



## ***The cost of non gender equality – Report on Austria***

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Vienna – May

Report for the EU-Group of Experts “Gender and Employment”, co-ordinated by Jill Rubery and the UMIST co-ordinating team for the Equal Opportunities Unit, DG V, Commission of the European Union

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## INTRODUCTION

Equality legislation in Austria does not only play a key role in providing protection against discrimination in the workplace on the grounds of gender but – according to the Ombudsperson for Equal Treatment Affairs – is also an “awareness raising instrument”. Thus, the Austrian Equal Treatment Act has contributed to changing public opinion and raising awareness of issues such as the traditionally low regard of female work and the bestowment of adequate value to women’s work in Austria (BMWA/BMSG 2000:73).

According to Neda Bei (1998:149) – an expert on the equal treatment of women and men within the Austrian Chamber of Labour – it is very difficult to assess the impact of equality legislation, as it has not been evaluated by experts.

The Austrian Equal Treatment Act entered into force on 1 July 1979. Initially rather limited in scope, the Act provided for sex equality mainly in terms of “equal pay for the same type of work” and only applied to private sector employment. The implementation and development of the Act are closely linked to Austria’s international obligations, in particular Austria’s accession to the EEA and the EU (Bei/Thomasberger 2002:14). First amended in 1985, the second major amendment to the Equal Treatment Act of 1990 was brought about when Austria joined the EEA. Under that treaty, Austria was required to endorse the objectives of European law and the rulings of the European Court of Justice. A further key impulse for the development of sex-equality legislation in Austria was provided by the Austrian Constitutional Court’s ruling on retirement age: To offset the gradual increase of the female retirement age from 2018, comprehensive legislation on gender equality (“Gleichbehandlungspaket”) was passed in 1993, resulting in a number of amendments to labour law as well as in a third amendment to the Equal Treatment Act and the creation of an Act on Equal Treatment for Women and Men in the Public Sector (*Bundesgleichbehandlungsgesetz*) (Mairhuber 1996:222). The third amendment to the Equal Treatment Act provided for the endorsement of two key concepts of EU law, i.e. “indirect discrimination” and “equal work”. Thus, the principle of “equal pay for equal work” has been applicable in Austria since 1993. In some respects, Austrian legislation even went further than the requirements of EU legislation as it was in force at the time. Thus, the Act already referred to sexual harassment and included a ban of sex-specific job advertisements. In addition, it outlawed discrimination on the grounds of gender with regard to access to employment, pay, benefits not included in pay, further training and qualification measures at enterprise level, career development and especially promotion, other working conditions and the termination of employment contracts.

The Act on Equal Treatment for Women and Men in the Public Sector applies to people employed by the Austrian state, provinces and municipalities. Unlike the Equal Treatment Act, public sector legislation also provided for positive action measures for the promotion of women, including the creation of special institutions devoted to the promotion of women (the Ombudsperson for Equal Treatment Affairs, positive action plans for women). These measures provide that priority is to be given to equally qualified

women in terms of employment, promotion and training. The positive action plans for women aim at raising female labour market participation in all sectors of employment, all pay groups and at all levels of the enterprise to at least 40% (Mairhuber 1996:223).

In this context, the privatisation of formerly public-sector organisations has given rise to considerable conflict, leading to an increase in the number of enquiries to the Ombudsperson for Equal Treatment Affairs as to which of the Acts applies. Unfortunately, the “higher quality” public sector legislation only applies if the legal provisions for privatisation explicitly stipulate it. In all other cases, the Austrian Equal Treatment Act applies to privatised companies (Bei/Thomasberger 2002:15f).

Since the early 1960s, Austrian legislation on the protection of expecting and nursing mothers and parental leave legislation has been rather generous (paid maternity leave of one year). Implementation of both the EEA directive on the protection of expecting and nursing mothers (92/85/EEA) and the EU parental leave directive (96/34/EC) thus only required minimal adjustments of Austrian law. With regard to the protection of expecting and nursing mothers these amendments were implemented in 1995, providing for workplace risk assessment, entitlement of pregnant women to take time off work for health checks, a ban on work for nursing women and the creation of resting facilities for pregnant and nursing women (Mairhuber 1996:226). Regarding parental leave, changes were implemented in 2000: three months of parental leave can be postponed and claimed until the child’s 7th birthday; fathers also have an individual right to parental leave, altogether regulations are more flexible (e.g. more flexible deadlines for applying for parental leave); employees on parental leave have a right to receive information on important events in the enterprise.

## **A. ASSESMENT OF THE IMPACT OF EU LEGISLATION TO DATE AND THE CONSEQUENCES OF NOT HAVING THIS LEGISLATION IN PLACE**

### **A.1. Societal level costs/benefits**

#### **A.1.1. Investing in a productive labour force**

*Austrian legislation compared to EU legislation*

##### ***Main improvements over and above EU legislation:***

- The Austrian Equal Treatment Act provides that enterprises are only eligible to receiving state subsidies and public funding if they endorse equal treatment legislation provided for in the so-called “Förderungsrichtlinie” (public funding directive) (directive 2002/73 requires similar measures; to be implemented only by 2005).
- Special institutions created in Austria to supervise the implementation of the legislation include the Ombudsperson for Equal Treatment Affairs (since 1990) and the Equal Treatment Commission (since 1979) (required by directive 2002/73 as an “independent institution”; to be implemented only by 2005). The Ombudsperson for Equal Treatment Affairs and her deputies have civil-servant status and serve as contact persons for all questions regarding the Equal Treatment Act. They provide confidential advice on matters of the Equal Treatment Act free of charge. As of 1998, Austrian law also provides for the option to install regional ombudspersons for equal treatment affairs in addition to the existing Ombudsperson, who holds her office in Vienna. The Equal Treatment Commission is composed of the chairperson and ten additional members. It deals with violations of the regulations of the Equal Treatment Act and all forms of discrimination provided for under the Equal Treatment Act. In practice, the Commission’s central role is that of a mediator between employees’ and employers’ interests. The Equal Treatment Commission reports on all questions relating to the violation of the Equal Treatment Act, in particular discriminating regulations in collective agreements and works council agreements (*Betriebsvereinbarungen*). These reports are to be published in the public gazette of Wiener Zeitung (Bei/Thomasberger 2002:7f).
- Sexual harassment in the workplace has been regarded as a form of discrimination on the grounds of gender since 1993 (required by directive 2002/73; to be implemented only by 2005). Anti-discrimination legislation is directed at the employer: employers are held responsible for discrimination if they themselves sexually harass an employee or (explicitly since 1999) if they are found guilty of failing to stop sexual harassment

in the workplace committed by others (colleagues or customers) (Bei/Thomasberger 2002:18).

- As of 1990, the responsible ministry is obliged to annually report to the Austrian parliament (*Nationalrat*) on the implementation of the Equal Treatment Act. This annual report is to include information on the activities of the Ombudsperson for Equal Treatment Affairs and the Equal Treatment Commission. In addition, the Austrian government is to report to the Nationalrat on the state and development of equal opportunities in Austria every five years (Bei/Thomasberger 2002:30).

### ***Main weaknesses of Austria compared to EU legislation***

- If an employer acts in violation of the Equal Treatment Act and refuses someone access to employment or access to promotion, the employee is entitled to claim financial compensation. At present, the maximum amount of compensation paid is limited. If several persons claim damages on the grounds of sexual discrimination, the maximum amount is divided among claimants. This regulation is in violation of EU law (According to a European Court of Justice ruling of 1997 a limitation of compensation payable is only admissible under certain conditions. The same ruling outlaws dividing the amount among claimants) (Bei/Thomasberger 2002:23).
- With regard to burden of proof, the Austrian Equal Treatment Act states that both the employee is required to provide evidence of discrimination and the employer must prove that he has not acted in breach of the Equal Treatment Act. According to the Burden of Proof Directive (97/80/EC), however, it is up to the defendant to prove that there has been no breach of the principle of equal treatment (BMSG/BMWA 2000:33).

### ***Non-legislative initiatives***

Non-legislative initiatives mainly refer to information and training measures as well as research projects and publications commissioned and financed by the Ministries in charge, the Ombudsperson for Equal Treatment Affairs or employers' and employees' representative bodies. Past research and publications include:

- “Analytische Arbeitsbewertung und Frauenlohndiskriminierung im Betrieb” (“Analytical work evaluation and female pay discrimination within the enterprise”; 1993): The study highlights discriminatory aspects of work evaluation and, with reference to the findings of the “Comparable Worth” concept, presents methods for reducing discrimination (Diestler/Moser 1993).
- The study on “Versteckte Diskriminierung” (“Hidden Discrimination” 1993) focuses on hidden forms of discrimination against women at enterprise level (Buchinger/Pircher 1993).
- The handbook “Johanna Bond & das Geheimnis der gläsernen Decke” (“Jane Bond & the Secret of the Glass Ceiling”; 1995) attempts to transform the findings of the study on hidden discrimination into a practical manual for women affected by discrimination as well as employees' representative bodies.

- “Teilzeitarbeit; Auswirkungen einer flexiblen Arbeitsorganisation” (“Part-time work, effects of flexible work organisation”; 1995) dealt with the structure and development of part-time work in quantitative terms as well as labour-market aspects, framework conditions provided by labour and social law as well as the findings of a survey on women in part-time employment (Finder 1995).
- “Im Dornröschenschlaf: Betriebliche Frauenförderung in Österreich” (“Sleeping Beauty: The promotion of women in Austrian enterprises”; 1997) focused on the elimination of gender inequality at enterprise level by means of measures to promote women (Papouschek/Pastner 1997).
- “Tendenzen im Dienstleistungssektor – Tendenzen der Frauenbeschäftigung” (“Service sector trends – female employment trends”; 1998) examined long-term trends in the development of female employment in Austria with a special emphasis on their significance for quantitative employment trends and changes in the quality of female employment (Finder/Blaschke 1999).
- “Hemmnisse der Frauenerwerbstätigkeit” (“Obstacles to female labour-market participation”; 1998): At the centre of this analysis are the obstacles present in both regional and social policy terms that prevent a higher female labour-market participation as well as the question of how these obstacles affect women’s lives (Kapeller et al. 1998).
- “Einkommen von Frauen und Männern in unselbständiger Beschäftigung” (“The income of men and women in paid employment”; 1999): The project examined the gender pay gap and its development over time and analysed the causes of pay inequality (Gregoritsch et al. 2000).
- In 2000, the Austrian Federal Ministry of Economic Affairs and Labour commissioned a research project which examines the system of non-discriminatory work evaluation and work organisation tested in two institutions (an Austrian bank and Volkshilfe Oberösterreich, an Austrian charity). The findings of this project have recently been published in a volume of conference proceedings (Meggeneder/Ranftl 2002, Gschwandtner/Buchinger 2002). Information is also available through a website on the subject: <http://www.dabo.at>. Among the positive effects of the project, one might note that Volkshilfe Oberösterreich decided to fully implement non-discriminatory work evaluation after the project was completed (Meggeneder/Ranftl 2002:114).
- At the start of the new millennium the Austrian Metalworking and Textile Union embarked on a comprehensive reformation project, for which, until the end of 2002, 39 collective agreements were analysed with view to gender aspects. The findings of this study are currently being compiled in a handbook together with suggestions for the improvements of regulations and best-practice examples. This handbook will be made available to all institutions with an interest in gender equality as well as to the bodies involved in collective agreement negotiations (BMSG/BMWA 2001:23f).



*Impact of legislation*

The 1979 Equal Treatment Act applies to all those employed in the private sector. These also include homeworkers and apprentices. Special legislation to be implemented by the legislative bodies of the Austrian provinces is in place for employees in agriculture and forestry (Bei/ Thomasberger 2002).

The Act on Equal Treatment for Women and Men in the Public Sector applies to all persons employed by the Austrian state, the federal provinces and municipalities.

*Societal benefits from the development of a skilled/educated workforce*

There are several reasons why equal treatment may be vital to the development of a skilled/ productive workforce and the successful transition to a knowledge society.

- to improve the supply of scientists/engineers
- to provide the high quality labour needed to maintain and develop the public infrastructure – particularly in health and education
- educated women are also less likely to be at risk of being socially excluded (with benefits for their children as well as for themselves, particularly when single parents).

*Societal costs/negative side effects*

Analyses mainly refer to central potential costs or negative indirect effects from equality legislation on the development of a productive labour force:

- A) the cost of compliance with the legislation (time and resources), including administrative costs of policymakers, enterprises etc.
- B) any displacement effects for other groups.

Ad A) Costs of compliance in Austria include the independent equal opportunity bodies – the Ombudsperson for Equal Treatment Affairs and the Equal Treatment Commission – and the cost of labour and social courts. All functions of the Equal Treatment Commission are honorary positions, its members including the chairperson thus work free of charge (BMWA/BMGS 2000:79). Reports on equal treatment in Austria do not supply information about the actual costs of the ombudspersons for equal treatment affairs or the management and offices of the Equal Treatment Commission. Neither are there any figures available on the costs of labour and social courts based on the subject matter of proceedings (Bei 1998:159).

In the context of the amendment of the Equal Treatment Act to install regional ombudspersons for equal treatment in 1998, Austria's Conservative party, ÖVP, questioned the usefulness of this concept in view of the costs these regional offices would incur. (BMWA/BMSG 2000:124).

Ad B) Although girls/women have been the main beneficiaries of increased spending on education and the democratisation of education in Austria since the 1970s, there have been no displacement effects for boys/men (see also below). Much rather, cuts in

spending in the area of education and the introduction of university fees have led to a new wave of displacement of working-class children, and in particular for girls/women.

***Evidence of impact of equality legislation on the development of a productive labour force***

*Women’s investment in education*

Girls and women clearly benefitted from the education initiatives of the 1970s and are continuing to catch up. With regard to formal education, young women have managed to draw level with their male counterparts and have even surpassed them at higher secondary education level. In terms of school education, the present generation of girls is doubtless the most highly qualified generation of women in Austria of all times (Papouschek/Pastner 1999:23).

**Table 1: Population over 15, according to highest attained level of education and gender in %**

Level of education	1961		1971		1981		1991	
	Women	Men	Women	Men	Women	Men	Women	Men
University graduates	0.6	3.2	0.9	3.5	1.6	4.4	2.6	5.5
Post-secondary education, other *			0.1	0.0	0.7	0.3	1.6	0.7
Vocational secondary education	1.8	3.3	0.8	2.4	2.1	3.8	3.7	5.6
General secondary education	1.6	3.1	3.7	5.0	4.0	4.7	5.1	5.2
Vocational schools	8.2	5.0	8.9	4.8	13.3	7.0	14.9	7.5
Apprenticeship			12.6	35.9	16.6	39.4	21.4	44.0
Compulsory education**	87.7	85.5	73.0	48.4	61.7	40.4	50.6	31.5
<b>Total (RD)</b>	<b>100.0</b>	100.0	<b>100.0</b>	100.0	<b>100.0</b>	100.0	<b>100.0</b>	100.0

Source: Census; Bauer/Lassnigg 1997:14 14 (quoted in Papouschek/Pastner 1999:24).

\* Post-secondary education institutions other than universities have only been established in Austria since the 1962 Schools Reform.

\*\* The 1962 census did not differentiate between compulsory education and apprenticeship.

RD: rounded figures

**Table 2: Population according to highest attained level of education , age and gender, 1997 ...  
% have completed**

	Compulsory education	Apprenticeship	Vocational secondary education	Secondary education	Post secondary education, other than university	University	Total (RF)
<b>25-29-year-olds</b>	<b>16.0</b>	<b>40.7</b>	<b>11.2</b>	<b>24.0</b>	<b>2.3</b>	<b>5.7</b>	<b>100</b>
<b>Women</b>	<b>19.1</b>	<b>33.8</b>	<b>15.0</b>	<b>24.1</b>	<b>3.1</b>	<b>4.9</b>	<b>100</b>
Men	13.1	47.7	7.7	23.9	1.5	6.0	100
<b>30-39-year-olds</b>	<b>18.3</b>	<b>43.0</b>	<b>12.4</b>	<b>16.2</b>	<b>2.3</b>	<b>7.9</b>	<b>100</b>
<b>Women</b>	<b>23.7</b>	<b>33.3</b>	<b>16.2</b>	<b>16.6</b>	<b>3.1</b>	<b>7.1</b>	<b>100</b>
Men	13.2	52.2	8.8	15.7	1.5	8.6	100
<b>40-49-year-olds</b>	<b>28.2</b>	<b>41.1</b>	<b>10.8</b>	<b>11.2</b>	<b>2.6</b>	<b>6.3</b>	<b>100</b>
<b>Women</b>	<b>35.4</b>	<b>31.7</b>	<b>14.4</b>	<b>11.5</b>	<b>3.1</b>	<b>4.0</b>	<b>100</b>
Men	21.1	50.2	7.2	10.9	2.1	8.6	100
<b>50-59-year-olds</b>	<b>35.5</b>	<b>37.5</b>	<b>10.9</b>	<b>9.8</b>	<b>1.3</b>	<b>5.1</b>	<b>100</b>
<b>Women</b>	<b>44.5</b>	<b>28.1</b>	<b>13.9</b>	<b>9.7</b>	<b>1.3</b>	<b>2.5</b>	<b>100</b>
Men	26.4	47.0	7.8	9.9	1.3	7.7	100

Source: Microcensus 1997; RF: Rounded figures (quoted in Papouschek/Pastner 1999:24).

In long-term comparison, the education level of Austria's population has seen a steady increase over the past decades, with women's education levels rising more sharply than those of men (Table 1).

**Table 3: Students according to school type 1997/98**

Type of school	Total	Women (%)
General compulsory primary and lower secondary schools	685,208	47.5
General education higher secondary schools	184,007	54.1
Other general education schools	5,380	49.2
Vocational lower secondary schools	125,039	31.2
Vocational middle secondary schools	67,501	61.2
Vocational higher secondary schools	113,417	48.4
Teacher-training schools (middle secondary)	4,005	27.1
Teacher-training schools (higher secondary)	9,267	96.1
Vocational training post-secondary academies	4,137	75.3
Teacher-training post-secondary academies	7,607	76.2
Total	1,205,568	48.3

Source: ÖSTAT; Statistisches Jahrbuch 1998:81 (quoted in Papouschek/Pastner 1999:26).

In the academic year of 1997/98 women/girls slightly outnumbered boys/men in general education middle and higher secondary education schools as well as in vocational middle secondary education schools. They were clearly overrepresented in higher secondary teacher-training establishments as well as in vocational and teacher-training academies.

#### *Further and higher education*

Women have been dominating non-university post-secondary education in Austria for decades. Women still accounted for 58% of first-year students in these institutions in 1997. The share of female students was particularly high at teacher-training academies (1997/98: 82.8%), academies for social work (1997/98: 74.9%) and colleges for higher medical-technical training (1997/98: 81.3%) (Papouschek/Pastner 1999:30f). Since the mid-1970s, women have also been overrepresented at post-secondary vocational schools (1997/98: 62%). In this context, it is interesting to note that the share of female students is also on the increase at colleges for professions in technology and trades. While women studying at technical colleges still accounted for 31% in 1990/91, they made up more than 50% by 1997/98 (52%). These forms of professional training thus seem to provide access to technical jobs for young women (Prenner et al. 2000:XV).

According to the OECD (2002), in 2000 the gender gap for those parts of the population who had attained at least tertiary education amounted to 1.03 for those aged between 25 and 34 and 10.40 for those aged between 55 and 64. These figures clearly highlight the age-specific differences in education between men and women but also show the extent to which young women can contribute to reducing this gap.

As a result of the education reforms between 1970 and 1980, the number of university students doubled between 1970 and 1980 and further increased by 68% from 1980 to 1990.

This growth was mainly due to the increasing numbers of female students and resulted in a higher share of women among university students. In the early 1990s, for the first time more women than men were enrolled at Austrian universities (Papouschek/Pastner 1999:31).

**Table 4: First-year students (full-time, Austrian nationals), according to post-secondary education institution and sex, autumn terms 1979/80, 1984/85, 1989/90, 1993/94 und 1997/98**

Institution		1979/80	1984/85	1989/90	1993/94	1997/98
Universities	total	14,503	18,362	18,622	19,479	16,684
	female in %	46.3	50.3	50.0	51.4	58.4
Art academies	Total	616	635	668	504	287
	female in %	42.0	45.0	46.3	48.2	56.1
„Fachhochschulen“	Total	-	-	-	-	2,462
	female in %	-	-	-	-	28.7
Teacher-training academies	Total	2,746	2,257	1,757	2,848	1,793
	female in %	80.4	79.9	84.2	84.1	82.8
Other teacher training academies. <sup>1</sup>	Total	509	779	475	728	360
	female in %	52.1	61.4	55.2	58.9	36.7
Academies for social work	Total	272	264	273	482	606
	female in %	78.3	79.2	82.8	70.9	74.9
Vocational colleges and training courses	Total	1,658	1,735	2,972	2,826	3,091
	female in %	55.5	54.1	55.2	45.9	61.1
Colleges for higher medical-technical training	Total	606	673	699	942	657
	female in %	91.9	94.0	90.6	87.4	81.3
<b>TOTAL</b>	<b>Total</b>	<b>20,910</b>	<b>24,705</b>	<b>25,466</b>	<b>27,809</b>	<b>25,940</b>
	<b>Female in %</b>	<b>53.3</b>	<b>54.9</b>	<b>54,4</b>	<b>55.9</b>	<b>58.2</b>

Source: BMWV, Hochschulbericht 1996, Band 2:99: BMWV, Statistisches Taschenbuch 1998 (quoted in Papouschek/ Pastner 1999:31).

<sup>1</sup> Other teacher-training academies are vocational teacher-training academies, teacher training academies for agriculture and forestry and teacher-training academies for religious education.

*Changes in female share in high level jobs/non traditional jobs*

Women's higher education levels are paralleled by a significant increase in female labour-market participation. According to Prenner et al. (2000:V) this increase has mainly been due to the increasing number of women working in the service sector, in particular in so-called secondary services. Secondary services are defined as higher-level services, including public and private administration, education, research, health and social sectors as well as business consultancy, management, organisation and financing. Women thus profited from the general expansion of the service sector, at least with respect to the creation of new job opportunities. In terms of professional groups, figures also show that women increasingly work in highly qualified or qualified jobs. By 1997 almost 50% of all working women were employed in these two groups. This largely positive development is however offset by an equally growing number of women working in the lowest segments of the service sector. One in four women employed in Austria works in a low-qualified service job (Prenner et al. 2000:Vf).

According to the European Labour Force Survey the female share in higher level jobs (defined as ISCO 1-3) in Austria increased from 40.2% to 44% between 1995 and 2001 and the female share of professional jobs (defined as ISCO 2) even increased from 43.3% to 51.3%.

*Women's employment and labour market participation*

Female labour-market participation in Austria has seen a steady increase over the past few years. Thus, female employment rose from 52.1% to 56.8% between 1985 and 1994 and to 59.7% until 1999. Male labour-market participation declined, from 83.1% and 76.5% between 1985 and 1994 before recovering slightly, to 76.7% until 1999 (European Commission 2001:96). Thus, the overall gender employment gap fell from 31% in 1985 to 17% in 1999.

In full-time equivalent (FTE) employment terms, which takes part-time and marginal employment into account, however, the situation looks rather different: Between 1985 and 1999, the share of women in FTE employment rose from 45.3% to 49.9%, while during the same period male FTE labour-market participation fell from 83.5% to 76.1% (European Commission 2001:96). The FTE gender employment gap for 1999 thus still amounted to 26.2% percentage points. These figures show that while overall female employment has risen over the past few years, many women have entered the labour-market on a part-time or marginal employment basis. Female part-time employment (including the marginally employed) accordingly rose from 23.1% to 32.6% between 1985 and 1999. During the same period, male part-time employment only rose from 3.4% to 4.4% (European Commission 2001:96). Domestic data indicate that in 1999 a total of 15.4% of all persons in paid employment were employed part-time, 87% of them women. Of those working full-time, only 34% were women. In 1999, almost a third (32%) of all women in paid employment worked part-time, the figure rising to 37% for female blue-collar workers. Between 1994 and 1999, women in paid employment experienced another, very specific development: Whereas the number of female part-time

workers rose by 106,000, the number of women in full-time employment declined by 42,000 (Wörister 2001a:3).

Employment figures according to age group further underline the differences between male and female employment patterns – caused, in part, by a gender-specific division of labour. In this context, highest employment rates were reached by women of the 24-29 age group (1999: 78.7%) while the gender employment gap amounted to as much as 18% for those aged 30 to 49: In this group men show the highest employment rate but at the same time it is the period in which many women take career breaks in order to look after their children (Leitner/ Wroblewski 2000:21f). Nevertheless, at 67.3%, employment of women aged 20-50 with children under 7 was relatively high in 1999.<sup>2</sup> Comparison with the relevant figures available for childless women (1999: 79,9%), however, reveals how seriously childcare impedes female labour force participation (Eurostat 1999).

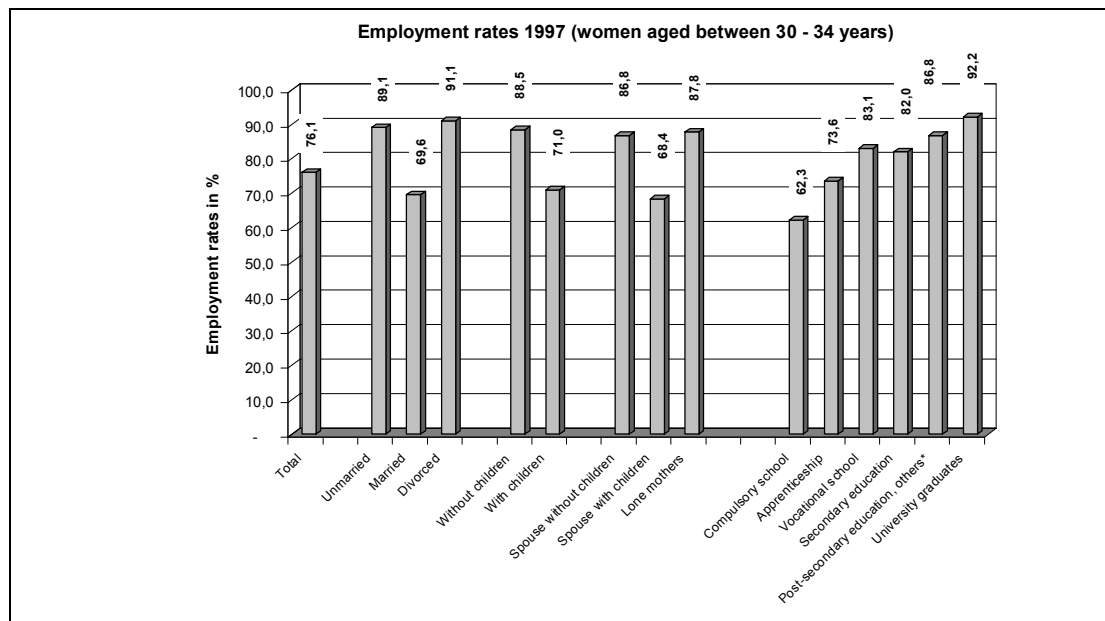
The inequality between men and women with regard to reconciling career and child-care responsibilities is also evident in the high share of unemployed women with restricted mobility. In 1998, almost half of all unemployed women were counted as hard propositions for job-placement, two thirds of them for reasons of restricted mobility due to child-care responsibilities. By contrast, only a fourth of unemployed men were regarded as difficult to place, usually for health reasons rather than restricted mobility (vgl. Leitner/Wroblewski 2000:28).

#### *Educational level, marital status and maternity*

In addition to education level – in 1997 labour-market participation amounted to 92.2% for university graduates, 86.8% for graduates from other tertiary education institutions, 83.1% for women who had completed specialist vocational training but only to 62.3% for women who had attained compulsory education only – marital status, or to be more exact, marital status in combination with children, plays a decisive role in female employment. Thus, in 1997, labour-market participation among single (89.1%) and divorced women (91.1%) was significantly higher than that of married women (69.9%).

<sup>2</sup> In this context, it has to be taken into account that in Austria women who claim children's allowance while taking career breaks to look after young children are regarded as employed.

**Illustration 1: Labour-market participation of women aged 30-34, according to various criteria, 1997**



\* Post-secondary education institutions other than universities have only been established in Austria since the 1962 Schools Reform.

Source: ÖSTAT, micro-census (quoted in Papouschek/Pastner 1999:19).

A closer look at the data, however, reveals that it is not marital status alone but much rather maternity that contributes to lower employment rates among married women. Thus childless married women have an employment rate of 86.8%, while only 68.4% of married women with children work. Single mothers obviously do not have much of a choice, as the employment rate of 87.8% for this group indicates: they and their children depend in the income from paid work (Papouschek/Pastner 1999:19).

The development of employment rates of mothers and childless women also shows that the increase in female labour-market participation in the past has been, to a significant extent, due to the successful integration of mothers in the labour market. Employment rates of childless women levelled off or fell slightly in the early 1990s and only began to pick up again from 1992, similar to those of men. Employment rates of women with children, on the other hand, rose steadily (Leitner/Wroblewski 2000:23).

### A.1.2. Sustainable fertility rate

#### *Austrian legislation compared to EU legislation*

#### **Main improvements over and above EU legislation:**

- Austrian maternity protection legislation provides for a compulsory maternity leave of a minimum of 16 weeks (8 weeks of pre-birth maternity leave and 8 weeks after the



birth of the child) while for caesarean, premature and multiple births a minimum of 20 weeks is required (only 14 weeks according to the maternity protection directive 92/85/EC).

- In 2002, the duration of parental leave was re-extended until the second birthday of the child; the childcare benefit is available until a child’s 3rd birthday (childcare benefits 30 months – only for one parent; or 36 months for two parents). Austrian legislation, in this respect, is much more generous than the provisions of the parental leave directive (96/34/EC). The consequences of these parental leave regulations are rather questionable however in terms of gender equality and the reconciliation of career and childcare responsibilities, mainly due to the long duration of the career breaks it offers as well as the lack of adequate childcare facilities.
- According to Austrian law, employees have a right to take time off work, to a maximum for two weeks per year, to look after sick children below the age of 12 living in the same household. During this period, they are entitled to receiving their normal wages or salaries (Frauenbüro der Stadt Wien 2000:246).

*Non legislative initiatives*

- Parents who are resident or usually live in Austria can claim family benefits for children living in the same household. Non-EEA immigrants are only eligible to claim family benefits if they have continuously lived in Austria for a minimum of 5 years. Immigrants who have been living here for less than 5 years can only claim family benefits if they have an income trough dependent employment.

**Table 5: Family benefit in €/month (2002)**

	Each child	Child over then years	Supplement for needy families
1st child	105.40	123.60	145.40
2nd child	118.20	136.40	158.20
3rd child	130.90	149.10	170.90

Source: Bundeskammer für Arbeit und Angestellte 2002:500.

- In addition to family benefits, child credits are granted within the tax system. The credit amounts to € 50.90 for each child/month and will be paid out together with the family benefits. For the third child and any additional children for whom family benefits are claimed, a “large-family supplement” can be claimed amounting to € 36.40 per child/month. This supplement is dependent on household income and is paid within framework of annual tax rebates.
- Lone parents supplement and tax reduction for single parents: Those entitled can claim a reduction in income tax of € 364/year (Bundeskammer für Arbeiter und Angestellte 2002:507).

### *Impact of legislation*

With the abolishment of the traditional parental leave benefit in favour of a childcare benefit, Austria has taken a huge step away from 40 years of social insurance transfers towards a system of family benefit. The new legislation stipulates that from 2002 childcare benefit can be claimed regardless of employment (and thus social insurance cover) previous to the birth of the child. Previous employment is only taken into consideration with regard to immigrant women as well as in establishing the additional earnings threshold (*Zuverdienstgrenze*). Under these provisions, housewives and students are also entitled to claim childcare benefits. Self-employed women and farmers now also receive childcare benefits instead of the temporary help allowance for self-employed mothers (which amounted to about half of the parental leave benefit) provided for under past provisions.

**Table 6: Recipients of parental leave or childcare benefit (October 2002)**

	Women	Men	Total	% Men
White-collar worker	19,612	114	19,726	0.6
Blue-collar workers	8,746	141	8,887	1.6
employees	2,589	11	2,600	0.4
Self-employed	590	59	649	9.1
Farmers	762	9	771	1.2
Housewives/Husbands	7,775	36	7,811	0.5
Tertiary education students	676	27	703	3.8
School students	346	0	346	0.0
Civil servants	1,252	18	1,270	1.4
Recipients of unemployment benefits	2,541	59	2,600	2.3
Recipients of unemployment assistance	1,946	33	1,979	1.7
Total	46,835	507	47,342	1.1

Source: BMSG; Wörister 2002 (Sozialdaten).

### *Societal benefits*

Maintaining a reasonable fertility rate is important for sustainability as it reduces the tendency towards an ageing population.

### *Societal costs/negative side effects*

The costs of compliance, in addition to the normal enforcement mechanisms, include for employers the costs of providing alternative cover during maternity leave. Another issue

that should be considered is whether there are any negative impacts on children (as opposed to impacts on the fertility rate). However, such negative impacts are more appropriately associated with the lack of good childcare arrangements, lack of participation by fathers or unreasonable working hours and conditions than with equality legislation.

***Evidence of change***

*Fertility rates*

Austria experienced a dramatic fall in fertility from the mid-1960s to the late 1970s. Since then Austria has been at sub-replacement level (Buber 2001:6). While the decline in birth rates has slowed down since the early 1980s, the total fertility rate still fell from 1.65 to 1.31 between 1980 and 1999.

**Table 7: Total fertility rate**

1970	1980	1990	1992	1995	1999
2.29	1.65	1.45	1.49	1.40	1.31

Source: European Observatory on Family Matters; focus monitoring 2000: Fertility.

As in most industrialised countries, motherhood has gradually been postponed and there has been a dramatic shift towards later childbearing, especially for first births.

**Table 8: Mean age of women at first childbirth**

1970	1980	1990	1992	1995	1999
22.9	23.3	25	25.3	26.2	27

Source: European Observatory on Family Matters; focus monitoring 2000: Fertility.

A large and still increasing proportion of children are born out of wedlock. In 1998 four in ten first births were non-marital births but more than half of these birth are at some stage “legalised” by the marriage of the parents, mostly within the first three years after childbirth. Austria is traditionally a country with a rather high proportion of non-marital births (Buber 2001:6f).

*Entry into motherhood and level of education*

According to a research project carried out by the Institute for Demography at the Austrian Academy of Sciences the entry into motherhood varies substantially among women with different levels of educational attainment: Women with compulsory education, and especially women with tertiary education, have the highest first-conception intensities. Women who have learned a trade – more exactly women whose

highest educational attainment currently is an apprenticeship, lower secondary education or professional training – do not differ from women of compulsory education level. But those with higher secondary education have significantly lower first-conception intensities (Buber 2001:27).

Butting the focus on the relationship between educational attainment and entry into motherhood by including the time since the completion of education the results are rather interesting:

- Women with compulsory education and no further formal education are to a greater extent family-oriented compared with women who have learned a trade or who have completed higher secondary education. Due to their poor level of general and vocational education, they are assumed to find a job mostly in low-paid occupations and to have only limited career prospects on the labour market. From an economic point of view, their opportunity costs of childbearing and childrearing are rather low. This explains the intensity of the conception of the first child as very high soon after the completion of (compulsory) education (Buber 2001:33).
- Women with higher educational levels try to avoid childbearing immediately after the completion of their education. The opportunity costs of childbearing for highly-educated women may be higher early in their post-educational career than somewhat later in their careers. But they catch up at a fast pace. Women with higher secondary education have very low first-conception intensities during education and during the first two years after the completion of their education, but after four years they reach the same level as women with basic education or women who have learned a trade (Buber 2001:30).
- Women with tertiary education have significantly higher first-conception intensities than women with basic education. Including the time elapsed since the completion of the educational level shows that they start at the same level as those with compulsory education but the intensity strongly increases during the second and the third years. Assuming that most of these women have entered the labour market, the researchers interpret this as “speeding up” with childbearing once they have a footing on the labour market (Buber 2001:30).

#### **Based on these finding the research project sum up:**

“In the general discussion on the (in)compatibility between the labour force participation of (young) women and their family formation behaviour, these results underline the importance of public childcare facilities and a legal basis for part-time maternity leave for mothers. Particularly for the higher-educated women along absence form the labour market has a strong negative effect on her human capital and on her chances of returning to the labour market” (Buber 2001:36).

### A.1.3. *Reduction in poverty/social exclusion*

#### *Austrian legislation compared to EU legislation*

No specific differences of relevance for social inclusion.

#### *Non legislative initiatives*

- Since 1993, so-called childcare periods (up to four years per child, independent of entitlement to or having received parental leave benefit or not) have been taken into account for the calculation of the pension amount. Therefore childcare periods are credited on the basis of a uniform assessment basis (€ 421) and are added cumulatively to any gainful employment which may have been pursued during the first years of the child's life. Thus, monthly pension rises by about the same amount for all mothers or fathers, independent of breaks in gainful employment. Since 2002, two years per child have even been taken into account for the eligibility criteria (minimum period of insurance coverage).
- Single mothers and low-income families are entitled to claim an additional amount of 6.06 €/day in addition to childcare benefits or parental leave benefits. These funds must be paid back however if the family income exceeds the relevant threshold.
- In 1996 and 1997 the Austrian public employment service (AMS) offered special programmes to support women returning to the labour market (BMWA/BMSG 2000:48).
- In 1999 AMS developed guidelines for advising women returners. From 2000, all regional AMS offices began to offer regular information events and consultation sessions for groups of women intending to return to the labour market. These events are also available to women on parental leave and can be attended also by women who do not claim benefits paid for by unemployment insurance (BMWA/BMGS 2000:49).
- A survey by the Federal Ministry for Social Security and Generations on special measures supplied by the federal social authorities for the disabled (*Bundessozialämter für behinderte Menschen*) showed that these measures particularly appeal to women, promote the integration of unemployed women into the labour market and improve women's long-term career perspectives (by offering more long-term employment, employment in new future-oriented sectors, improvement of working conditions and higher income ...) (BMWA/BMWS 2000:118).

#### *Impact of legislation (share affected)*

Since the end of 1997, the share of men and women claiming an additional amount in addition to the childcare benefits or parental leave benefits has remained constant at 11% (Wörister 2001:22).

*Societal benefits from the development of a skilled/educated workforce*

Risk of poverty is twice as high for persons who have attained compulsory education level than for more highly educated people. Inadequate education and training reduce employment opportunities while significantly increasing risk of poverty. According to the Labour Force Survey, in Austria employment of both women and men aged 20 to 60 who have not attained a level of education exceeding compulsory education is 20% below that of their more highly educated counterparts. The lower the education level, the higher is the risk of unemployment and the lower are income opportunities (Bundeskammer für Arbeiter und Angestellte 2001:4f).

*Societal costs/negative side effects*

The right to equal treatment increases the share of persons who entitled to training measures (with its associated costs as well as benefits). Access to labour market, particularly for single mothers, requires the provision of an adequate and feasible childcare infrastructure.

*Evidence of change**Professional and economic situation of lone mothers*

The income situation of single mothers working in paid employment shows that the better trained women are the less they are at risk of poverty, a risk that normally is particularly high among lone mothers (Wolf 1995:357). With regard to professional qualification, in 1998 most single mothers of children below the age of 15 were working in gainful employment (56%). Within this group, the share was highest among white-collar workers and civil servants. Ten years previously, the share of single mothers in gainful employment had been considerably lower by comparison (48%). At that time, a larger proportion of single mothers were not gainfully employed (1988: 45%; 1998: 39%) (Amesberger et al. 2001:21f). In 1998 two thirds of all working single mothers were white-collar workers or civil servants. Compared with 1988, when nearly 40% of all working single mothers were to be found among blue-collar workers, their employment situation has clearly improved.

In 1993, the income situation of single mothers working in white-collar jobs was about that of the average income of single mothers. According to Amesberger et al. (2001:23), the employment situation has not changed significantly during the 1990s. The higher number of highly qualified jobs on offer in public administration and civil service and higher minimum incomes in these areas have contributed to an income advantage among single mothers working in these areas: it is a sixth above that of the average income of single mothers (Wolf 1995:358).

However, higher labour market participation and qualification levels do not protect single mothers against risk of poverty. Family transfers play a major role in this context: According to the 1998 micro-census, the proportion of lone mothers of a single child at

risk of poverty (70.5%) falls from 12 % to 7.9% if transfer benefits are taken into account. Risk of poverty is reduced by 10% among single mothers of two children and by as much as just below 21% for single mothers of three children (Amesberger et al. 2001:25).

## A.2. *Employing organisations cost/benefits*

### *Austrian legislation compared to EU legislation*

- As of 1993, Austrian constitutional labour law (*Arbeitsverfassungsgesetz*) provides for the option to implement works council agreements (optional) in order to reduce discrimination of women and to promote gender equality at enterprise level. As of 1998, employers are obliged to discuss measures to promote women at enterprise level as well as measures to help women reconcile their careers and childcare responsibilities with works council representatives. In particular, these measures refer to employment practices, training and further qualification measures and career development (Frauenbüro der Stadt Wien 2000:243, BMWA/BMSG 2000:19).

### *Non legislative initiatives*

In addition to the research projects and publications mentioned above as well as the gender mainstreaming of collective agreements, which to a large extent refer to the enterprise level, the following initiatives can be mentioned:

Frauenbüro der Stadt Wien (MA57) and Wiener ArbeitnehmerInnen-Förderungsfonds (WAFF) commissioned a handbook on “*7 Schritte zur Gleichstellung*” (“7 steps towards gender equality”). The handbook aims to support enterprises in the reduction of discriminatory practices that may interfere with the company’s success as well as in the development of measures promoting gender equality at enterprise level and helping employees to better reconcile career and family/private life. The publication deals with five main areas (operational diagnosis, human resources management, recruitment, human resources development, the reconciliation of career and family life and corporate culture), is directed at both employers and employees and offers a great variety of relevant practical information as well as good-practice examples (Frauenbüro der Stadt Wien 2000:6).

### *Competitions and auditing*

A number of options are available to Austrian enterprises to assess their present situation in terms of gender equality and family-friendly environment. Various institutions offer competitions and certification procedures, using different instruments and focusing on different areas (Frauenbüro der Stadt Wien 2000:260).

- Since 1991, the “**Taten statt Worte**” initiative has been holding annual competitions to elect the “Most women and family friendly enterprise”, initially in Styria, more recently in all federal provinces. Interested enterprises fill in a questionnaire and

supply additional data material; company visits and interviews provide further information. In all Austrian provinces, the “best” companies are awarded the title of “Most women and family-friendly enterprise” or “Most family friendly enterprise”, or the “Gläserner Schuh” prize (in Vienna). In addition, the three best companies receive prizes in the form of a selection of seminars. Criteria include human resources development, training and further qualification measures, positive action plans for women, women in management positions, enterprise-level working time and parental leave models, support for returners, measures to deal with childcare problems and family-friendly facilities (Frauenbüro der Stadt Wien 2000:261f).

- The Federal Ministry for Social Security and Generations compiles the information on the winners from all federal provinces. The measures and strategies implemented by the winning enterprises are once more evaluated in a **federal competition** and the “best” Austrian enterprises selected (Frauenbüro der Stadt Wien 2000:262f).
- With its **audit “Familie und Beruf”**, the Federal Ministry for Social Security and Generations has established an instrument to systematically collect and evaluate the “family-friendliness” of enterprises. The audit assesses written agreements on family-friendly measures in a company, the target groups they are intended for as well as in how far these measures are actually made use of. The audit questionnaire is completed by a representative project group. A business consultancy company then evaluates the collected data and makes recommendations. The first step of the audit results in a basic certificate. A re-audit three years later evaluates in how far the measures have been put into practice. Companies are finally awarded a so-called audit certificate. (Frauenbüro der Stadt Wien 2000:263f).
- The non-profit organisation Total E-Quality Austria awards the so-called **Total E-Quality Prädikat** to enterprises that have incorporated gender equality in their personnel and corporate policies. Special emphasis is placed on the best possible use of human resources. Interested enterprises undergo auditing procedures, accompanied and advised by Total E-Quality. A Total E-Quality jury finally awards a certificate and the title. Seven areas are assessed: gender-specific data collection and monitoring on the working conditions of men and women; recruitment and employment practices; personnel development, training and further education, career development facilities; reconciliation of career and family life; solidarity in the workplace; institutionalised equal opportunities; equal opportunities as part of corporate culture (Frauenbüro der Stadt Wien 2000:265).

### *Expertise, information and advice provided by the Ombudsperson for Equal Treatment Affairs*

Workers’ representative bodies – and in particular their women’s organisations – as well as all institutional and non-governmental women’s organisations concerned with working life are among the most important cooperation partners of the office of the Ombudsperson for Equal Treatment Affairs in their attempt to improve awareness of the discrimination of women in the workplace (BMSG/BMWA 2001:16). The



Ombudsperson for Equal Treatment Affairs and her team provide their expertise and experience with practical solutions in the form of information events, seminars, training courses and conferences but also through their collaboration in joint projects. Regular training for works council representatives is available at the courses provided by the Austrian Trade Union Association, through seminars organised by the individual unions and the Austrian Chamber of Labour as well as within the framework of further training for teachers (BMSG/BMWA 2000:14). In 2000 the main focus of these activities was on income disadvantages of women and enterprise level gender equality programmes (cf. BMSG/BMWA 2000:15) while in 2001 they focussed on two of the key disadvantages women are subject to in the workplace: unequal pay and sexual harassment. Workshops on sexual harassment are increasingly preventative in character: Representatives from personnel departments and workers' representatives deal with questions on how to create and to promote a working environment that minimise the risk of sexual harassment.

### *Some concrete examples:*

- The Women's Department of the Austrian Employment Service (AMS) has asked the ombudsperson for her support in the creation of internal guidelines available to AMS staff dealing with companies that have had complaints of sexual harassment (BMSG/BMWA 2001:17).
- A working group of the Vienna Economic Chamber invited the ombudsperson for equality affairs to cooperate in an initiative for the promotion of parental leave for fathers. The working group's key objective was to provide information to management consultants to enable them to introduce the issue during their work at enterprise level and to offer support in cases where conflicts occur (BMSG/BMWA 2001:19).

### *Impact of legislation (share of enterprises affected)*

#### Equal treatment

According to Ulrike Papouschek and Ulli Pastner (1997) positive action in Austrian enterprises is still a "sleeping beauty", i.e. positive action or company policies to ensure equal opportunities (or programmes that aim at abolishing gender-related inequalities at company level) are – in spite of all media propaganda to the contrary – a non-starter in Austria. The empirical research was based on 20 qualitative case studies of companies of differing sizes (10 to 9,000 employees, with small and medium-sized enterprises being given priority), from different sectors and regions. Of these 20 enterprises, only three offered an explicit concept to encourage the advancement of equal rights for women, in other words they have made positive action one of their objectives and established procedures, produced written materials and instigated measures for this purpose.

However, even here one cannot speak of binding institutionalised and programmatically installed personnel policies for the advancement of equality in every case. On the contrary, one of the enterprises is a good example for the thesis that actions (although

they may seem quite impressive on paper) that are only half-heartedly sanctioned at top level are doomed to failure. These enterprises clearly show that in order to successfully implement concepts of equal opportunities, both the management and the labour force have to unconditionally support these. A corporate policy that ignores the needs of women in enterprises will, as a matter of course, be doomed to fail. Policies that aim at ensuring equal opportunities, but run contrary to the interests of the enterprise, stand little or no chance of being adopted. And something else also becomes evident: if male employees cannot be persuaded to at least accept the programme then the chances of its successful implementation are very slim indeed. Boycott and hostility will become a day-to-day occurrence, especially in cases where an enterprise is not flourishing - in other words when it is not a question of the distribution of additional profits but where women try to enter into employment areas that have traditionally belonged to men or attempt to achieve higher management positions and thus become serious “competitors” in the allocation of attractive jobs.

The other 17 cases studied here showed no concepts that are specifically designed to encourage equal opportunities for women.

#### *Equal pay*

In view of the development of the gender pay gap outlined above, it cannot be claimed that equal pay legislation has, as of yet, had a significant impact in Austria. It has, however, in the past few years contributed to a more lively discussion of pay discrimination. According to Andrea Leitner (2002:16), “one could also say that Austria is still in the process of analysing wage differences and that the reduction of pay differentials through gender mainstreaming is a long-term process which will only show an effect after along period of time. This argumentation is justified, insofar as there has been a lack of knowledge and awareness of these differences in income. (...). Analysing the problem and its causes would thus certainly be an important step towards initiating a gender mainstreaming process, which could in turn be used as a basis for concrete targets and measures.”

#### *Maternity/Family friendly*

As can be gathered from the competitions and auditing procedures described in more detail above, in Austria the concept of “gender equality/equal opportunities” is very often interpreted in terms of creating a “family-friendly” working environment. The same is the case at enterprise level: most enterprise-level policies thus refer to the improvement of the reconciliation of work and family life (Frauenbüro der Stadt Wien 2000). The question remains to what extent “family-friendly” policies and measures – such as part-time work – can contribute to gender equality in the context of issues such as promotion and equal pay, or whether they “only” serve to help women to better reconcile work and family obligations.

### *Employer benefits*

According to the handbook “7 Schritte zur Gleichstellung - zur betrieblichen Gleichstellung von Frauen und Männern und zur Vereinbarkeit von Beruf und Familie/Privatleben” (Frauenbüro der Stadt Wien 2000:5ff), enterprises can benefit from gender equality for a number of reasons:

- As the labour force is set to decline in the years to come, it is in the interest of employers to use the potentials of female labour to their best advantage. Women thus need to be granted the same working conditions (e.g. in terms of pay and further qualification) and career opportunities as men. Enterprises which make men and women equally welcome will thus be able to choose from a larger pool of skilled labour.
- Experience shows that collaboration of men and women on equal terms contributes to higher levels of work efficiency. Owing to their different socialisation, men and women have different social competences to offer. “Mixed” teams are thus better at dealing with the tasks at hand as they can make use of different interaction and problem-solving skills.
- Placing and promoting employees in accordance with their attributes and preferences increases satisfaction in the workplace, performance and loyalty. The quality of work rises while high turnover rates among qualified staff can be avoided.
- Policies that allow employees to better reconcile work and family/private life have been shown to have similar effects. Increasingly fewer women are prepared to exclusively devote their lives to their families while men want to be able to spend sufficient time with their children.
- A large share of qualified staff is a necessary prerequisite for enterprises in retaining a competitive edge. At enterprise level, a lack of skilled labour leads to higher recruitment expenditure. As women make up nearly half of the total workforce, it can only be to a company’s advantage to make use of the growing number of highly qualified women and to offer them adequate opportunities for career development.

### *Employer costs/negative side effects*

An essential element of making full use of the potential of the female workforce is a professional way in dealing with the career breaks women take to take care of young children. According to the handbook “7 Schritte zur Gleichstellung – zur betrieblichen Gleichstellung von Frauen und Männern und zur Vereinbarkeit von Beruf und Familie/Privatleben” (Frauenbüro der Stadt Wien 2000:7), for many enterprises this would require new forms of work organisation and working time patterns, and would thus incur additional costs. Such efforts, however, pay off in the long term. Gabriela Riedl (1998:97) also mentions the costs of lost working time, personnel costs of participants in training and qualification measures and expenditure for in-company childcare facilities.

### *Evidence of change*

As outlined above, gender equality and the promotion of women at enterprise level have had a number of positive effects. Gabriela Riedl (1998:89), however, states for Austria: “What most programmes and measures to foster the equality of women and men in the workplace, in both public administration and the private sector, have in common is that in-depth evaluation of their effectiveness, efficiency and cost structure is lacking.” She further thinks that the potential benefits of many policies cannot be measured directly. Thus, in her view, the available literature frequently claims measures to be efficient without providing sufficient evidence (Riedl 1998:97).

What is also lacking, however, is basic data at enterprise level. Even in large companies with professional human resources departments, detailed staff indicators are often rudimentary while disaggregate data either are not available at all or only provide limited information (Riedl 1998:99).

### **A.3. Individual/household costs/benefits**

#### *Austrian legislation compared to EU legislation*

See A.1.2.

#### *Non legislative initiatives*

The office of the Ombudsperson for Equal Treatment Affairs not only cooperates with workers’ representative bodies but also closely collaborates with non-governmental women’s organisations providing special training for girls and women within the framework of the AMS. Especially the provision of information on gender equality legislation within the context of measures for women returning to the labour market is seen as a positive input that helps to raise women’s awareness of their rights in the workplace (BMSG/BMWA 2001:16f).

#### *Impact of legislation (share affected)*

The rising number of enquiries to the offices of the Ombudsperson for Equal Treatment Affairs not only shows the growing awareness of gender issues and discrimination but can also be seen as a consequence of the establishment of regional offices of the Ombudsperson (since 1998) and thus the greater ease with which women can now get professional advice.

**Table 9: Cases of consultancy by the office of the Ombudsperson of Equal Treatment Affairs**

	1995	1996	1997	1998	1999	Total
Women	176	464	451	477	627	2195
Men	33	62	91	94	145	425
Total	209	526	542	571	772	2620

Source: BMWA/BMSG 2000:85.

According to Sieglinde Rosenberger (1995:395), the increase in the number of petitions to the Equal Treatment Commission is evidence of the fact that women are no longer willing to suffer discrimination – in particular with regard to sexual harassment.

**Table 10: Petitions to the Equal Treatment Commission**

	1995	1996	1997	1998	1999	Total
Sexual harassment	6	5	7	16	7	41
Discriminatory job advertisements	1					1
Access to employment	1	1	2	2		6
Pay	1		3	3	6	13
Working conditions/ Termination of work contracts	1	1	1	1	1	5
Training and further qualification					1	1
Promotion		1	2	1	1	5
Total	10	8	15	23	16	72

Quelle: BMWA/BMSG 2000:109f.

*Benefits for individuals/households*

- Individual choice/right to non-discrimination is positive for men as well as women
- Improves matching of division of labour to individual attributes and preferences
- Equality of access to employment may promote more equal participation in civil society, greater equality of representation in decision-making
- Women’s employment associated with decrease in domestic violence

*Costs/negative side effects for individuals/households*

- Individual costs of asserting rights through legislation (cost in time, resources, reputation etc.)

- Administrative costs associated with exertion of individual rights (provision of advice, legal aid etc.)
- Impact on stress/health of family time squeeze (when right to employment not matched by control of working hours/rights to flexible working arrangements)

### *Evidence of change*

#### *Changes in participation rates, in education levels, non-traditional jobs*

See: “evidence of changes” under A 1.1.

#### *Changes in household formation and growth of women as main breadwinner*

Although the majority of women still live in traditional families, the number of alternative household arrangements has been on the increase since the 1970s. In 1993, 17.4% of women were living with a partner but no children, 50.7% with a partner and child/ren, while 8.9% were living with their child/ren but without a partner and 14.2% of women over 60 were living alone (BMfF 1995:114).

This trend has had significant implications for the housing market. Thus, the number of households is on the increase (by 34% between 1961 and 1991) while the size of individual households is declining. Reasons for this development include a rising divorce rate, a growing preference for living alone and the disappearance of complex household types (Bauer et al. 1995:53).

The number of women among heads of household has seen a significant increase in past years. In 1994, a third of all heads of Austrian households were female. This tendency is not only due to the women’s higher life expectancy and thus the growing number of older women. Younger women, too, now tend to live alone or put their names down as heads of their households. The majority of women among heads of household (a total of 994,000 in 1993) live on their own (more than 58%), 21% are single mothers and another 15% live with a partner (Bauer et al. 1995).

#### *“Time budget” and the division of labour within the family*

According to two special micro-census surveys carried out in 1981 and 1991 on the issue of “time budget”, the gender employment gap has decreased but is still considerable. Thus, in 1981 55.2% of the men aged 19 and above who participated in the survey, but only 29.5% of the women, had performed paid work on the day of the survey. By 1992 the figures had only slightly decreased to 56.4% for men but risen to 33.7% among women. In terms of a standard Monday-to-Friday working day, female employment amounted to close to 40%, while male employment stood at 67.3% (Faßmann 1995a:38).

The share of people doing housework has not only risen among women but also among men. By 1992, men not only participated in housework more frequently but also performed those types of housework (“indoor activities”) which are generally regarded

as less desirable and attractive: Cooking, tidying and doing the laundry are no longer the exclusive responsibility of women. Between 1981 and 1992 the proportion of men who do the cooking rose from 6% to 28.5%. While in 1981 only 8% of men spent time cleaning, tidying and doing the laundry, by 1992 their number had risen to 38.7%. Similarly, the number of men who do the shopping grew from 11% to as much as 26.3% (Faßmann 1995a:39).

## **B. ASSESSMENT OF PROGRESS TOWARDS ACHIEVING THE OBJECTIVES OF EQUALITY**

### **B.1. Progress towards and costs of not achieving equality objectives**

#### **B.1.1. Societal level costs/benefits**

##### *B.1.1.1. Productive labour force*

##### *Under-education and Segregation*

- Women and girls have clearly benefited from the education initiatives of the 1970s and are continuing to catch up. All the same, the gender gap was still significant in the 1990s among university graduates and persons who had completed apprenticeships or compulsory education. According to the 1991 census, half of Austrian women, against 31% of men, had not attained education higher than compulsory education. At the same time, almost half of the men (44%) had attained vocational training by completing an apprenticeship, compared to 21.4% of women. And while women had drawn level with men in terms of a general education higher secondary level (“Matura”; A-levels equivalent), more men (5.5%) than women (2.6%) have university degrees (Papouschek/Pastner 1999:25).
- Gender segregation was, and still is, significant with regard to vocational education, apprenticeships and post-secondary education. Thus by the late 1990s, women still predominantly chose typically female paths of education and vocational training, while they were only marginally represented in technical education and training (Papouschek/Pastner 1999:23, Prenner et al. 2000:IX). Women are particularly underrepresented (1997/98: 32%) in apprenticeships – a central form of vocational training in Austria as it allows for a smooth transition from training into employment – and show a marked preference for a small number of – traditionally female – trades. Although women have made inroads in other trades during the 30 past years, in 1998 almost 78% of female apprentices were still to be found in the ten most common trades (against to 91% in 1970) (Prenner et al. 2000:XI).
- Although they have surpassed men in terms of school education, women do less well at university level. Women drop out of university more frequently. A survey commissioned by the Federal Ministry for Science and Transport in 1998 on university graduates of 1996/97 showed that children of university graduates are more likely to complete university training than working-class children. This phenomenon is more marked among women than men: While 17% of female first-year students were children of university graduates, they accounted for 21% of female graduates that



year. Daughters of workers, on the other hand, made up 11% of first year students but only 9% of graduates (Papouschek/Pastner 1999:32). Female students are also more likely to choose subjects in arts and sciences: Approx. 49% of female first-year students were enrolled in these faculties. In some subjects, such as translation and interpretation studies, languages and pharmacy, women account for as much as 70% or 80%. In science subjects, the number of female students has risen by 20% since the 1970s (Prenner et al. 2000:XVII). On the other hand, women rarely embark on technical and engineering courses. Only 6% of female first-year university students – as compared to 24% of male students – were enrolled in technical courses, where they can be found in a very limited range of subjects. Thus women account for almost a third of students of architecture, development planning and civil engineering while only 3% of students in electrical and mechanical engineering are women. Educational gender segregation thus persists at university level, even if women have managed to penetrate some traditionally male dominated disciplines and now account for more than half of first-year students in law, medicine and veterinary medicine (Papouschek/Pastner 1999:33).

### *Underutilisation*

- Although women have managed to catch up in terms of education in the past decades, this does not seem to have the desired affect on female employment: A higher educational level does not offer the same opportunities to find work in more highly qualified jobs as it does for men. Of those who have attained general higher secondary education, only 40% of women but 80% of men work in qualified or highly qualified positions. Among university graduates, more than two thirds of women (but only 37.5% of men) work in qualified jobs and less than a fourth of women (59% of men) in highly qualified jobs (Wiederschwinger 1995:240). Women are thus more frequently found in jobs below their educational level than men. Hence, higher educational attainment does not guarantee women access to better jobs and, as a consequence, to higher income, better working conditions and career opportunities (Papouschek/Pastner 1999:49).
- Marginal employment in Austria rose by a further 3.9% (to a total of 197.000 persons) in 2000. In all, 10% of all women in paid employment but only 3.5% of men were marginally employed. This form of employment is particularly common among women of childcare age. In July 2000 one in three marginally employed men were also working in another part-time or full-time job; the same only applied to one in five women. For a far greater number of men than women, marginal employment is thus just an additional source of income. For this reason, it is not surprising that, at 72%, the share of women in marginal employment is below that of part-time employment in general (Wörister 2001a:3).
- Childbirth constitutes a key factor for women taking career breaks and also provides an explanation for the fact that women lag behind men in career terms. A micro-census survey carried out in 1990 on career breaks and their impact on career development showed that approx. 43% of all female respondents had taken a break

from, or given up, their careers to look after their children (Faßmann 1995). Central legal provisions in this context include parental leave as well as parental leave benefits (or, since 2002, childcare benefits). In June 1998, of the ca. 84,000 persons claiming parental leave benefit, 98.4% were women, while men only accounted for 1.6% (or 1,400 persons). According to Gerda Neyer (1998), about a third of these women returned to the labour market right after the end of paternal leave provided for by legislation. This share has remained stable since the 1980s. The length of career breaks significantly varies according to the length of the period during which parental leave benefits are claimed: Of the women who had claimed parental leave benefits for one year, half had returned to the job market within two years. Women who claim benefits for two years tend to stay at home with their children for longer, even beyond the period during which they can claim benefits. In this group 50% only return to the labour market after three years. According to Faßmann (1995:71), the length of career breaks also varies according to occupational group: Skilled workers take career breaks of an average of three years, while semi-skilled workers drop out of the labour market for 3.5 years, unskilled workers for 3.8 years. Civil servants and higher-level white-collar workers also tend towards shorter career breaks: The length of career breaks amounted to 2.1 years among white-collar workers and civil servants in highly qualified and management positions, 3.2 years among middle-level and 3.8 years among lower-level white-collar workers.

- The length of career breaks significantly impacts on women's income situation. According to Gerda Neyer (1998), only those women who return to their jobs immediately after the end of the period during which they are entitled to claim benefits have a chance to compensate for income loss due to parental leave. Longer career breaks including subsequent unemployment and/or periods of non-insurance lead to massive reductions in real income which are difficult to make up for. Gärtner (1994) quantified this form of income discrimination: After "only" two years of parental leave, women not only suffer reductions in direct income but also miss out on income dynamics. Depending on the level of income, this can result in indirect income loss of up to a year's salary (calculated in the basis of 25 years of employment). In addition, women are frequently subject to deskilling, i.e. skilled workers can only find work in semi-skilled or unskilled jobs while middle-level white-collar workers are forced to take on lower-level jobs on their return to the labour market (Faßmann 1995).

### *Underpayment*

- According to Gregoritsch et al. (2000:14), in 1997 female employees (including civil servants and the marginally employed) earned a median gross monthly income of ATS 17,000 (€ 1,235), against male median gross monthly earnings of ca. ATS 25,000 (€ 1,816). Women's pay was thus 31% below that of men. The gender pay gap even falls to 28% if the marginally employed are excluded. Income inequalities rise considerably, however, once the analysis is based on wage and income tax statistics. In 1999, men had an average gross annual income of ATS 378,571 (€ 27,513), as compared to ATS 227,284 (€ 16,518) for women, pushing up the gender

pay gap to as much as 40% (Traxler 2001:1). For persons in paid employment, the female gross annual income in 1999 was ATS 222,400 (€ 59,131) and thus 36% below that of male employees (ATS 349,800; € 25,420) (Statistik Austria 2002:60, 197).

- With regard to the long-term development of male and female incomes, the gender pay gap (for all employees without the marginally employed and civil servants) grew from 29% in 1977 to 32.3% in 1997. Between 1977 and 1997 the income differential thus rose by 3.3%, with the increasing number of female part-timers greatly contributing to the rise in earnings inequality (Gregoritsch et al. 2000:24f).
- An analysis of the gender pay gap based on micro-census data of 1997 (which do account for differences in weekly working hours) shows that in 1997 the average gross annual income of male full-timers was still 23% above that of women working full-time (Böheim et al. 2002:50).<sup>3</sup> Gregoritsch et al. (2000:42f) show how in 1996 women in full-time work<sup>4</sup> earned about ATS 98 (€ 7.12) an hour before tax, compared to ATS 125 (€ 9.08) for men. On average, the female full-time gross hourly pay, excluding supplementary, was 22% below that of men working full-time. In 1996, the female full-time gross monthly income on average amounted to ATS 17,400 (€ 1,2645.10), that of men to ATS 21,800 (€ 1,584.27). For women, part-time work (without the marginally employed) usually means slightly above average hourly rates (if not a higher monthly income), while male part-timers earn less per hour. Nevertheless, at ATS 115 (€ 8.36) the median male part-time hourly pay in 1996 was still above that of female part-timers (ATS 100 (€ 7.27)). In the same year, female part-time gross monthly earnings averaged out at ATS 10,100 (€ 734.00), compared to the male equivalent of ATS 11,500 (€ 835.74). The gender pay gap for part-time work thus amounted to 15%, and is lower than the pay gap for full-time work.
- According to Gregoritsch et al. (2000:15ff), in 1997 145,600 women (income: ATS 40,000; € 2,906) and 195,000 men (income: ATS 57,900; € 4,207) accounted for Austria's top earning 10% of employees, while among the lowest paid 20% of employees were 285,600 women (income: ATS 7,300; € 530) and 388.100 men (income: ATS 12,800; € 930). Accordingly, for the women in the highest decile, the gender pay gap amounted to 31% in 1996, while it was as much as 42% for the women among the lowest paid 20%.
- Gregoritsch et al. (2000:17) investigated income differentials according to educational level. The authors show that while in 1997 female employees (discounting the marginally employed) on average earned 27.9% less than men, the pay gap was highest for women of primary education level (30.7%) and lowest for those who had attained secondary education level without "Matura" (A-levels) (20.9%). The Consumer Survey for 1999/2000, which bases its data on net full-time annual income, arrives at a much lower earnings differential for women of 18%, with particularly high, above-average pay inequality for women at the top and bottom education levels

<sup>3</sup> Net pay for a standardized 40-hour working week.

<sup>4</sup> Gregoritsch et al. (2000:42) define full-time work as a working week of 30 hours or more.

(tertiary education graduates/minimum mandatory education) (Statistik Austria 2002:204).

- According to Gregoritsch et al. (2000:64ff), career breaks due to childcare duties are definitely responsible for wage inequalities. While in 1997 women who had not interrupted their careers earned 20% more than in 1993, the average income of women who had taken parental leave was 9% below its 1993 level. Women in higher-level positions (-17%), of secondary education level (-12.3%) and university and college graduates (-11.4% or -12.1%) were particularly penalised.
- As Austria's social security system is largely income-based, the income gap also affects transfer payments. Thus the mean pension awarded to women in their own right during this period amounted to only 55.2% of men's average pension in 1996 and – due to, above all, to the pension reforms of recent years – even fell further, to 50%, in 1999. What is more, 4 in 10 women of retirement age (ca. 400,000 women) are currently not entitled to claim any pension in their own right. On the other hand, almost all Austrian men are entitled to claim pension in their own right.
- In addition to direct income inequality, it is mainly career breaks and part-time work for childcare reasons that contribute to women's lower pensions. In the mid-1990s, the Austrian Federal Ministry for Employment, Health and Social Affairs first calculated female pensions (of women who had retired recently) on the basis of the number of children. Not surprisingly, the findings showed that pension levels of women decline with the number of children they have born – despite the fact that, from 1993, so-called childcare periods (up to a maximum of 4 years/child) have been taken into account for the calculation of pension levels. In 1996, childless women on average received a pension of 855.94 € (compared to 1,191.83 € for men). This amount fell to 716.26 €. for mothers of two children and by a further 109 € each for the third and fourth child (Wörister 1999:14f).
- The gender gap is not as dramatic with regard to unemployment benefits but has also widened slightly: Average unemployment benefits received by women fell from 74.6% to 74% of mean male unemployment benefit payments (Wörister 2001:9). With regard to unemployment assistance the fact that the partner's or spouse's income is taken into account not impacts negatively on the level of transfers: Frequently the gender income gap also means that women are not entitled to claim unemployment assistance at all (Mairhuber 2001).

#### *B.1.1.2. Population balance/sustainable fertility rate*

##### *Low fertility rates*

See: “fertility rates” under A 1.2.

##### *High penalties associated with childbirth*

See especially for high penalties related to equal pay and pension benefits: “underpayment” under B 1.1.1.

- According to Sieglinde Rosenberger (2003), Austria's relatively low fertility rate is due to the difficulties in reconciling work and family life in Austria. The penalties associated with childbirth are thus too high. The rather generous benefit payments granted (e.g. family supplements, childcare benefits, etc.) as well as the extended career breaks provided for under Austrian legislation are evidence of a "mother-centred family policy" and result in women depending on their husbands or partners. In Rosenberger's view, Austria lacks a "well developed welfare system based on the availability of adequate childcare facilities and a high labour market participation of both parents".

#### B.1.1.3. Reducing social exclusion and poverty

*Unequal pay and unequal social security benefits (pensions, unemployment benefits, social assistance)*

See: "underpayment" under B 1.1.1.

#### *Single mothers*

- As has been outlined above, only highly qualified single mothers do not suffer an above average risk of poverty. Workers (who in 1998 made up a third of all single mothers) are thus particularly prone to risk of poverty. Due to female workers' low income levels, the mean income of single mothers among workers was almost 25% below that of the average single mother. In 1993 more than 1 in 4 households were to be found in the lowest tenth of household income distribution, i.e. household incomes not exceeding 455.78 €/month. Almost one in two working-class women can be found in this category (Wolf 1995:357f). According to Amesberger et al. (2001:23) the income inequality of single mothers has not seen a reduction but – based on median income – has much rather become more pronounced.
- In the short term, policies such as childcare benefits and minimum pension insurance periods that take childcare periods into account may contribute to reducing risk of poverty and to increasing women's entitlement to – minimum – pension in their own right. In the long run, however, both childcare benefit and minimum pension insurance periods that take childcare periods into account encourage women to take longer career breaks and thus reduce women's income opportunities. According to the first findings of a current empirical study (Lutz 2003:227), "the new regime – so far – has led to a longer withdrawal of women from the labour market, without resulting in a stronger involvement of fathers in the care of younger children. It is true that women with young children no longer find themselves in a financially insecure situation for as long a time as in the past, but their labour market participation and, above all, their level of active employment has declined at the same time. The percentage of women returning to the labour market before their children reach the age of 2<sup>1/4</sup> years has dropped from 54% to 35%. The decline in employment was strongest among women who had their children at early age, women with several children, and women in low-paid jobs".

## **B.1.2. Employing organisations cost/benefits**

### *B.1.2.1. Efficient employing organisation*

#### *Job segregation*

- Both the job segregation index (1994: 1.20; and 1998: 1.14) and the segregation index for different sectors of the economy (1994:1.01; and 1998: 0.98) indicate a slight reduction in segregation, thus underpinning the trend towards an increasing integration of male and female work. However, a closer look at the data shows that women have not managed to penetrate male jobs. The amount of women working in highly feminised jobs (more than 80% women) is on the increase while the percentage of women working in male-dominated occupations (less than 30% women) is declining. In terms of work content, qualification and income opportunities, typically “female” jobs, in which 58% of all working women are employed, are at a considerable disadvantage compared to “mixed” or typically male occupations (Leitner/ Wroblewski 2000:93).

#### *Recruitment and training still gender based*

- The “Gleichbehandlungsbericht” (“Equal Treatment Report”) (BMWA/BMSG 2000:92f) for the reporting period of 1995-2000 refers to a considerable number of complaints by girls and young women who were refused apprenticeship in traditionally male-dominated jobs. While employers had not revised their attitudes or strategies, the Ombudsperson for Equal Treatment Affairs states that, in contrast to the previous reporting period (1990-1995), increasing numbers of girls are not denied apprenticeship on “honest” gender-based grounds. Much rather, employers increasingly refer to the lack of placement opportunities for apprentices in general (BMWA/ BMSG 2000:94).
- The data available on in-company training and further qualification in Austria are highly unsatisfactory. Still, Ulrike Papouschek and Manfred Krenn (1999) state that:
- Women are less frequently offered participation in “in-company training measures”: While one in two men in paid employment stated that they were offered in-company training, the same only applied to 41% of women (Ulam 1997 quoted in: Papouschek/ Krenn 1999).
- Women less frequently participate in management training leading to promotion within the company.
- Gender differentials can also be found in terms of the contents and areas covered by further qualification measures. While the gender gap is less visible with regard to computer skills and language training, gender segregation is more pronounced in other areas. Thus one in five women claimed to have received further training in “education” (8% of men) but only one in 25 women (against 18% of men) was offered further qualification in the area of “science and technology”.

- Only a small number of enterprises offer further training and qualification measures specifically targeted at female employees (Ebner 1998 quoted in: Papouschek/Krenn 1999).
- In Austria, participation in further training and qualification measures correlates significantly with the position in the company's hierarchy. As women are found less frequently in higher positions, participation in training and further qualification measures among unskilled and semi-skilled workers (22%) is well below the percentage of all working people participating in qualification activities (58%) (Ullram 1997 quoted in: Papouschek/Krenn 1999).

#### *Problems of retention after maternity leave*

- According to the Ombudsperson for Equal Treatment Affairs (BMWA/BMSG 2000:90), recruitment practices in Austria still subject women to questions regarding family planning in job interviews, demanding pregnancy tests or excluding mothers of young children.
- In the period from 1995 to 2000, the Chambers of Labour in Tirol, Vorarlberg and Vienna have had to deal with increasing numbers of complaints from women returning to the job market after parental leave. In particular, employers refuse to comply with women's requests of reductions in working time or an adjustment of working time to the opening hours of childcare facilities. Women returners not only face threat of dismissal but also unilateral changes of working hours or work contents on the part of employers (BMWA/BMSG 2000:118).

#### *Continuing harassment*

- Since its incorporation in the Equal Treatment Act in 1993, sexual harassment in the workplace has become a central focus of the counselling activities of the Ombudspersons of Equal Treatment Affairs. By the middle of 2000, complaints had levelled off at 120-150 reported incidents/year, a number that is set to rise further with the establishment of regional offices. Thus the number of complaints rose from 12 to 30 within a year, when a regional ombudsperson for equal treatment affairs was appointed for the Tyrol, Vorarlberg and Salzburg (BMWA/BMSG 2000:95).

**Table 11: Cases of counselling by the Ombudsperson of Equal Treatment Affairs**

	1995	1996	1997	1998	1999	Total
Equal Treatment Act provisions other than sexual harassment	80	236	182	243	283	1024
Equal treatment in public-sector employment	20	62	75	76	89	322
Sexual harassment	48	98	125	117	142	530
Labour law	14	28	22	18	26	108
Social security provisions	8	5	8	6	10	37
Other aspects of the Equal Treatment Act	39	97	130	111	222	599
Total	209	526	542	571	772	2620

Source: BMWA/BMSG 2000:85.

- The Equal Treatment Commission reports higher numbers of complaints regarding sexual harassment during the reporting period of 1995-2000 (BMA/BMSG 2000:54).

**Table 12: Cases of discrimination filed, 1995-2000**

Type of discrimination	Number of Complaints	Discriminations/Cases not yet concluded/
Sexual harassment	55	30
Recruitment	8	6
Remuneration	17	7
Training and further qualification	6	3
Promotion	15	12
Working conditions, other	19	4
Termination of contract	29	7
Gender-specific job advertisements	2	2

Source: BMWA/BMSG 2000:53.

- The Austrian Chambers of Labour, who represent employees in cases before work and labour courts also report that more than half of the sexual harassment cases they dealt with between 1995 and 2000 were brought forward on the basis of the Equal Treatment Act (BMA/BMSG 2000:122).
- Sexual harassment was also the focus of a large-scale quantitative study (in 1988) and three studies at sectoral level (reported by Zippel 1999). The main finding of the survey is that for a high percentage of women employees sexual harassment is part of their everyday working lives: About 80% of the female employees who participated in the study were confronted with sexually harassing behaviours throughout their



working lives. 70% of the women reported serious forms of sexual harassment. The most serious physical forms of harassment had been experienced by almost 1/3 of the women. Moreover, 3% of the women reported they had been coerced to sexual contact under the threat of disadvantages for refusals; and 7% of the women had been promised professional advantages if they became sexually involved (Zippel 1999:48).

- Women with university degrees regard physical incidents and sexually harassing remarks as more severe than women with lower education. According to Zippel (1999:48) the differences in women's interpretations, when correlated to their educational level, might derive from the different status women achieve within organisations. Women in higher positions might have higher self-awareness and self-confidence and thus be less likely to accept such forms of behaviour from colleagues and supervisors.
- At sectoral level, 33% of female employees had experienced sexual harassment and within local governments 73%. The longer women had been employed in the organisation, the more often they observed harassment. Moreover, women in the productive sector were more likely to perceive harassing behaviour than those in the public sector, while the experience of harassment did not depend on the sex composition in the workplace (reported by Zippel 1999:5f).
- A study based on a survey conducted in a vocational school in 1996 shows that sexual harassment is a problem for women even in their first years of training on the job: one in every six women between 15 and 20 years of age had already experienced sexual harassment in their brief working lives (reported by Zippel 1999:53).

### **B.1.3. Individual/households**

#### *B.1.3.1. Extended individual/household choices*

##### *Impact of continuing harassment on careers*

- According to the survey mentioned above the fear of negative consequences as a result of complaining about sexual harassment is real: almost half of the complaints women made did not result in changes in their circumstances. Of 162 complaints filed, only 24 resulted in the harasser being warned or reprimanded. The women themselves were more likely to experience negative consequences as a result of the complaints. Ten of the women were dismissed, though only two of the harassers lost their jobs; nine women were transferred, while only three of the men accused of harassment were forced to relocate. What is more, a common reaction is to blame the women for the harassment. Other women are seen as having sought advantage for themselves, and they, rather than the harassers, are held responsible for the behaviour. Even the women who experience harassing behaviour themselves are more likely to blame themselves than the harasser (Zippel 1999:49).
- In the qualitative interviews conducted for the survey women reported that the colleagues or supervisors who had demonstrated sexually harassing behaviour had

also expressed hostility towards women at work in general. According to Zippel (1999:49), sexual harassment thus constituted a special burden at work with which specially women are confronted, through which women are hindered in their access to paid employment, and by which means women are discriminated against.

- The emotional and psychological consequences even of “less” severe forms of harassment can be similar to those of sexual assault and rape. If the harasser was a supervisor the negative impact on women can be even more dramatic (Zippel 1999:50).
- A study commissioned by the City of Graz in 1994 on the work-related satisfaction of women and discrimination against women in public administration, in university and in the private sector found that those women who reported more harassment showed more work-related dissatisfaction. These findings have been further underpinned by a study on nurses, saleswomen and secretaries in 1995: women who had not reported sexual harassment were more satisfied with their work and felt less indifferent towards their work than those who had experienced sexual harassment (Zippel 1999:51f).

#### *Impact of differential earnings on domestic division of labour*

- The gender pay gap is one of the most popular arguments invoked concerning a gender-specific division of labour. In particular, the reluctance of men to take parental leave is frequently put down to the fact that women’s lower incomes cannot make up for income loss of men claiming parental leave, or childcare, benefits, and thus allow for a non-traditional division of labour (in this context, see also the figures on men and women claiming parental leave or childcare benefits mentioned above).

#### *Problems of access/retention in non traditional sectors*

See: “recruitment and training still gender based” under B 1.2.1.

#### *Time budget – division of labour*

- While equality in terms of labour market participation has improved (see above), micro-census surveys show an increase in gender inequality with regard to working hours. Due to the fact that women increasingly work part-time, female working time fell from 7 hours and 10 minutes in 1981 to 6 hours and 40 minutes/day in 1992. During the same period, reduction of male working hours was ten minutes below that of women (Faßmann 1995a:38). Despite the improvements mentioned above, housework is still predominantly women’s work (cf. Faßmann 1995a:39). The share of women doing the cooking, tidying and the laundry is three times that of men, and twice as many women shop for groceries. Men only outweigh women when it comes to “other household purchases” (i.e. durable consumer goods). Women still take on the main share of responsibility for household and family, also in terms of childcare duties: While in 1992 12.1% of men took on responsibility for looking after their children and grandchildren (1981:7%), the share of women taking care of children is twice as high.

Many fathers still leave childcare entirely up to their partners or spouses (1992: 24.6%; 1981:19%). In terms of childcare activities, fathers prefer to playing with their children, joint outings and other leisure activities, and occasionally take it upon themselves to reprimand their offspring. Supervising children is less, and doing schoolwork least popular among fathers. It is up to the mothers to provide basic care work, to look after their children's developmental needs and to help them succeed at school (Faßmann 1995a:39).

## **B.2. Barriers to achieving equality**

### **B.2.1. Main barriers**

#### *Mail breadwinner model/gendered division of labour*

- A key concept in this context is the 'male breadwinner and female caretaker' model, which is still deeply rooted in Austrian society and social policies. As this model regards women, if at all, as "additional family-income earners" rather than "regular employees", measures that help to prolong or even promote the continued existence of this model subvert the efforts undertaken to reduce vertical and horizontal segregation as well as the implementation of non-discriminatory analytical work evaluation. The introduction of the childcare benefit, the lack of plans to extend childcare facilities in Austria and the cutbacks within the social security system of women's entitlement to claim benefits in their own right (Mairhuber 2002) are but a few examples of this strategy in Austria.
- Findings of a 1994 study on "Male Identity in Austria" ("Mannsein in Österreich", Zulehner 1994) showed 41% of male respondents in favour of a gender-specific division of labour: In their view, women are in charge of the household and children, while men are responsible for income from gainful employment and the financial provisions of the family. What is more, 7 in 10 men believe that women are, by their nature, better suited to raise children. It is a widespread belief in Austria that children are best off at home with their mothers for their first three years of life (Papouschek/Pastner 1999:54).

#### *Childcare provision*

- One of the key obstacles to achieving gender equality is the lack of adequate childcare facilities in Austria: According to the findings of a micro-census survey among parents, as many as 109.000 childcare places were missing in Austria for children aged 0 to 9 in the mid-1990s. Based on the EU average, Austria still lacks childcare facilities for ca. 100.000 children between 0 and 9, with childcare facilities particularly needed for young children between 0 and 2. In comparison with Denmark, for instance, 390.000 additional childcare places would be needed for children from 0 and 9 (Leitner/Wroblewski 2000:77f). The creation of facilities for an additional 30,000

children since the mid-1990s may have resulted in a slight fall in demand, provided that demand for additional childcare facilities has not risen in the meantime. However, Austria still lacks a considerable number of childcare facilities, in particular facilities offering opening hours that really allow parents to reconcile work and family life. With the introduction of the childcare benefit, however, any commitment towards a further extension of childcare facilities has been abandoned. While the introduction of childcare benefit swallowed enormous sums of money, the lack of interest in improving childcare facilities in Austria has been obvious since NAP 2001.

### *Social Security System*

- In 1998 the Austrian Federal Ministry Federal for Labour, Health and Social Affairs commissioned a comprehensive study on “Hemmnisse der Frauenerwerbstätigkeit” (“Obstacles to female labour-market participation”, Kapeller et al. 1998). The authors of the study concluded that Austria’s social security system, with its strong emphasis on gainful employment, favours “consecutive” rather than “integrative” models of combining work and family life, which may greatly impact on the lives and employment situation of women. Thus extended periods of parental leave may prove beneficial for mothers in the short-term but many lead to traditional forms of divisions of labour and thus women’s financial dependence on their husbands. Neither are enterprises encouraged to take parents’ special requirements into account (Papouschek/Pastner 1999:20).

### *Gender pay gap/gender pay policies*

- According to Franz Traxler (2001:4), two properties of the Austrian industrial relations system are likely to contribute to gender-related inequality: 1) “the fact that pay differentials are generally wide, not only according to gender but also in terms of sectors and employment status”, and 2) “the irrelevance of solidaristic goals for wage setting”. “The unions have traditionally understood solidarity as a device for maintaining a maximum level of employment”. “Maintaining a maximum level of employment” first and foremost means maintaining a maximum level of male employment. Andrea Leitner (2002:5) notes in this context: “This priority is based on the concept of the male breadwinner who is a full-time employee enjoying various benefits for his “dependents”. Women in this concept play only a minor role of an additional family-income earner primarily in charge of the childcare and family work.”

### *Prejudice regarding promotion and the women’s occupational status*

- Highly controversial complaints by women concern cases where women are refused promotion within the company despite excellent job qualifications. It is two factors in particular that contribute to women being unable to realise their career opportunities: On the one hand, these include the subjective perception of many HR managers as well as colleagues that because so many women had already achieved management positions it is the men who need to be protected against discrimination. The Commission for Equal Treatment is thus frequently presented with statistical data

which supposedly show the predominance of women in (certain) areas of management but much rather are evidence of the “glass ceiling” firmly in place in many enterprises (BMSG/BMWA 2000:16). On the other hand, recruitment and promotion procedures are increasingly developed with a view making it harder for women to complain, while little attention is given to avoiding discriminatory elements in recruitment (BMSG/BMWA 2000:17).

#### *Limits of positive action at the level of enterprise*

- Women have been particularly badly affected by trends in business life such as the widening gap in incomes, flexibility in labour and the deregulation of the labour market and safety regulations. The economic developments of the past few decades have been characterised by an increasing restructuring of enterprises. The concentration on core areas has led to the relocation and the transfer of services to sub-contractors as well as to changes in the organisation of labour that were accompanied by internal decentralisation. As may be expected, the accompanying changes in personnel policies – wholesale reduction of staff, widespread changes in employment conditions with respect to tasks and working hours, increasing emphasis on performance in remuneration policies, decentralisation of responsibility for personnel, etc. – have had an adverse effect on the realisation of measures for equal opportunity. And all of this at a historical turning point when legal and institutional conditions are more favourable than ever before (Papouschek/Pastner 1997).
- According to Papouschek/Pastner (1997) limiting factors at a company level are, first and foremost, limits of consciousness. These includes both the consciousness of female discrimination as such and a consciousness of the potential that women can represent for enterprises. Enterprises export social problems in the form of external effects, without actually being affected by the same. It can hardly be expected for this reason that a consciousness of problems relating to the discrimination of women in enterprises will emerge – except in the case of a labour shortage. Hence, the necessary sensibility must be imparted to the enterprises from the outside. An adequate appreciation of the efficiency, high qualifications and strong professional motivation of women has not yet been able to develop.

#### **B.2.2. Recent changes that may remove/reduce barriers**

- The gender-sensitive analyses of 39 collective agreements commissioned by the Metalworking and Textile Union might help to reduce the gender pay gap by increasing the awareness of non-direct discrimination within collective agreements: The findings of this study are currently being compiled in a handbook together with suggestions for the improvements of regulations and best-practice examples. This handbook will be made available to all institutions with an interest in equal treatment as well as to the bodies involved in collective agreement negotiations (BMSG/BMWA 2001:23f).

- The guidelines for advising women returners developed by the AMS might be also a help for inactive women: From 2000, all regional AMS offices began to offer regular information events and consultation sessions for groups of women intending to return to the labour market. These events are also available to women on parental leave and can be attended also by women who do not claim benefits paid for by unemployment insurance (BMWA/BMGS 2000:49).
- The handbook “7 steps towards gender equality” aims to support enterprises in the reduction of discriminatory practices that may interfere with the company’s success as well as in the development of measures promoting gender equality at enterprise level and helping employees to better reconcile career and family/private life. The publication deals with five main areas, is directed at both employers and employees and offers a great variety of relevant practical information as well as good-practice examples (Frauenbüro der Stadt Wien 2000:6).
- Although the Austrian government claims to be aiming at improving reconciliation of work and family life, the negative effects on women of recent legislation (e.g. incentives for women to extend career breaks; negative incentives to share childcare work equally among partners; negative incentive to opt for part-time leave instead of a career break) seem to point towards the opposite (Cf. for more details: Mairhuber 2002:11ff). According to the first findings of a current empirical study (Lutz 2003:227), “the new regime – so far – has led to a longer withdrawal of women from the labour market, without resulting in a stronger involvement of fathers in the care of younger children”. What is more, with the introduction of the childcare benefit not only has the returners’ assistance – an allowance paid to employers who take on returners to the labour market – been scrapped but also any commitment towards a further extension of childcare facilities has been abandoned.

### **B.2.3. Further proposed changes that may remove/reduce barriers**

- A further amendment of the Equal Treatment Act of 1979 is being discussed regarding the abolishment of maximum amounts of compensation awarded in cases of violation of the Equal Treatment Act, as well as concerning the adaptation of burden of proof regulations to EU directives (97/80/EC) (BMSG/BMWA 2000: 33). In addition, the Ombudsperson for Equal Treatment Affairs demands better protection from sexual harassment in the workplace – similar to German labour law provisions –, including proof of burden regulations that are more in favour of the claimant. The Ombudsperson would also like to see the scope of the Act extended to apply to persons working on a free-lance basis and the “new self-employed” (BMSG/BMWA 2000:34ff).
- Within the EU programme for the EU strategy on equal opportunities of men and women (2001-2005), the Swedish Ombudsperson for Gender Equality has initiated a platform on „The European Project on Equal Pay“ that provides for improved exchange of experience with regard to active equal pay strategies. A research project co-funded by the EC aims to develop tools for the promotion of pay equality on a

practical level. The Austrian Ombudsperson will contribute a handbook on gender aspects of collective agreements developed in cooperation with the Austrian Metalworking and Textile Union (see above) and in turn be able use the instruments developed in Sweden, Denmark and Norway for practical application in Austria (BMSG/BMWA 2001:25).

- Workers representative bodies have long called for the obligatory use of standardised aggregated data in all gender – equality relevant report for all core elements of gender equality (BMWA/BMSG 2000:106ff). Workers representative bodies would also like to see sufficient staff resources provided for the Equal Treatment Commission, i.e. an additional full-time management position (BMWA/BMSG 2000:129f).
- In the context of a successful implementation of positive action programmes for women in Austria, Papouschek/Pastner (1997) state the following: binding regulations that feature effective sanctions: Official strategies can range from direct legislative regulation to indirect control through binding requirements governing the distribution of public funds to the direct financial support of measures that benefit women. Financial support for private initiatives would also belong to this scenario. Small and medium-sized enterprises in particular could be supported from diverse funds for compensatory payments, further training, child-care programmes, etc. Furthermore, educational work, the promotion of "awareness" and with it the an increase of sensibility on the part of company protagonists is of central significance here. Information and co-ordination bureaux, that work on a supra-plant basis and that are, for instance, situated near public administrations, could encourage an exchange of ideas on a company level, document positive examples, etc. On top of that, advisory bureaux are also necessary, which could be consulted when developing concrete company measures. All in all, it is imperative to establish a specific infrastructure, that enables activities to be carried out in enterprises and to support their effectiveness.
- Individualisation of the right to retirement pension for women: According to the SPÖ women, this is an important objective within gender equality policies, and not only necessary because ensuring women's income in old age through derived rights (survivors' pension benefits) is becoming increasingly inadequate, especially in view of rising divorce rates and increasing numbers of single mothers. The right of women to claim retirement pension in their own right should be obtained basically by the introduction of a *General Compulsory Pension Insurance System*, which covers the entire population. That means, that all persons over a certain age limit resident in Austria would have to pay contributions, independent of their employment status. Apart from a substantially higher assessment basis for childcare periods (e.g. based on the level of the average pay), the introduction of periods taken into account for caring for infirm and disabled relatives and the individualisation of the means-tested equalisation supplement, the payment of individual contributions for women by either social insurance institutions or the husband is an important tool within this new pension system. This means that in the case of unemployment, sickness, motherhood, caring for infirm or disabled relatives, contributions should be paid by the respective social insurance institutions (*Public Employment Service, Health Funds, etc.*), by the state and in the case of reduced gainful employment due to household work by the husband. That way, women would not be affected at the individual level, e.g. by structural labour market problems (Prammer 1997).

## **C. EVALUATION OF THE SOCIAL AND ECONOMIC IMPACT OF THE RECASTING**

### **C.1. The socio-economic impact of removing the exemption of Directive 86/378/EEC and Directive 96/97/EC (occupational schemes)**

Occupational or company pensions are traditionally of minor importance in Austria. But since the early 1990s the institutional framework for additional forms of protection has been improved by the adoption of the *Company Pension Act* and the *Pension Fund Act*: the *Company Pension Act* provides for better hedged pension commitments by employers; the *Pension Fund Act* enables the formation of company and inter-company (pooled) pension funds and regulates admission requirements, organisation and activity of such funds (cf. Tálos/Wörister 1998:265f). The formation of a company or inter-company pension fund needs a company or collective agreement. Within this agreement the following regulations have to be stipulated: the participation of employees in the administration of pension funds and in the rules of entitlements (e.g. entitlement to benefits and employers' contributions) (Mairhuber 2003:8f). Both acts do not address gender equality at all, i.e. different actuarial calculations in occupational schemes are not forbidden by law. Actually, different actuarial calculations are used within occupational schemes. The differences are based on gendered life-expectancy tables. Although women and men pay the same contributions, women's pension benefits within occupational schemes are lower than those of men. Currently, there are 12 company and 7 inter-company pension funds in Austria and about 280,000 employees can expect to qualify for pensions and benefits. 35,000 benefits (no gendered data are available) paid out by the company or inter-company funds are offset by 2 million pensions paid out by the public pension system (Republik Österreich 2002:11f). Nevertheless, removing the exemption of Directive 86/378/EEC and Directive 96/97/EC would have an important impact on women's pension benefits since the Austrian government has already implemented several measures to increase the importance of occupational schemes within the Austrian pension system (cf. Mairhuber 2003). With regard to pensions funds, removing the exemption would bring about an increase in expenditure or the need to introduce a new method of calculating the amount of the pension and thereby a redistribution of funds among men's and women's occupational pension benefits.

According to the Austrian Ombudswoman for Equal Treatment Affairs different actuarial calculations in occupational schemes are in violation of the fundamental principles of equal treatment of women and men, but changes in legislation or in practice are not even under discussion in Austria. Therefore, removing the exemption on the EU level could bring about an important motivation in promoting equal treatment within occupational pension schemes in Austria.



## **C.2. The socio-economic impact of the introduction of the innovative provisions of Directive 2002/73/EC in Directives 75/117/EEC, 79/7/EEC, 86/378/EEC, 97/80/EC**

- Regarding the Austrian equality bodies (Equal Treatment Commission and Ombudspersons for Equal Treatment Affairs) new legislation has been proposed in order to provide for the independence of the Ombudspersons. According to the Austrian legal expert, this means in practice that neither the annual nor the 5-yearly equal treatment reports would have to be approved by the minister in charge. Instead, the Ombudspersons for Equal Treatment Affairs would be in a position to commission independent studies if funding is available. In addition, the Ombudspersons for Equal Treatment Affairs could then make recommendations concerning all areas of discrimination, independent of whether these recommendations are in line with government policy. For one thing, this would have positive effects on the contents and information presented in the equal treatment reports: Detailed reports on equal treatment backed up by comparable data would definitely help to promote gender equality in Austria. For another, the option to make recommendations independently offers considerable potential for the improvement of equal treatment of men and women.
- According to the Austrian legal expert, the legal impact of measures such as equality plans and preventative measures is, however, unclear as the question is already under discussion in Austria of whether the implementation of these provisions needs action by the legislator. Therefore, a comment on the possible socio-economic impact in Austria is not possible.
- The Equal Treatment Act for the private sector still contains upper limits for compensation (e.g. sexual harassment). Only after the amending directive 2002/73/EC made this more visible, the importance of this was acknowledged and a amendment to the Equal Treatment Act proposed including provisions which are in conformity with EC law. According to the legal expert, the proposed legislation provides for compensation in cases of discrimination of the differences in pay, pension benefits etc. without any upper limit. Sanctions against the discriminator would have to be explicitly introduced by the legislator. As the gender pay gap is still considerable in Austria (cf. above), such legal provisions would have considerable beneficial effects on women and help to improve the socio-economic situation of women. For employers and pensions funds, on the other hand, the introduction of such sanctions and damages payable without any upper limits might turn out to be a rather costly affair. The actual socio-economic impact, however, depends on whether pay discrimination can be proven and especially on whether pay differentials will be recognised as a form of discrimination.
- Regarding the extension of the “burden of proof” into occupational pension schemes, the Austrian legal expert states that most social security schemes are handled by administrative bodies. In this kind of procedures it up to the authority to investigate the facts of the case. Other systems have to be enforced through court decisions: here the shift of the “burden of proof” would have to be implemented by the legislator.

Thus, the extension of the “burden of proof” into occupational pension schemes would lead to more juristic security for women to be treated equally. Since occupational pensions schemes still do not play a major role in Austria and even less attention is paid to equal treatment within occupational pensions schemes, the extension of the “burden of proof” could be very helpful in promoting at least a sense of awareness for the necessity of equal treatment of women and men within occupational pension schemes.

### **C.3. *The shortcomings of the legislation with respect to equal pay***

- According to Austrian Ombudswoman for Equal Treatment Affairs the requirement of an independent review or analysis of job grading would be very helpful in strengthening equal pay legislation. As mentioned above, the Austrian Ombudswoman for Equal Treatment Affairs together with the Metalworking and Textile Union have examined collective agreements for compliance with the principle of equal pay. Although the analysis was based on voluntary participation and only involved 39 collective agreements, it could already be seen in the light of such a requirement. An extension of such an analysis to all collective agreements or the introduction of the requirement for an independent (annual) analysis of job grading at the national/legislative level could be very helpful in closing the gender pay gap or at least in paying more attention to the problem of the gender pay gap.
- In addition to the examination of collective agreements by the Austrian Ombudswoman for Equal Treatment Affairs together with the Metalworking and Textile Union, the findings of a research project on gender pay differences have recently been published by the Federal Ministry of Economic Affairs and Labour (Gregoritsch et al. 2003). It must be mentioned here that although the results of the study had been available since December 2001, they were not published by the Ministry of Economic Affairs and Labour until May 2003 (The findings are in line with the earlier study by Gregoritsch et al. in 2000). In this context, it also seems necessary to once more refer to the Austrian Chamber of Labour’s call for comparable gender-specific income data for all equal treatment reports (see above).
- According to Andrea Leitner und Angela Wroblewski (2000:44), the gender pay gap in Austria is – at least partly – due to occupational and sectorial gender segregation. Women are heavily underrepresented in well-paying sectors while accounting for the majority of employees in low-wage sectors, such as retailing and the textile industry. Leitner and Wroblewski’s study (2000:44ff) also shows that female pay is highest in segregated male jobs, followed by highly segregated female jobs, “mixed” occupations and segregated female jobs. The lowest incomes are earned by women working in highly segregated male jobs. With regard to the gender pay gap, however, the study produced different findings: Thus, the gender pay gap is highest in highly segregated male jobs, the area where women show the lowest income opportunities in comparison to other occupational groups. For all other categories, the gender pay gap is between 26% and 29%. The higher incomes of women employed in segregated

male jobs and highly segregated female occupations are generally due to the higher qualification levels in these categories. Income differentials between men and women are lower in female jobs and mixed occupations than in segregated male jobs. Women experience the most pronounced income disadvantages in highly segregated male occupations, where despite similar qualification levels men earn almost 50% more than women. On the basis of these empirical findings an extension of the scope for comparison across employing organisations or the use of hypothetical comparators for equal pay claims could be very useful in establishing equal value or work rated as equivalent.

#### **C.4. The socio-economic impact of eliminating the derogation under Directive 79/7/EEC (statutory schemes)**

- Article 3(2) on family benefits and survivors benefits: Since 1995 survivor pension benefits have been ruled in a gender neutral way. As of the Pension Reform 2000, the survivor's pension amounts to between 0% and 60% of the deceased spouse's pension. The percentage depends on the income gap between spouses during their active working lives. A survivor receiving several incomes which together do not exceed € 1453.45 a month will still receive 60% of the spouse's pension. Due to this method of calculating the amount of the survivor's pension, widow's pensions are, de facto, higher than widower's pensions. Because of the low direct pensions for women (for details see above) widows' pensions are still of great importance to ensure retirement income for women. Thus, the elimination of the derogation under Directive 97/7/EEC would not have any impact in Austria.
- Article 7(a) retirement and retirement age: Currently, the statutory retirement age for a standard old-age pension is 60 years for women and 65 years for men. According to a ruling by the Constitutional Court in 1990, different retirement ages for women and men are not in accordance with the Austrian constitution. In response to this ruling, the Austrian government decided in 1992 to raise women's statutory retirement age gradually to that of men, after having set a range of measures regarding labour legislation, equality legislation and social security laws in order to promote the factual equal treatment of women and men. Thus, from 2018, women's statutory retirement age will be gradually raised; and by 2033, the statutory retirement age is to be 65 for both men and women. Age limits for early retirement pensions (women: 55 years; men 60 years) will be harmonised in accordance with raised statutory retirement age for standard old-age pensions. Following a ruling of the European Court (*Buchner* case), early retirement pension due to reduced working capacity was retroactively abolished from May 23, 2000 (cf. Mairhuber 2003:5). According to the Austrian legal expert, the elimination of the derogation in terms of pensionable age would mean that the existing standard retirement age would have to be equalised. "From the perspective of de-facto equality between women and men and with view to social justice, this equalisation should not be enforced too quickly. As already reported in Austria women only have an average pension of 50% of the average pensions of men (private sector), the income gap is around 30% and is increasing (!), the employment rate of

women in part-time jobs is increasing as well without any safeguard provisions which would minimize the negative effects of these forms of employment on the pensions (!), the unemployment rates of women are regularly higher than those of men. Apart from this, women suffer from several other forms of inequality on the labour market, they still are the main carers for children". Thus, regarding the Austrian statutory pension system, the question of equal treatment between women and men has to be seen in view of de facto equality. Since women's pension benefits are that small and the gender pension gap is that large, formal equal treatment between women and men cannot be justified and what is more, equal treatment would enhance women's risk of falling into poverty and increase women's economic dependency.

- Article 7(b) on advantages with respect to old-age pension schemes granted to persons who have brought up children; the acquisition of benefits entitlements following periods of interruption of employment due to the bringing up of children: The Pension Reform of 1993 replaced the qualifying period during parental leave (up to two years per child, according to the duration of the parental leave benefit) by so-called childcare periods (up to four years per child, independent of entitlement to or having received parental leave benefit). Therefore, childcare periods are credited on the basis of a uniform assessment basis (1997: € 421). Childcare periods are added cumulatively to any gainful employment which may have been pursued during the first years of the child's life. Thus, monthly pension rises by about the same amount for all mothers (or fathers), independent of breaks in gainful employment. Generally it is the mother who is entitled to these credits although the period is credited to the father if he can prove to have raised the child during the relevant time. The childcare periods can not be shared between the partners even when they have jointly cared for the child. In order to reduce the negative effects by the Pension Reform of 2000 on the pension of mothers, the special assessment basis for periods of childcare has been raised to the level of the equalisation supplement for non-married persons (2002: € 630.92) (cf. Mairhuber 2003:6f). With the introduction of the so-called childcare benefit in 2002, periods of childcare not only increase the amount of the pension benefits, but two years per child have even been taken into account for the eligibility criteria (minimum period of insurance coverage). The option for parents to share childcare periods if mother and father have jointly raised a child was already discussed when childcare periods were introduced. In view of the huge gender gap within pension benefits, however, it is recommended to keep the existing legal provisions, especially as a main reason for the introduction of childcare periods was to help women fill gaps in insurance time and thus to increase female pensions.
  - Article 7(c) on the granting of old-age or invalidity benefit entitlements by virtue of the derived entitlements of a spouse

Austrian law does not provide for such entitlements.

- Article 7(d) on the granting of increases of long-term invalidity, old-age, accidents at work and occupational disease benefits for a dependent spouse

In Austria, non-married persons and married couples who are generally entitled to a pension benefit (own pension or survivor's pension) whose total income does not exceed a certain level (so-called equalisation supplement reference rate) may claim a so-called equalisation supplement. The equalisation supplement is the difference between the means-tested income and the reference rate. The reference rate depends on marital status: for 2002, the minimum was € 630.90 monthly for non-married persons and € 900.13 monthly for married couples. As a consequence, married women are much less frequently entitled to claim equalisation supplement than men, due to the generally much higher income earned by men. Since the Austrian statutory pension system has no provision for an individual minimum pension benefit, in the case of old age and invalidity the subsistence of married women depends heavily on their husbands' income. Thus, mainly women within the SPÖ (Social Democratic Party of Austria) and the employees' representative bodies have, for many years, demanded an individualisation of the entitlement to equalisation supplement.

- Article 7 (e) on the consequences of the exercise, before the adoption of this Directive, of a right of option not to acquire rights or incur obligations under a statutory scheme (very limited and almost not-existent)

Austrian law does not provide for such regulations.

### **C.5. The use of the potential for positive action (optional question)**

According to the legal expert, in Austria positive action is an area where Community gender equality law can be said to have had a negative impact on national gender equality policy. The Act on Equal Treatment for Women and Men in the Public Sector was first created to comply with Council Recommendation 84/635/EEC on the promotion of positive action for women and Article 2(4) of Directive 76/207/EEC and was confirmed by Article 141(4) EC later on; but most importantly with the ECJ judgements in the *Kalanke* and *Badek* cases, the so-called "safeguard-clauses" had to be introduced in the provisions on the promotion of women with regard to access to jobs and job promotion and thus weakened the concept.

A positive encouragement for positive action rather than a permissive approach at EU level is certainly desirable as it would take into account the requirements for de facto gender equality. Especially in view of the equality in terms of socio-economic situation, positive action is of great importance: as long as socio-economic differences and different living conditions between men and women prevail, purely formal equality in terms of law is far from sufficient and can even lead to further de facto inequality (for instance, with regard to pension systems).

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