the interests of the business.

212. Regarding special measures taken concerning labour issues, see the Annex.

213. With respect to social security, older persons are protected as the provisions on social insurance apply to them.

214. A central concern of the Austrian policy on senior citizens is to give them a political voice and to create opportunities for older people to have an equal say in all matters and questions that affect them.

215. Under the Federal Act on the Support of Matters of Relevance to the Older Generation (*Bundesgesetz über die Förderung von Anliegen der älteren Generation*), Federal Law Gazette No. 84/1998 as amended, the representation of the interests of the older generations vis-à-vis political decision makers at the federal level was guaranteed through the establishment of the Federal Senior Citizens' Advisory Board (*Bundesseniorenbeirat*). Furthermore, the funding of counselling, information and assistance for senior citizens by the organisations for senior citizens was secured by establishing a general support scheme for senior citizens (*Allgemeine Seniorenförderung*). Regarding the tasks of the Federal Senior Citizens' Advisory Board see also the Annex.

216. The official representation of older people is the umbrella organisation of Austrian organisations for senior citizens, the Austrian Senior Board (*Österreichischer Seniorenrat*), which is provided by law. The Senior Citizens' Council is placed on an equal footing with

the other statutory professional representations in all matters concerning the interests of senior citizens in Austria. Thus, it can be said that the representation of interests of older people with equal priority and importance has been enshrined at the federal level.

#### **9. Economic and social rights of asylum-seekers**

217. Regarding the economic and social rights of asylum seekers, reference is made to the complete transposition of Directive 2003/9/EC (laying down minimum standards for the reception of asylum seekers) and to the agreement entered into by the federal government and the provinces pursuant to Art. 15a of the Federal Constitution, Federal Law Gazette Vol. I No. 80/2004, which has been in force since 1 May 2004, providing for joint measures for the temporary provision of basic services to aliens in need of assistance and protection (Agreement on Basic Care and Maintenance ([*Grundversorgungsvereinbarung*])). The temporary basic care and maintenance to be provided to aliens in need of assistance and protection depends on the level and type of neediness, with organised accommodation and board, toiletries, clothing, pocket money, medical care, etc. taking priority. Under certain circumstances, an individual household may be kept or partial services may be provided, for instance if the asylum seeker is already covered by statutory health insurance.

218. The objectives of this agreement include primarily the standardisation of the treatment of asylum seekers and other privileged foreigners throughout Austria, as well as legal security. Art. 6 para. 1 (1) of the Agreement on Basic Care and Maintenance underlines the importance of the family unit as the primary core element of basic care and maintenance services, thereby ensuring that asylum seekers are “placed in suitable accommodation, with due regard to human dignity and preserving the unity of their families”.

219. Art. 7 of the Agreement on Basic Care and Maintenance provides for comprehensive special provisions for unaccompanied minor refugees which serve the purpose of providing protection and assistance to children and adolescents. Thus, the law requires that the minor’s interests in the asylum procedure and accompanying basic care and maintenance procedure be represented by a legal advisor, thereby ensuring that, in addition to the youth welfare institution as the body having general custody, an adviser is available at all times for all questions and problems that might arise. In addition, in the context of health care, measures for the minor’s mental stabilisation are taken and, if necessary, socio-pedagogical and psychological support is envisaged.

220. Moreover, all children and adolescents are put in a position to attend general public schools, even beyond obligatory schooling, until they reach majority. They receive support under the basic care and maintenance scheme, for instance in the form of free public transport to and from school and school supplies. Access to vocational training and the labour market is governed by the Employment of Foreigners Act, which in general also applies to asylum seekers. This means that asylum seekers need a work permit in order to be entitled to engage in gainful employment. All asylum seekers and consequently all persons under subsidiary protection are, as a rule, granted public health insurance and thus receive health protection equal to that provided to Austrians. This applies in particular in the case of childbirth and motherhood, but also for victims of violence or trafficking in persons. Persons entitled to asylum and persons under subsidiary protection have a right to basic care and maintenance for at least up to four months after their international protection status has been granted.

221. The Concluding Observations on the Third and Fourth Periodic Report contained in Item 31, which referred to guaranteeing adequate social support during asylum proceedings, were based on a legal situation that, even at that time, was already being changed and no longer applies. In the meantime, the Agreement on Basic Care and Maintenance described above has been implemented at both the federal and provincial levels. Under this

agreement, special importance is given to the family and maintaining its integrity by way of family reunification (nuclear family), on the one hand, and to persons requiring special protection, such as victims of violence and torture, persons in need of care, unaccompanied minor refugees (UMR) etc., on the other hand. In particular regarding women travelling alone and UMR, but also regarding victims of violence, attention is paid to providing separate accommodation and promoting adequate projects with psycho-social components.

## 10. Family reunification

222. The requirements for family reunification of third-country nationals depend on the residence status of the sponsor. In line with the regulations under Community law, the following three scenarios can be differentiated:

223. If the sponsor is an Austrian or a citizen of an EEA country or Switzerland who exercises his/her right of free movement (sec. 54 of the Settlement and Residence Act, Federal Law Gazette Vol. I No. 100/2005 as amended) the following applies: The residence of EEA nationals and their family members (pursuant to sec. 52 para. 1 of the Settlement and Residence Act) for periods of more than three months is governed by secs. 51 *et seq.* of the Settlement and Residence Act. These are the provisions resulting from the transposition of Directive 2004/38/EC. EEA citizens have a right of residence in Austria for a period exceeding three months if they are gainfully employed or self-employed persons in Austria or have sufficient resources and comprehensive health insurance cover for themselves and their family members so as not to become a burden on the Austrian social assistance system during their period of residence or if the principal purpose of their stay is to follow a course of study and they have adequate resources for subsistence and comprehensive health insurance cover (sec. 51 of the Settlement and Residence Act). Pursuant to sec. 53 of the Settlement and Residence Act, the right of residence within the European Union is documented by means of a confirmation of registration (*Anmeldebescheinigung*) to be issued upon application. After five consecutive years of residing legally in Austria, EEA nationals acquire the right of permanent residence and are entitled to apply for a confirmation of permanent residence (*Bescheinigung des Daueraufenthalts*; sec. 53a of the Settlement and Residence Act). Third-country family members of EEA citizens entitled to residence within the EU (secs. 51 and 53a of the Settlement and Residence Act) are also entitled to a stay of more than three months. Upon application, they are to be issued a residence card (*Aufenthaltskarte*; sec. 54 of the Settlement and Residence Act). After five consecutive years of residing legally in Austria, they acquire the right of permanent residence, which is documented by means of a permanent residence card (*Daueraufenthaltskarte*). The documents mentioned (confirmation of registration, confirmation of permanent residence, residence card, permanent residence card) document a residence right on the basis of the laws of the European Union and are therefore not subject to the quota requirements (for details on such requirements, see below).

224. If the sponsor is an Austrian or a citizen of an EEA country or Switzerland who does not exercise his/her right of free movement (sec. 47 of the Settlement and Residence Act), the following applies: Pursuant to sec. 2 para. 1 (9) of the Settlement and Residence Act, family members include spouses/registered partners or under-age children (including adoptive or step children) (nuclear family); whether a child is a minor is determined on the basis of the national provisions. The general requirements for residence permits (sec. 11 of the Settlement and Residence Act) must be met (in particular, the residence of the alien must not run counter to public interests; the alien must have an accommodation in conformity with local accommodation conditions and hold comprehensive health insurance, and the alien's residence must not lead to a financial burden on a local authority.) Family members within the meaning of sec. 2 para 1 (9) of the Settlement and Residence Act are to be granted a residence permit under the title of "family member"; upon application, certain other family members may be granted a "settlement permit – relative" (sec. 47 para. 3 of

the Settlement and Residence Act). The granting of the aforementioned residence permits is not subject to quotas.

225. If the sponsor is a third-country national (sec. 46 of the Settlement and Residence Act), the following applies: Whether a person is a family member is governed by sec. 2 para. 1 (9) of the Settlement and Residence Act and whether children are under age also depends on national provisions. Pursuant to the provisions of the Settlement and Residence Act, the starting basis for family reunification proceedings for third-country nationals is the determination of the residence status of the sponsor. Another criterion for the immigration of family members from third countries is that they meet the general requirements for residence permits (sec. 11 Settlement and Residence Act). In addition, the sponsor has to meet certain criteria as well: He/she must have a permanent residence status (EU), a settlement permit (unrestricted) or another type of settlement permit. If he/she is the holder of a residence permit, the family reunification options are restricted to a greater extent (sec. 69 of the Settlement and Residence Act). Family reunification is only possible if the sponsor is staying in Austria for specified purposes: rotational workers, artists, special cases of gainful employment, students, researchers and sec. 69a of the Settlement and Residence Act (special protection). A derived residence permit may also be granted if the family unit did not already exist in the country of origin but was only created in Austria. The granting of residence permits — including those to family members — is not subject to any quotas.

226. The 2009 amendment of sec. 27 of the Settlement and Residence Act introduced a further improvement of the residence status of family members holding a settlement permit. Although, in the case of family reunifications, a potential immigrant relies on another person — the sponsor — who is permanently residing in Austria (so that the starting base for family reunification proceedings is always the determination of the precise status of the sponsor), the family members still have a separate right of settlement. Therefore — in the case of an extension of such permit — they are to be issued a settlement permit if they meet the general requirements even if the requirements for family reunification no longer exist (e.g. due to divorce). Thus, there is no derivation of the purpose for residence during the first five years. If the family member meets the criteria laid down in sec. 11 para. 2 of the Settlement and Residence Act and if there are no reasons preventing the issuance of a settlement permit, such permit is to be issued, the settlement purpose of which corresponds, in any case, to the original settlement purpose.

227. Certain types of residence permits may be granted regardless of quotas (as already explained above). However, some types of residence permits are subject to quotas, i.e. a permit may only be granted if the relevant quotas for the calendar year have not yet been filled in the respective province. The respective quotas for a calendar year are laid down in the annual Settlement Ordinance (*Niederlassungsverordnung*; sec. 13 of the Settlement and Residence Act). This ordinance is enacted by the federal government in agreement with the main committee of the National Council. Before making a decision, the Federal Ministry of the Interior obtains an expert opinion from the Austrian Institute of Economic Research which then forms the basis for further deliberations. Under said ordinance, the federal government needs to ensure the development of a regulated labour market and provide for an allocation of permits to the individual provinces that is in line with their opportunities and requirements. Prior to issuing the Settlement Ordinance, the Austrian Federal Commercial Chamber (*Wirtschaftskammer Österreich*), the Federal Chamber of Labour (*Bundesarbeitskammer*), the Presidential Conference of the Austrian Chambers of Agriculture (*Präsidentenkonferenz der Landwirtschaftskammern Österreichs*), the Austrian Association of Cities and Towns (*Österreichischer Städtebund*), the Austrian Federation of Municipal Authorities (*Österreichischer Gemeindebund*), the Austrian Trade Union Federation (*Österreichischer Gewerkschaftsbund*), the Federation of Austrian Industries (*Vereinigung der österreichischen Industrie*) and the Austrian Institute of Economic Research are to be heard. The local authorities are to be given the opportunity to submit

specific proposals with regard to the number of settlement permits required in the province concerned. In issuing the ordinance, the federal government must give due consideration to the absorption capacity of the domestic labour market and the proposals of the provincial authorities; the numbers stated in any such proposal may be exceeded solely with the consent of the provincial authority. As a rule, residence permits subject to this quota obligation may only be granted if the relevant quotas of the relevant province have not yet been filled. If an application for family reunifications pursuant to sec. 46 para. 4 of the Settlement and Residence Act is filed and, in principle, such application would be granted but no permit may be issued as the quotas have been filled, such applications must not be rejected. The decision (granting) has to be postponed until a quota place becomes available. However, three years after application no further delay is admissible, i.e. the family member must be granted a residence permit at the latest after three years (irrespective of whether or not the quotas have been filled). This provision is in line with EU legislation (*cf.* Art. 8 of Directive 2003/86/EC on the right to family reunification). In addition — as already explained above — it should be stated that EEA nationals, who are entitled to free movement, and Swiss nationals have a right of residence under EU law which is only documented and is not subject to any quotas. There are also some other types of residence permits that are not restricted by quotas (*cf.* sec. 47 paras. 1 and 2 of the Settlement and Residence Act, cases in which the sponsor is an Austrian, EEA national or Swiss national permanently residing in Austria). In addition, since the entry into force of the amendment of 1 April 2009, the option of applying for the residence permits “settlement permit – restricted” pursuant to sec. 44 para. 3 of the Settlement and Residence Act and “settlement permit – unrestricted” pursuant to sec. 43 para. 2 of the Settlement and Residence Act on the basis of reasons laid down in Art. 8 of the Convention for the Protection of Human Rights and Fundamental Freedoms (Right to respect of private and family life) has been introduced. Both residence permits are independent of the quota requirements and applications may be filed in Austria. All in all, the option of family reunification — in harmony with EU law — has thus been sufficiently guaranteed.

#### **11. Legislation criminalising acts of domestic violence**

228. The Second Protection Against Violence Act (*Zweites Gewaltschutzgesetz*), Federal Law Gazette Vol. I No. 40/2009, created the offence of “persistent perpetration of violence” (*fortgesetzte Gewaltausübung*) pursuant to sec. 107b of the Criminal Code which, although applicable to violence in different relationships, will be applied primarily to acts of domestic violence. In addition, a multitude of other offences cover various forms of domestic violence, namely nearly all offences against life and limb, sexual offences, but also, for instance, offences against property such as damage to property. Since the entry into effect of the Criminal Code Amendment Act of 2006 (*Strafrechtsänderungsgesetz*), Federal Law Gazette Vol. I No. 56/2006, all acts of violence within families and/or other domestic relationships have been placed on a completely equal footing, under criminal law, with acts of violence outside families and/or other domestic relationships. This also refers to marital/partner rape, for which a special right of mitigation applied for a long time.

#### **12. Support of victims of domestic violence**

229. Pursuant to sec. 66 para. 2 of the Code of Criminal Procedure (*Strafprozessordnung*), Federal Law Gazette No. 631/1975 as amended, victims of violence are entitled to free psycho-social and legal assistance during their proceedings (preparation, assistance, legal advice and representation regarding complaint and criminal proceedings, in certain circumstances psycho-social assistance during civil proceedings taking place after the criminal proceedings). In addition, at public prosecutor’s offices of a certain size (starting from 10 permanent posts) proceedings regarding violence within a person’s close social environment (domestic violence, violence against children) are to be entrusted to one or

more public prosecutors who have received special training. Since the entry into effect of the First Protection Against Violence Act (*Erstes Gewaltschutzgesetz*), Federal Law Gazette No. 759/1996, the police has been authorised, in the case of (an imminent) attack against the life, health or freedom of a person, to expel the person causing the danger from the apartment in which the person at risk lives and from the direct surroundings of such person and to impose a prohibition order (*Betretungsverbot*) on such person (sec. 38a of the Security Police Act [*Sicherheitspolizeigesetz*], Federal Law Gazette No. 566/1991 as amended).

230. As an additional measure for the support of persons directly affected by domestic abuse, an intervention centre and/or a violence protection centre (sec. 56 para. 1 of the Security Police Act) have been in place in each province since 1999. In five provinces, regional centres have been set up as well. In addition, women's service centres (providing counselling), an Austrian-wide free 24-hour helpline for women and a total of 30 women's shelters (with a total of 750 places) are supported and advertised. For persons affected by sexualised violence, five autonomous emergency hotlines (Innsbruck, Linz, Salzburg, Graz, Vienna) and a 24-hour hotline of the City of Vienna are available.

### **13. Public awareness-raising measures/training regarding domestic violence**

231. Public awareness-raising measures include the (co-)financing of events regarding violence against women. Examples of such events and information on additional awareness-raising initiatives are provided in the Annex. In the education and further training of judges and public prosecutors as well as law-enforcement officers, considerable attention is given to topics relating to protection against violence. For instance, pursuant to sec. 16 of the Service Regulations Act for Judges and Public Prosecutors (*Richter- und Staatsanwaltschaftsdienstgesetz*), Federal Law Gazette No. 305/1961 as amended, the prevention of violence and the law on the protection against violence are examination subjects of the final examination for judges. Training measures for employees at institutions for women are supported on a regular basis as well.

### **14. Legislation criminalising trafficking in persons**

232. In Austria, specific criminal law provisions against trafficking in persons are in place. These include, without limitation, sec. 104a of the Criminal Code (Trafficking in persons), sec. 217 of the Criminal Code (Cross-border trafficking for prostitution) and sec. 116 of the Alien Police Act of 2005 (*Fremdenpolizeigesetz 2005*), Federal Law Gazette Vol. I No. 100/2005 as amended (Exploitation of a foreigner). In addition, other criminal law provisions such as sec. 194 of the Criminal Code (Illegal adoption) lay down sanctions against various forms of trafficking in persons.

### **15. Trafficking in persons/national plan of action, support of victims**

233. At the Public Prosecutor's Office in Vienna and at the Provincial Court for Criminal Matters in Vienna, specialised departments for the investigation of cases of trafficking in persons have been set up. This ensures that public prosecutors and judges who have received special training and who are, in particular, also familiar with the needs of victims of trafficking in persons are entrusted with such cases. In addition, reference is made to the general comments on the protection of victims provided in connection with domestic violence.

234. On the basis of international debates and measures (UN, EU, Council of Europe), in 2006 the federal government established the task force for trafficking in persons, and in 2007 adopted a national plan of action under which it was decided to set up a working group on trafficking in children. The working group, which operates under the auspices of the Ministry of Youth, has presented its first report on its activities during the period 2007-



2009. Its tasks include gathering knowledge on the situation in Austria and providing information on this phenomenon in order to make the identification of victims easier. To this end, an information folder listing indicators was published and distributed to employees of youth welfare institutions, the police, aliens' departments, judicial institutions, embassies and consular representations. Moreover, strategies for the prevention of trafficking in children, the improvement of the protection of victims and the targeted punishment of perpetrators are being developed. Comprehensive information on the topic of trafficking in children is available at [www.kinderrechte.gv.at](http://www.kinderrechte.gv.at).

235. See also the data provided in the Annex.

## **Article 11**

### **1. The right to the continuous improvement of living conditions**

#### **(a) Poverty line**

236. In Austria, there is no official or politically defined poverty line. Reports on poverty refer to the risk-of-poverty threshold used at EU level, which is set at 60% of the weighted median household income. Persons whose income is below this threshold value are deemed to be at risk of poverty. The relevant figures are available at <http://www.bmask.gv.at/cms/site/liste.html?channel=CH0104>.

#### **(b) Combating poverty and Item 29 of the recommendations of the concluding observations on the third and fourth periodic report**

237. Combating poverty is a central objective of the government programme for 2008 to 2013.

238. As an upgrade of the existing social security systems of the federal provinces, as an additional important pillar in the social protection system and as an important means to combat poverty, the means-tested minimum income scheme is scheduled to be introduced; it is supposed to come into force on 1 September 2010 and create a system of uniform minimum standards all over Austria. Details on the means-tested minimum income are provided in the Annex.

239. Within the framework of the EU programme on social inclusion (Austrian Report on Strategies for Social Protection and Social Inclusion 2008 to 2010), Austria also adopted a strategy plan.

240. Within the context of a joint co-ordination procedure for social inclusion, data are collected and indicators computed in all EU countries. EU-SILC (Statistics on Income and Living Conditions), which is standardised EU-wide, serves as the basis. In addition, nationally determined indicators are collected. Both data collections are subjected to a monitoring and evaluation procedure. They form the basis for defining strategic goals and for assessing the effects of initiated interventions.

241. Classified by population groups, the income and living conditions of all private households are surveyed, either on a representative basis or based on administrative data. The results are available on the following website: <http://www.bmask.gv.at/cms/site/liste.html?channel=CH0104>.

242. In this context, improvements in the field of care-related services and benefits, higher pensions and comprehensive measures for education and further training as well as for promoting the employment of young people should be mentioned as important measures in social and labour-market policy.

(c) **Family hardship allowance scheme**

243. In 2008, 366 allowances in the total amount of EUR 776,299 were granted. With this amount, 809 children in various emergency situations were financially supported.

244. In connection with the extensive flooding in 2002 and 2005, a total of EUR 385,000 in allowances was paid out within the scope of the flood relief scheme in co-operation with the disaster relief funds of the federal provinces. Overall, from 1999 to 2008, some 4,000 families received financial support in a total amount of EUR 9.73 million through the family hardship allowance scheme.

245. For details, see page 805 of the Fifth Austrian Family Report, available at: <http://www.bmwfj.gv.at/Familie/Familienforschung/Documents/Familienbericht%202009/Band%20II%20-%20Familienpolitische%20Akzente.pdf>.

**2. The right to adequate food**

246. The National Action Plan for Nutrition (*NAP.e*), which was implemented in Austria in early 2010, follows a comprehensive approach (“health in all policies” strategy). The objective is to create a constantly evolving action catalogue with reliable data generation and documentation of effects. It focuses on: regional, national and international networking, evidence-based action and optimisation of information, awareness-raising and nutritional information programmes. It facilitates effect-oriented planning and controlling with regard to priority fields of action and clear goals that are identified on an annual basis. The *NAP.e* is designed to create a structured dialogue and lead to the implementation of effective measures which reverse the increase in overweight and obesity in Austria. The project is managed by the Austrian Agency for Health and Food Safety (*Österreichische Agentur für Gesundheit und Ernährungssicherheit GmbH*) and the *Fonds Gesundes Österreich*, a fund aimed at promoting health in Austria. In addition, scientific projects such as the Austrian Nutrition Report, for which EUR 500,000 are earmarked for three budgetary years, are part of the *NAP.e*. Further information can be found in the Annex. In addition, information on the Nutrition Report 2008 is available at: <http://www.bmg.gv.at/cms/site/standard.html?channel=CH0857&doc=CMS1081844270722> (in English and German).

247. In Austria, the multi-year integrated food-safety inspection plan (*mehrfähriger integrierter Kontrollplan*) 2007 to 2010 was drawn up pursuant to sec. 30 of the Food Safety and Consumer Protection Act (*Lebensmittelsicherheits- und Verbraucherschutzgesetz*), Federal Law Gazette Vol. I no. 13/2006 as amended. EU legislation serves as the basis for drawing up such a plan. The plan defines the strategy and the objectives of risk-based food-safety inspections. The detailed requirements for inspection activities are specified on an annual basis in the review and sample schedule. Both instruments are designed to make sure that safe food is available to the Austrian people.

**3. The right to water**

248. It can be assumed that water supply and disposal systems are in place throughout almost the entire Austrian territory.

249. Directive 2000/60/EC establishing a framework for the Community action in the field of water policy (Water Framework Directive) obligates the Member States to draw up a national water management plan (*Nationaler Gewässerbewirtschaftungsplan*), i.e. a river basin-related plan. For Austria, the National Water Management Plan 2009 was drawn up (<http://publikationen.lebensministerium.at/publication/publication/view/3257/28607>); individual parts of this plan were declared binding by means of the National Water Management Ordinance of 2009 (*Nationale GewässerbewirtschaftungsVO 2009*), Federal Law Gazette Vol. II No. 103/2010.

250. The National Water Management Plan 2009 provides, for example, for measures designed to create adequate incentives for water users to treat the resource of water in a sustainable and efficient way. Furthermore, adequate contributions are to be collected from the water-using sectors for the recovery of the costs of water services.

251. Even though the prices for water (for water services and other uses) have been regulated by law for some time (Fiscal Constitutional Law, provincial laws, fee schedules), water-pricing policies are to create an incentive for users to act in accordance with the targets of sustainability and efficiency and, therefore, in a more environmentally friendly way (e.g. by means of minimum fees, installation of water meters, use of water-saving technologies, state-of-the-art abstraction controls). Water-pricing policies cover all financially relevant regulations (regarding territory and agreements) applicable to the use of water. They also affect, in particular, the field of municipal water management, i.e. the provision of water for the users and the collection and purification of waste water.

252. In addition, measures for more transparency regarding water utilisation costs are planned.

253. Connection to the public sewage system is regulated in the relevant provincial laws of the federal provinces. Provisions regarding compulsory connection to the public water supply system and exceptions thereto are subject to provincial legislation.

254. Austria's water supply and waste water disposal system can be considered a decentralised one. It features small-scale structures and a large number of (predominantly small) supply and disposal companies.

255. For the most part, the municipalities are in charge of public water supply and waste water disposal. Only a very small part of these services are rendered by other supply or disposal companies such as, for example, privately-owned companies (basically spun-off public-sector companies, e.g. *Stadtwerke*, which is also a supply and disposal company). Water supply and waste water disposal are carried out by the municipalities. The municipalities are free to decide how they organise these services in detail. In general, the municipalities have the right (based on resolutions of the municipal council) to levy fees that cover investment and operating costs of municipal facilities.

256. Pursuant to Art. 8 of the Water Framework Directive, programmes are to be developed to monitor the status of water in order to get a coherent and comprehensive overview of the water status in each river basin district. At a national legal level, these requirements were transposed in 2003 in the seventh chapter of the Water Act of 1959 (*Wasserrechtsgesetz 1959*), Federal Law Gazette No. 215/1959 and in the Water Status Monitoring Ordinance (*Gewässerzustandsüberwachungsverordnung*), Federal Law Gazette Vol. II No. 479/2006.

257. Therefore, as regards the right to water, reference can be made to the Water Act of 1959, which lays down environmental goals for surface water, groundwater and protected areas. In order to comply with these provisions, all of which aim at good water status, the Quality Objective Ordinance for the Chemical Status of Surface Water (*Qualitätszielverordnung Chemie Oberflächengewässer*), Federal Law Gazette Vol. II No. 96/2006, the Quality Objective Ordinance for the Ecological Status of Surface Water (*Qualitätszielverordnung Ökologie Oberflächengewässer*), Federal Law Gazette Vol. II No. 99/2010, and the Quality Objective Ordinance for the Chemical Status of Groundwater (*Qualitätszielverordnung Chemie Grundwasser*), Federal Law Gazette Vol. II, No. 98/2010, have been issued so far.

**4. The right to adequate housing****(a) General remarks and Item 30 of the recommendations of the concluding observations on the third and fourth periodic report**

258. The Austrian National Platform of Social Services for Homeless People (*Bundesarbeitsgemeinschaft Wohnungslosenhilfe*) carried out a national survey regarding homeless people in the period of 2006 to 2008. The study aimed at identifying the number of people and households in Austria who are homeless or at risk of becoming homeless. It was also intended to support EU-wide efforts to upgrade the database on homelessness and on the corresponding assistance structures and to extend the existing basis to a trans-national scale.

259. The results of this survey are available at <http://www.bmsk.gv.at/cms/site/attachments/5/4/1/CH0184/CMS1229091777409/kurzfassung.pdf>. They resulted in a comprehensive overview of homeless people and families in Austria and those at risk of becoming homeless, insofar as they have received counselling and/or care from assistance institutions for the homeless.

260. The Austrian Law of Tenancy (*Mietrechtsgesetz*), Federal Law Gazette No. 520/1981 as amended, provides for a tried and tested legal protection system for tenants and people looking for housing with respect to the rent; the law is intended to create affordable access to housing, among other things, by limiting the rent. In addition, strict protection provisions against eviction are in place. These civil-law protection provisions are accompanied by various social services and other assistance measures such as, for example, rent allowance for low-income groups, and activities of social institutions that are structurally connected with the courts in order to help prevent eviction and homelessness. Please see the table listing the number of requested evictions in the past five years in the Annex.

**(b) Housing subsidies**

261. The highest priority of Austria's housing subsidy scheme has been to counterbalance the housing shortage. In addition, in the past few years, the renovation of old buildings and old dwellings as well as the increase of energy efficiency have gained importance. The current assistance scheme aims to lower financial and energy expenses, with families (depending on the number of members, the family income, custody obligations for a special-needs child, etc.) being additionally supported.

262. See also the chapter on homes and other environments of families on pages 673 to 674 of the Fifth Austrian Family Report, available at <http://www.bmwfj.gv.at/Familie/Familienforschung/Documents/Familienbericht%202009/Band%20II%20-%20Familienpolitische%20Akzente.pdf>.

**(c) Housing for persons with special needs**

263. In addition to including a "mandatory design of living quarters in accordance with the requirements of barrier-free construction" into the regular layout of a flat pursuant to sec. 2(2) of the Non-Profit Housing Act (*Wohnungsgemeinnützigkeitsgesetz*), Federal Law Gazette No. 139/1979 as amended, the housing legislation amendment of 2000 allows non-profit housing associations to offer housing-related services that benefit primarily the residents of the flats managed by the housing association (e.g. care services for the elderly).

264. The housing legislation amendment of 2006, Federal Law Gazette No. 124/2006, which came into force on 1 October 2006, created the new "flat type" of a "senior-citizen flat" in the Law of Tenancy. The objective of this newly defined "dwelling form" — in which the right of surviving family members to take over the tenancy on grounds of death

is partially revoked — is to make such flats more attractive especially to senior citizens through non-profit housing associations.

265. For information on housing subsidies in the federal provinces, see the detailed comments provided in the Annex.

## Article 12

### 1. National health policy

266. A focus of current health policy in the government programme 2008–2013 is to ensure a high-quality provision of medical services to all people in Austria, regardless of their income, age, origin, religion or sex. When further developing the health care system, the interests of patients have to be taken into consideration, which is to say that the publicly funded health care system must be revised and adjusted to provide services which correspond to the patients' needs (in particular with regard to dental medicine, psychotherapy and immunisation of children and adults), while at the same time securing the necessary funding.

### 2. Access to health care

267. By Federal Law Gazette Vol. I No. 131/2006, the protection period in force after termination of an employee's compulsory insurance was extended from three to six weeks. During this period of time, patients continue to be provided with health care services, thus avoiding short-term gaps in insurance cover.

268. With the coming into force of the Social Law Amendment Act of 2007 (*Sozialrechtsänderungsgesetz 2007*), individuals working under minimum-employment contracts during periods of child-raising were given the opportunity to take out a special self-insurance available for persons with minimum-employment contracts at a favourable rate during the first 48 calendar months following birth, in the case of multiple-birth children during the first 60.

269. The Third Social Law Amendment Act of 2009, Federal Law Gazette I No. 84, provides co-coverage under health insurance without paying contributions for those individuals who provide care to insured persons entitled to receive care benefits in the amount stipulated for level 3 or higher (i.e. care requirement of more than 120 hours a month) in the environment of their home, on a non-gainful basis, to an extent that claims almost all of the time they would otherwise need to pursue gainful employment.

270. The Third Social Law Amendment Act of 2009 also created the opportunity for the dental clinics operated by health insurance carriers to provide medical services for the prevention of diseases of the teeth, mouth and jaw, including the related tissue.

271. A not insignificant number of social welfare recipients are not included in the statutory health insurance scheme but are provided with health care services in various ways by the social welfare institutions of the provinces. The uniform inclusion of all recipients of social welfare into the statutory health insurance scheme is planned in the course of the upcoming introduction of the means-tested guaranteed minimum income (Annex ad Art. 11) (e-card for all individuals concerned). For further details, please refer to the Annex.

### 3. Costs

272. Federal Law Gazette Vol. I No. 101/2007 introduced a cap on prescription charges in the amount of 2% of a person's net income: As soon as an insured has spent 2% of

his/her net income on prescription charges during one calendar year, he/she becomes exempt from prescription charges for the remainder of that calendar year.

#### **4. Training of health personnel**

273. The training regulations of some health-care professions (e.g. health care workers, paramedics) explicitly set forth, among other things, the following objective: "To teach a respectful basic mindset, respect for the life, dignity and fundamental rights of all people, regardless of their nationality, ethnic origin, religion, skin colour, age, sex, language, political affiliation and social class, as well as reliable, independent and human interaction with all people, be they healthy, disabled, ill or dying." All training programmes include curricula that treat ethical aspects pertaining to the profession, which follow, among other things, the standards of international professional associations, and thus teach ethical behaviour. Moreover, the training regulations for health-care programmes at universities of applied sciences (*Fachhochschulen*) provide for a profile of necessary skills which includes, for example, the ability to relate to people with various cultural and religious needs, lifestyles and attitudes.

#### **5. Health of pregnant women and young children**

274. The Mother/Child Pass examination programme ensures that adequate health services are provided for all pregnant women, and children up to the age of five. These women and children may consult statutory health insurance physicians (*VertragsärztInnen*) on the register of the social security carriers for free. For individuals who do not have insurance, federal funds are appropriated for these examinations. Starting at the beginning of 2010, the examination schedule for pregnant women has been expanded by one ultrasound scan to be carried out between the 8<sup>th</sup> and 12<sup>th</sup> week of pregnancy, one HIV test up to the 16<sup>th</sup> week and one oral glucose tolerance test at 25 to 28 weeks.

#### **6. Access to clean water**

275. See comments regarding article 11, heading 3.

#### **7. Infectious diseases**

276. In 2009 the electronic epidemiological notification system for infectious diseases was introduced in all of Austria. This system enables the real-time surveillance of epidemiologic developments and has also led to a significant improvement in the quality of data. Data on infectious diseases which have to be reported are entered into an electronic register that is directly available to the competent authorities for planning preventative action as well as for implementing outbreak control. Moreover, high-quality data can now be transferred to the European Centre for Disease Prevention and Control (ECDC).

#### **8. Prevention of substance abuse**

277. Great significance is being attached to the continuation of the focus that health policy has so far placed on substance abuse prevention, in order to ensure the implementation of Item 32 of the recommendations of the Concluding Observations on the Third and Fourth Periodic Report. Accordingly, the Narcotic Substances Act (*Suchtmittelgesetz*), Federal Law Gazette No. 112/1997 as amended, provides for the subsidising not only of institutions that offer counselling, treatment and care in connection with drug abuse but also of the offices for substance abuse prevention that have been set up as centres of competence in all the provinces. Their main tasks are to initiate, develop, advise on and monitor projects implemented at a local and regional level and to offer education programmes to multipliers (parents, schoolteachers, kindergarten teachers, etc.) as well as specific training for a wide variety of professional groups.

278. For gender-specific drug prevention programmes in schools, which take into consideration the various aspects of identity formation in men and women, a large amount of detailed information is provided. In general, health education is included in many curricula as an educational principle (*Unterrichtsprinzip*) and specified in the Ministerial Policy Decree on Health Education (No. 7/1997).

279. The Federal Ministry for Education, Arts and Culture has set up a separate fund for (environmental and) health education, which not only provides funding but also initiates PR activities (e.g. awards) and evaluations. The fund has a total annual budget of EUR 50,000 to be made available for projects that have been developed by individual schools for the purpose of health education.

280. In addition, school-based crime prevention programmes by the police specifically deal with the prevention of substance abuse. Teachers, staff of the offices for substance abuse prevention and law-enforcement officers help pupils to become aware of various aspects of refusal skills and to gain understanding of the risks and consequences of substance abuse.

281. Officers in charge of these school-based programmes receive continuous training to raise their own awareness and prepare them for classroom lessons. In their work, all drug prevention officers take into account the current developments and new manifestations of juvenile delinquency, which determine the number of interventions made and lectures given and how often they contact guidance counsellors, etc. The same applies in particular also to the prevention of violence.

## 9. HIV prevention

282. As an example illustrating the measures taken in this area, it is to be mentioned that the Federal Ministry of Health subsidises seven provincial AIDS counselling centres. The main task of these centres is HIV prevention with a particular focus on educating young people. In addition, target-group-specific education and prevention is also provided to specific risk groups. The Ministry also supports the generally accessible homepage of Austria's AIDS counselling centres (<http://www.aidshilfen.at/>), providing detailed information and numerous contacts, partly also in English and French.

## Article 13

### 1. Education on economic, social and cultural rights

283. In Austria, human rights education has been integrated into school curricula since 1978 via the educational principle "civic education" (*politische Bildung*). According to this principle, civic and human rights education is a fundamental part of teaching in all the subjects, at all school levels and in all school types. In addition, human rights are taught within the framework of civic education, a compulsory subject, and are incorporated into the science and social studies (*Sachunterricht*) curriculum of primary schools.

284. In the curricula of technical and vocational schools and colleges, economic, social and cultural rights are primarily taught in business administration, accounting, economics, civic education and law. In addition to technical know-how, the business knowledge taught also includes the social and ecological responsibility of those working in the business sector.

285. Human rights are dealt with in numerous ways at Austrian schools, ranging from education in history and political science (National Socialism and the Holocaust) to the treatment of human rights aspects of globalisation. Frequently, children's rights are used as an introduction to human rights education.

286. In addition to regular human rights education, detailed information and teaching material explicitly treating economic, social and cultural human rights is available. These measures have been compiled in a collection of relevant information and made available online at: [www.politische-bildung.at/index.php?modul=themen&show\\_no\\_archiv=1&top\\_id=3477](http://www.politische-bildung.at/index.php?modul=themen&show_no_archiv=1&top_id=3477).

## **2. Education, compulsory schooling, free access**

287. As laid down at constitutional level, democracy, humanity, solidarity, peace and justice as well as open-mindedness and tolerance are the fundamental values to which Austrian schools are committed. Schools must ensure the best possible level of education for all, regardless of the origin, social status or financial means of pupils or their parents. This holds true for all public primary and secondary schools.

288. Compulsory school attendance starts at the age of six and lasts for nine years. Attendance at a part-time vocational school for apprentices (*Berufsschule*) is compulsory for apprentices and for certain groups of vocational trainees. Apprenticeship training — as primary vocational training — takes place in the context of a dual system: company-based training of apprentices is complemented by attendance at a part-time vocational school.

289. The necessary teaching aids, in particular textbooks but also, for example, electronic teaching resources, are provided free of charge for pupils of all school levels. The co-payment to be made by parents (10%) is very often dispensed with, for example, in case of special needs schools, for therapeutic purposes, etc. For details, please refer to the Annex.

290. To provide financial assistance in connection with schooling, allowances may be granted for the participation of pupils in school events, in general as well as in special cases of hardship. On certain conditions, such as a good academic performance record and social neediness, children are eligible for a boarding allowance from ninth school level onwards (when accommodated in a school boarding house), sometimes also for a commuting allowance, as well as from tenth level onwards for school allowance. When additional standards are met (e.g. co-payment, disability, excellent academic performance record), boarding and school allowances are higher. School attendance is also supported by free school commuting by public transport and/or school busses, if necessary also by other grants or allowances.

291. The establishment of private schools is provided for under constitutional law. These schools are most commonly maintained by churches and religious communities recognised under the law, by local authorities or by other bodies under public law.

292. In many instances, the federal government contributes to the funding of private schools, most frequently by way of payments, but also by meeting the costs for the salaries of teachers.

## **3. Universities, free access to universities and ad Item 33 of the recommendations of the Concluding Observations on the Third and Fourth Periodic Report**

293. Pursuant to sec. 63 of the Universities Act of 2002 (*Universitätsgesetz 2002*), Federal Law Gazette Vol. I No. 120/2002 as amended, admission to degree programmes is conditional on fulfilment of the general and particular admission requirements. Admission numbers are limited only for the study of medicine and journalism.

294. Students who are Austrian citizens, citizens of the European Union or to whom Austria is obliged under international treaties, such as, for example, the Convention relating to the Status of Refugees, to accord the same rights to access to employment as its nationals, do not have to pay tuition fees provided that these students do not exceed the minimum duration determined for each section of the degree programme by more than two



semesters. Remission or reimbursement of tuition fees may be granted to students with disabilities, students who, in the previous semester, received a scholarship grant under the Studies Promotion Act of 1992 (*Studienförderungsgesetz 1992*), Federal Law Gazette Vol. I No. 305/1992 as amended, students requiring a period of study or work experience abroad, or students who have become ill or pregnant. Students who have been granted leave of absence are not required to pay tuition fees. In any case, Convention refugees enjoy the same rights as Austrian students.

295. A well-designed system of financial aid to students (EUR 180 million per year) also makes it possible for students from low-income families to attend university. The success of Austria's efforts to facilitate all aspects of mobility in higher education is also illustrated by the steep increase in the number of students enrolled at Austrian universities, which rose to 273,000 in the academic year 2009/2010 from 220,000 the previous year. 61,000 students were foreign nationals. Further information on financial aid to students is available at <http://www.bmwf.gv.at/wissenschaft/national/studienfoerderung/>.

296. Please refer also to the Annex.

#### 4. Lifelong learning

297. Several provinces offer continuing education and training programmes at adult education centres. Vienna, for example, has aligned the education programme offered by Wiener Volkshochschulen GmbH in accordance with European and national strategies on competences, using the key competences defined by the EU as a reference framework. All eight key competences are offered. The Vienna adult education centres also offer comprehensive second chance education (*zweiter Bildungsweg*) programmes, ranging from literacy to obtaining the "Matura" certificate, which entitles the holder to attend university.

#### 5. Instruction of or in a native language

298. Austria is aware of the fact that, in general, the availability of education programmes in the languages spoken by ethnic groups and/or programmes providing classroom instruction presented both in the specific languages as well as in the language spoken by the majority, plays an important role in preserving the native languages of ethnic groups. In multi-lingual early childhood education, private bilingual kindergartens are supported by the federal and provincial governments, for example, from the funds of the ethnic group promotion scheme, provided that no bilingual municipal kindergarten is available.

299. The principles of schooling relating to the six autochthonous national minorities (ethnic groups) in Austria, granted in part by international law, in part (also) by constitutional law, are basically governed by two federal acts that are comparable in structure: The Minority School Act (*Minderheiten-Schulgesetz*) for Burgenland regulates schooling for the local Croat and Hungarian ethnic groups and also contains provisions governing the Roma; the Minority School Act for Carinthia concerns the local Slovene ethnic group. Both acts relate to compulsory schools and academic secondary schools, in a differentiated way also to technical and vocational colleges. The Czech ethnic group in Vienna has a private education and school system at its disposal, providing for an unbroken chain of education, in other words education from kindergarten up to the "Matura" certificate, and also contains programmes targeted at the Slovak ethnic group.

300. These schools only differ from the rest of the schools in Austria in their extended language programmes. Otherwise the same level and quality of education as in all the other Austrian schools is guaranteed.

301. Apart from these specific school programmes available to ethnic groups in Austria, the languages spoken by ethnic groups are taught as a subject at general public schools, in different types of schools and at numerous locations. Moreover, numerous ethnic group

organisations run language programmes for children and young people, aimed at teaching or improving the ethnic language skills of Burgenland Croatian, Slovene, Hungarian, Czech, Slovak and Romani. They also receive funding from the ethnic group promotion scheme.

302. In addition to these six ethnic group languages, children from ethnic groups that are not autochthonous in Austria have been able to receive classroom instruction in their native tongue for many years in approximately 20 languages, irrespective of their nationality. To give an example, more than 360 teachers provided mother-tongue instruction to approximately 30,000 pupils at more than 800 schools (more than 500 of which were primary schools) in the academic year 2008/09. Interest in ethnic group languages has significantly increased over the past few years, which has had effects on ethnic group schooling, as shown, for example, by the development of enrolment figures in schools in Carinthia (see the Annex).

## **6. Equal opportunities**

303. As concerns the curricula and admission to different types of schools, no distinction is basically made between girls and boys at Austrian schools. (All gender-specific names of schools were abolished in the 1980s.)

304. Especially girls and women have benefited from the education campaign over the past few decades: The proportion of girls in academic secondary schools and technical and vocational colleges has continuously risen to more than 50%. Approximately 56% of the pupils currently attending academic secondary schools are girls. This trend continues at the tertiary level; currently, approximately 57% of the students at universities are women.

## **7. Drop-out rates**

305. The current drop-out rate in Austria is 9.6% (below the EU average of 17%) and relates to people aged 18 to 24 who have not completed any schooling beyond compulsory school and are no longer in training. At 8.4%, the proportion of women is slightly lower.

306. The drop-out rate of migrants, however, amounts to 29.8% and that of second or third generation migrants is approximately 15.6%. Whereas women, on the average, do not drop out of education as frequently, the drop-out rate of women with migration backgrounds is higher. In this connection it is paramount to consider how to communicate to educationally disadvantaged parents the value of educating girls – an undertaking that is all the more complicated because it is difficult or even impossible to reach these parents through the schools, not only due to language barriers. To avoid drop-outs and/or early school leaving, Roma projects providing extracurricular learning assistance also receive funding under the ethnic group promotion scheme and have proved highly effective.

307. In general, lowering the rate of young people who have not completed schooling or vocational training has been stipulated as a prime objective in the government programme 2008–2013. In this regard, securing youth employment by granting young people the opportunity to attend secondary schools is a central approach. To implement guaranteed education up to the age of 18, a model was developed for returning to education and training and obtaining upper secondary qualification on the basis of a shared funding commitment of the federal government and the provinces. Reaching agreement on common target figures, setting common quality standards for implementation, determining uniform requirements of access to the funding model (eligible target groups) in all of Austria and negotiating financial and accounting issues with all provinces is a time-consuming and complex process.

## Article 15

308. Art. 17 of the Basic Law on the General Rights of Nationals provides that academic and scientific research and their teaching are free. Art. 17a of the same Basic Law states that artistic creativity as well as the dissemination of the arts and their teaching are equally free. The Federal Ministry of Science and Research is making enormous efforts to reach the target of spending 3% of GDP on research.

### 1. Integration through sport and equal opportunities in society in Austria

309. Sport is both an integral part and a reflection of societal reality. Sports programmes help people to deal with unemployment in a constructive manner. A good illustration of this is the Fit-Start project, a successful initiative for job-seekers launched by the Working Group for Sport and Physical Culture in Austria (*Arbeitsgemeinschaft für Sport und Körperkultur in Österreich*) in 2007.

310. To all intents and purposes, sport is an ideal means of implementing socio-political integration measures. For this reason, sport clubs and associations as well as the provincial and federal umbrella organisations carry out integration projects. The federal government has the option of using the federal sports promotion scheme to give incentives for placing a stronger focus on the subject of integration in sport, for example by promoting projects for girls and women with a migration background in rural areas or in programmes for the integration of adolescents through language and sport in larger cities. Funds under the federal sports promotion scheme have also been provided for the target group of asylum seekers.

311. In order to strengthen the presence of Austrian women athletes in international competitions, in particular the Olympic Games, World Championships and European Championships, the general federal sports promotion scheme has earmarked EUR 300,000 for gender mainstreaming in its annual budget. These funds promote high-performance women athletes. This advancement measure yielded its first positive effects at the Beijing Olympic Games of 2008, for which the percentage of women in the Olympic team was stepped up to 43% as compared to only 27% four years earlier.

312. The Austrian Institute for the Construction of Schools and Sports Facilities (*Österreichisches Institut für Sportstättenbau, ÖISS*) has developed several instruments ensuring accessibility for people with disabilities, such as the ÖISS guideline on accessible sports facilities as an important planning tool, or ÖISS assessments of sports projects, in which the projects are tested for accessibility as a basis of obtaining federal and/or provincial grants.

313. These instruments have most recently been supplemented by an agreement stipulating that the Austrian Sports Federation for the Disabled (*Österreichischer Behindertensportverband, ÖBSV*) has to be involved in assessing construction projects of sports facilities of Austrian-wide relevance (if these receive funding from the federal government), thus ensuring that the sports facilities are constructed taking the specific needs of athletes with disabilities into account.

### 2. Access to the cultural heritage of mankind

314. Austria promotes the arts in manifold ways, thereby making cultural life accessible to large segments of the population. For information on federal museums, federal theatres and other federal institutions, such as the Austrian National Library, their budgets, federal funding options as well as their numerous public activities carried out in 2008 and 2009, please refer to the 2009 Culture Report, which may be downloaded at <http://www.bmukk.gv.at/medienpool/19409/kulturbericht2009.pdf>.

### 3. Participation in cultural life by children

315. As a recent example of efforts to facilitate the participation of children in cultural and artistic life it is to be mentioned that admission to all federal museums is now free for children under the age of 19. At the same time the federal museums and the Austrian National Library have intensified their cultural education programmes focussing on specific subjects to establish these institutions as places where children can learn. School classes are, for example, offered guided tours, workshops, projects or get-togethers with contemporary artists.

316. The Vienna museum Albertina now offers adolescents a multi-media guide called “Albertina for you and me”, which was created by a school class in cooperation with curators and educators. Getting acquainted with the museum’s masterpieces in an exciting and playful manner paves the way to holistic learning in which art history, creativity and aesthetic education go hand in hand.

317. The first success of these programmes and measures, which have been in effect since the beginning of 2010, is reflected, for example, in the fact that a total of 220,000 children and young people visited federal museums in the first quarter of 2010, which corresponds to an increase of approximately 40% in this segment of visitors.

### 4. Participation of ethnic groups in Austria in cultural life

318. Ethnic groups in Austria have the right to non-discriminatory participation in cultural life, participation in scientific progress, copyright protection and the freedom of research and the arts, just like the majority of the population.

319. Art. 8 para. 2 of the Federal Constitution states, as a basic policy clause, that the Republic (Federation, provinces and municipalities) recognises and endorses its evolved linguistic and cultural multiplicity as expressed in the autochthonous ethnic groups, and that the existence and preservation of these ethnic groups are to be respected, safeguarded and supported. The Ethnic Groups Act (*Volksgruppengesetz*), Federal Law Gazette No. 396/1976 as amended, provides that the Federation is to award financial support for activities and projects serving the preservation and safeguarding of the existence of the ethnic groups, their traditions as well as their characteristics, irrespective of general financial support measures. For the cohesion of population groups, in particular in areas where ethnic groups have settled, the obligation of the Federation to support intercultural projects that serve the cooperation of ethnic groups is of particular relevance.

320. Therefore, Austria supports the diverse cultural activities pursued by its ethnic groups (e.g. cultural events of a general kind, theatre performances, readings, all types of ethnic arts and culture) as well as, to a varying extent, children’s and youth sports programmes that are bilingual or tailored to the specific needs of ethnic groups. Supporting academic activities concerning the history, language and culture of ethnic groups is a central objective of the ethnic group promotion scheme. In this connection it should be mentioned that the codification and instruction of the six Romani languages most frequently spoken in Austria have been facilitated in Austria through the ethnic group promotion scheme. As a consequence, it is possible to teach Romani dialects either as a school subject or extracurricularly, thus contributing to the preservation of an ethnic group’s most important cultural asset – its language; as a result, other cultural assets (such as folk tales, fairy tales, legends and other lore in Romani dialects) can be recorded and preserved for future generations.

321. For information on individual projects carried out by the provinces with the aim of promoting participation in cultural life, please refer to the Annex.

## 5. Education in the field of culture and the arts in schools and in vocational education

322. Pursuant to the School Organisation Act (*Schulorganisationsgesetz*) schools must, among other things, develop the aptitude of pupils by imparting (also) aesthetic values and empower young people to participate in the cultural life of Austria, Europe and the rest of the world (sec. 2 para. 1). Consequently, the curricula of primary school, general secondary school (*Hauptschule*) and academic secondary school (*allgemeinbildende höhere Schule*) include, for example, music and fine arts education as compulsory subjects. In addition, there are types of academic secondary schools with a special orientation towards musical education as well as academic upper secondary schools (*Oberstufenrealgymnasium*) where special emphasis is placed, for example, on education in the creative arts or music. In the field of secondary technical and vocational education, there are numerous schools and colleges focussing on applied arts.

323. On the occasion of the European Year of Creativity and Innovation 2009, the Federal Ministry for Education, Arts and Culture passed a policy decree on a holistic-creative culture of learning in the schools, and published a brochure entitled “Kreativ & Innovativ – Zukunft in der Schule gestalten” (“Creative and Innovative – Shaping the Future in Schools”) (<http://www.bmukk.gv.at/schulen/kreativinnovativ/index.xml>), giving an overview of numerous programmes and initiatives aimed at comprehensively promoting the interest of pupils in creative and innovative processes. These include, for example, the funding of school projects aimed at creating new approaches to arts education, competitions organised in cooperation with non-school partners, special guided tours for schools to various monuments on a “Monument Day”, cultural education projects for apprentices, dialogue events for pupils with artists, or programmes promoting the use of digitised cultural holdings of museums, galleries, etc. for classroom teaching.

324. Six universities with an artistic orientation have been established under the Universities Act of 2002 as well as three private universities, also with an artistic orientation, under the University Accreditation Act (*Universitäts-Akkreditierungsgesetz*).

## 6. Access to the benefits of scientific progress

325. One of the major goals pursued by the Austrian e-government strategy is to offer everyone the same level of efficient and high-quality public services. With its website [www.HELP.gv.at](http://www.HELP.gv.at), the government has set up an “electronic aid” in the form of a government agency platform which provides comprehensive information on official channels in Austria and also handles administrative procedures through the Internet. The website is structured on the basis of a “life situation” concept and fulfils the standards of the Web Content Accessibility Guidelines and of user friendliness.

326. In order to also provide access to these services to people who lack the necessary technical infrastructure, public multimedia stations providing Internet access to e-government services have been subsidised and approximately 1,000 such machines have been set up throughout Austria. The e-government scheme also operates with intermediaries, thus helping to integrate people who are not willing or able to use such electronic services themselves. Last but not least, electronic documents are also accessible to the blind and the visually impaired; they may read documents for themselves and sign them by means of an electronic signature.

327. Austria also takes into account the importance of including people with disabilities in the modern information society. On the one hand, Austrian disability equality law has become a safeguard for increasing accessibility of the Internet to people with disabilities. On the other hand, targeted promotion programmes ensure that advisors are available who, together with clients or relatives, try to find individual hardware and software solutions so as to provide the best possible tools for people with disabilities. In addition to such

consultations, special focus is also placed on providing computer training and further training to people with disabilities.

328. All individuals, regardless of their origin and personal views, may study, research and teach at Austrian universities. The premises of universities and research institutions are barrier-free for people with disabilities.

**7. Measures taken to prevent the use of scientific and technical progress for purposes which are contrary to the enjoyment of human dignity and human rights**

329. An important example is the Austrian Bioethics Commission, established in 2001 to prevent the use of scientific and technical progress in human medicine and human biology for purposes which are contrary to the enjoyment of human dignity. It thus advises the Federal Chancellor from an ethical point of view on new developments in the field. This includes in particular the submission of recommendations for practical use and suggestions for enacting the necessary legal provisions as well as the preparation of expert opinions on specific issues. See the Annex for the topics of adopted recommendations.

330. Ethics and arbitration commissions have been set up at universities and research institutions with the aim of making education and research impeccable by ethical standards.

**8. Copyright**

331. The rights of originators are protected by the Copyright Act of 1936 (*Urheberrechtsgesetz 1936*), Federal Law Gazette No. 111/1936 as amended. In conformity with Austria's European and international obligations in the field of copyright protection (most significantly Austria is a Contracting Party to the Berne Convention, as revised, the WIPO Copyright Treaty [WCT] and the WTO Agreement) the Austrian Copyright Act grants all authors moral as well as exploitation rights.

**9. Freedom of academic and scientific research**

332. As already mentioned in the introductory remarks to Art. 15, freedom of academic and scientific research and their teaching is a right granted by federal constitutional law under Art. 17 of the Basic Law on the General Rights of Nationals. This freedom is also enshrined in sec. 2 para. 1 of the Universities Act of 2002.

**10. Conservation, development and diffusion of science and culture and encouraging and developing international cooperation**

333. The Austrian research community is involved in all of the EU's research programmes. Moreover, numerous bilateral research agreements are in place. All universities have entered into numerous partnership agreements with many Austrian and foreign universities and research institutions. In addition, the Austrian Exchange Service (*Österreichischer Austauschdienst*) has been established with the objective of managing and implementing the international exchange of students and researchers. The number of international contacts and research cooperation projects has skyrocketed in the past few years and is significantly promoted by the Federal Ministry of Science and Research.

334. The Federal Ministry for Education, Arts and Culture represents Austria in the Member States Expert Group on Digitisation and Digital Preservation (MSEG). This Group's task is to monitor the progress of digitisation and online accessibility in connection with Europeana and to exchange information and good practices of Members States' policies and strategies in this field.

335. The implementation of a centralised online portal for the digitised material of Austrian resources pertaining to cultural heritage is a project carried out by the Federal

Ministry for Education, Arts and Culture in cooperation with the Federal Ministry of Science and Research. This portal by the name of Kulturpool ([www.kulturpool.at](http://www.kulturpool.at)) is committed to bringing about closer cooperation in the arts, culture, education and science by providing an interdisciplinary and trans-disciplinary approach as well as context information.

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