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Working Time Directive in Social Care and Support Services for Persons with Disabilities:

**Case of Austria**

**Introduction**

This country report gives a brief description of the architecture of the social care and health sector and the economic and organizational conditions in which service providers in Austria operate. Subsequently, it elaborates on the legal framework in which working time in the sector of social care and support services (SCSS) for persons with disabilities (PwD) is regulated in Austria and the influence of the EU Working Time Directive (WTD) on the domestic norms. It also touches upon the significance of the Austrian social partners in shaping working conditions via collective agreements. Subsequently, the results of qualitative interviews conducted with stakeholders in the sector aim to shed light on the working realities that can be found in the sector. To exemplify present confrontations and developments and to provide a comprehensive picture of the sector, scientific publications and journals are used along with news articles and statements from staff and employer representatives to make this report as comprising as possible.

# Social Care and Support Services for Persons with Disabilities in Austria

As a starting point for this country report, it is essential to look into the legal framework in which issues of disability are embedded in Austria, the functioning of the distribution of state support for persons with disabilities and the structure of the sector.

## “Disability” in Austria – Legal Term, Action Plan and Statistics

In 2010, the current definition of “disability” was enshrined in law by §1 of the “Evaluation Regulation”, reading: “A disability in the sense of this regulation is the effect of a non-temporary, physical, mental or psychical sensory or functional impairment that is likely to impede the participation in public life, especially in working life. Non-temporary is to be understood as a timeframe of more than six months.”[[1]](#footnote-1) Accordingly, Austrian authorities operate with a very broad understanding of “disability” that also includes, for example, effects of work accidents that last longer than 6 months but do not persist indefinitely. This results in a percentage of 20.5% of the Austrian population living with (at least) one form of a disability, amounting to 1.7 million persons as a mini-census in 2007 has shown.[[2]](#footnote-2) Amongst people older than 60 years, the percentage of persons with disabilities rises up to 48.4%.[[3]](#footnote-3) Issues of disabilities are therefore discussed closely linked with those of the general health sector, care for elderly people and rehabilitation and are not expressly distinguished from those other sectors. This heavily affects the way data on disability and the workforce in social care and support services for persons with disabilities is gathered, and it can be difficult to draw conclusions from most official statistics regarding this sector. Nonetheless, the best shall be done hereinafter to provide a picture as complete as possible from the existing information.

Already in 2008, Austria ratified the Convention on the Rights of Persons with Disabilities that reaffirms the equal enjoyment of human rights by persons with disabilities, *inter alia* the equal access to health and social services.[[4]](#footnote-4) This step led to a multitude of activities on the national level, for example the drafting of reports, action plans and reinforced efforts by ministries and other stakeholders regarding the issues faced by persons with disabilities. The “National Action Plan Disability 2012-2020” includes a far-ranging catalogue of measures to guarantee the inclusion of persons with disabilities in the labor market, the education system and health and rehabilitation, among other areas.[[5]](#footnote-5) Also, the Monitoring Group of the Action Plan, tasked with the evaluation of the Plan and prioritizing its goals[[6]](#footnote-6), set out to gather statistical data from all ministry departments on persons with disabilities in Austria.[[7]](#footnote-7)

## Access to Social Care and Support Services for Persons with Disabilities

The Austrian model of disability policy, including the access to social care and support services for persons with disabilities, is based on the principle of self-determination.[[8]](#footnote-8) Accordingly, persons with disabilities or their legal representatives can choose freely which forms of assistance they deem fit to meet their respective needs. In doing so, they are publicly supported by being granted the so-called *Pflegegeld* (Care Allowance) 12 times a year, at the end of every month and free from income tax.[[9]](#footnote-9) The value of the allowance is determined in a 7-level-scheme, level 1 being the “lowest” form of disability and level 7 the “highest”.[[10]](#footnote-10) The designation to which group a person belongs is regulated by the Evaluation Regulation mentioned above, and the amount of monthly payments are directly linked to this assessment. While in level 1, persons entitled to Care Allowance receive € 157.30 per month, persons in level 7 receive € 1688.90.[[11]](#footnote-11)

In its statistical report, the Monitoring Group identified 432,819 persons entitled to receive Care Allowance in 2012.[[12]](#footnote-12) The fact whether a person may receive this allowance is determined by the *Pflegegeldgesetz* (Care Allowance Act) that entered into force in 2012, concentrating the competences in this area at the level of the federal government and tasking the *Pensionsversicherungsanstalt* (Pension Insurance Institution) with the administration of all care allowance payments. The most important requirements to be granted Care Allowance are constant need for assistance due to a disability as defined by the Evaluation Regulation described above, that this need amounts to at least 65 hours per month, and a habitual residence in Austria. Some *Länder* (regions) of Austria, that were responsible for Care Allowances before 2012, choose to additionally support their inhabitants with disabilities by granting an additional *Pflegegeldzuschuss* (Care Allowance subsidy) that covers a portion of care expenses. For example, the region *Vorarlberg* grants an extra € 200.00 a month to persons within level 5, 6 or 7 of the disability scheme prescribed by the Care Allowance Act.[[13]](#footnote-13)

In contrast with the precisely regulated conditions under which financial support is granted, the practical access to social care and support services seems to be more problematic: In 2010, 53% of persons entitled to Care Allowance did not receive formal social care services, 29% relied on mobile services, 16% on stationary care and 2% on 24-hours-care. In 2011, 48% did not receive any formal services, 32% made use of mobile services, 17% were in stationary care and 3% in 24-hours-care.[[14]](#footnote-14) The high percentage of persons with disabilities who are not receiving formal care services is supplemented by reports that care for other groups, e.g. for elderly people, is largely provided by families in Austria.[[15]](#footnote-15) They are, in other words, excluded from the formal sector and supported informally by their relatives. Since 2014, family members who take care of relatives that have a disability of at least level 3 are entitled to go on care leave and to receive the so-called *Pflegekarenzgeld* (care leave allowance) which amounts to 55% of the prior net wage for up to 3 months. Such a care leave has to be agreed upon by the employer and the employee.[[16]](#footnote-16)

## Providers of Social Care and Support Services for Persons with Disabilities

Social care and support services are provided by a large spectrum of organizations in Austria; however, no centralized information on the state of the sector seems to be available. The ministry of social affairs provides a database called “Austria Social” containing service providers all across Austria that lists 95 organizations offering services like care, legal or work assistance, 907 residential facilities, and 991 social service providers.[[17]](#footnote-17) Even though this data is not exhaustive, it still provides a good overview of the shape of the sector: The list contains public, ecclesiastical, non-profit and private institutions and also individuals that are active in the sector. Currently, there are 12,312 one-person-businesses in the health sector, part of which provide services for persons with disabilities.[[18]](#footnote-18)

# Legal Framework of Working Time and Rest in Austria

Austrian Labor Law is characterized by particularities and sectoral subtleties. Hereafter, only the most important general principles and significant features of the social care and support services sector shall be taken into account. Depending on what exact service is provided by social care and support services staff, different working time and rest periods law is applicable.

## EU Law & National Legislation

Since Austria’s accession to the European Economic Area in 1994 and the subsequent accession to the European Union (1995), EU directives have to be transposed into national law. With regards to working time and rest periods, this was already the case upon accession to the EU: The requirements of Directive 93/104/EG were to be met by the main Austrian implementation provisions *Arbeitszeitgesetz* (Working Hours Act, being the general catalogue of norms), the *Krankenanstalten-Arbeitszeitgesetz* (Hospital Working Hours Act, applicable to certain types of facilities and workforce) and the *Arbeitsruhegesetz* (Act on Rest Periods).[[19]](#footnote-19)

### Transposition into National Law

§32 (1) of the Austrian Working Hours Act expressly refers to the present WTD, directive 2003/88/EG, stating that the Act implements, among other EU norms, the directive in question. However, this is a mere declaration and has, according to academia, “no special value”.[[20]](#footnote-20) The present Austrian regulations therefore have to be evaluated paragraph by paragraph and measured by the material content of the WTD.

The limit for “normal” working time is defined in the Working Hours Act as 8 daily hours and 40 weekly hours, with the possibility to extend daily normal working time to 10 hours by collective agreement for a sector (*“Kollektivvertrag”*).[[21]](#footnote-21) For shift work, daily working time may not exceed 9 hours, with a weekly maximum of 40 hours.[[22]](#footnote-22) Flexitime may be introduced by collective agreement at the level of an individual business or company (“*Betriebsvereinbarung”*).[[23]](#footnote-23) In the case of standby duty, weekly normal working time may be extended to 60 hours and daily working time to 12 hours by collective agreement on the sectoral *and* company level.[[24]](#footnote-24) The outmost boundaries for weekly working time (= average working time as defined by the WTD) is 48 hours, with a reference period of 17 weeks/4 months, as required by the WTD.[[25]](#footnote-25) The Working Hours Act, however, allows exceptions for certain sectors and types of work, for instance: as indicated above, in the case of standby duty, which is seen as problematic by experts in the light of the rules of the WTD.[[26]](#footnote-26) Contemporary discussions about working time in the sector of social care and support services are elaborated on below (“Social Partners, Collective Agreements and Their Significance”).

In contrast to the particularities described above, the implementation of EU working time law by the Austrian legislator was mostly unproblematic overall. The health and care sectors however, in parts of which special Austrian legislation is applicable (the Hospital Working Hours Act), have been in the center of the discussions about working time in Austria. In 2010, a report by the European Commission identified these problematic areas where Austrian legislation was inconsistent with EU law.[[27]](#footnote-27) As a consequence, Austria was prompted to bring its laws in line with the WTD by the European Commission in 2014.

### Problematic Areas

The aforementioned irregularities indicated by the Commission report are highly relevant for this country report: The Austrian Hospital Working Hours Act is, contrary to its name, is not only applicable to hospitals *per se*, but also to other “organizational units” that provide stationary care and has precedence over the general Working Hours Act.[[28]](#footnote-28) These “organizational units” include, as indicated in the legislative materials[[29]](#footnote-29), institutions where persons receive stationary assistance and care.

With regards to professional groups, the Working Hours Act applies, *inter alia*, to caregivers, social and health psychologists and psychotherapists, who are likely to be working in institutions for persons with disabilities. The Hospital Working Hours Act can therefore be applicable to some of the workforce of a residential unit for persons with disabilities that, for example, provides care for a small portion of its residents, while the (general) Working Hours Act applies to the rest of the employees. To the displeasure of the European Commission, provisions of the Hospital Working Hours Act used to average working times of more than 60 hours a week while hindering workers to consume their rest periods. Since then, the Hospital Working Hours Act has been reformed, not without taking into account care providers’ need to adapt to the new legislation which will incrementally bring Austrian law in line with the requirements of the WTD until 2021 by lowering average weekly working hours to 48.[[30]](#footnote-30) In the meantime, collective agreements on the level of individual businesses and individual consent of employees (“opt-out”) allow average weekly working hours of 60 (until 2017), respectively 55 (from 2017 to 2021).

## Social Partners, Collective Agreements and their Significance

The most important collective agreement for the social sector is the *Sozialwirtschaft Österreich Kollektivvertrag (SWÖ-KV)* which is, as a statute, not only applicable for member institutions of the representing body of employers (*Sozialwirtschaft Österreich),* but to all organizations in the sector. Hence, it applies to about 100.000 employees, among them those working for/with people with disabilities.

EASPD is the European Association of Service providers for Persons with Disabilities. We are a European not-for-profit organisation representing over 15,000 social services and disability organisations across Europe. The main objective of EASPD is to promote equal opportunities for people with disabilities through effective and high-quality service systems.

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1. Verordnung des Bundesministers für Arbeit, Soziales und Konsumentenschutz betreffend nähere Bestimmungen über die Feststellung des Grades der Behinderung (Einschätzungsverordnung), StF: BGBl. II Nr. 261/2010 idF BGBl. II Nr. 251/2012. [↑](#footnote-ref-1)
2. See: Federal Ministry of Labour, Social Affairs and Consumer Protection (ed.), Nationaler Aktionsplan Behinderung 2012-2020, 2nd edition, 2016, 14; Federal Ministry of Labour, Social Affairs and Consumer Protection (ed.), Begleitgruppe zum Nationalen Aktionsplan Behinderung – Statistiken, 2013, 2. [↑](#footnote-ref-2)
3. See: Federal Ministry of Labour, Social Affairs and Consumer Protection (ed.), Nationaler Aktionsplan Behinderung 2012-2020, 2nd edition, 2016, 22. [↑](#footnote-ref-3)
4. GA-Res.: Convention on the Rights of Persons with Disabilities, A/RES/61/106, 13 December 2006, Art. 25. [↑](#footnote-ref-4)
5. Federal Ministry of Labour, Social Affairs and Consumer Protection (ed.), Nationaler Aktionsplan Behinderung 2012-2020, 2nd edition, 2016. [↑](#footnote-ref-5)
6. See ibid., 11. [↑](#footnote-ref-6)
7. See Federal Ministry of Labour, Social Affairs and Consumer Protection (ed.), Begleitgruppe zum Nationalen Aktionsplan Behinderung – Statistiken, 2013. [↑](#footnote-ref-7)
8. See Federal Ministry of Labour, Social Affairs and Consumer Protection (ed.), Nationaler Aktionsplan Behinderung 2012-2020, 2nd edition, 2016, 9. [↑](#footnote-ref-8)
9. See Pensionsversicherungsanstalt (ed.), Pflegegeld-Auszahlung, online: http://www.pensionsversicherung.at/portal27/pvaportal/content?contentid=10007.707702&viewmode=content [accessed April 04, 2017]. [↑](#footnote-ref-9)
10. Bundesgesetz, mit dem ein Pflegegeld eingeführt wird (Bundespflegegeldgesetz — BPGG)

    StF: BGBl. Nr. 110/1993, §4 para. 2. [↑](#footnote-ref-10)
11. See ibid., §5. [↑](#footnote-ref-11)
12. See Federal Ministry of Labour, Social Affairs and Consumer Protection (ed.), Nationaler Aktionsplan Behinderung 2012-2020, 2nd edition, 2016, 30. [↑](#footnote-ref-12)
13. See Land Vorarlberg (ed.), Zuschuss zum Pflegegeld bei ambulanter Pflege, online: <http://www.behinderung-vorarlberg.at/Seiten/ZuschusszumPflegegeldbeiambulanterPflege.aspx> [accessed April 4, 2017]. [↑](#footnote-ref-13)
14. See ibid., 29. [↑](#footnote-ref-14)
15. Arbeiterkammer (ed.), Pflege und Betreuung von älteren Menschen, [↑](#footnote-ref-15)
16. Arbeitsvertragsrechts-Anpassungsgesetz – AVRAG StF: BGBl. Nr. 459/1993 idgF, §14a. [↑](#footnote-ref-16)
17. Ministry for Social Affairs (ed.), Österreich Sozial, online: <https://www.infoservice.sozialministerium.at/InfoService2/;jsessionid=25570D006EE50AF3C9306EE99EED8215;jsessionid=85EA58ABB03B5FA0CE052D2E7A18A7C1?execution=e1s16> [accessed: April 7, 2017] [↑](#footnote-ref-17)
18. See Lukawetz et. al., Demographie und Sozialstatistik von EPU/Solo-Selbstständigen - Analysen aus den Datenbeständen der Statistik Austria, 2015, 12. [↑](#footnote-ref-18)
19. See: Klaus Mayr, Einfluss des Gemeinschaftsrechts auf das österreichische Arbeitsrecht, in: WISO 4/2001, 115-139, 122; Bundesgesetz vom 11. Dezember 1969 über die Regelung der Arbeitszeit (Arbeitszeitgesetz) (AZG), StF: BGBl. Nr. 461/1969; Bundesgesetz, mit dem ein Arbeitszeitgesetz für Angehörige von Gesundheitsberufen in Kranken-, Pflegeanstalten und ähnlichen Einrichtungen geschaffen wird (Krankenanstalten-Arbeitszeitgesetz - KA-AZG), StF: BGBl: I Nr. 8/1997; Bundesgesetz vom 3. Feber 1983 über die wöchentliche Ruhezeit und die Arbeitsruhe an Feiertagen (Arbeitsruhegesetz - ARG), StF: BGBl. Nr. 144/1983 . [↑](#footnote-ref-19)
20. Franz Schrank, Arbeitszeitgesetze – Kommentar, 2015, 601. [↑](#footnote-ref-20)
21. See Arbeitszeitgesetz, §3. [↑](#footnote-ref-21)
22. See ibid., §4a. [↑](#footnote-ref-22)
23. See ibid., §4b. [↑](#footnote-ref-23)
24. See ibid., §5. [↑](#footnote-ref-24)
25. See ibid., §9 para. 4; WTD, Art. 16 lit. b. [↑](#footnote-ref-25)
26. See Schrank, Arbeitszeitgesetze, 284: standby duty in general as defined in §5 Working Hours Act, lorry drivers - §13b para. 3 Working Hours Act, public pharmacy workers - §19a para. 2 Working Hours Act. [↑](#footnote-ref-26)
27. Report from the Commission to the European Parliament, the Council, the European Committee and the Committee of the Regions on implementation by Member States of Directive 2003/88/EC (‘The Working Time Directive‘), SEC (2010) 1611, 3ff. [↑](#footnote-ref-27)
28. KA-AZG, §1 para. 1 (11). [↑](#footnote-ref-28)
29. EB RV 386 BlgNR XX. GP. [↑](#footnote-ref-29)
30. KA-AZG, §4 para. 4b. [↑](#footnote-ref-30)