

## Full text version of the Anti-Wage and Social Dumping Act (*Lohn- und Sozialdumping-Bekämpfungsgesetz*) as amended on 2 October 2023

### Long name

Federal Act enacting a law to combat wage and social dumping (*Lohn- und Sozialdumping-Bekämpfungsgesetz, LSD-BG*)

Original version: Federal Law Gazette I no. 44/2016 (NO. GP XXV RV 1111 AB 1133 p. 128. BR: AB 9590 p. 854.)

[CELEX no.: 32014L0067]

### Amendment

Federal Law Gazette (*BGBl.*) I no. 30/2017 (NO. GP XXV RV 1362 AB 1440 p. 158. BR: AB 9680 p. 862.)

Federal Law Gazette (*BGBl.*) I no. 64/2017 (NO. GP XXV RV 1589 AB 1603 p. 175. BR: AB 9788 p. 867.)

Federal Law Gazette (*BGBl.*) I no. 32/2018 (NO. GP XXVI RV 65 AB 97 p. 21. BR: AB 9956 p. 879.) [CELEX no.: 32016L0680]

Federal Law Gazette (*BGBl.*) I no. 100/2018 (NO. GP XXVI RV 329 AB 413 p. 57. BR: AB 10082 p. 888.)

Federal Law Gazette (*BGBl.*) I no. 104/2019 (NO. GP XXVI IA 985/A AB 692 p. 88. BR: AB 10252 p. 897.)

Federal Law Gazette (*BGBl.*) I no. 54/2020 (NO. GP XXVII IA 480/A AB 171 p. 34. BR: AB 10347 p. 907.)

Federal Law Gazette (*BGBl.*) I no. 99/2020 (NO. GP XXVII RV 110 AB 173 p. 32. BR: 10323)

Federal Law Gazette (*BGBl.*) I no. 174/2021 (NO. GP XXVII RV 943 AB 1011 p. 115. BR: AB 10692 p. 929.)

[CELEX no.: 32018L0957]

Federal Law Gazette (*BGBl.*) I no. 111/2022 (NO. GP XXVII RV 1488 AB 1602 p. 167. BR: AB 11032 p. 943.)

[CELEX no.: 32020L1057]

### Preamble/promulgation clause

The National Council resolved:

### 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 (*Note: Entitlement to minimum remuneration, reimbursement of expenses and appropriate accommodation standards*)

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 (*Note: Investigations of the Anti-Fraud Office*)
- 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 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 pay 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  
(*Note: Section 25a* .)
- 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 (*Note: Failure to keep pay documents readily available and failure to submit them*)
- 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 (*Note: Payment freeze - payment prohibition - 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

## Text

### 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.
5. employment relationships if the employer is a public body of a Member State of the European Economic Area, the Swiss Confederation or any other third country and if the employment relationships are subject to public sector employment law provisions comparable to those referred to in no. 1 and no. 2 stipulating with compulsory effect the content of the relationships.

(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*) 2021, Federal Law Gazette no. 78/2021; 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 2021 is determined by the LAG 2021.

(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. 5 of the Federal Sports Promotion Act (*Bundes-Sportförderungsgesetz, BSFG*) 2017, Federal Law Gazette I no. 100/2017, 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.

(6) This Federal Act shall not apply to group-internal temporary postings of particularly skilled workers to Austria as defined by Directive 96/71/EC concerning the posting of workers in the framework of the provision of services, Official Journal L 18 of 21 January 1997, p. 1, as amended by Directive (EU) 2018/957 amending Directive 96/71/EC concerning the posting of workers in the framework of the provision of services, Official Journal L 173 of 9 July 2018, p. 16, within a group pursuant to section 15 of the Stock Corporation Act (*Aktiengesetz, AktG*), Federal Law Gazette no. 98/1955, and Section 115 of the Limited Liability Companies Act (*GmbH-Gesetz, GmbHG*), Imperial Law Gazette no. 58/1906, where 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; or
3. for work involving delivering, commissioning (and related training), maintaining, servicing or repairing machines, plants or IT systems.

(7) This Federal Act shall not apply to workers posted or hired out to Austria for training activities lasting for longer periods, if

1. the foreign employer or contractual partner is not obliged to perform any work for the Austrian business and the workers are assigned to Austria to allow them to acquire basic or advanced skills and knowledge by participating in a programme of basic or advanced training offered by the employer or Austrian undertaking; and
2. any activities carried out or products, services and preliminary results produced by the workers as a result of the training have only an insignificant bearing on the production process and business outcomes of the business where training takes place; and
3. the workers are not involved in the training business for a longer period than is necessary for acquiring the necessary knowledge and skills.

(8) This Federal Act shall not apply to

1. work as a mobile worker as defined by Para: 9 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; however, Section 21a

- and Section 26a Para. 1 no. 3 and Para. 2 shall apply in the case of mobile workers in the road transport sector;
2. work as an employee who for the last two pay periods preceding the posting or temporary work period and during the posting or temporary work period demonstrably receives a monthly gross remuneration of at least 120% 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;
  3. work as an employee referred to in Section 14 Para. 1 nos. 1 and 2 who demonstrably receives a monthly gross remuneration of at least 120% of thirty times the maximum contribution base per calendar day in accordance with Section 108 Para. 3 ASVG;
  4. posting or hiring-out within the scope of exchange, education, further training or research programmes or in the capacity of a posted or hired-out lecturer at universities as defined by the Universities Act (*Universitätsgesetz, UG*) 2002, Federal Law Gazette I no. 120/2002, 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 Act (*Fachhochschulgesetz, FHG*), Federal Law Gazette no. 340/1993;
  5. delivery of goods by workers posted by the seller or lessor and the collection of goods by workers posted by the buyer or lessee;
  6. activities essential for commissioning and use of goods delivered which are performed in few hours by employees posted by the seller or lessor.

(9) For the purposes of this Federal Act, mobile workers are persons who work as drivers or accompanying staff in the carriage of passengers and goods, as well as employees of an employer which operates in a sector other than the carriage of passengers and goods but which deploys workers to Austria primarily to carry passengers and goods. This also applies to the provisions of this Federal Act enacted to transpose Directive (EU) 2020/1057 laying down specific rules with respect to Directive 96/71/EC and Directive 2014/67/EU for posting drivers in the road transport sector and amending Directive 2006/22/EC as regards enforcement requirements and Regulation (EU) No 1024/2012, Official Journal L 249 of 31 July 2020, p. 49, and Section 2 of Part A of Annex 31 to the Trade and Cooperation Agreement between the European Union and the European Atomic Energy Community, of the one part, and the United Kingdom of Great Britain and Northern Ireland, of the other part, Official Journal L 149 of 30 April 2021, p. 10 (hereinafter referred to as the Agreement with the United Kingdom of Great Britain and Northern Ireland).

**Additional provisions regarding the scope of application in the road transport sector within the scope of Directive (EU) 2020/1057 and Section 2 of Part A of Annex 31 to the Agreement with the United Kingdom and Northern Ireland**

**Section 1a.** (1) Mobile workers employed by a transport undertaking established in an EU Member State or EEA State or the Swiss Confederation shall not be deemed to be posted to Austria if within the framework of a posting under Article 1(3)(a) of Directive 96/71/EC they perform bilateral transport operations in respect of goods or passengers or combined transport operations as defined by Article 1(3) or (4) or (6) of Directive (EU) 2020/1057. The same shall apply to mobile workers employed by a transport undertaking established in an EU Member State if within the framework of a posting under Article 1(3)(a) of Directive 96/71/EC, in addition to performing a bilateral transport operation they perform additional activities of loading and/or unloading of goods or picking up or setting down of passengers to which the exemption for bilateral transport operations pursuant to Article 1(3) or (4) of Directive (EU) 2020/1057 applies.

(2) A bilateral transport operation in respect of goods as defined by the first sentence of Para. 1 – which does not constitute a case of posting to Austria – means the movement of goods, based on a transport contract, from an EU Member State or EEA State or the Swiss Confederation, where that country is the Member State of establishment as defined by Article 2(8) of Regulation (EC) No 1071/2009 establishing common rules concerning the conditions to be complied with to pursue the occupation of road transport operator, Official Journal L 300 of 14 November 2009, p. 51, most recently amended by Regulation (EU) 2020/1055, Official Journal L 249 of 31 July 2020, p. 17, to another of the aforementioned countries or to a third country or from another of the aforementioned countries or a third country to the Member State of establishment.

(3) An additional activity of loading or unloading of goods as defined by the second sentence of Para. 1 – which does not constitute a case of posting to Austria – occurs if, in addition to performing a bilateral transport operation, the driver performs one activity of loading and/or unloading in the Member



States or third countries that the driver crosses, provided that the driver does not load goods and unload them in the same Member State.

(4) Where a bilateral transport operation in respect of goods starting from the Member State of establishment during which no additional activity as defined by Para. 3 was performed is followed by a bilateral transport operation in respect of goods to the Member State of establishment, the activities in addition to the bilateral transport operation as defined by Para. 1 second sentence – which does not constitute a case of posting to Austria – shall comprise no more than two additional activities of loading and unloading, provided that the driver does not load goods and unload them in the same Member State.

(5) An additional activity under Para. 1 second sentence and Paras. 3 and 4 – which does not constitute a case of posting to Austria – shall be regarded as such only until the date from which vehicles registered in a Member State for the first time are required, under the fourth subparagraph of Article 8(1) of Regulation (EU) No 165/2014 on tachographs in road transport, Official Journal L 60 of 28 February 2014, p. 1, as amended by Regulation (EU) 2020/1054 amending Regulation (EC) No 561/2006 and Regulation (EU) No 165/2014, Official Journal L 249, 31 July 2020, p. 1., to be fitted with smart tachographs complying with the requirement of recording border crossings and additional activities referred to in the first subparagraph of Article 8(1) of Regulation (EU) No 165/2014. From that date, the exemptions for additional activities set out in Para. 1 second sentence and Paras. 3 and 4 shall apply solely to mobile workers using vehicles fitted with smart tachographs as provided for in Articles 8, 9 and 10 of Regulation (EU) No 165/2014.

(6) A bilateral transport operation in respect of passengers as defined by Para. 1 first sentence – which does not constitute a case of posting to Austria – in international occasional or regular carriage of passengers as defined by Regulation (EC) No 1073/2009 on common rules for access to the international market for coach and bus services, Official Journal L 300 of 14 November 2009, p. 88, most recently amended by Regulation (EU) No 517/2013, Official Journal L 158 of 10 June 2013, p. 1, corrected by Official Journal L 272 of 16 October 2015, p. 15, is when a driver performs any of the following operations:

1. picks up passengers in an EU Member State or EEA State or the Swiss Confederation, where that country is the Member State of establishment, and sets them down in another of the aforementioned countries or a third country; or
2. picks up passengers in an EU Member State or EEA State or the Swiss Confederation or in a third country, and sets them down in an EU Member State or EEA State or the Swiss Confederation, where that country is the Member State of establishment; or
3. picks up and sets down passengers in an EU Member State or EEA State or the Swiss Confederation, where that country is the Member State of establishment, for the purpose of carrying out local excursions in another Member State or a third country, in accordance with Regulation (EC) No 1073/2009.

(7) An additional activity in respect of passengers as defined by Para. 1 second sentence – which does not constitute a case of posting to Austria – occurs if, in addition to performing a bilateral transport operation, the driver picks up passengers once and/or sets down passengers once in Member States or third countries that the driver crosses, provided that the driver does not offer passenger transport services between two locations within the Member State crossed. The same shall apply to the return journey.

(8) An additional activity under Para. 1 second sentence and Para. 7 – which does not constitute a case of posting to Austria – shall be regarded as such only until the date from which vehicles registered in a Member State for the first time are required to be fitted with a smart tachograph that meets the specifications laid down in first subparagraph of Article 8(1) of Regulation (EU) No 165/2014 and complies with the requirement of recording border crossings and additional activities referred to in the first subparagraph of Article 8(1) of Regulation (EU) No 165/2014. From that date, the exemption for additional activities set out in Para. 1 second sentence and Para. 7 shall apply solely to mobile workers using vehicles fitted with smart tachographs as provided for in Articles 8, 9 and 10 of that Regulation.

(9) A combined transport operation as defined by Para. 1 first sentence – which does not constitute a case of posting to Austria – occurs when the driver performs the initial or final road leg of a combined transport operation as defined by Directive 92/106/EEC on the establishment of common rules for certain types of combined transport of goods between Member States, Official Journal L 368 of 17 December 1992, p. 38, most recently amended by Directive 2013/22/EU adapting certain directives in the field of transport policy, by reason of the accession of the Republic of Croatia, Official Journal L 158 of 10 June 2013, p. 356, if the road leg on its own consists of bilateral transport operations, as defined by Article 1(3) of Directive (EU) 2020/1057.

(10) A driver who carries out a cabotage operation as defined by Regulation (EC) No 1072/2009 on common rules for access to the international road haulage market, Official Journal L 300 of 14 November 2009, p. 72, most recently amended by Regulation (EU) 2020/1055, Official Journal L 249 of 31 July 2020, p. 17, or in Regulation (EC) No 1073/2009, shall be deemed to be posted for the purposes of this Federal Act.

(11) A mobile worker employed by a transport undertaking established in the United Kingdom of Great Britain and Northern Ireland shall not be deemed to be posted when performing transport operations, based on a transport contract, as defined by Article 462(1)(a) of the Agreement with the United Kingdom of Great Britain and Northern Ireland.

**Please note re the following provision**

also applies to workers as defined by Section 1 Para. 9 (cf. Section 72 Para. 12)

**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) Sections 3 and 4 AÜG or comparable Austrian legislation shall be relevant in assessing whether workers have been hired out.

(3) Where the effective duration of a posting or hiring-out of a worker from the EEA or Switzerland exceeds twelve months, Austrian labour standards provided for by law, ordinance or collective agreement shall apply in their entirety to such employment relationships from that date, if those standards are more favourable than the corresponding provisions of the posting country. The collective agreement applicable to comparable workers employed by comparable employers at the place of work shall be applied. The foregoing does not apply to aspects governed by the Corporate Staff and Self-Employment Provision Act (*Betriebliches Mitarbeiter- und Selbständigenvorsorgegesetz, BMSVG*), Federal Law Gazette I no. 100/2002 or comparable Austrian provisions; the Company Pension Act (*Betriebspensionsgesetz, BPG*), Federal Law Gazette no. 282/1990; and procedures, formalities and conditions of entering into and terminating employment contracts, including non-competition clauses. Where the employer provides substantiated information in German or English, the period referred to in the first sentence shall be extended to 18 months. For the purpose of calculating the duration of the posting, account shall be taken of any previous posting period worked by a posted worker at a particular job. If applicable, the notification shall be submitted together with a change report as defined by Section 19.

(3a) With regard to Para. 3, a posting as defined by Directive (EU) 2020/1057 shall be considered to be ending when the mobile worker leaves Austria in the performance of an international carriage of goods or passengers. That period of posting shall not be cumulated with previous periods of posting in the context of such international operations performed by the same mobile worker or by another mobile worker whom they replace.

(4) Para. 3 shall not apply to workers as defined by Section 33d of the Construction Workers' Annual Leave and Severance Pay Act (*Bauarbeiter-Urlaubs- und Abfertigungsgesetz, BUAG*), Federal Law Gazette no. 414/1972.

(5) Employers shall be responsible for ensuring that their drivers acquire knowledge about their rights and obligations deriving from Directive (EU) 2020/1057.

**Please note re the following provision**

also applies to workers as defined by Section 1 Para. 9 (cf. Section 72 Para. 12)



## Part 2

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

#### Chapter 1

#### Entitlements based on labour law

##### Entitlement to minimum remuneration, reimbursement of expenses and appropriate accommodation standards

**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 (BMSVG), Federal Law Gazette I no. 100/2002 or comparable Austrian legislation, and contributions or premiums pursuant to the Company Pension Act (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 this work in Austria does not take longer than three months in total in each case.

(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.

(7) Without prejudice to the law governing the employment relationship, posted workers shall, for the duration of the posting, have a mandatory entitlement to reimbursement of at least the expenses for travel, lodging and board incurred in Austria during the posting as determined by law, ordinance or collective agreement to which comparable workers employed by comparable employers at the place of work are entitled. That reimbursement of expenses shall cover costs incurred by workers as a result of relocating from one place of regular work to another within 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 posting or 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 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 has 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 his/her 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 (*Bundesvergabe-gesetz*) 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 Anti-Fraud Office (*Amt für Betrugsbekämpfung*), carrying out case investigations involving employees whose habitual place of work is outside Austria and who are not subject to the ASVG;
2. the Austrian Health Insurance Fund (*Österreichische Gesundheitskasse*) 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 Anti-Fraud Office (*Zentrale Koordinationsstelle für die Kontrolle der illegalen Beschäftigung, ZKO*), collecting and processing posting reports (posting declarations) or reports on the hiring-out of workers.

(2) When using data in connection with investigations with regard to Sections 12 and 29, the Anti-Fraud Office shall act in the capacity of a processor as defined by Article 4(8) of the Regulation on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation), Official Journal L 119 of 4 May 2016, p. 1, (hereinafter referred to as GDPR).

(3) In connection with its activities pursuant to Section 13, the CWSD Competence Centre shall act in the capacity of a controller as defined by Article 4(7) GDPR.

(4) Personal data collected by the Anti-Fraud Office 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 the Anti-Fraud Office**

**Section 12.** (1) The Anti-Fraud Office shall be entitled to monitor compliance with the requirement of keeping available the documents specified in Sections 21, 21a 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). The bodies of the Anti-Fraud Office shall be entitled 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;
3. inspect the documents required for the investigation (Sections 21, 21a and 22), make copies of these documents and – except in the case of deployment of mobile workers as defined by Directive (EU) 2020/1057 or Section 2 of Part A of Annex 31 to the Agreement with the United Kingdom of Great Britain and Northern Ireland – request 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 Anti-Fraud Office, 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;
4. request submission of the pay documents enumerated in Section 22 up to one month after completion of the posting or temporary work period. The employer or temporary work agency shall send these documents within 14 days of receipt of the request by the employer;
5. in the case of the posting of mobile workers as defined by Directive (EU) 2020/1057 to Austria, request submission of the following documents after the posting has ended via the public interface to the Internal Market Information System (IMI) pursuant to Regulation (EU) No. 1024/2012 on administrative cooperation through the Internal Market Information System and



repealing Commission Decision 2008/49/EC (the “IMI Regulation“), Official Journal L 316 of 14 November 2012, p. 1, most recently amended by Regulation (EU) 2020/1055, Official Journal L 249 of 31 July 2020, p. 17, and Directive (EU) 2020/1057:

- a) the documents enumerated in Section 21a Para. 2;
- b) the contract of employment or equivalent documents as defined by Article 3 of Directive 91/533/EEC on an employer's obligation to inform employees of the conditions applicable to the contract or employment relationship, Official Journal L 288 of 18 October 1991, p. 32, and – for the calendar month(s) of the posting – payslips, proof of wage payment or bank transfer, documents relating to pay categorisation, and records of hours worked.

The transport undertaking must submit these documents via the public interface to the Internal Market Information System (IMI) within eight weeks of the date of the request.

6. in the case of the posting of mobile workers as defined by the Agreement with the United Kingdom of Great Britain and Northern Ireland, request submission of the following documents via the public interface to the Internal Market Information System after the posting has ended:

- a) the documents enumerated in Section 21a Para. 2;
- b) the contract of employment or an equivalent document, as well as – for the calendar month(s) of the posting – payslips, proof of wage payment or bank transfer, documents relating to pay categorisation, and records of hours worked.

The transport undertaking must submit these documents via the public interface to the Internal Market Information System (IMI) within eight weeks of the date of the request.

7. inspect the database at the CWSD Competence Centre;
8. inspect the database of the Umbrella Association of Austrian Social Security Institutions (*Dachverband der Sozialversicherungsträger*) in which the information transmitted in connection with the issue of a PD A1 pursuant to Regulations (EC) No 883/2004 and No 987/2009 is stored;
9. inspect the posting reports (posting declarations) pursuant to Section 19a.

(2) The Anti-Fraud Office 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. receiving the results of investigations by the Anti-Fraud Office;
2. requests to the Anti-Fraud Office 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.

(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 Anti-Fraud Office 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 offices of the Austrian Health Insurance Institution 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 health insurance providers.

(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. The Construction Workers' Holiday and Severance Pay Fund shall be entitled pursuant to Section 12 Para. 1 nos. 4 and 7 to request the submission of documents and to inspect the database at the CWSD Competence Centre.

#### **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 Federal Finance Administration (*Bundesfinanzverwaltung*), 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 assistance (*Amtshilfe*)**

**Section 17.** (1) Within the scope of their competence, the authorities and agencies listed below shall be allowed to provide mutual 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 Anti-Fraud Office,
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 mutual 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 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 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 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 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 assistance and cooperation must be claimed by other EU Member States or EEA States.

**Cooperation with authorities of other EU Member States and mutual assistance in the road transport sector pursuant to Directive (EU) 2020/1057**

**Section 17a.** (1) The Anti-Fraud Office shall cooperate with the competent authorities and agencies of other EU Member States with regard to the tasks provided for in point (c) and the second and third subparagraphs of Article 1(11) of Directive (EU) 2020/1057. That cooperation shall comprise the provision of documentation and the requesting of such provision by way of mutual assistance pursuant to point (c) and the second and third subparagraphs of Article 1(11) of Directive (EU) 2020/1057.

(2) In the case of a request addressed to the Anti-Fraud Office by a competent authority or agency of another Member State or EEA state pursuant to point (c) and the second subparagraph of Article 1(11) of Directive (EU) 2020/1057, the Anti-Fraud Office shall provide the requested documentation via the Internal Market Information System (IMI) no later than within 25 working days from the day of the request for mutual assistance.

(3) The provisions of Section 17 shall remain unaffected.

**Cooperation with authorities and mutual assistance in the road transport sector pursuant to the Agreement with the United Kingdom of Great Britain and Northern Ireland**

**Section 17b.** (1) The Anti-Fraud Office shall cooperate with the competent authorities and agencies of the United Kingdom of Great Britain and Northern Ireland with regard to the tasks provided for in point (c) and the second and third subparagraphs of Article 6(1) of Section 2 of Part A of Annex 31 to the Agreement with the United Kingdom of Great Britain and Northern Ireland. That cooperation shall comprise the provision of documentation and the requesting of such provision by way of mutual assistance pursuant to point (c) and the second and third subparagraphs of Article 6(1) of Section 2 of Part A of Annex 31 to the aforementioned Agreement.

(2) In the case of a request addressed to the Anti-Fraud Office pursuant to point (c) and subparagraph 2 of Article 6(1) of Section 2 of Part A of Annex 31 to the Agreement with the United Kingdom of Great Britain and Northern Ireland, the Anti-Fraud Office shall provide the requested documentation via the Internal Market Information System (IMI) no later than within 25 working days from the day of the request for mutual assistance.

**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 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.

**Obligation of transport undertakings to provide information**

**Section 18a.** Transport undertakings established in Austria shall make available to the Anti-Fraud Office, within one week of being asked to do so by the Anti-Fraud Office, the documentation necessary to enable the Anti-Fraud Office to comply with a request for mutual assistance as defined by Section 17a or Section 17b.

## 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 (change report). 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 workers in the transport sector (Section 1 Para. 9, the report shall be submitted before the employees enter Austrian territory. This report (declaration) 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 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, social security 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 security 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, social security 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 service contracts, service procurement contracts 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 six months (framework period) before work is commenced for the first time. The place of employment as defined by Para. 3 no. 8 or Para. 4 no. 6 must be reported separately for each client or user undertaking. The documents pursuant to Sections 19, 21 and 22 shall be kept readily available at the place/site of work for the duration of the framework period or made electronically accessible at that place at the time of investigation. Section 21 Para. 2 shall be applied.

(5a) Para. 5 shall not apply to workers as defined by Section 33d BUAG.

(6) If the employee's cross-border assignment involves the fulfilment of similar service contracts entered into with several clients, all clients can be indicated in the report pursuant to Para. 1, provided that the service contracts are continuously performed in Austrian territory and within one week.

(7) The report pursuant to Para. 1 on posting mobile workers in the transport sector (Section 1 Para. 9) shall be made exclusively pursuant to this paragraph for a period of six months in each case and has to include the following information; 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. unless the driver is the contact person (Section 23, second sentence): 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); regarding contact persons in the case of other means of transport Para. 3 no. 3 shall be applied;
4. names, addresses, birth dates, social security numbers and applicable social security institutions as well as the nationalities of the workers who will probably work in Austria in the given period;
5. licence plate numbers of the vehicles used by the employees specified in no. 4;
6. amount of remuneration payable to the individual employee under Austrian law and date of commencement of the employment relationship with the employer;
7. type of work and deployment of the worker, taking into account the applicable Austrian collective agreement;
8. 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;
9. 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

(8) Paras. 1 to 3 and 5 to 7 shall not apply to the posting of mobile workers as defined by Directive (EU) 2020/1057.



### Reporting requirement in cases of posted mobile workers in the road transport sector

**Section 19a.** (1) Transport undertakings established in an EU Member State shall report the posting to Austria of mobile workers as defined by (EU) 2020/1057 employed by them using the standard form available on the public interface to the Internal Market Information System (IMI) pursuant to Regulation (EU) No 1024/2012 on administrative cooperation through the Internal Market Information System and repealing Commission Decision 2008/49/EC. The report (declaration) shall be submitted at the beginning of the posting period and shall include the following data; if the data changes at a later time, this shall be reported without delay:

1. the identity of the undertaking, at least in the form of the number of the Community licence where this number is available;
2. the contact details of a transport manager or other contact person in the Member State of establishment to liaise with the competent Austrian authorities and to send out and receive documents or notices;
3. the identity (name, date of birth, social security number and citizenship), the address of the residence and the number of the driving licence of the mobile worker;
4. the start date of the mobile worker's contract of employment, and the law applicable to it;
5. the envisaged start and end date of the posting, which shall be for a minimum of one day and a maximum of six months;
6. the number plates of the motor vehicles;
7. whether the transport services performed are carriage of goods, carriage of passengers, international carriage or cabotage operations.

(2) Transport undertakings established in the United Kingdom of Great Britain and Northern Ireland shall report the posting to Austria of mobile workers as defined by Section 2 of Part A of Annex 31 to the Agreement with the United Kingdom of Great Britain and Northern Ireland using the standard form available on the public interface to the Internal Market Information System (IMI) pursuant to Regulation (EU) No 1024/2012. The report (declaration) shall be submitted at the beginning of the posting period and shall include the following data; if the data changes at a later time, this shall be reported without delay:

1. the identity of the undertaking, at least in the form of the number of the valid licence where this number is available;
2. the contact details of a transport manager or other contact person in the territory of the United Kingdom;
3. the identity (name, date of birth, social security number and citizenship), the address of the residence and the number of the driving licence of the mobile worker;
4. the start date of the mobile worker's contract of employment, and the law applicable to it;
5. the envisaged start and end date of the posting, which shall be for a minimum of one day and a maximum of six months; and
6. the number plates of the motor vehicles.

### Notification of the authorities

**Section 20.** (1) Section 19 Paras. 3, 5 and 6 lay 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 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 health insurance institution;
2. the Construction Workers' Holiday and Severance Pay Fund (BUAK); and
3. 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 worker'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 or English showing the inability to obtain these documents from the competent social security institution prior to the posting, equivalent documents in German or English (application for issuance of social security document E 101 or A 1 and documents showing that the employee is subject to a foreign social security scheme for the posting period) shall be kept readily available;
2. the report pursuant to Section 19;
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 or Para. 7 no. 8, 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 (*Wirtschaftstreuhandberufsgesetz, WTBG*) 2017, Federal Law Gazette I no. 137/2017, 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 Anti-Fraud Office or the Construction Workers' Holiday and Severance Pay Fund takes place outside the business hours of the professional representative, the latter shall, upon the Anti-Fraud Office's 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 Anti-Fraud Office 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 mandatory social security in Austria; if, at the time of the investigation, the temporary work agency furnishes evidence in German or English showing the inability to obtain these documents from the competent social security institution prior to the hiring-out, equivalent documents in German or English

(application for issuance of social security document E 101 or A 1 and documents showing that the employee is subject to a foreign social security scheme for the posting period ) 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 documents available in the road transport sector**

**Section 21a.** (1) Before the start of a posting of mobile workers, transport undertakings as defined by Section 19a Paras. 1 and 2 shall provide drivers with the report (declaration) pursuant to Section 19a in paper or electronic format. Drivers shall keep the report provided to them readily available during the posting period or shall make it accessible to the Anti-Fraud Office electronically on site and at the time of the investigation.

(2) Drivers whose habitual place of work is outside Austria and who are employed by a transport undertaking established in an EU Member State or in the United Kingdom of Great Britain and Northern Ireland shall – regardless of whether they are considered to be posted to Austria and without prejudice to Para. 1 – keep the following documents provided by the transport undertaking readily available or make them accessible electronically to the Anti-Fraud Office on site and at the time of the investigation:

1. records showing
  - a) in the case of the carriage of goods: the goods carried, the place of loading and unloading, and the client, or
  - b) in the case of carriage of passengers, the pick-up and drop-off (set-down) points of the passengers carried

in the case of lit a), this can be an electronic consignment note (e-CMR) or evidence referred to in Article 8(3) of Regulation (EC) No 1072/2009; and
2. tachograph records in accordance with recording and record-keeping requirements under Regulation (EC) No 561/2006 on the harmonisation of certain social legislation relating to road transport, Official Journal L 102 of 11 April 2006, p. 1, most recently amended by Regulation (EU) 2020/1054, Official Journal L 249 of 31 July 2020, p. 1, and Regulation (EU) No 165/2014, or set out in Sections 2 and 4 of Part B of Annex 31 to the Agreement with the United Kingdom of Great Britain and Northern Ireland.

Transport operators shall provide the aforementioned documents in paper or electronic format. The obligation under this Paragraph applies both to postings to Austria and in cases in which the driver is not considered to be posted to Austria, such as under Section 1a or in the case of transit through Austria.

- (3) The provisions of Section 21 Para. 1 shall remain unaffected.

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

**Section 22.** (1) In order to allow verification of the remuneration to which the posted employee is entitled under Austrian law, employers as defined by Section 3 Para. 2, Section 8 Para. 1 or Section 19 Para. 1 shall keep the following documents readily available:

1. employment contract or statement of terms and conditions (*Dienstzettel*) as referred to in Directive 91/533 on an employer's obligation to inform employees of the conditions applicable to the contract or employment relationship, Official Journal L 288 of 18 October 1991, p. 32;
2. payslips, proof of wage payment or bank transfer, wage records relating to the supplements and allowances owed for the specific work performed or specific assignment undertaken;
3. records of hours worked and documents relating to pay categorisation where categorisation is not evident from other pay documents;

specifically in German or English at the place/site of work for the duration of the overall period of employment (in Austria) or posting period or the framework period (Section 19), or shall make them accessible electronically to the Anti-Fraud Office 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. 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.

(1a) In the case of posting mobile workers in the transport sector (Section 1 Para. 9) - in derogation of Para. 1 above - the employment contract or the statement of terms and conditions (*Dienstzettel*) as well as the records of hours worked (records as defined in Regulation (EU) No. 165/2014, shall be kept readily available in the vehicle already as soon as the workers enter Austrian territory or shall be made accessible electronically to the Anti-Fraud Office on site and at the time of the investigation. Payslips (*Lohnzettel*), proof of wage payment or bank transfer statements as well as documents relating to pay categorisation for the mobile worker in the transport sector shall be submitted upon request of the Anti-Fraud Office for the calendar month during which the inspection was carried out and, additionally, for the preceding calendar month if the employee performed work in Austria in the preceding month, within a period of 14 calendar days after the end of the calendar month of the inspection. If the pay documents as specified in the second sentence are not submitted to the Anti-Fraud Office within this period or are incomplete, this is deemed a failure to keep the pay documents readily available.

(1b) In the case of postings lasting no longer than 48 hours and not involving mobile workers – in derogation of Para. 1 – the employment contract or the statement of terms and conditions as well as the records of hours worked shall be kept readily available or shall be made accessible electronically to the Anti-Fraud Office on site and at the time of the investigation. For the purpose of calculating the duration of the posting, account shall be taken of any previous posting periods already completed by another worker. Para. 1a second and third sentences shall also apply.

(1c) Paras. 1 to 1b shall not apply to the posting of mobile workers as defined by Directive (EU) 2020/1057 or in Section 2 of Part A of Annex 31 to the Agreement with the United Kingdom of Great Britain and Northern Ireland.

(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. Section 21 Para. 2 shall be applied accordingly.

#### **Contact person**

**Section 23.** (1) 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). In the case of posting mobile workers in the transport sector, the driver of the vehicle shall be the contact person unless the employer nominates a person authorised to professionally represent the parties (Section 21 Para. 2 no. 4) as the contact person.

(2) Para. 1 shall not apply to mobile workers posted to Austria as defined by Directive (EU) 2020/1057.

#### **Responsible agents**

**Section 24.** (1) The appointment of responsible agents (or “special responsible representatives”) pursuant to Section 9 Paras. 2 last sentence and 3 VStG 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 VStG. 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.

**Section 25a.** If information regarding which national statutory rules are applicable to posting or hiring-out is absent from the website to be provided for pursuant to Article 5 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 of 28 May 2014, p. 11, this shall be regarded as a mitigating circumstance for the purposes of Section 19 of the Administrative Penal Act (*Verwaltungsstrafgesetz, VStG*) in administrative penal proceedings pursuant to this Federal Act.

#### 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 the Anit-Fraud Office or the Construction Workers’ Holiday and Severance Pay Fund

commits a single administrative offence regardless of the number of workers concerned and shall be fined by the District Administration Authority to pay up to EUR 20,000.

(1a) Notwithstanding Para. 1 no. 1, the report shall be deemed to have been made in a complete manner if, in the case of a report pursuant to Section 19 Para. 1, the form containing the information provided for under Section 19 Para. 4 is used in error instead of the form containing the information provided for under Section 19 Para. 3 or vice versa.

(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, commits a single administrative offence regardless of the number of workers concerned and shall be fined by the District Administration Authority to pay up to EUR 20,000.

#### Violations of reporting obligations and the obligation to keep documents readily available in cases of posted workers in the road transport sector

**Section 26a.** (1) Anyone who, as a transport undertaking as defined by Section 19a or Section 21a,

1. violates Para. 19a 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 21a by failing to provide the driver with the required documents

commits a single administrative offence regardless of the number of workers concerned and shall be fined by the District Administration Authority to pay up to EUR 20,000.

(2) Anyone who, as a driver, violates Section 21a by failing to keep readily available or make accessible in electronic format the required documents provided to them commits a single administrative offence regardless of the number of workers concerned and shall be fined by the District Administration Authority to pay up to EUR 1,000.

#### Frustration of pay level verification

**Section 27.** (1) Anyone who, as an employer, temporary work agency or user undertaking, violates Section 12 Para. 1 no. 3 by not submitting the necessary documents, commits a single administrative offence regardless of the number of employees concerned and shall be fined by the District Administration Authority to pay up to EUR 40,000. 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 by refusing to provide information or by otherwise impeding or hindering verification commits a single administrative offence regardless of the number of workers concerned and shall be fined by the District Administration Authority to pay up to EUR 40,000.

(3) Anyone who, as an employer, temporary work agency or user undertaking, refuses inspection of the documents pursuant to Sections 21 Para. 1 or Section 22, commits a single administrative offence regardless of the number of workers concerned and shall be fined by the District Administration Authority to pay up to EUR 40,000.

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

#### **Frustration of checks on the posting of workers in the road transport sector**

**Section 27a.** Anyone who, as a transport undertaking as defined by Section 19a, violates Section 12 Para. 1 no. 5 or 6 by not submitting the required documents commits a single administrative offence regardless of the number of workers concerned and shall be fined by the District Administration Authority to pay up to EUR 40,000.

**Section 27b.** (1) Anyone who, as a consignor, freight forwarder, contractor or subcontractor commissions a transport service where they knew, or, in the light of all relevant circumstances ought to have known, that the transport undertaking or the driver infringed the provisions of Section 19a or Section 21a in connection with the transport service, commits a single administrative offence regardless of the number of employees concerned and shall be fined by the District Administration Authority to pay up to EUR 20,000.

(2) Anyone who, as a consignor, freight forwarder, contractor or subcontractor commissions a transport service where they knew, or, in the light of all relevant circumstances ought to have known, that the transport undertaking or the driver infringed the provisions of Section 12 Para. 1 no. 5 or 6 in connection with the transport service, commits a single administrative offence regardless of the number of employees concerned and shall be fined by the District Administration Authority to pay up to EUR 40,000.

**Section 27c.** Anyone who, as a transport undertaking, violates Section 18a by failing to make the necessary documents available to the Anti-Fraud Office commits a single administrative offence regardless of the number of employees concerned and shall be fined by the District Administration Authority to pay up to EUR 40,000.

#### **Failure to keep pay documents readily available and failure to submit them**

**Section 28.** Anyone who

1. as an employer violates Section 22 Para. 1, Para. 1a or Para. 1b 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, or
4. as an employer or temporary work agency violates Section 12 Para. 1 no. 4 by not submitting the pay documents

commits a single administrative offence regardless of the number of workers concerned and shall be fined by the District Administration Authority to pay up to EUR 20,000, or, in case of repetition, up to EUR 40,000.

#### **Underpayment**

**Section 29.** (1) Any employer who employs or has employed one or more employees without paying the employee or employees at least the remuneration to which they are 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 a single administrative offence regardless of the number of workers concerned and shall be fined by the District Administration Authority to pay up to EUR 50,000. If, in the former case and where the employer has up to nine employees, the total amount of remuneration withheld from employees is less than EUR 20,000, the fine shall be up to EUR 20,000. If the total amount of remuneration withheld from employees is greater than EUR 50,000, the fine shall be up to EUR 100,000. If the total amount of remuneration



withheld from employees is greater than EUR 100,000, the fine shall be up to EUR 250,000. If the total amount of remuneration withheld from employees is greater than EUR 100,000 and if over the remuneration periods during which employees were underpaid an average of more than 40% of remuneration was deliberately withheld, the fine shall be up to EUR 400,000. If the employer cooperates promptly and fully in establishing the truth of the matter, the next lower penalty range shall be applied instead of the penalty range of up to EUR 100,000 or up to EUR 250,000. 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 counted towards any underpayments in the respective remuneration period. With regard to special payments to employees subject to Section 14 Para. 1 no. 1, 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. 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 the 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 Anti-Fraud Office, 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 Anti-Fraud Office 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 against an administrative decision of an administrative authority, and an appeal (*Revision*) with the Administrative Court of Justice against a ruling or a decision of an Administrative Court.

#### **Provisional security deposit**

**Section 33.** (1) 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 Anti-Fraud Office 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 Anti-Fraud Office shall notify the Fund 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 37 Para. 4 last sentence, Section 37a Paras. 3 to 4 and Section 50 Para. 6 first sentence VStG shall apply accordingly to provisional security deposits collected in accordance with the first sentence. The Anti-Fraud Office is 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.

(2) Section 34 Para. 9 shall be applied accordingly. A provisional security deposit collected by way of confiscation shall also be declared released if the penalty imposed on the contractor or temporary employment agency has been executed.

(3) The District Administration Authority shall declare the provisional security deposit forfeited once it has become evident that it will be impossible to prosecute the contractor or the temporary employment agency. The provisional security deposit collected by way of confiscation shall also be declared forfeited once it has become evident that it will be impossible to enforce the penalty; Section 37 Para. 6 VStG shall apply.

#### **Payment freeze - payment prohibition - 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 Anti-Fraud Office, in conjunction with the investigations pursuant to Section 12, as well as the Construction Workers' Holiday and Severance Pay Fund may order the domestic or foreign 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. If the amount specified in the payment freeze is lower than the outstanding compensation or the outstanding remuneration for temporary agency work, the payment freeze shall, up to the amount specified therein, encompass the part or parts of the compensation or remuneration for temporary agency work that will fall due first.

(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 Paras. 4 and 4a. The Anti-Fraud Office may order a payment freeze only where a provisional security deposit pursuant to Section 33 was not set or not collected. The Construction Workers' Holiday and Severance Pay Fund must not impose a payment freeze if it has been notified by the Anti-Fraud Office 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 having immediate

effect; Paras. 9 and 10 shall apply accordingly to such security deposit; proceedings pursuant to Section 4, if pending, shall be dismissed.

(3) After having imposed a payment freeze pursuant to Para. 1, the Anti-Fraud Office 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. Within one week of receiving such application, the District Administration Authority shall consign to a delivery service a request to comment addressed to the contractor or temporary work agency and specifying a deadline for response, or have its own staff attempt service, for example at the place of delivery pursuant to Section 41, with the payment freeze becoming ineffective otherwise. The District Administration Authority shall decide on the application within three weeks of receiving comments from the contractor or temporary work agency, 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 after conducting an investigation, the District Administration Authority with jurisdiction over the administrative penal proceedings finds that 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 Austrian or foreign client or, in the case of temporary agency work, the user undertaking, to deposit as a security deposit the outstanding compensation or the outstanding remuneration for temporary agency work or parts thereof at the time or times that the outstanding compensation or remuneration for temporary agency work fall(s) due under civil law. Rights of retention, defences, claims for damages or comparable rights under civil law vis-à-vis the contractor or temporary work agency which affect the civil claim (in terms of its merits, amount or due date), shall remain unaffected by the administrative decision. This administrative decision shall specify no deadline and shall not be enforceable. The administrative decision shall have the consequence that the client or user undertaking may make payments in respect of compensation or remuneration for temporary agency work, up to the amount specified in the decision, only to the District Administration Authority but not to the contractor or temporary work agency (payment prohibition). Para. 2 first sentence shall be applied accordingly for proceedings under Para. 4a. Upon the District Administration Authority's instruction, the client shall submit the contract for work and services, or the user undertaking the temporary work agreement. Sections 37 and 37a VStG shall not apply in such cases unless otherwise stipulated in this provision. The payment freeze (imposed by the Anti-Fraud Office or the Construction Workers' Holiday and Severance Pay Fund) under Para. 1 shall cease to apply upon issue of the administrative decision against the client or user undertaking, regardless of whether that administrative decision has become final. If the application under Para. 3 is rejected, the authority shall notify the client or user undertaking in the administrative decision that the payment freeze under Para. 1 has ceased to apply. The District Administration Authority shall notify the contractor or temporary work agency of sums paid. The client or user undertaking and the contractor or temporary work agency shall have the role of a party.

(4a) If the client or user undertaking fails to make the security deposit as ordered in a final administrative decision pursuant to Para. 4, the authority may, subject to the due date under civil law of the compensation or remuneration for temporary agency work, issue an administrative decision ordering the client or user undertaking to pay a specific sum as a security deposit. The client or user undertaking and the contractor or temporary work agency shall have the role of a party. If the compensation or remuneration for temporary agency work is disputed as to its merits, amount or due date, the District Administration Authority may refrain from issuing an administrative decision to the extent that the compensation or remuneration is disputed. Such exemption shall not affect an administrative decision pursuant to Para. 4. Irrespective of any administrative decision pursuant to this Paragraph, the contractor or temporary work agency may also bring court proceedings seeking payment of the compensation or remuneration for temporary agency work; in such case, however, the client or user undertaking must pay any sum awarded to the District Administration Authority.

(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 or Para. 4a 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) Complaints (*Beschwerden*) filed against administrative decisions pursuant to Para. 4 do not suspend the effect of the decision, including with regard to the payment prohibition; the client or user undertaking must pay the compensation or remuneration for temporary agency work or parts thereof to the District Administration Authority as they fall due under civil law. Notwithstanding the foregoing, the Administrative Court of the *Land* shall on application accord the complaint suspensive effect if implementation of the administrative decision would cause disproportionate disadvantage to the party having filed the complaint. Information to that effect shall be included in the instructions on the right of appeal against the administrative decision pursuant to Para. 4. In case of an application to accord suspensive effect, the authority shall, unless the complaint is to be rejected as inadmissible or out of time, submit the complaint, together with the file relating to the proceedings, to the Administrative Court without delay. The Administrative Court shall without delay rule on the application to accord suspensive effect by decision (*Beschluss*) and return the file relating to the proceedings to the authority, unless the authority has refrained from issuing a preliminary decision on the appeal.

(9) The District Administration Authority shall declare the security deposit released without issuing an administrative decision if the penal proceedings are discontinued, regardless of whether the discontinuation has become final, or if the security deposit is not declared forfeited within five years of payment. Released security deposits shall be paid out to the contractor or the temporary work agency without delay. If a penalty becomes final, the security deposit shall be used to pay the fine and the costs of the penal proceedings and the contractor or temporary work agency shall be notified thereof; any remaining sum shall be paid out to the contractor or temporary work agency.

(10) The District Administration Authority shall declare the security deposit forfeited once it has become evident that it will be impossible to prosecute the contractor or the temporary employment agency. For dedication of forfeited security deposits, the same rules apply as for fines.

**Record of administrative (penal) proceedings pursuant to Sections 26, 26a, 27, 27a to 27c 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, 26a, 27, 27a to 27c, 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 (including the date of entry into force) they or the Administrative Court of Justice issued in penal proceedings or proceedings pursuant to Sections 26, 26a, 27, 27a to 27c, 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, 26a, 27, 27a to 27c, 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 Anti-Fraud Office 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, 26a, 27, 27a to 27c, 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, or state that no punishment, no prohibition of services has been recorded or no data are available. Information provided in connection with proceedings pursuant to Section 31 shall comprise: 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. 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.

*(Note.: Para. 6 repealed by Article 1 no. 29, Federal Law Gazette I No. 174/2021)*

### **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 of 28 May 2014, p. 11, the Offices of the *Land* Government shall be appointed 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 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.

(1a) Para. 1 shall apply to the deployment of mobile workers as defined by Directive (EU) 2020/1057 or by Section 2 of Part A of Annex 31 to the Agreement with the United Kingdom of Great Britain and Northern Ireland subject to the proviso that service may be effected on the driver instead of the contact person.

(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. In the circumstances referred to in the first sentence, the Anti-Fraud Office 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 and/or Section 59 or Section 65.

(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, Sub-chapters 3 and 4.

#### **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 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 Anti-Fraud Office, 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.

(3) Section 53 Para. 1, Section 53 Para. 2 and Section 67 as amended by the Federal Act, Federal Law Gazette I no. 30/2017, shall enter into force on 1 January 2017.

(4) Section 13 Para. 2 no. 6, Section 19 Para. 7, Section 20 Paras. 1 and 2, Section 21 Para. 1 nos. 2 and 3, Section 22 Paras. 1 and 1a, Section 23, last sentence, and Section 28 no. 1 as amended by the Federal Act, Federal Law Gazette I no. 64/2017, shall enter into force on 1 June 2017 and shall apply to cases occurring after 31 May 2017. Reports pursuant to Section 19 for mobile workers in the transport sector as amended before Federal Law Gazette I no. 64/2017 that were submitted before 1 June 2017 shall continue to apply. Section 22 Para. 1 as amended before Federal Law Gazette I no. 64/2017 shall apply for cases of posting mobile workers in the transport sector that were reported before 1 June 2017.

(5) Section 11 Paras. 2 to 4 as amended by the Data Protection Adaptation Act (*Materien-Datenschutz-Anpassungsgesetz*) 2018, Federal Law Gazette I no. 32/2018, shall enter into force on 25 May 2018.

(6) Section 11 Para. 1, Section 13 Para. 7, Section 14 including heading, Section 20 Para. 1, Section 32 Para. 1 and Section 35 Para. 4 as amended by the Federal Act, Federal Law Gazette I no. 100/2018, shall enter into force on 1 January 2020. Audits pursuant to Section 14 in the version before amendment by the Federal Act, Federal Law Gazette I no. 100/2018, which are pending on the date on which this Federal Act enters into force shall be continued by the Wage-Related Taxes and Contributions Audit Service (*Prüfdienst für lohnabhängige Abgaben und Beiträge*).

(7) Section 11 Para. 1 nos. 1 and 6, Paras. 2 and 4, Section 12 Paras. 1 and 2 including heading, Section 13 Para. 2 nos. 1 and 2, Para. 4, Section 16 Para. 1, Section 17 Para. 1 no. 4, Section 22 Para. 1a, Section 32 Para. 1 no. 1 and Para. 2, Section 33, Section 34 Paras. 1 to 3, Section 35 Para. 4, Section 41 Para. 2 and Section 69, each as amended by the Federal Act, Federal Law Gazette I no. 104/2019, shall enter into force on 1 January 2021.

(8) Section 12 Para. 1 as amended by the Federal Act, Federal Law Gazette I no 104/2019, shall not enter into force.

(9) Section 12 Para. 1 as amended by the Federal Act, Federal Law Gazette I no. 99/2020, shall enter into force on 1 January 2021.

(10) Section 1 Paras. 2, 3, 5 to 9, Section 2 Paras. 2, 3 and 4, Section 3 Paras. 5 and 7, Section 12 Para. 1 nos. 3 to 6, Section 14 including heading, Section 15 Para. 2, Section 19, Section 21, Section 22, Section 24 Para. 1 first sentence, Section 25a, Sections 26 to 28 including headings, Section 29 Para. 1, Section 33, Section 34 including heading, Section 35 Paras. 2 and 4 and the heading to Section 3 as amended by the Federal Act, Federal Law Gazette I no. 174/2021, shall enter into force on 1 September 2021 and shall apply to posting and temporary work periods commencing after 31 August 2021. Section 2 Para. 3 and Section 35 Para. 6 in the version before amendment by the Federal Act, Federal Law Gazette I no. 174/2021, shall expire on 31 August 2021 and shall apply to any and all facts and cases occurring before 1 September 2021. Section 2 Para. 3 and Section 3 Para. 7 as amended by the Federal Act, Federal Law Gazette I no. 174/2021, shall not apply to workers as defined by Section 1 Para. 9. Section 11 Para. 1 no. 3, Section 20 Paras. 1 and 2 no. 1, Section 32 Para. 1 no. 2 as amended by the Federal Act, Federal Law Gazette I no. 174/2021, shall enter into force the day after promulgation of this Federal Act. Sections 26 to 29 as amended by the Federal Act, Federal Law Gazette I no. 174/2021, shall apply to all proceedings, including proceedings before the Administrative

Court of Justice (*Verwaltungsgerichtshof*) and the Constitutional Court (*Verfassungsgerichtshof*), which are pending when these provisions enter into force.

(11) Section 1 Para. 9, Section 1a including heading, Section 2 Para. 3a and Sections 17a, 17b and 18a including headings, as well as Section 19 Para. 8 as amended by the Federal Act, Federal Law Gazette I no. 111/2022, shall enter into force on 2 February 2022. Section 1 Para. 8 no. 1, Section 2 Para. 5, Section 12 Para. 1, Section 15 Para. 2, Section 19a including heading, Section 21a including heading, Section 22 Paras. 1a and 1c, Section 23, Section 26a including heading, Sections 27a to 27c including heading, Section 35 Paras. 1, 2 and 4 and Section 41 Para. 1a as amended by the Federal Act, Federal Law Gazette I no. 111/2022, shall enter into force the day after their promulgation and shall apply to postings that began the day after promulgation. Reports pursuant to Section 19 Para. 7 in respect of mobile workers as defined by Directive (EU) 2020/1057 submitted prior to the entry into force of the Federal Act, Federal Law Gazette I no. 111/2022, shall continue to be valid for the period specified in the report.

(12) Section 2 Para. 3 and Section 3 Para. 7 as amended by the Federal Act, Federal Law Gazette I no. 174/2021, shall also apply to workers as defined by Section 1 Para. 9 with effect from 2 February 2022.