

# **Anti-Wage and Social Dumping Act (Lohn- und Sozialdumping-Bekämpfungsgesetz, LSDB-G)**

## **Contents**

### **Part 1 General provisions**

- Section 1. Scope of application
- Section 2. True economic substance - assessment criteria

### **Part 2 Claims based on labour law and measures to protect them**

#### **Chapter 1 Entitlements based on labour law**

- Section 3. Entitlement to minimum remuneration
- Section 4. Annual leave entitlement
- Section 5. Entitlement to compliance with working hours and rest periods
- Section 6. Provisions governing the hiring-out of workers on a cross-border basis
- Section 7. Collective agreements

#### **Chapter 2 Liability provisions**

- Section 8. Liability for remuneration entitlements vis-à-vis employers established in a third country
- Section 9. Liability provisions applicable to the construction sector
- Section 10. General contractor's liability for remuneration entitlements vis-à-vis contractors established in an EU Member State or EEA State or the Swiss Confederation

#### **Chapter 3 Authorities**

- Section 11. Authorities and agencies
- Section 12. Investigations of tax authorities
- Section 13. CWSD Competence Centre
- Section 14. Determination of offences by the health insurance provider
- Section 15. Determination of offences by the Construction Workers' Holiday and Severance Pay Fund
- Section 16. Cooperation of domestic authorities in the field of temporary agency work
- Section 17. Cooperation with authorities of other EU Member States and EEA States and mutual administrative assistance (Amtshilfe)
- Section 18. Obligation of employers established in Austria to provide information

#### **Chapter 4 Formal requirements in the event of cross-border assignment**

- Section 19. Reporting requirement for posting or hiring out workers from an EU Member State or an EEA State or the Swiss Confederation
- Section 20. Notification of the authorities
- Section 21. Keeping reporting documents, social security documents and official permits readily available
- Section 22. Keeping wage or salary documents readily available
- Section 23. Contact person
- Section 24. Responsible agents

#### **Chapter 5 Penal provisions, prohibition of services and record of administrative (penal) proceedings**

- Section 25. Place of the administrative offence
- Section 26. Violations of reporting obligations and the obligation to keep documents readily available in cases of posted or hired-out workers

- Section 27. Frustration of pay level verification
- Section 28. Failure to keep pay documents readily available
- Section 29. Underpayment
- Section 30. Failure to report changes concerning the responsible agent
- Section 31. Prohibition of services
- Section 32. Role of a party in administrative (penal) proceedings
- Section 33. Provisional security deposit
- Section 34. Payment freeze - security deposit
- Section 35. Record of administrative (penal) proceedings pursuant to Sections 26, 27, 28, Section 29 Para. 1 and Sections 31 and 34

### **Part 3**

#### **Enforcement of measures to protect claims based on labour law in the event of cross-border assignments**

##### **Chapter 1**

###### **General provisions**

- Section 36. Scope of application
- Section 37. Definition of "domestic authority" and "domestic authorities"
- Section 38. Prosecution effort in cross-border law enforcement
- Section 39. Using the Internal Market Information System (IMI)
- Section 40. Offices of the Land Government as central authorities

##### **Chapter 2**

###### **Service to foreign employers in Austria**

- Section 41. Service to foreign employers in Austria

##### **Chapter 3**

###### **Effecting the service and enforcement of decisions of domestic authorities in another EU Member State or EEA State**

###### **Sub-chapter 1**

###### **General provisions**

- Section 42. Scope of application
- Section 43. Transmission of a request for service or enforcement
- Section 44. Information on the further processing of a request for service or enforcement

###### **Sub-chapter 2**

###### **Effecting the service of decisions made by domestic authorities in another EU Member State or EEA State**

- Section 45. Principles
- Section 46. Request for service in another EU Member State or EEA State

###### **Sub-chapter 3**

###### **Effecting the enforcement of decisions of domestic authorities in another EU Member State or EEA State**

- Section 47. Principles
- Section 48. Request for enforcement in another EU Member State or EEA State
- Section 49. Notification of the authority requested for enforcement of another EU Member State or EEA State
- Section 50. Consequences of the request for enforcement in another EU Member State or EEA State on enforcement in Austria

## **Chapter 4**

### **Service and enforcement in Austria of the decision of an authority of another EU Member State or EEA State**

#### **Sub-chapter 1**

##### **General provisions**

- Section 51. Scope of application
- Section 52. Recognition and equal treatment of the decision of another EU Member State or EEA State
- Section 53. Forwarding in case of lack of competence
- Section 54. Refusal of enforcement
- Section 55. Notification of the requesting authority of another EU Member State or EEA State

#### **Sub-chapter 2**

##### **Service in Austria of decisions made by courts and administrative authorities of another EU Member State or EEA State**

- Section 56. Initiating service
- Section 57. Applicable procedural law
- Section 58. Refusal of service

#### **Sub-chapter 3**

##### **Enforcement in Austria of decisions made by administrative authorities of another EU Member State or EEA State**

- Section 59. Initiating enforcement
- Section 60. Applicable procedural law
- Section 61. Postponement of enforcement
- Section 62. Termination of enforcement
- Section 63. Accrual of monies obtained from enforcement
- Section 64. Costs

#### **Sub-chapter 4**

##### **Enforcement in Austria of decisions made by courts of another EU Member State or EEA State**

- Section 65. Initiating enforcement
- Section 66. Applicable procedural law
- Section 67. Postponement of enforcement

## **Part 4**

### **Final provisions**

- Section 68. References
- Section 69. Inspection plan - activity report
- Section 70. Gender-neutral use of language
- Section 71. Enforcement provisions
- Section 72. Entry into force

## Part 1 General provisions

### Scope of application

**Section 1.** (1) This Federal Act shall apply to:

1. employment relationships based on a contract under private law;
2. the employment of workers as defined by Section 3 Para. 4 of the Temporary Agency Work Act (*Arbeitskräfteüberlassungsgesetz, AÜG*), Federal Law Gazette no. 196/1988;
3. employment relationships governed by the Homeworking Act (*Heimarbeitsgesetz, HAG*) 1960, Federal Law Gazette no. 105/1961.

(2) The following shall be excluded:

1. employment relationships if the employer is the Federal Government and if the employment relationships are subject to public sector employment law, stipulating with compulsory effect the contents of the relationships;
2. employment relationships if the employer is an Austrian state (*Land*), a local authorities association (*Gemeindeverband*) or a municipality (*Gemeinde*);
3. hiring out workers as defined by Section 3 Para. 4 *AÜG* by the Federal Government, one of the Austrian *Laender*, a municipality or a local authorities association;
4. employment relationships with foundations, institutions or funds to which, pursuant to Section 1 Para 2 of the Contractual Employees Act (*Vertragsbedienstetengesetz, VBG*), Federal Law Gazette no. 86/1948, the provisions of said Act shall be applied.

(3) (**Constitutional provision**) With the exception of Sections 3 to 6, Section 8 Para. 2 and Section 20 Para. 3, this Federal Act shall apply to employment relationships of agricultural and forestry workers as defined by the Agricultural Labour Act (*Landarbeitsgesetz, LAG*) 1984, Federal Law Gazette no. 287/1984; Sections 3 to 6 shall apply only where the posting of agricultural and forestry workers is concerned. The admissibility of hiring out agricultural and forestry workers as defined by the *LAG* 1984 is determined by the *LAG* 1984.

(4) Unless hereinafter specified otherwise, this Federal Act shall, without prejudice to the law otherwise governing the employment relationship, also apply to workers posted to perform work in Austria or hired out on a cross-border basis as defined by Section 3 Para. 4 *AÜG* from the European Union (EU), the European Economic Area (EEA), the Swiss Confederation or any other third country. The posting or hiring-out of workers from the Swiss Confederation on a cross-border basis shall be treated like the hiring-out or posting of workers from the EEA. Except for Section 41, Part 3 shall not apply to workers posted or hired out from the Swiss Confederation. Sections 17 to 21, Sections 23 and 26 as well as Part 3, except for Section 41, shall not apply to the posting or hiring-out of workers from third countries.

(5) This Federal Act shall not apply if the worker is posted to Austria exclusively for the purpose of performing the following small, temporary tasks:

1. business meetings without rendering any other services; or
2. participation in seminars and lectures without rendering any other services; or
3. participation in trade fairs and similar events as specified in § 17 Paras. 3 to 6 of the Rest Periods Act (*Arbeitsruhegesetz, ARG*), Federal Law Gazette no. 144/1983, with the proviso that the lower limit set forth in Section 17 Para. 4 ARG does not apply, except for preparatory and concluding activities for the event (assembling and dismantling exhibition facilities and delivering and removing trade fair objects); or
4. attending and participating in congresses and conventions; or
5. participation in and organisation of cultural events (music, dance, theatre or cabaret performances) taking place within the scope of a tour where the event(s) in Austria is (are) only of minor significance, provided that the employees work during most of the tour at least; or
6. participation in and organisation of international competitions (international championships) as defined by Section 3 no. 6 of the Federal Sports Promotion Act (*Bundes-Sportförderungsgesetz, BSFG*) 2013, Federal Law Gazette I no. 100/2013, with the exception of preparatory and concluding activities for the event (assembling and dismantling of facilities for the event) as well as providing food and beverages at the event; or

7. work as a mobile employee or as a crew member (Section 4 of the Ordinance governing the minimum ship crew for vessels (Schiffsbesatzungsverordnung), Federal Law Gazette II no. 518/2004) in the cross-border transport of freight and passengers (transport sector), provided that the work is performed exclusively within the scope of transit traffic and the habitual place of work is not in Austria; or
8. work as an employee who receives a monthly gross remuneration of at least 125% of thirty times the maximum contribution base per calendar day (on average) pursuant to Section 108 Para. 3 of the General Social Insurance Act (Allgemeines Sozialversicherungsgesetz, ASVG), Federal Law Gazette no. 189/1955, within a group as defined by Section 15 of the Stock Corporation Act (Aktengesetz, AktG), Federal Law Gazette no. 98/1965 or Section 115 of the Limited Liability Companies Act (GmbH-Gesetz, GmbHG), Imperial Law Gazette no. 58/1906; or
9. work within the scope of international education and further training or research programmes at universities as defined by the Universities Act (Universitätsgesetz, UG) 2002, Federal Law Gazette I no. 120/2002, at University Colleges of Teacher Education as defined by the Higher Education Act (Hochschulgesetz, HSchG) 2005, Federal Law Gazette I no. 30/2006, or universities of applied sciences as defined by the University of Applied Sciences Studies Act (Fachhochschul-Studiengesetz, FHStG), Federal Law Gazette no. 340/1993.

(6) This Federal Act shall not apply to group-internal temporary postings of particularly skilled workers to Austria as defined by the Posting of Workers Directive within a group pursuant to Section 15 AktG and Section 115 GmbHG; such postings must not exceed a total length of two months per calendar year, provided that the postings take place within a group

1. for the purposes of research and development, training courses held by the skilled worker, planning the project work; or
2. for the purposes of the exchange of experience, corporate consultancy services, financial controlling, or co-operation with group departments with centralised controlling and planning functions which are responsible for several countries.

#### **True economic substance - assessment criteria**

**Section 2.** (1) The true economic substance rather than the outer appearance of the facts shall be relevant for assessing whether an employment relationship, the cross-border posting or hiring out of workers as defined by this Federal Act exists.

(2) Section 4 Para. 2 AÜG or comparable Austrian legislation shall be relevant in assessing whether workers have been hired out.

(3) A posting as defined by this Federal Act shall not require the conclusion of a service contract between an employer not established in Austria and a recipient of services operating in Austria.

## **Part 2**

### **Claims based on labour law and measures to protect them**

#### **Chapter 1**

##### **Entitlements based on labour law**

###### **Entitlement to minimum remuneration**

**Section 3.** (1) Employees with their habitual place of work in Austria shall be mandatorily entitled to the remuneration determined by law, ordinance or collective agreement.

(2) Employees with their habitual place of work in Austria whose employer is not established in Austria and is not a member of a corporate body entitled to enter into collective agreements in Austria shall be mandatorily entitled to the same remuneration determined by law, ordinance or collective agreement to which comparable workers employed by comparable employers are entitled at the place of work.

(3) Workers posted to Austria by an employer established in an EU Member State or EEA State or a third country in order to perform work shall, without prejudice to the law governing the employment relationship, be mandatorily entitled to at least the remuneration determined by law, ordinance or collective agreement (except for contributions pursuant to Section 6 of the Corporate Staff and Self-Employment Provision Act (Betriebliches Mitarbeiter- und Selbständigenvorsorgegesetz, BMSVG), Federal Law Gazette I no. 100/2002 or comparable Austrian legislation, and contributions or premiums pursuant to the Company Pension Act (Betriebspensionsgesetz, BPG), Federal Law Gazette

no. 282/1990) to which comparable workers employed by comparable employers are entitled at the place of work.

(4) If a law, ordinance or collective agreement provides for special payments, the employer shall make such payments to the posted worker or the worker who has been hired out on a cross-border basis on a pro-rated basis for the respective wage period in addition to the regular remuneration (due date).

(5) Para. 3 shall not apply to posted workers who are employed in Austria in the context of supplying equipment to a domestic company which was manufactured by the posted worker's employer or by another employer affiliated with the worker's employer through a company group as defined by Section 15 AktG and Section 115 GmbHG to perform assembly work, implementation and related training or in repair work of such equipment and machinery which cannot be performed by domestic workers, provided the remuneration is subject to a collective agreement and this work in Austria does not take longer than three months in total.

(6) For posted workers involved in construction work for the purpose of erection, restoration, maintenance, conversion or demolition of buildings, in particular in excavation, earthwork, construction work in the narrow sense, erection and disassembly of pre-fabricated elements, fittings or equipment, conversion, renovation, repair, dismantling work, demolition work, servicing, maintenance (painting and cleaning work) or refurbishment as well as in repairs and installations at plant facilities, Paras. 3 and 4 shall, in any case, apply as of the first day of employment in Austria.

#### **Annual leave entitlement**

**Section 4.** (1) Without prejudice to the law governing the employment relationship, employees with their habitual place of work in Austria shall have a mandatory entitlement to paid annual leave.

(2) Employees posted or hired out on a cross-border basis shall be mandatorily entitled to paid annual leave pursuant to Section 2 of the Paid Annual Leave Act (Urlaubsgesetz, UrlG), Federal Law Gazette no. 390/1976, or comparable Austrian laws, for the period they are posted or hired out if the paid annual leave according to the law governing the employment relationship is shorter. After having completed the temporary work period, the posted or hired-out employee shall keep the pro-rated share of the difference between the higher annual leave entitlement according to Austrian law and the entitlement according to the legal provisions governing the employment relationship.

(3) Para. 2 shall not apply to posted workers who perform assembly work as defined by Section 3 Para. 5 in Austria which does not take longer than eight calendar days altogether.

(4) Para. 2 shall in any case, apply to posted workers who perform construction work as defined by Section 3 Para. 6 in Austria as of the first day of employment in Austria.

(5) Paras. 1 to 4 shall not apply to workers to which Sections 33d to 33i of the Austrian Construction Workers' Annual Leave and Severance Pay Act (Bauarbeiter-Urlaubs- und Abfertigungsgesetz, BUAG), Federal Law Gazette no. 414/1972, apply.

#### **Entitlement to compliance with working hours and rest periods**

**Section 5.** Without prejudice to the applicable law, maximum working times and minimum rest periods, including the provisions on working time and rest periods stipulated in collective agreements which apply at the work place to comparable workers employed by comparable employers, shall mandatorily apply to posted workers.

#### **Provisions governing the hiring-out of workers on a cross-border basis**

**Section 6.** (1) Without prejudice to the law governing the employment relationship, a worker hired out to Austria shall, during the period of hiring out to Austria, have a mandatory entitlement to:

1. continued remuneration in the event of illness or accident including the entitlements upon termination of the employment relationship, on public holidays and when prevented from work for other important personal reasons, in the amount and for the period applicable to comparable employees;
2. compliance with the notice periods and dates applicable to comparable employees as well as with the standards governing special protection against termination of employment and dismissal; and
3. compensation for termination of employment;

if this is more favourable than the provisions of the law governing the contractual relationship.

(2) The collective agreements applicable in Austria to workers hired out for commercial purposes shall also be applied to workers hired out to Austria from abroad.

(3) The AÜG or comparable Austrian laws shall also apply to workers hired out on a cross-border basis.

### **Collective agreements**

**Section 7.** (7) The parties to a collective agreement shall make the collective agreements they entered into available electronically. As far as construction activities are concerned, information shall be provided by the Construction Workers' Holiday and Severance Pay Fund (*Bauarbeiter-Urlaubs- und Abfertigungskasse*).

## **Chapter 2**

### **Liability provisions**

#### **Liability for remuneration entitlements vis-à-vis employers established in a third country**

**Section 8.** (1) In the capacity of entrepreneur, the client shall, within the scope of the contract as a guarantor and payer pursuant to Section 1357 of the General Civil Code (*Allgemeines Bürgerliches Gesetzbuch, ABGB*), Law Gazette No. 946/1811, be liable for the remuneration entitlements of posted workers derived from Section 3 of an employer established in a third country.

(2) Section 14 AÜG or comparable Austrian laws shall be applied to temporary agency work, unless this is expressly excluded by said Act.

#### **Liability provisions applicable to the construction sector**

**Section 9.** (1) The client shall, as guarantor and payer pursuant to Section 1357 ABGB, be liable for the entitlement of workers posted or hired-out on a cross-border basis to remuneration they are entitled to receive from their employer under a law, ordinance or collective agreement, under consideration of the individual classification criteria, for construction work in Austria assigned in accordance with Section 3 Para. 6. The client, who is not a contractor of the assigned construction work, shall be liable only if aware of the non-payment of remuneration prior to commissioning the work, or if the client had to seriously reckon with non-payment due to obvious indications and accepted it.

(2) The following requirements for establishing the client's liability pursuant to Para. 1 shall apply:

1. the worker shall inform the Construction Workers' Holiday and Severance Pay Fund (BUAK) about the claim to remuneration outstanding no later than eight weeks after the remuneration's due date, indicating a specific amount and remuneration payment period;
2. the worker's information shall comprise data about the employer concerned, the existence of an employment relationship, the place and period when work under the assignment was performed, as well as the type of the work activity;
3. the Construction Workers' Holiday and Severance Pay Fund shall notify the client in writing about it after having completed the investigation pursuant to Para. 3, indicating a specific amount; and
4. the entitlement to the outstanding remuneration has neither expired nor lapsed.

The client's liability shall be established at the time of receipt of the written information pursuant to no. 3. The liability shall expire nine months after the due date of the respective remuneration, unless the claim is asserted vis-à-vis the client in court by the employee within this period. The liability shall be limited to the amount indicated in the information provided.

(3) On the basis of the data provided pursuant to Para. 2 nos. 1 and 2, the Construction Workers' Holiday and Severance Pay Fund shall check the existence of an employment relationship as well as the claim asserted by the employee. Sections 23b and 23c BUAG shall apply. The Construction Workers' Holiday and Severance Pay Fund shall transmit the information pursuant to Para. 2 no. 3 to the client, the contractor and the employee, in which case the transmission to the contractor shall mean an out-of-court assertion in order to avoid the entitlement to the remuneration outstanding to expire or lapse. It may add reasonable grounds for doubting the existence of the employment relationship or the entitlement to the information provided to the client.

(4) As soon as the client's liability pursuant to Para. 1 has been established, it can, for the duration of the liability period, refuse payment of the compensation it owes to the contractor pursuant to Para. 1 from the particular or any other contract. The right to refuse payment is limited to the amount indicated in the information pursuant to Para. 2 last sentence, plus a reasonable amount covering any costs of court proceedings. The commencement of insolvency proceedings concerning the contractor shall not affect the establishment or the continued existence of the client's right to refuse payment. To the extent that the client pays the contractor's debt, the client shall be discharged from its debt to the contractor. If the client makes payment as a result of an enforceable court ruling handed down against it and if it notified the

contractor of the litigation (Section 21 of the Code of Civil Procedure (Zivilprozessordnung, ZPO), Imperial Law Gazette no. 113/1895) or taken the steps it can reasonably be expected to take regarding such notification in order to enable the contractor to object to the claim raised in a way that was beneficial to its interests, the payment including the amount covering the costs of the court proceedings against the contractor shall have a discharging effect. The payment shall not have a discharging effect where the amount indicated in the court ruling is based on wanton conduct of the client. The client's payment shall also have a discharging effect to the extent that it is covered by an enforceable court ruling handed down against the contractor.

(5) If the client has paid the compensation, it may claim reimbursement from the contractor for the debt paid in the contractor's place (Section 1358 ABGB). If the client makes payment as a result of an enforceable court ruling handed down against it and if it has notified the contractor of the litigation (Section 21 ZPO) or taken the steps it can reasonably be expected to take regarding such notification in order to enable the contractor to object to the claim raised in a way that was beneficial to its interests, it may claim reimbursement from the contractor for the payment made including the amount covering the costs of the court proceedings. There is no claim to reimbursement where the amount indicated in the court ruling is based on wanton conduct of the client. The client's payment shall also constitute an entitlement to reimbursement if it is covered by an enforceable court ruling handed down against the contractor.

(6) Within the scope of Paras. 1 to 5, any and all clients shall truthfully provide the Construction Workers' Holiday and Severance Pay Fund with information about the companies they have contracted and about subcontracting construction work no later than 14 days from receiving the request for information. In order for the employee to assert his/her claims, the Construction Workers' Holiday and Severance Pay Fund shall have the right to forward to the employee the information provided and the data related to information that was not provided. To this end, the Construction Workers' Holiday and Severance Pay Fund shall name to the employee any and all clients (name and address) it is aware of.

(7) If a person who is required to provide information to the Construction Workers' Holiday and Severance Pay Fund fails to do so, that person shall, as long as the necessary information is not provided, with respect to the subcontracted construction work or other contracts, be considered the contracting company for all subcontracted companies.

(8) The client's liability shall extend to employees of each further contractor if placing the contract is to be considered a legal transaction designed to evade liability (evasive transaction) and the client was aware of that or had to consider it entirely possible due to obvious indications and accepted it.

(9) If workers hired out on a cross-border basis are employed by a client to perform construction work as defined by Para. 1, Paras. 1 to 8 shall be applied to the relationship with the client as a user undertaking. Section 14 AÜG shall not be applied in that case.

(10) As guarantor and payer pursuant to Section 1357 ABGB, the client as defined by Para. 1 shall also be liable for supplements its contractor has to pay to the Construction Workers' Holiday and Severance Pay Fund for its employees within the scope of the employment relationship, unless they have expired or lapsed. The Construction Workers' Holiday and Severance Pay Fund shall inform the client as defined by Para. 1 in writing of the commencement of liability and of the amount of supplements to be paid. The liability of the client as defined by Para. 1 shall be limited to the amount indicated in the information provided. Liability shall be established at the time of receipt of the written information and shall expire nine months after the supplements have been due, unless the Construction Workers' Holiday and Severance Pay Fund asserts the claim vis-à-vis the client in court within this period. Paras. 4 to 9 shall also apply.

#### **General contractor's liability for remuneration entitlements vis-à-vis contractors established in an EU Member State or EEA State or the Swiss Confederation**

**Section 10.** (1) Anyone who - as a contractor of a public-sector client or as a sectoral contracting entity, within the scope of its entrepreneurial activities - subcontracts at least part of the work he/she shall perform under a project to another entrepreneur (subcontractor), except for employers with their registered office in a third country, shall be a general contractor. If the general contractor has subcontracted a project or part of a project in a way that is unlawful pursuant to the provisions of the Purchase Contract Awards Act (*Bundesvergabegesetz*) 2006, Federal Law Gazette I no. 17/2006, or any other similar legal provisions or the contractual provisions, he/she shall, pursuant to Section 1357 of the General Civil Code (*Allgemeines Bürgerliches Gesetzbuch; ABGB*), be liable as guarantor and payer for the statutory pay entitlements determined by ordinance or collective agreement for the workers employed by the subcontractor to carry out the work and to which they are entitled within the scope of the agreed

performance of work. The same shall apply to a subcontractor if it subcontracts a project or part of a project in an unlawful way.

(2) Within the scope of Para. 1, any and all clients shall truthfully provide the employee with information about the companies they have contracted, about subcontracting of contracts and the respective subject matters no later than 14 days from receiving the request for information. In the construction sector, the Construction Workers' Holiday and Severance Pay Fund shall provide to the employee the names of any and all clients (name and address) it is aware of. If a person who is required to provide information fails to do so, said person shall, as long as the necessary information is not provided, with respect to the subcontracted construction work or other contracts, be considered the contracting company for all subcontracted undertakings. The public-sector client shall inform the employee whether or not the contract may be subcontracted.

(3) The client's liability shall extend to employees of each further contractor if placing the contract is to be considered a legal transaction designed to evade liability (evasive transaction) and the client was aware of that or had to consider it entirely possible due to obvious indications and accepted it.

### **Chapter 3** **Authorities**

#### **Authorities and agencies**

**Section 11.** (1) The following authorities and agencies shall enforce the Anti-Wage and Social Dumping Act (Lohn- und Sozialdumping-Bekämpfungsgesetz, LSD-BG):

1. the tax authorities, carrying out case investigations involving employees whose habitual place of work is outside Austria and who are not subject to the ASVG;
2. the Vienna Regional Health Insurance Fund (Wiener Gebietskrankenkasse) in its capacity as Competence Centre for Combating Wage and Social Dumping (CWSD Competence Centre), carrying out the tasks assigned to it pursuant to Section 13, in particular the verification of pay levels involving employees who are not subject to the ASVG;
3. the health insurance providers, carrying out the tasks assigned to them pursuant to Section 14 involving:
  - a) employees subject to the ASVG,
  - b) employees with their habitual place of work in Austria who are not subject to the ASVG, as well as
  - c) homeworkers as defined by the Homeworking Act (Heimarbeitsgesetz; HAG) who are subject to the ASVG;
4. the Construction Workers' Holiday and Severance Pay Fund, carrying out the tasks in the construction sector assigned to it pursuant to Section 15;
5. the District Administration Authorities, carrying out administrative penal proceedings pursuant to this Federal Act;
6. the Central Co-ordinating Agency Charged with Investigating Illegal Employment pursuant to the Employment of Foreigners Act (Ausländerbeschäftigungsgesetz, AuslBG) and the Anti-Wage and Social Dumping Act of the Federal Ministry of Finance (Zentrale Koordinationsstelle für die Kontrolle der illegalen Beschäftigung, ZKO), collecting and processing posting reports or reports on the hiring-out of workers.

(2) When using data in connection with investigations pursuant to Sections 12 and 29, the tax authorities shall act in the capacity of a service provider as defined by Section 4 no. 5 of the Data Protection Act (Datenschutzgesetz, DSG) 2000, Federal Law Gazette I no. 165/1999.

(3) In connection with its activities pursuant to Section 13, the CWSD Competence Centre shall act in the capacity of a client as defined by Section 4 no. 4 DSG 2000.

(4) Regarding any other aspects, Section 14 DSG 2000 shall be applied to the activities of tax authorities and the CWSD Competence Centre under this Federal Act. Personal data collected by the tax authorities in connection with investigations pursuant to Section 12 shall be deleted after a period of five years after the onset of the investigation regarding certain facts. This period shall be extended by ten years if an administrative penalty is issued in this context. If it turns out that there was no criminal conduct involved in the specific case, the personal data shall be deleted without delay.

(5) The use of personal data shall only be admissible if this is absolutely necessary for carrying out the tasks laid down in this Federal Act.

### **Investigations of tax authorities**

**Section 12.** (1) The tax authorities shall be entitled to monitor compliance with the requirement of keeping available the documents specified in Sections 21 and 22 and, in connection with employees with their habitual place of work outside of Austria, to verify compliance with the pay to which an employee not subject to the *ASVG* is entitled in Austria as stipulated in Section 29 under consideration of the individual classification criteria (verification of pay levels), and to:

1. freely access the place of employment, premises and any external workplaces or sites as well as the day rooms of the employees and to use roads, even where public access is otherwise prohibited;
2. request from the individuals encountered there information concerning all facts relevant for the investigation pursuant to Para. 1, if there are grounds for assuming that those individuals are employers or employees; and to
3. inspect the documents required for the investigation (Sections 21 and 22), make copies of these documents and request the handover of these documents, with such documents to be sent by the end of the second working day after the request was made. If the place/site of work changes within one working day and the inspection is not carried out at the first place/site of work, the documents shall be demonstrably handed over to the tax authority, with the documents to be sent by the end of the second working day after the request was made. No reimbursement of expenses shall be due for submitting the documents.

(2) The tax authorities shall submit to the CWSD Competence Centre the results of the investigations regarding the pay level verification and at the request of the CWSD Competence Centre conduct further investigations regarding previously submitted results which must be specifically defined or investigations based on substantiated third-party reports.

### **CWSD Competence Centre**

**Section 13.** (1) For the purpose of verifying the remuneration to which an employee whose habitual place of works is outside Austria and who is not subject to the *ASVG* is entitled in Austria as stipulated in a law, ordinance or collective agreement under consideration of the individual classification criteria as defined by Section 29 Para. 1, the Competence Centre for Combating Wage and Social Dumping (CWSD Competence Centre) shall be set up.

(2) The CWSD Competence Centre shall have the following responsibilities within the scope of the assigned competence, subject to the instructions of the Federal Minister of Labour, Social Affairs and Consumer Protection:

1. receipt of the results of investigations by the tax authorities;
2. requests to the tax authorities to conduct further investigations (to be specifically defined) into previously received results of investigations or investigations based on substantiated third-party reports;
3. reporting an offence pursuant to Para. 4;
4. maintaining the record of administrative (criminal) offences and providing information pursuant to Section 35;
5. assuming the role of a party in proceedings as well as exercising the related rights pursuant to Section 32 Para. 1;
6. informing employees about reports that concern their employment relationships pursuant to Para. 4 in proceedings pursuant to Section 29 Para. 1, provided that the addresses are indicated in the reports pursuant to Section 19 Para. 3 or Para. 4.

(3) The Federal Government shall bear the costs incurred by the CWSD Competence Centre.

(4) If the CWSD Competence Centre determines that the employer does not compensate the employee as defined in Para. 1 with at least the relevant remuneration to which the employee is entitled as stipulated in Para. 1 under consideration of the individual classification criteria, the CWSD Competence Centre shall report the offence to the competent District Administration Authority. A specific level of penalty shall be applied for when reporting the offence. The report shall be submitted electronically to the tax authorities for the purpose of levying the unpaid charges. Remuneration payments which exceed the remuneration due as stipulated by a law, ordinance or collective agreement shall be counted towards any underpayments in the respective remuneration period.

(5) The CWSD Competence Centre may hear the parties who concluded the collective agreement relevant for the employee regarding the remuneration and in particular in order to determine the remuneration to which the employee is entitled under consideration of the individual classification criteria

pursuant to Para. 1. The CWSD Competence Centre shall hear the parties to the collective agreement in the case of any substantiated objections which the employer might raise against the remuneration assumed by the CWSD Competence Centre, and, in particular the assumed classification. Any statement by the parties to the collective agreement must be a joint one. Unless otherwise stipulated in the collective agreement, any reimbursement of costs and expenses or remuneration in kind must not be taken into account for determining the remuneration according to the collective agreement.

(6) If the CWSD Competence Centre finds out that the employer demonstrably pays out to the employee the difference between the remuneration actually paid and the amount to which the employee is entitled pursuant to Para. 1 within a period to be set by the CWSD Competence Centre, following a notification by the CWSD Competence Centre, and

1. the deviation from the remuneration relevant pursuant to Para. 1 under consideration of the individual classification criteria is relatively small, or
2. the fault of the employer or of the person appointed to represent the employer in external matters (Section 9 Para. 1 of the Administrative Penal Act (Verwaltungsstrafgesetz, VStG) 1991, Federal Law Gazette no. 52/1991) or of the responsible agent (Section 9 Para. 2 or 3 VStG) does not go beyond slight negligence,

it shall refrain from reporting the offence to the competent District Administration Authority. Likewise, an offence report shall not be filed if - prior to the CWSD Competence Centre's notification - the employer demonstrably compensates the employee with the remuneration to which the employee is entitled under Austrian law, and the other prerequisites stipulated in the first sentence are met. Section 25 Para. 3 *VStG* shall not apply. Neither shall an offence report be filed if there is a reason to reverse the penalty as defined by Section 29 Para. 2.

(7) The CWSD Competence Centre shall be entitled to mandate other regional health insurance funds to represent, against reimbursements of costs, the CWSD Competence Centre before the District Administration Authority and the Administrative Court (Verwaltungsgericht).

#### **Determination of offences by the health insurance provider**

**Section 14.** (1) If as part of its activities the competent health insurance provider finds out that

1. the employer does not pay to the employee subject to the *ASVG* or
2. the employer does not pay to the employee whose habitual place of work is in Austria but who is not subject to the *ASVG*, or
3. the client pursuant to the Homeworking Act 1960 does not pay to the homemaker insured under Section 4 Para. 1 no. 7 *ASVG*

at least the remuneration to which the employee or homemaker is entitled in Austria as stipulated in a law, ordinance or collective agreement under consideration of the individual classification criteria pursuant to Section 29 Para. 1, Section 13 Paras. 4 to 6 shall apply with the proviso that the CWSD Competence Centre shall be replaced by the competent health insurance provider.

(2) The competent health insurance provider shall be entitled to inspect the documents required for the activities pursuant to Para. 1 and to make copies of these documents. Employers shall submit on request the required documents or photocopies, with the documents or copies to be sent by the end of the second working day after the request was made. No reimbursement of expenses shall be due for submitting the documents.

(3) The competent health insurance provider shall inform the employee about a report that concerns his/her employment relationship in proceedings pursuant to Section 29 Para. 1.

#### **Determination of offences by the Construction Workers' Holiday and Severance Pay Fund**

**Section 15.** (1) If as part of its activities the Construction Workers' Holiday and Severance Pay Fund finds out that the employer does not pay at least the remuneration as defined in Section 29 Para. 1 to which the employee as defined in Chapter I of the *BUAG* or as defined in Section 33d of the *BUAG* is entitled as stipulated in a law, ordinance or collective agreement under consideration of the individual classification criteria, Section 13 Para. 4, Para. 5 last sentence and Para. 6 shall apply with the proviso that the CWSD Competence Centre shall be replaced by the Construction Workers' Holiday and Severance Pay Fund.

(2) The Construction Workers' Holiday and Severance Pay Fund shall as part of its activities be entitled to check whether the documents are kept readily available pursuant to Sections 21 and 22, make copies of these documents and request the handover of these documents, with such documents to be sent by the end of the second working day after the request was made. If the place/site of work changes within one working day and the inspection is not carried out at the first place/site of work, the documents shall

be demonstrably handed over to the Construction Workers' Holiday and Severance Pay Fund, with the documents to be sent by the end of the second working day after the request was made. No reimbursement of expenses shall be due for submitting the documents.

#### **Cooperation of domestic authorities in the field of temporary agency work**

**Section 16.** (1) All authorities and all public bodies, in particular the statutory interest groups representing employers and employees and the social insurance providers, shall, within their respective fields of activity, support the Federal Minister of Labour, Social Affairs and Consumer Protection, the tax authorities, the trade authorities, the Labour Inspectorates and the authorities otherwise competent to deal with workers' protection in fulfilling their tasks set forth in this Federal Act, the AÜG or in comparable Austrian laws.

(2) This support shall include the transmission of the following information to the competent authorities specified in Para. 1:

1. the name, date of birth, address, sex, nationality, place of work, working conditions and contract terms as well as pension insurance, accident insurance and health insurance data of the hired-out worker or quasi-subordinate worker (arbeitnehmerähnliche Person);
2. the name, address, business purpose and business location of the temporary work agency; and
3. the name, date of birth, address, statutory interest group, trade federation or professional association as well as any technical subdivision and the registered office of the user undertaking.

#### **Cooperation with authorities of other EU Member States and EEA States and mutual administrative assistance (Amtshilfe)**

**Section 17.** (1) Within the scope of their competence, the authorities and agencies listed below shall be allowed to provide administrative assistance to and cooperate with authorities and agencies of other EU Member States and EEA States in charge of monitoring compliance with labour-law provisions:

1. the courts specified in Section 42 nos. 2 to 4;
2. the Construction Workers' Holiday and Severance Pay Fund (BUAK);
3. the District Administration Authorities;
4. the tax authorities in accordance with the Tax Administration Organisation Act (Abgabenverwaltungsorganisationsgesetz, AVOG) 2010, Federal Law Gazette I no. 9/2010;
5. the CWSD Competence Centre;
6. the Central Co-Ordinating Agency;
7. the Federal Ministry of Labour, Social Affairs and Consumer Protection; and
8. the Federal Ministry of Finance

The authorities and agencies specified in nos. 1 to 8 shall, within the scope of their competence, be obligated to provide administrative assistance to and cooperation with the authorities or agencies of other EU Member States or EEA States as necessary, based on one of these authorities' or agencies' request, to promote compliance with labour-law provisions.

(2) Mutual administrative assistance and cooperation pursuant to Para. 1 shall comprise obtaining and providing information as well as requesting authorities to

1. monitor compliance with labour-law provisions; or
2. take steps necessary to further investigate suspected infringements of labour-law provisions; or
3. prepare a decision according to Part 3 of this Federal Act for being served or enforced.

Mutual administrative assistance and cooperation shall include serving documents issued by the authorities, except for documents of domestic administrative authorities (Section 41) and decisions of other EU or EEA Member States, which are governed by Part 3.

(3) Unless otherwise stipulated in state treaties, the Internal Market Information System (IMI) as defined by Regulation (EU) No. 1024/2012 on administrative cooperation through the Internal Market Information System and repealing Commission Decision 2008/49/EC (hereinafter referred to as "IMI") shall be used for the purpose of mutual administrative assistance and cooperation pursuant to Paras. 1 and 2.

(4) The authorities and agencies specified in Para. 1 nos. 1 to 8 shall be obligated to meet other EEA States' authorities' requests for access to data without delay, in cases specifically designated as urgent within two working days, in all other cases within no more than 25 working days.

(5) The authorities and agencies specified in Para. 1 nos. 1 to 8 shall be allowed to use data which become known to them in the course of mutual administrative assistance and cooperation only in connection with the matter for which the data were requested.

(6) No reimbursement for the expenses incurred as a result of mutual administrative assistance and cooperation must be claimed by other EU Member States or EEA States.

#### **Obligation of employers established in Austria to provide information**

**Section 18.** Employers established in Austria shall make information available to the authorities and agencies specified in Section 17 Para. 1, upon written request and in accordance with data protection provisions, which are required for the purpose of mutual administrative assistance or cooperation pursuant to Section 17, unless these authorities and agencies are able to get access to that information on the basis of other provisions or other similar sources of information.

### **Chapter 4**

#### **Formal requirements in the event of cross-border assignment**

##### **Reporting requirement for posting or hiring out workers from an EU Member State or an EEA State or the Swiss Confederation**

**Section 19.** (1) Employers and temporary work agencies established in an EU Member State or EEA State or the Swiss Confederation shall report the employment of workers posted or hired out to Austria. A separate report shall be filed each time a worker is posted or hired out. Retroactive changes of data pursuant to Para. 3 or 4 shall be reported without delay. A user undertaking which posts an employee to Austria in order to perform work shall be considered an employer with respect to the reporting obligations laid down in this paragraph and in Paras. 2 and 3.

(2) The posting or hiring out of workers as defined by Para. 1 shall be reported to the Central Coordinating Agency prior to commencement of the work. In the case of mobile employees in the transport sector, the report shall be submitted before the employees enter Austrian territory. This report shall be submitted exclusively by filling in the electronic forms of the Federal Ministry of Finance. In the event of a posting, the employer shall hand a copy of the report to the contact person as defined by Section 23 or , in the case of only one employee, to that employee or make it available electronically.

(3) The report pursuant to Para. 1 shall be submitted separately for each posting and shall include the following data; if the data changes at a later time, this shall be reported without delay:

1. employer's name, address and business licence or field of business as defined in Para. 1, VAT identification number;
2. name and address of persons appointed to represent the employer in external matters;
3. name and address of the contact person pursuant to Section 23 nominated from among the employees posted to Austria or of persons established in Austria and authorised to professionally represent the parties (Section 21 Para. 2 no. 4);
4. name and address of the domestic client (general contractor);
5. names, addresses, birth dates, social security numbers and applicable social security institutions as well as the nationalities of the workers posted to Austria;
6. total period of posting as well as date of commencement and expected duration of employment in Austria for each employee, duration and scheduling of the agreed normal working hours for each employee;
7. amount of remuneration payable to the individual employee under Austrian law and date of commencement of the employment relationship with the employer;
8. place of employment (exact address) in Austria (including other work sites in Austria);
9. in cases pursuant to Section 21 Para. 2, the person (exact address) or the branch (exact address) where the reporting documents and pay documents are kept available;
10. type of work and deployment of the worker, taking into account the applicable Austrian collective agreement;
11. the authority issuing the permit as well as the reference code, issue date and period of validity or a copy of the permit, provided that an official permit is required to employ the posted workers in the country where the employer is established;
12. the authority issuing the permit as well as the reference code, issue date and period of validity or a copy of the permit, provided that an official permit is required to employ the posted workers in the country where the employer is established;

(4) The report pursuant to Para. 1 shall be submitted separately for each hiring-out and shall include the following data; if the data changes at a later time, this shall be reported without delay:

1. name and address of the temporary work agency;
2. name and address of persons appointed to represent the temporary work agency in external matters;
3. name and address of the user undertaking, including VAT identification number and business licence or field of business;
4. names, addresses, dates of birth, social insurance numbers and social security institutions as well as citizenship of the hired-out employees or quasi-subordinate workers;
5. date of commencement and expected duration of employment of the individual hired-out employees or quasi-subordinate workers with the user undertaking;
6. places of employment in Austria, indicating the exact address;
7. in cases pursuant to Section 21 Para. 3, the person (exact address) or the branch (exact address) where the reporting documents and pay documents are kept available;
8. amount of remuneration payable to every single employee or quasi-subordinate worker under Austrian law;
9. type of work and use of the individual employees or quasi-subordinate workers, taking into account the applicable Austrian collective agreement;
10. in cases where an official permit is required to employ the hired-out employees or quasi-subordinate workers in the country where the temporary work agency is established: the authority issuing the permit as well as the reference code, issue date and period of validity or a copy of the permit;
11. in cases where the hired-out employees or quasi-subordinate workers need a residence permit in the country where the temporary work agency is established: the authority issuing the permit as well as the reference code, issue date and period of validity or a copy of the permit.

(5) If the recurring cross-border assignment of workers has been agreed under a service contract, a service procurement contract or within a group as defined by Section 15 AktG and Section 115 GmbHG, the posting or hiring-out to a domestic client or user undertaking may, in derogation of Paras. 1 and 2, be reported for a period of up to three months before work is commenced for the first time.

(6) If the employee's cross-border assignment involves the fulfillment of similar service contracts entered into with several clients, all clients can be indicated in the report pursuant to Para. 1, provided that there is a close geographical and temporal connection between the service contracts.

#### **Notification of the authorities**

**Section 20.** (1) Section 19 Para. 3 lays down that the Central Co-ordinating Agency Charged with Investigating Illegal Employment shall provide the report of a posting electronically to the competent health insurance institution (Sections 26 and 30 ASVG) and, if the work involves construction activities, to the Construction Workers' Holiday and Severance Pay Fund.

(2) Section 19 Para. 4 lays down that the Central Co-ordinating Agency Charged with Investigating Illegal Employment shall electronically transmit the report of a worker being hired out to

1. the competent trade authority;
2. the competent health insurance institution (Sections 26 and 30 ASVG);
3. the Construction Workers' Holiday and Severance Pay Fund (BUAK); and
4. the Federal Ministry of Labour, Social Affairs and Consumer Protection

(3) The Central Co-ordinating Agency Charged with Investigating Illegal Employment shall make the data pursuant to Section 19 Para. 4 available to the Social and Training Fund (Sozial- und Weiterbildungsfonds) pursuant to Section 22a AÜG or a service provider commissioned by the Fund for the purposes of collecting contributions as stipulated by Section 22d Paras. 2 and 4 AÜG and of providing services to workers hired out from abroad.

(4) Within the scope of carrying out its assigned tasks in the field of labour market policy, the Federal Ministry of Labour, Social Affairs and Consumer Protection (BMAK) shall have the right to electronically inspect the database on reports of postings pursuant to Section 19 Para. 3 maintained by the Central Co-ordinating Agency, with the right to review the following data: company data (company name and address), employee data of the posted individual (name, date of birth, social security number, social security institution, place of residence, activity performed, remuneration, duration of employment, place

of employment), data of domestic clients (company name and address of the user undertaking or the general contractor in Austria) and employment requiring a permit.

**Keeping reporting documents, social security documents and official permits readily available**

**Section 21.** (1) Employers established in an EU Member State or EEA State or the Swiss Confederation shall keep the following documents readily available at the domestic place/site of work during the posting period or shall make them accessible electronically to the tax authorities or the Construction Workers' Holiday and Severance Pay Fund on site and at the time of the investigation:

1. documents showing the employee's registration for social insurance (social security document E 101 in accordance with Regulation (EEC) No. 1408/71, or social security document A 1 in accordance with Regulation (EC) No. 883/04 on the coordination of social security systems), unless the posted worker is subject to mandatory social security in Austria; if, at the time of the investigation, the employer furnishes evidence in German showing the inability to obtain these documents from the competent social security institution prior to the posting, equivalent documents in German (application for issuance of social security document E 101 or A 1 and confirmation of the competent social security institution that the employee is subject to a foreign social security scheme for the period of posting) shall be kept readily available;
2. the report pursuant to Section 19 Paras. 1 and 3;
3. the official permit for employment of the posted workers in the country where the employer is established pursuant to Section 19 Para. 3 no. 11, provided such permit is required.

If an employee works in different places on the same day, the required documents shall be kept readily available at the first place/site of work or shall be made accessible electronically. In the case of mobile workers in the transport sector, the documents listed above shall be kept readily available in the vehicle as soon as the workers enter Austrian territory or shall be made accessible electronically. A user undertaking which posts an employee to Austria in order to perform work shall be considered an employer with respect to the obligation laid down in this provision.

(2) In derogation of Para. 1, the documents shall, except in the case of mobile workers in the transport sector, be kept readily available in Austria

1. with the contact person specified in the report pursuant to Section 19 Para. 3 no. 3; or
2. at a branch registered in Austria where the foreign employer operates not only occasionally; or
3. at a domestic independent subsidiary or the domestic parent company of a group as defined by Section 15 AktG or Section 115 GmbHG; or
4. with a professional representative of the parties established in Austria as defined by the Professional Accountants and Tax Advisors' Act (Wirtschaftstreuhänderberufsgesetz, WTBG), Federal Law Gazette I no. 58/1999, the Code of Professional Conduct for Lawyers (Rechtsanwaltsordnung, RAO), Imperial Law Gazette no. 96/1868, and the Code of Ethics of Notaries (Notariatsordnung, NO), Imperial Law Gazette no. 75/1871,

or made electronically accessible at the places indicated in nos. 1 to 4 at the time of investigation, provided this is specified in the report pursuant to Section 19 Para. 3 no. 9. If the investigation by the tax authorities or the Construction Workers' Holiday and Severance Pay Fund takes place outside the business hours of the professional representative, the latter shall, upon the tax authorities' or the Construction Workers' Holiday and Severance Pay Fund's request, submit the documents by the end of the second subsequent working day. No reimbursement of expenses shall be due for submitting the documents.

(3) The user undertaking shall keep the following documents on each hired-out worker readily available at the domestic place/site of work during the period the worker is hired out or shall make them accessible electronically to the tax authorities or the Construction Workers' Holiday and Severance Pay Fund on site and at the time of the investigation:

1. documents on the registration of the worker with a social security institution (social security document E 101 or A 1), unless the hired-out worker is subject to obligatory social security in Austria; if, at the time of the investigation, the temporary work agency furnishes evidence in German showing the inability to obtain these documents from the competent social security institution prior to the hiring-out, equivalent documents in German (application for issuance of social security document E 101 or A 1; confirmation of the competent social security institution that the employee is subject to a foreign social security scheme for the period of being hired out) shall be kept readily available;
2. the report pursuant to Section 19 Paras. 1 and 4;

3. the official permit for employment of the hired-out workers in the country where the temporary work agency is established pursuant to Section 19 Para. 4 no. 10, provided such permit is required.

Para. 2 shall apply accordingly.

#### **Keeping wage or salary documents readily available**

**Section 22.** (1) For the time of employment (in Austria) or the period of posting (Section 19 Para. 3 no. 6), employers as defined by Section 3 Para. 2, Section 8 Para. 1 or Section 19 Para. 1 shall keep the employment contract or the statement of terms and conditions (Dienstzettel) as defined by Council Directive 91/533 on an employer's obligation to inform employees of the conditions governing the contract or employment relationship, the payslip (Lohnzettel), proof of wage payment or bank transfer statements, wage records, records of hours worked and documents relating to pay categorisation in order to verify the remuneration that is payable to the posted employee under Austrian law for the duration of the employment, readily available in German, with the exception of the employment contract, at the place/site of work or make them accessible electronically to the tax authorities or the Construction Workers' Holiday and Severance Pay Fund on site and at the time of the investigation, even if the employment of the individual worker in Austria ended prematurely. The employment contract shall be kept readily available either in German or in English. If an employee works in different places on the same day, the pay documents shall be kept readily available at the first place/site of work or shall be made accessible electronically. A user undertaking which posts an employee to Austria in order to perform work shall be considered an employer with respect to the obligation laid down in this provision. Section 21 Para. 2 shall be applied accordingly. In the case of mobile workers in the transport sector, the documents listed above shall be kept readily available in the vehicle as soon as the workers enter Austrian territory or shall be made accessible electronically. In the case of mobile workers in the transport sector, only nos. 2 and 3 of Section 21 Para. 2 shall be applied accordingly.

(2) In the event of cross-border temporary agency work, the domestic user undertaking shall be obligated to keep the pay documents readily available pursuant to Para. 1. The temporary work agency shall demonstrably provide the pay documents pursuant to Para. 1 to the user undertaking.

#### **Contact person**

**Section 23.** In accordance with the provisions of this Federal Act, the contact person nominated in the report pursuant to Section 19 Para. 3 no. 3 shall keep documents readily available, accept documents and provide information. The contact person shall be nominated from among the workers posted to Austria or may be a person established in Austria and authorised to professionally represent the parties (Section 21 Para. 2 no. 4).

#### **Responsible agents**

**Section 24.** (1) The appointment of responsible agents (or "special responsible representatives" ) pursuant to Section 9 Paras. 2 and 3 *VSzG* required to comply with this Federal Act shall become legally effective only after receipt of a written notification on the appointment including evidence of the appointed person's approval at

1. the Central Co-ordinating Agency: by employers pursuant to Section 3 Para. 2, Section 8 Para. 1, or Section 19 Para. 1, by a user undertaking pursuant to Section 19 Para. 1 last sentence, or a temporary work agency established abroad; or
2. the competent health insurance institution, by employers or user undertakings established in Austria.

This shall not apply to the appointment of responsible agents at the authority's request pursuant to Section 9 Para. 2 *VSzG*. Notifications received pursuant to no. 1 shall be forwarded to the CWSD Competence Centre, notifications received pursuant to nos. 1 and 2 related to the construction sector (Chapter I or Section 33d *BUAG*) shall be forwarded to the Construction Workers' Holiday and Severance Pay Fund as well.

(2) The employer or the user undertaking as defined in Section 19 Para. 1 last sentence, the temporary work agency or the user undertaking shall without delay notify in writing the institution where the notification of the appointment was to be made pursuant to Para. 1 of the withdrawal of the appointment or the resignation of responsible agents.

## Chapter 5

### Penal provisions, prohibition of services and record of administrative (penal) proceedings

#### Place of the administrative offence

**Section 25.** In cases of postings and hiring-out of workers on a cross-border basis, the administrative offence shall be deemed to have been committed in the area of jurisdiction of the District Administration Authority where the place/site of work of the employee posted or hired out to Austria is located, and at the place of inspection if the places/sites of work change.

#### Violations of reporting obligations and the obligation to keep documents readily available in cases of posted or hired-out workers

**Section 26.** (1) Anyone who, in the capacity of an employer or temporary work agency as stipulated in Section 19 Para. 1,

1. violates Para. 19 by failing to make the report on later data changes (change report), make it in time or in a complete manner; or
2. intentionally provides incorrect data in the report or the change report; or
3. violates Section 21 Para. 1 or Para. 2 by failing to keep the required documents readily available or to make them directly accessible in electronic format to the officials of tax authorities or the Construction Workers' Holiday and Severance Pay Fund

commits an administrative offence and shall be fined by the District Administration Authority to pay between EUR 1,000 and EUR 10,000 for each worker, and between EUR 2,000 up to EUR 20,000 in case of repetition of the offence.

(2) Anyone who, as a user undertaking in the case of cross-border temporary agency work, violates Section 21 Para. 3 by not keeping the required documents readily available or not making them accessible electronically, commits an administrative offence and shall be fined by the District Administration Authority to pay between EUR 500 and EUR 5,000 and, in case of repetition, between EUR 1,000 and EUR 10,000.

#### Frustration of pay level verification

**Section 27.** (1) Anyone who fails to submit the required documents as set forth in Section 12 Para. 1 no. 3, commits an administrative offence and shall be fined by the District Administration Authority to pay between EUR 500 and EUR 5,000 for each worker, and between EUR 1,000 and EUR 10,000 in case of repetition of the offence. Likewise, anyone who fails to submit the documents as set forth in Section 14 Para. 2 or Section 15 Para. 2 shall be fined.

(2) Anyone who violates Section 12 Para. 1 by refusing access to the place of employment, premises and any external workplaces or sites as well as the day rooms of the employees and the related use of roads or provision of information, or by otherwise impeding or hindering the verification of documents, commits an administrative offence and shall be fined by the District Administration Authority to pay between EUR 1,000 and EUR 10,000 and between EUR 2,000 and EUR 20,000 in case of repetition of the offence.

(3) Anyone who refuses inspection of the documents pursuant to Sections 21 Para. 1 and Section 22, commits an administrative offence and shall be fined by the District Administration Authority to pay between EUR 1,000 and EUR 10,000 for each worker, and between EUR 2,000 and 20,000 in case of repetition of the offence.

(4) Any employer who violates Section 14 Para. 2 by refusing the inspection of the documents shall also be fined pursuant to Para. 3.

#### Failure to keep pay documents readily available

**Section 28.** Anyone who

1. as an employer violates Section 22 Para. 1 by not keeping the pay documents available, or
2. as a temporary work agency violates Section 22 Para. 2 by not demonstrably making the pay documents available to the user undertaking in the case of cross-border temporary agency work in Austria, or
3. as a user undertaking violates Section 22 Para. 2 by not keeping the pay documents available in the case of cross-border temporary agency work,

commits an administrative offence and shall be fined by the District Administration Authority to pay between EUR 1,000 and EUR 10,000 for each employee and between EUR 2,000 and EUR 20,000 in case of repetition of the offence; if more than three employees are affected, the fine is between

EUR 2,000 and EUR 20,000 for each employee and between EUR 4,000 and EUR 50,000 in case of repetition of the offence.

### Underpayment

**Section 29.** (1) Any employer who employs or has employed an employee without paying the employee at least the remuneration to which the employee is entitled as stipulated in a law, ordinance or collective agreement under consideration of the individual classification criteria, with the exception of the remuneration components laid down in Section 49 Para. 3 ASVG, commits an administrative offence and shall be fined by the District Administration Authority. Underpayments over several continuous remuneration periods shall be considered one single administrative offence. Remuneration payments which exceed the remuneration due as stipulated by a law, ordinance or collective agreement shall be set off against any underpayments in the respective remuneration period. With regard to special payments to employees subject to the *ASVG*, an administrative offence pursuant to the first sentence is committed only if the employer fails entirely or partly to make special payments by 31 December of the respective calendar year. If the underpayment affects no more than three employees, the fine is between EUR 1,000 and EUR 10,000 for each employee and in case of repetition between EUR 2,000 and EUR 20,000; if more than three employees are affected, the fine is between EUR 2,000 and EUR 20,000 for each employee and in case of repetition between EUR 4,000 and EUR 50,000. Likewise, anyone who, as an employer as defined by Section 14 Para. 1 no. 3, employs or has employed a homemaker without paying the homemaker at least the remuneration to which the homemaker is entitled as stipulated in a law or ordinance under consideration of the individual classification criteria, with the exception of the remuneration components laid down in Section 49 Para. 3 ASVG, shall be fined.

(2) No punishable offence pursuant to Para. 1 has been committed if - before investigation by the competent institution pursuant to Sections 12, 14 and 15 - the employer demonstrably pays out to the employee the difference between the remuneration actually paid and the amount to which the employee is entitled under a law, ordinance or collective agreement.

(3) If the District Administration Authority establishes that the employer demonstrably pays out to the employee the difference between the remuneration actually paid and the amount to which the employee is entitled under a law, ordinance or collective agreement within a period to be specified by the Authority and

1. the deviation from the remuneration relevant pursuant to Para. 1 under consideration of the individual classification criteria is relatively small, or
2. the fault of the employer or of the person appointed to represent the employer in external matters ("regular representative" according to Section 9 Para. 1 Administrative Penal Act (*Verwaltungsstrafgesetz, VStG*)) or of the responsible agent ("special responsible representative" according to Section 9 Para. 2 or 3 *VStG*) does not go beyond slight negligence,

it shall refrain from imposing a fine. Likewise, a fine shall not be imposed if - prior to the District Administration Authority's request - the employer demonstrably pays out to the employee the difference between the remuneration actually paid and the amount to which the employee is entitled as stipulated in a law, ordinance or collective and if the other prerequisites pursuant to the first sentence are met. If the District Administration Authority's decision depends on clarification of a preliminary question as defined by Section 38 of the General Administrative Procedure Act (*Allgemeines Verwaltungsverfahrensgesetz, AVG*) 1991, Federal Law Gazette no. 51/1991 which is the subject of proceedings pending or simultaneously instituted at the competent court, the District Administration Authority shall suspend the administrative penal proceedings until a ruling has been handed down with final effect; in this case, the administrative penal proceedings shall be deemed adjourned and the parties shall be notified thereof. Section 45 Para. 1 no. 4 and last sentence of the *VStG* shall not be applied in administrative penal proceedings pursuant to Para. 1. If the employer provides to the District Administration Authority evidence that it has paid the difference between the remuneration actually paid out to the employee and the amount to which the employee is entitled as stipulated in a law, ordinance or collective, this shall be taken into account with mitigating effect when deciding on the penalty.

(4) The statute of limitation for prosecution (Section 31 Para. 1 *VStG*) shall be three years from the remuneration due date. In case of underpayments over several continuous remuneration periods the statute of limitation for prosecution as defined in the first sentence shall commence on the due date of the remuneration for the latest period of remuneration underpayment. In case of underpayments, the statute of limitation for punishability (Section 31 Para. 2 *VStG*) shall be five years; the first and second sentences shall be relevant for determining the commencement of the statute of limitation for punishability. With regard to special payments, the statute of limitation for prosecution and punishability shall commence at the end of the respective calendar year (Para. 1 third sentence).

(5) If the employer pays the remuneration to which the employee is entitled for the period of underpayment in question pursuant to Para. 1 at a later date, the statute of limitation pursuant to Section 31 Paras. 1 and 2 *VStG* shall be one year (statute of limitation for prosecution) or three years (statute of limitation for liability), unless the statute of limitation has already expired at an earlier point in time according to Para. 4; the period shall commence when the complementary payment is made.

#### **Failure to report changes concerning the responsible agent**

**Section 30.** Any employer, temporary work agency or user undertaking as defined by Section 19 Para. 1 who fails to report the withdrawal of the appointment or the resignation of responsible agents as required by Section 24 Para. 2, commits an administrative offence and shall be fined by the District Administration Authority to pay between EUR 41 and EUR 4,140 or, in case of repetition, between EUR 83 and EUR 4,140.

#### **Prohibition of services**

**Section 31.** (1) The competent District Administration Authority shall prohibit the employer as defined by Section 3 Para. 2, Section 8 Para. 1 or Section 19 Para. 1, and in the case of cross-border temporary agency work the temporary work agency, from carrying out the work constituting the subject matter of the service for a period of at least one year up to a maximum of five years if a fine was imposed on the employer with legal effect pursuant to

1. Section 26 Para. 1 no. 1 or 2, or Section 27 Para. 2 or 3 repeatedly, or
2. Section 28 or 29 Para. 1 with respect to more than three employees, or in the case of repeated offences, pursuant to Section 28 or 29 Para 1,

or if such a fine is attributable to the employer. A fine shall be attributable to the employer if this fine was imposed with final effect on the employer himself/herself or on the person/s appointed to represent the employer in external matters ("regular representative" according to Section 9 Para. 1 *VStG*) or on the responsible agent/s ("special responsible representative" according to Section 9 Para. 2 or 3 *VStG*). Section 19 *VStG* (except Section 19 Para. 2 last sentence *VStG*) shall be applied accordingly to determine the period of prohibition. The administrative decision regarding the prohibition of services shall be electronically submitted to the Federal Minister of Science, Research and Economy with regard to Sections 373a to 373e of Austrian Industrial Code (*Gewerbeordnung*) 1994, Federal Law Gazette no. 194/1994 as well as the Central Co-ordinating Agency.

(2) No prohibition pursuant to Para. 1 shall be imposed if the employer or the temporary work agency makes a credible case of having taken specific technical, organisational or staff-related measures suitable to prevent the administrative offence from being committed another time and if the fine imposed has been paid. Such measures include, for example,

1. the introduction of a high-quality reporting and monitoring system;
2. the involvement of an internal auditing body for checking compliance with the relevant provisions on a regular basis;
3. the introduction of internal rules governing liability and damages to ensure compliance with the relevant provisions.

(3) Within the scope of assessing the circumstances specified in Para. 2, the District Administration Authority shall examine the statement provided by the employer or temporary work agency and put the measures taken into proportion with the number and severity of the administrative offences committed. When assessing the severity of the administrative offences, the number of employees affected and, in case of an administrative offence pursuant to Section 29 Para. 1, the level of underpayment shall be taken into account in particular.

(4) Anyone who provides services contrary to a prohibition pursuant to Para. 1 above, commits an administrative offence and shall be fined by the District Administration Authority to pay between EUR 2,000 and EUR 20,000.

(5) Section 18 AÜG or comparable Austrian laws shall remain unaffected.

#### **Role of a party in administrative (penal) proceedings**

**Section 32.** (1) The role of a party in administrative (penal) proceedings shall be assumed,

1. pursuant to Section 26, Section 27 Para. 1, 2 or 3, by the tax authority, in cases of Section 29 Para. 1 in conjunction with Section 13 by the CWSD Competence Centre;
2. pursuant to Section 29 Para. 1 in conjunction with Section 14 and in the cases of Section 27 Para. 1 second sentence and Section 27 Para. 4, by the competent health insurance institution;

3. pursuant to Section 26, Section 27 Para. 1 second sentence, Section 27 Paras. 2 and 3, Section 28 and Section 29 Para. 1 in conjunction with Section 15, the Construction Workers' Holiday and Severance Pay Fund,

even if the report was not filed by the institutions specified in nos. 1 to 3. These institutions can file a complaint (*Beschwerde*) with the Administrative Court (*Verwaltungsgericht*) against an administrative decision of an administrative authority, and an appeal (*Revision*) with the Administrative Court of Justice (*Verwaltungsgerichtshof*) against a ruling or a decision of an Administrative Court.

(2) The parties involved in administrative (penal) proceedings are, pursuant to Section 31 Paras. 1 and 4, the CWSD Competence Centre, the tax authorities and the Construction Workers' Holiday and Severance Pay Fund in the construction sector (Chapter I or Section 33d *BUAG*); as a party they can file a complaint (*Beschwerde*) with the Administrative Court (*Verwaltungsgericht*) against an administrative decision of an administrative authority, and an appeal (*Revision*) with the Administrative Court of Justice (*Verwaltungsgerichtshof*) against a ruling or a decision of an Administrative Court.

#### **Provisional security deposit**

**Section 33.** If there is reasonable suspicion that an administrative offence pursuant to Sections 26, 27, 28, 29 Para. 1 or Section 31 Para. 4 was committed and if on the basis of certain facts of the individual case it must be assumed that prosecution of the offence or execution of the penalty will be impossible or substantially impeded for reasons lying with the employer (contractor) or the temporary work agency, the tax authorities shall be authorised to set and collect a provisional security deposit up to the maximum amount of the impending fine. Where the Construction Workers' Holiday and Severance Pay Fund's scope of activity is concerned, the tax authority shall notify the latter of the collection of a provisional security deposit. The contact person as defined by Section 19 Para. 3 no. 3 shall be deemed the employer's representative if the employer or a representative appointed by the employer is not present during the official act. Section 37a Paras. 3 to 5 and Section 50 Para. 6 first sentence VStG shall apply accordingly to provisional security deposits collected in accordance with the first sentence. The tax authorities are authorised to allow the employer (contractor) or temporary work agency to pay the provisional security deposit in certain foreign currencies or by cheque or credit card. Any confiscation shall be revoked upon a transfer of funds pursuant to Section 34 Para. 4 or a deposit of a security pursuant to Section 34 Para. 9.

#### **Payment freeze - security deposit**

**Section 34.** (1) If there is reasonable suspicion that an administrative offence pursuant to Sections 26, 27, 28, Section 29 Para. 1 or Section 31 Para. 4 was committed and if on the basis of certain facts it must be assumed in individual cases that prosecution of the offence or execution of the penalty will be impossible or substantially impeded for reasons lying with the employer (contractor) or the temporary work agency, the tax authority, in conjunction with the investigations pursuant to Section 12, as well as the Construction Workers' Holiday and Severance Pay Fund may order the client, or in the case of a temporary work agency the user undertaking, in writing not to pay the outstanding compensation or the outstanding remuneration for temporary agency work or parts thereof (payment freeze). No legal remedy is admissible against a payment freeze. The payment freeze shall not be effective to the extent that the specified amount exceeds the outstanding compensation or the outstanding remuneration for temporary agency work. The payment freeze must not be higher than the maximum impending fine.

(2) If the client or the user undertaking pays the compensation or the remuneration for temporary agency work despite the payment freeze, the compensation or remuneration for temporary agency work shall be deemed not paid in proceedings pursuant to Para. 4. The tax authorities may order a payment freeze only where a provisional security deposit pursuant to Section 33 was neither set nor collected. The Construction Workers' Holiday and Severance Pay Fund must not impose a payment freeze if it has been notified by the tax authorities that a provisional security deposit pursuant to Section 33 has been collected. If the contractor or the temporary work agency makes the provisional security deposit retroactively or makes a voluntary deposit without a deposit having been set, the District Administration authority shall lift the payment freeze by administrative decision; proceedings pursuant to Section 4, if pending, shall be dismissed.

(3) After having imposed a payment freeze pursuant to Para. 1, the tax authorities and the Construction Workers' Holiday and Severance Pay Fund shall file an application to the District Administration Authority seeking deposit of a security pursuant to Para. 4 within three working days, with the payment freeze becoming ineffective otherwise. The District Administration Authority shall decide on this application within four weeks after receipt, with the payment freeze becoming ineffective otherwise. In such proceedings, the institutions specified in the first sentence shall assume the role of a party where they filed the application for a security deposit. These institutions can file a complaint

(*Beschwerde*) with the Administrative Court (*Verwaltungsgericht*) against an administrative decision of an administrative authority, and an appeal (*Revision*) with the Administrative Court of Justice (*Verwaltungsgerichtshof*) against a ruling or a decision of an Administrative Court.

(4) If there is reasonable suspicion that an administrative offence pursuant to Sections 26, 27, 28, Section 29 Para. 1 or Section 31 Para. 4 has been committed and if on the basis of certain facts it must be assumed that prosecution of the offence or execution of the penalty will be impossible or substantially impeded for reasons lying with the employer (contractor) or the temporary work agency, the District Administration Authority may issue an administrative decision ordering the client or, in the case of temporary agency work, the user undertaking to deposit as a security the outstanding compensation or remuneration for temporary agency work or parts thereof within a reasonable period of time. Upon the District Administration Authority's instruction, the client shall submit the contract for work and services, or the temporary work agency the temporary work agreement, in German. Sections 37 and 37a *VStG* shall not apply in such cases unless otherwise stipulated in this provision. As soon as an administrative decision has been issued, the payment freeze shall be lifted.

(5) The compensation or remuneration for the temporary agency work is hereby defined as the total payment for fulfilling the contract or the temporary agency work agreement.

(6) The remittance of funds pursuant to Para. 4 shall have the effect of releasing the client or the user undertaking from obligations vis-à-vis the contractor or the temporary employment agency in the amount of the funds remitted.

(7) The amount of the security deposit must not be higher than the maximum impending fine. The client or the user undertaking shall be obliged to inform upon request the District Administration Authority of the amount and due date of the compensation or the remuneration for temporary agency work. If the outstanding compensation or the remuneration for temporary agency work is not sufficient to cover the liability amount resulting from Section 67a *ASVG* and Section 82a of the Income Tax Act (*Einkommensteuergesetz, EStG*), Federal Law Gazette no. 400/1988, the client or the user undertaking may exercise its right to make the compensation payment to the service centre (*Dienstleistungszentrum* according to Section 67c *ASVG*).

(8) Appeals (*Beschwerden*) filed against administrative decisions pursuant to Para. 4 do not suspend the effect of the decision.

(9) The District Administration Authority shall declare the security deposit released if the proceedings are dismissed or the fine imposed on the contractor or temporary employment agency has been executed or if the security deposit is not declared lapsed within one year. In proceedings pursuant to Section 29 Para. 1, the first sentence shall apply subject to the proviso that the security deposit shall be declared released if it is not declared lapsed within two years. The security deposit shall also be declared released if it has been deposited by the contractor or the temporary work agency. Released security deposits shall be paid out to the client or the user undertaking.

(10) The District Administration Authority shall declare the security deposit lapsed once it has become evident that it will be impossible to prosecute the contractor or the temporary employment agency or to execute the fine. Section 17 *VStG* shall apply accordingly.

(11) Section 37 Para. 6 of the *VStG* shall apply accordingly with regard to utilising lapsed security deposits, in which case any remaining amount shall be paid out to the client or the user undertaking.

#### **Record of administrative (penal) proceedings pursuant to Sections 26, 27, 28, Section 29 Para. 1 and Sections 31 and 34**

**Section 35.** (1) For the purpose of suggesting and deciding on the level of penalty, of prohibiting services pursuant to Section 31 Para. 1 and of determining whether work has been carried out contrary to a prohibition as well as for the purpose of evaluating the prosecution of the offence or execution of the penalty as well as for the purpose of providing information to public clients and sectoral contracting entities, the CWSD Competence Centre shall maintain a record of final administrative decisions and rulings in administrative (penal) proceedings pursuant to Sections 26, 27, 28, Section 29 Para. 1, Section 31 and 34. The record may be maintained electronically.

(2) The District Administration Authorities and the Administrative Courts shall submit electronically to the CWSD Competence Centre without delay counterparts of any final administrative decisions and rulings they or the Administrative Court of Justice issued in penal proceedings or proceedings pursuant to Sections 26, 27, 28, Section 29 Para. 1, Sections 31 und 34. The aforementioned shall also serve official copies of final administrative decisions and rulings imposing a fine pursuant to Sections 26, 27, 28 or Section 29 Para. 1 on responsible agents as defined in Section 9 Para. 2 last sentence and Para. 3 *VStG* to the undertaking to which the punishment pursuant to Para. 4 second sentence is to be attributed. The

administrative decision or ruling shall include mention of the fact that, as a result of the final punishment, the accused as well as the undertaking to which the punishment is to be attributed will be entered into the record.

(3) The CWSD Competence Centre shall delete any data pertaining to penal proceedings five years after the corresponding decision or ruling has taken legal effect. The CWSD Competence Centre shall delete any data pertaining to proceedings on the prohibition of services three years after the prohibition period has passed.

(4) Upon request, the CWSD Competence Centre shall within two weeks provide information to the District Administration Authority, the Administrative Court of the respective Land, the health insurance provider, the tax authorities or the Construction Workers' Holiday and Severance Pay Fund, with regard to suggesting and deciding on the level of penalty, prohibiting services or determining whether work is being carried out contrary to a prohibition; this information shall include details as to whether any record of final punishment or decision pursuant to Sections 26, 27, 28, 29 Para. 1 or Section 31 exists or is to be attributed to the employer indicated in the information request. A fine shall be attributable to the employer if this fine was imposed with final effect on the employer himself/herself or on the person/s appointed to represent the employer in external matters (Section 9 Para. 1 *VStG*) or on the responsible agent/s (Section 9 Para. 2 or 3 *VStG*). The information shall indicate the number of penalties and, as applicable, the relevant data of the administrative penalties and rulings, the administrative decisions where admonitions were issued as well as administrative decisions and rulings pursuant to Section 31 (authority, case reference number, date of the administrative decision, ruling and date of legal effect, name and date of birth of the person to which the administrative decision or ruling refers and to whom it is attributable, fines imposed, duration/period of prohibition of services), or state that no punishment, no prohibition of services has been recorded or no data are available. Five years after the respective administrative penalty or penal ruling took legal effect as well as three years after the period of prohibition of services has passed, no more information relating to this decision or ruling must be provided.

Furthermore, the CWSD Competence Centre shall within two weeks provide information on request to the public client or the sectoral contracting entity as to whether any record of final punishment or decision pursuant to Section 28, Section 29 Para. 1 or Section 31 Para. 1 exists or is to be attributed to the employer indicated in the information request. Para 4 penultimate sentence shall be applied correspondingly. Section 28b Para. 2 second and third sentences of the Employment of Foreigners Act (*Ausländerbeschäftigungsgesetz, AuslBG*) shall apply to information to public-sector clients and sectoral clients subject to the proviso that the term "punishment" is replaced by "punishment or decision". As regards information to public-sector clients and sectoral clients, final punishments or decisions pursuant to Sections 28, 29 Para. 1 or Section 31 Para. 1 which refer to several employees or cover different administrative offences shall be considered one punishment or decision.

(6) The District Administration Authorities shall report to the CWSD Competence Centre on an annual basis concerning the collection of securities deposited in proceedings pursuant to Section 34.

### **Part 3**

## **Enforcement of measures to protect claims based on labour law in the event of cross-border assignments**

### **Chapter 1**

#### **General provisions**

##### **Scope of application**

**Section 36.** In connection with the violation of labour-law provisions or provisions under this Federal Act, Part 3 governs the following:

1. in Chapter 2, the service of domestic official documents to foreign employers in Austria (Section 41);
2. in Chapter 3, how to effect
  - a) the service (Sections 43 to 46) and
  - b) enforcement (Sections 43, 44 and 47 to 50)

of administrative penalties and rulings from the administrative authorities and courts in another EU or EEA Member State as specified in Section 42;

3. in Chapter 4,

- a) the service of court decisions and decisions of administrative authorities (Sections 52, 53, 55 as well as 56 to 58),
- b) the enforcement of decisions of administrative authorities (Sections 52 to 55 as well as 59 to 64), and
- c) the enforcement of court decisions (Sections 52 to 55 as well as 65 to 67) upon request of another EU or EEA Member State in Austria.

#### **Definition of "domestic authority" and "domestic authorities"**

**Section 37.** Unless suggested otherwise in the given context, "domestic authorities" as used in Part 3 shall be the administrative authorities and courts specified in Section 42 nos. 1 to 4, and "domestic authority" shall be one of the administrative authorities specified in Section 42 no. 1 or one of the courts specified in Section 42 nos. 2 to 4.

#### **Prosecution effort in cross-border law enforcement**

**Section 38.** In the decision about whether to discontinue administrative penal proceedings conducted under this Part, domestic authorities must be aware of the fact that law enforcement and prosecution in cases under Section 36 may require a comparably bigger effort, as more than one country will be involved. This fact alone shall not justify the discontinuation of administrative proceedings pursuant to Section 45 Para. 1 no. 6 VStG.

#### **Using the Internal Market Information System (IMI)**

**Section 39.** Domestic administrative authorities and courts which, pursuant to Section 36 no. 2 or 3, deal with requests or meet requests for the service and enforcement of decisions, shall use IMI to this end.

#### **Offices of the Land Government as central authorities**

**Section 40.** (1) Requests for the service and enforcement of domestic administrative penalties or rulings in another EU Member State or EEA State pursuant to Section 36 no. 2 shall be made by the domestic authorities themselves.

(2) Requests for the service and enforcement of decisions of other EU Member States or EEA States pursuant to Section 36 no. 3 shall be accepted and forwarded by the Offices of the Land Government. In accordance with Article 14 of Directive 2014/67/EU on the enforcement of Directive 96/71/EC concerning the posting of workers in the framework of the provision of services and amending Regulation (EU) No. 1024/2012 on administrative cooperation through the Internal Market Information System ('the IMI Regulation'), Official Journal L 159/11 of 28 May 2014, the Offices of the Land Government shall be designated as the central authorities vis-à-vis the Commission.

(3) If the service or enforcement pursuant to Para. 1 or 2 proves difficult, a domestic administrative authority or a domestic court may, as stipulated in this Part, request assistance from the regionally competent Office of the Land Government, in particular if the authority has no access to IMI. In such cases, the regionally competent Office of the Land Government shall act as the liaison office as defined by Section 15 Para. 2 nos. 1 and 3, Paras. 5 and 6 of the Austrian Services Act (Dienstleistungsgesetz, DLG) and is obliged to provide assistance.

(4) That Office of the Land Government in whose area of jurisdiction the authority requesting service or enforcement is established shall be regionally competent for taking steps according to Chapter 3 (Sections 43, 44, 46, 48 and 49). That Office of the Land Government in whose area of jurisdiction the person who is affected by the decision is established or resides shall be regionally competent for taking steps according to Chapter 4 (Sections 53 to 56, 58 Para. 2, Sections 59 and 65).

## **Chapter 2**

### **Service to foreign employers in Austria**

**Section 41.** (1) The place of employment and premises in Austria, the external place/site of work where the employee works shall also be deemed a place of delivery (*Abgabestelle*) as defined in Section 2 no. 4 of the Service of Documents Act (*Zustellgesetz, ZustG*), Federal Law Gazette no. 200/1982, for the purpose of applying this Federal Act. Both the person to whom the document refers (the physical recipient) as well as the contact person specified in Section 19 Para. 3 no. 3 can be nominated as a recipient according to Section 2 no. 1 *ZustG* for the purpose of serving documents to this place of delivery. Documents may be served to the contact person specified in Section 19 Para. 3 no. 3 at this place of delivery even if the physical recipient was nominated as the recipient according to Section 2 no. 1 *ZustG* or if the physical recipient is not regularly present at the place of delivery. If, contrary to Section 19 Para. 3 no. 3, no contact person was nominated or the documents cannot be served to the

contact person nominated from among the workers posted to Austria, the documents may be served on employees of the foreign employer, with the regular presence of the physical recipient or the recipient according to Section 2 no. 1 ZustG being irrelevant. The contact person specified in Section 19 Para. 3 no. 3 can also be nominated as recipient according to Section 2 no. 1 ZustG with regard to the service of documents outside that place of delivery.

(2) If there is reasonable suspicion that an administrative offence pursuant to Sections 26, 27, 28, 29 Para. 1 or Section 31 Para. 4 was committed and if on the basis of certain facts it must be assumed that the service of documents will be impossible or substantially impeded for reasons lying with the physical recipient or the contact person specified in Section 19 Para. 3 no. 3, the District Administration Authority may order the physical recipient by administrative decision to nominate a person authorised to accept service for the proceedings in question within a period of at least two weeks. Under the circumstances specified in the first sentence, the tax authorities may order the physical recipient to nominate a person authorised to accept service for proceedings resulting from the investigation within a period of at least two weeks. Section 10 Para. 1 second to fourth sentences and Para. 2 ZustG shall be applied accordingly; the place of delivery pursuant to Para. 1 shall not be deemed a place of delivery pursuant to Section 10 Para. 2 no. 2 ZustG.

### **Chapter 3**

## **Effecting the service and enforcement of decisions of domestic authorities in another EU Member State or EEA State**

### **Sub-chapter 1**

#### **General provisions**

##### **Scope of application**

**Section 42.** Chapter 3 lays down how to effect the service and enforcement

1. of administrative penal decisions by the District Administration Authorities;
2. of rulings by the Administrative Courts of the Laender;
3. of rulings by the Federal Administrative Court; and
4. of rulings by the Administrative Court

in the EU Member State or EEA State where the accused on whom a fine was imposed is established or resides.

##### **Transmission of a request for service or enforcement**

**Section 43.** (1) Offices of the Land Government and domestic authorities which request the service or enforcement of a domestic administrative penalty or a domestic administrative ruling shall enter the data according to Section 46 Para. 2 and/or Section 48 Para. 2 into the standardised form provided via IMI for such requests. If the domestic authority requesting the service or enforcement is not registered in IMI, it shall request the Office of the Land Government which is regionally competent pursuant to Section 40 Para. 4 to forward the request for service or enforcement and to provide the data and enclosures as required by Section 46 and/or Section 48.

(2) Together with the enclosures specified in Section 46 Para. 3 and/or Section 48 Para. 3, the completed form, or if no form is available, the request as such, shall be forwarded to the authority or to one of the authorities which the other Member State has specified as competent pursuant to Article 14 of Directive 2014/67/EU.

##### **Information on the further processing of a request for service or enforcement**

**Section 44.** (1) An Office of the Land Government or a domestic authority which has received information on the further processing of a request pursuant to Section 46 and/or Section 48 shall forward this information to the Office of the Land Government regionally competent pursuant to Section 40 Para. 4. The regionally competent Office of the Land Government in turn shall forward the information to the domestic authority that made the request if the information is not available to the domestic authority.

(2) If the foreign authority which was requested to serve documents or enforce a ruling pursuant to Section 43 fails to report within one month about the measures it has taken, the Office of the Land Government regionally competent pursuant to Section 40 Para. 4 or the domestic authority which had requested the service or enforcement pursuant to Section 43 shall request the corresponding information from the foreign authority.

## Sub-chapter 2

### Effecting the service of decisions made by domestic authorities in another EU Member State or EEA State

#### Principles

**Section 45.** The domestic authority which has made a decision as defined by Section 42 shall have that decision served to an accused established or residing in another EU Member State or EEA State. If service in Austria pursuant to Section 41 and according to the rules of the Service of Documents Act seems to be hopeless from the beginning or turns out to be impossible, service of the decision shall be initiated pursuant to Section 46 in the Member State where the accused is established or resides.

#### Request for service in another EU Member State or EEA State

**Section 46.** (1) The domestic authority which has made the decision shall either have the decision served in another EU Member State or an EEA State itself or shall request the Office of the Land Government that is regionally competent pursuant to Section 40 Para. 4 to do so.

(2) The request for service of the decision shall include the following information:

1. the name and address of the recipient and all other data available that enable the recipient's identification;
2. the contact details of the domestic authority which made the decision to be served;
3. the express designation of the domestic authority which made the decision as "Gericht" (court) or "Verwaltungsbehörde" (administrative authority);
4. a summary of the facts;
5. information about which labour-law provision was violated;
6. the amount of the fine;
7. the date by when the decision is to be served at the latest.

(3) The following documents shall be attached to the request:

1. the decision to be served;
2. a translation of the decision to be served into an official language of the EU Member State or EEA State where the accused is established or resides.

## Sub-chapter 3

### Effecting the enforcement of decisions of domestic authorities in another EU Member State or EEA State

#### Principles

**Section 47.** If a decision stipulated in Section 42 against an obligor who is established or resides in another EU Member State or EEA State has become effective, enforcement of the decision shall first be attempted in Austria. When determining the regionally competent District Administration Authority or the court regionally competent for enforcement in Austria, that place shall be relevant where the obligor's assets which will be affected by the decision are located. If enforcement in Austria seems hopeless, impossible or would involve a disproportionate effort, the EU Member State or EEA State where the accused is established or resides shall be requested to enforce the decision pursuant to Section 48.

#### Request for enforcement in another EU Member State or EEA State

**Section 48.** (1) The domestic authority which has made the decision shall either have the decision enforced in another EU Member State or an EEA State itself or shall request the Office of the Land Government that is regionally competent pursuant to Section 40 Para. 4 to do so.

(2) The request for enforcement of the decision shall include the following information:

1. the name and address of the obligor and all other data available that enable the obligor's identification;
2. the contact details of the domestic authority which made the decision to be enforced;
3. the express designation of the domestic authority which made the decision as "Gericht" (court) or "Verwaltungsbehörde" (administrative authority);
4. a summary of the facts;
5. information about which labour-law provision was violated;
6. the amount of the fine;

7. information about previous service of the decision, if applicable;
  8. the date when the decision became enforceable or effective;
  9. the instrument permitting enforcement;
  10. confirmation of enforceability.
- (3) The following documents shall be attached to the request:
1. the decision to be enforced;
  2. a translation of the decision to be enforced into an official language of the EU Member State or EEA State where the accused is established or resides.

#### **Notification of the authority requested for enforcement of another EU Member State or EEA State**

**Section 49.** (1) The domestic authority which has requested enforcement pursuant to Section 48 shall without delay notify the requested authority of the other EU Member State or EEA State or the Office of the Land Government regionally competent pursuant to Section 40 Para. 4 of circumstances due to which the enforcement of the administrative penalty or ruling is to be restricted or postponed or enforceability expires, in particular if

1. the obligor has fully or partially paid the fine;
2. an extraordinary appeal (application for reopening the proceedings or restoring the status quo ante) is lodged against the administrative penalty or ruling;
3. the administrative penalty or ruling or their enforceability has been repealed or amended retroactively, or the amount of the fine has been reduced; or
4. enforcement is no longer sought for other reasons.

(2) If the request for enforcement pursuant to Section 48 Para. 1 was made by the Office of the Land Government which is regionally competent pursuant to Section 40 Para. 4, that Office of the Land Government shall notify the authority which the other EU Member State or EEA State has specified to be competent pursuant to Article 14 of Directive 2014/67/EU of the circumstances indicated in Para. 1.

#### **Consequences of the request for enforcement in another EU Member State or EEA State on enforcement in Austria**

**Section 50.** A decision transmitted with the request for enforcement pursuant to Section 48 must not be enforced in Austria. Enforcement in Austria shall be allowed again if the other EU Member State or EEA State requested for enforcement does not meet the request.

### **Chapter 4**

#### **Service and enforcement in Austria of the decision of an authority of another EU Member State or EEA State**

##### **Sub-chapter 1**

##### **General provisions**

##### **Scope of application**

**Section 51.** Chapter 4 governs the measures to be taken in response to the request of an authority of another EU Member State or EEA State for

1. service and
2. enforcement

of a decision made by a court or administrative authority of that EU Member State or EEA State in Austria on grounds of violation of a labour-law provision if the request was made to an Office of the Land Government, another domestic administrative authority or a domestic court.

#### **Recognition and equal treatment of the decision of another EU Member State or EEA State**

**Section 52.** Unless there is a reason for rejecting the service (Section 58) or enforcement (Section 54) of a decision which another EU Member State or EEA State has requested, the decision shall be recognised as such and shall be treated equally to a decision handed down by a domestic administrative authority or court.

#### **Forwarding in case of lack of competence**

**Section 53.** (1) A decision transmitted to be served or enforced shall ex officio and without delay be forwarded by the authority which received it to the Office of the Land Government that is regionally competent pursuant to Section 40 Para. 4 if the decision was issued to

1. a domestic administrative authority or a domestic court not competent for the service or enforcement, or
2. an Office of the Land Government lacking regional competence pursuant to Section 40 Para. 4.

The Office of the Land Government regionally competent pursuant to Section 40 Para. 4 shall proceed in accordance with Section 56 no. 2 and/or Section 59 no. 2 or Section 65 no. 2.

(2) Domestic administrative authorities and courts which were directly requested to serve and/or enforce a decision and which have the required competence shall proceed in accordance with Section 55 and Sub-chapter 2 and/or Sections 54, 55 and Sub-chapter 3.

#### **Refusal of enforcement**

**Section 54.** (1) The domestic administrative authority or court dealing with a request for enforcement pursuant to Section 53 Para. 2, Section 59 or Section 65 shall review the request for enforcement as to whether one of the grounds for refusal specified in Para. 3 applies. If one of the grounds for refusal specified in Para. 3 nos. 4 to 6 is found to apply, the domestic administrative authority or court shall notify the requesting authority of the other EU Member State or EEA State of the refusal of the request and the related grounds. If one of the grounds for refusal specified in Para. 3 nos. 1 to 3 is found to apply, the requesting authority of the other EU Member State or EEA State shall be notified of the refusal of enforcement unless data or documents are submitted or complemented within a certain period of time which are required to remedy the deficiencies specified in Para. 3 nos. 1 to 3.

(2) The authority of the other EU Member State or EEA State requesting enforcement pursuant to Para. 1 shall be notified either by the Office of the Land Government which is regionally competent pursuant to Section 40 Para. 4 or the domestic administrative authority or court which ruled on the refusal.

(3) Enforcement shall be refused if the request for enforcement

1. does not include all the data specified in Section 48 Para. 2; or
2. is transmitted without the decision to be enforced; or
3. is obviously not in line with the underlying decision; or
4. if the expected costs or instruments for enforcement are disproportionately high when compared to the financial penalty to be enforced; or
5. if the financial penalty or fine to be enforced is lower than EUR 350 or the equivalent of this amount; or
6. if enforcement is not compatible with constitutional rights or other fundamental values of the Austrian legal system.

#### **Notification of the requesting authority of another EU Member State or EEA State**

**Section 55.** (1) Apart from the refusal of service and/or enforcement governed in Section 58 and/or Section 54, the authority of another EU Member State or EEA State requesting service or enforcement shall be informed about the following:

1. which measures were taken to comply with Sub-chapters 2 to 4; and
2. which actual or legal impediments exist in relation to these measures.

(2) In accordance with Para. 1, the following data shall be provided in any case:

1. the dates on handling the request such as the date of service, of completion or discontinuation of enforcement;
2. any refusal of acceptance of the decision to be served pursuant to Section 12 ZustG;
3. the lodging of an appeal in enforcement proceedings;
4. the uncollectibility of the fine.

(3) The authority of the other EU Member State or EEA State requesting service or enforcement pursuant to Paras. 1 and 2 shall be notified either by the Office of the Land Government which is regionally competent pursuant to Section 40 Para. 4 or the domestic administrative authority or court which took the measures to which the circumstances to be communicated pursuant to Paras. 1 and 2 refer.

## **Sub-chapter 2**

### **Service in Austria of decisions made by courts and administrative authorities of another EU Member State or EEA State**

#### **Initiating service**

**Section 56.** An Office of the Land Government that was requested to serve a decision shall, if it is regionally competent pursuant to Section 40 Para. 4, have the decision and its translation, if applicable, served to the accused's address indicated in the request via the competent domestic administrative authority or the competent domestic court.

#### **Applicable procedural law**

**Section 57.** The Service of Documents Act (Zustellgesetz, ZustG) shall apply to the service of decisions made by authorities of other EU Member States or EEA States pursuant to this Sub-chapter.

#### **Refusal of service**

**Section 58.** (1) The competent domestic administrative authority or court dealing with a request for service pursuant to Section 53 Para. 2 or Section 56 shall review the request for service as to whether one of the grounds for refusal specified in Para. 3 applies. If one of the grounds for refusal is found to apply, the requesting authority of the other EU Member State or EEA State shall be notified of the refusal of service unless data or documents are submitted or complemented within a certain period of time which are required to remedy the deficiencies specified in Para. 3.

(2) The authority of the other EU Member State or EEA State requesting service pursuant to Para. 1 shall be notified either by the Office of the Land Government which is regionally competent pursuant to Section 40 Para. 4 or the domestic administrative authority or court which dealt with the request for service.

- (3) Service shall be refused if the request for service
1. does not include all the data specified in Section 46 Para. 2; or
  2. is transmitted without the decision to be served; or
  3. is obviously not in line with the underlying decision.

## **Sub-chapter 3**

### **Enforcement in Austria of decisions made by administrative authorities of another EU Member State or EEA State**

#### **Initiating enforcement**

**Section 59.** An Office of the Land Government which was requested to enforce an administrative authority's decision pursuant to Section 51 no. 2 shall request - if it has regional competence - the District Administration Authority, which in its capacity as enforcement authority is regionally competent for the obligor's place of establishment or residence as specified in the request, to enforce the decision.

#### **Applicable procedural law**

**Section 60.** The Administrative Enforcement Act (Verwaltungsvollstreckungsgesetz, VVG) 1991, Federal Law Gazette no. 53/1991 and Section 6 of the EU Administrative Penalty Enforcement Act (EU-Verwaltungsstrafvollstreckungsgesetz, EU-VStVG), Federal Law Gazette I no. 3/2008 shall be applied to proceedings where decisions made by administrative authorities of other EU Member States or EEA States are enforced.

#### **Postponement of enforcement**

**Section 61.** The enforcement authority shall postpone enforcement as soon as it becomes aware of the fact that the decision made by the authority of the other EU Member State or EEA State which is to be enforced is being contested in that State.

#### **Termination of enforcement**

**Section 62.** The enforcement authority shall terminate enforcement as soon as it becomes aware of the fact that the request for enforcement has become void following a decision or measure taken in the requesting EU Member State or EEA State.

#### **Accrual of monies obtained from enforcement**

**Section 63.** Monies obtained from enforcement shall accrue to the legal entity which bears the expenses of the enforcement authority.

### Costs

**Section 64.** The costs shall be carried by the legal entity competent pursuant to Section 63, regardless of whether they can be recovered from the obligor.

### Sub-chapter 4

## Enforcement in Austria of decisions made by courts of another EU Member State or EEA State

### Initiating enforcement

**Section 65.** An Office of the Land Government which was requested to enforce a court's decision pursuant to Section 51 no. 2 shall - if it has regional competence pursuant to Section 40 Para. 4 - request the Regional Court (Landesgericht) which is regionally competent for the obligor's place of establishment or residence as specified in the request, to enforce the decision.

### Applicable procedural law

**Section 66.** Sections 53d, 53f, 53h and 53j of the Federal Act on Judicial Cooperation in Criminal Cases with the Member States of the European Union (Bundesgesetz über die justizielle Zusammenarbeit in Strafsachen mit den Mitgliedstaaten der Europäischen Union, EU-JZG), Federal Law Gazette I no. 36/2004 as well as the Collection of Court Fees Act (Gerichtliches Einbringungsgesetz, GEG) 1962, Federal Law Gazette no. 288/1962 shall be applied to proceedings where court decisions of other EU Member States or EEA States are enforced.

### Postponement of enforcement

**Section 67.** The Regional Court which is competent pursuant to Section 53 Para. 2 or Section 65 Para. 2 shall postpone enforcement

1. as soon as it becomes aware of the fact that the decision made by the authority of the other EU Member State or EEA State which is to be enforced is being contested in that State;
2. until a legally effective decision has been made regarding a complaint (Beschwerde) lodged pursuant to Section 53d Para. 4 EU-JZG;
3. until the decision has been translated at the court's request and at the court's costs;
4. until the additional information requested by the issuing State's authority has been received.

## Part 4

### Final provisions

### References

**Section 68.** (1) If the present federal act refers to other federal acts, they shall be applied as amended.

(2) Where other Federal Acts refer to Sections 7 to 7o of the Employment Contract Law Adaptation Act (Arbeitsvertragsrechts-Anpassungsgesetz, AVRAG), Federal Law Gazette no. 459/1993 as amended by Federal Law Gazette I no. 44/2016 or Sections 10 and 10a AÜG as amended by Federal Law Gazette I no. 44/2016, that reference shall be considered as reference to the corresponding provisions of this Federal Act.

### Inspection plan - activity report

**Section 69.** In cooperation with the Federal Minister of Finance, the Federal Minister of Labour, Social Affairs and Consumer Protection shall draw up an annual inspection plan in accordance with their respective responsibilities with a view to performing effective monitoring on the basis of risk assessment and statistical data and considering the specific risks of particular industries. The inspection plan shall include information about whether the tax authority, which is in charge of the inspection pursuant to Section 12, has sufficient staff with a view to the number of workers posted to Austria and the efficiency of those inspections. Accordingly, the Federal Minister of Finance shall ensure that a sufficient number of staff is available. The first inspection plan shall be drawn up for 2018. The Federal Minister of Finance shall draw up a report on fulfilling the inspection plan for each year, by 30 June of the subsequent year, and shall submit said report jointly with the Federal Minister of Labour, Social Affairs and Consumer Protection to the Austrian National Council and make it accessible to the public.

### Gender-neutral use of language

**Section 70.** Any references made to persons shall include both sexes.

**Enforcement provisions**

**Section 71.** The responsibility for enforcing this Federal Act shall lie with

1. the Federal Minister of Finance regarding Section 12, Section 19 Para. 2, Section 20 Para. 3;
2. the Federal Minister Federal Minister of Labour, Social Affairs and Consumer Protection and the Federal Minister of Finance regarding Section 69;
3. the Federal Minister of Labour, Social Affairs and Consumer Protection with regard to all other provisions.

**Entry into force**

**Section 72.** (1) This Federal Act shall enter into force on 1 January 2017 and shall apply to any and all facts and cases occurring after 31 December 2016.

(2) **(Constitutional provision)** Section 1 Para. 3 of this Federal Act shall enter into force on 1 January 2017 and shall apply to any and all facts and cases occurring after 31 December 2016.