

## EMPLOYMENT CONTRACT LAW ADAPTATION ACT

Extract: Section 7 to Section 7m

Employment Contract Law Adaptation Act, Federal Law Gazette (FLG) no. 459/1993, as amended by

FLG no. 450/1994	FLG no. 895/1995	FLG no. 754/1996	FLG I no. 9/1997
FLG I no. 139/1997	FLG I no. 120/1999	FLG I no. 179/1999	FLG I no. 44/2000
FLG I no. 2/2001	FLG I no. 98/2001	FLG I no. 52/2002	FLG I no. 68/2002
FLG I no. 89/2002	FLG I no. 100/2002	FLG I no. 8/2005	FLG I no. 103/2005
FLG I no. 36/2006	FLG I no. 78/2007	FLG I no. 104/2007	FLG I no. 90/2009
FLG I no. 135/2009	FLG I no. 150/2009	FLG I no. 29/2010	

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### **Entitlements of employees<sup>1</sup> with their habitual place of work in Austria vis-à-vis foreign employers not established in Austria**

**Section 7.** If an employer not established in Austria who is not a member of a corporate body entitled to enter into collective agreements in Austria employs workers (employees) with their habitual place of work in Austria, these workers shall automatically be entitled to at least the same remuneration determined by law, ordinance or collective agreement to which comparable workers employed by comparable employers are entitled at the place of work.

#### **Entitlements vis-à-vis foreign employers not established in an EEA member state**

**Section 7a.** (1) Section 7 shall, without prejudice to the law applicable to the employment relationship, automatically apply also to a worker who is posted to Austria by an employer not established in an EEA member state to work within the framework of temporary agency work or to perform continued work.

(2) The employer pursuant to Para 1 and his/her client in the capacity of the entrepreneur shall be liable for the remuneration entitlements of the worker resulting from Para 1 as joint and several debtors.

(3) Without prejudice to the law applicable to the employment relationship, a posted employee of an employer defined in Para. 1 shall for the duration of the posting have mandatory entitlement to

1. paid annual leave pursuant to Section 2 of the Paid Annual Leave Act (*Urlaubsgesetz, UrlG*), Federal Law Gazette no. 390/1976, provided that paid annual leave according to the legislation of the home country is shorter; after completion of the posting, this employee shall keep the prorated share of the difference between the higher annual leave entitlement according to Austrian law and the entitlement according to the laws of his/her home country, corresponding to the duration of the posting; employees who are subject to the annual leave regulation of the Annual Leave and Severance Pay for Construction Workers Act (*Bauarbeiter-Urlaubs- und Abfertigungsgesetz, BUAG*), Federal Law Gazette no. 414/1972, shall be exempt from this annual leave regulation;
2. compliance with the working hour regulations as defined in the collective agreement.

(4) The following shall not apply to a posted worker who is involved in assembly and repair work in connection with the supply of plants and machinery to a company, or in activities required to set into operation such plants and machinery which cannot be performed by domestic employees:

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<sup>1</sup> Note: The terms “employee“ and “worker“ are interchangeable synonyms in this text

1. Para 1, if this is remuneration under collective agreement as defined by Para 1 and this work in Austria does not last longer than three months altogether;
2. Para 3, if this work in Austria does not last longer than eight days altogether.

For workers involved in construction work for the purpose of erection, restoration, maintenance, conversion or demolition of buildings, in particular in excavation, earthwork, construction work in the narrow sense, erection and disassembly of pre-fabricated elements, fittings or equipment, conversion, renovation, repair, dismantling work, demolition work, servicing, maintenance (painting and cleaning work), refurbishment, repairs and installations at plant facilities, Paras 1 and 3 shall, in any case, apply as of the first day of employment in Austria.

#### **Entitlements vis-à-vis foreign employers established in an EEA member state**

**Section 7b.** (1) A worker who is posted to Austria by an employer established in an EEA member state other than Austria in order to perform continued work shall, without prejudice to the law applicable to the employment relationship, be automatically entitled to the following for the duration of the posting:

1. at least the remuneration determined by law, ordinance or collective agreement to which comparable workers employed by comparable employers are entitled at the place of work;
2. paid annual leave pursuant to Section 2 *UrlG*, provided that paid annual leave according to the legislation of the home country is shorter; after having completed the posting this worker shall keep the pro-rated share of the difference between the higher annual leave entitlement according to Austrian law and the entitlement according to the law of his/her home country, corresponding to the duration of the posting; workers who are subject to the annual leave regulation of the *BUAG* shall be exempt from this annual leave regulation;
3. compliance with the working hour regulations as defined in the collective agreement;
4. the employer or the agents authorised to instruct the posted worker on behalf of the employer shall keep readily available the records as defined by Council Directive 91/533/EEC on an employer's obligation to inform employees of the conditions applicable to the contract or employment relationship in Austria.

(2) The following shall not apply to a posted worker who is involved in assembly and repair work in connection with the supply of plants and machinery to a company, or in activities required to set into operation such plants and machinery which cannot be performed by domestic workers:

1. Para 1 no. 1, if this is remuneration under collective agreement as defined by Para 1 no. 1 and this work in Austria does not last longer than three months altogether;
2. Para 1 no. 2, if this work in Austria does not last longer than eight days altogether.

For workers involved in construction work for the purpose of erection, restoration, maintenance, conversion or demolition of buildings, in particular in excavation, earthwork, construction work in the narrow sense, erection and disassembly of pre-fabricated elements, fittings or equipment, conversion, renovation, repair, dismantling work, demolition work, servicing, maintenance (painting and cleaning work), refurbishment, repairs and installations at plant facilities, Para 1 shall, in any case, apply as of the first day of employment in Austria.

(3) Employers as defined by Para. 1 shall report the employment of workers who are posted to Austria to perform continued work to the Central Co-ordinating Agency Charged with Investigating Illegal Employment pursuant to the Employment of Foreigners Act (*Ausländerbeschäftigungsgesetz, AuslBG*) and the Employment Contract Law Adaptation Act (*Arbeitsvertragsrechts-Anpassungsgesetz, AVRAG*) of the Federal Ministry of Finance one week prior to the first day of work at the latest, and hand over a copy of the report to the agent mentioned in Para. 1 no. 4, or - provided that only one worker is posted – hand it over to said worker. The report shall be submitted by electronic means if technically possible. In situations of disaster, in the case of work that cannot be delayed or has to be performed at short notice the report shall be made available immediately before commencement of work. If the employer has not handed over a copy of the report to the agent or worker prior to commencement of work, the agent or worker shall file a report pursuant to the first sentence and Para. 4 immediately upon commencement of work. The Central Co-ordinating Agency Charged with Investigating Illegal Employment pursuant to the Employment of Foreigners Act and the Employment Contract Law Adaptation Act of the Federal Ministry of Finance shall pass a copy of the report electronically on to the competent health insurance institution (Sections 26 and 30 of the General Social Insurance Act (*Allgemeines Sozialversicherungsgesetz; ASVG*)).

(4) The report as defined by Para 3 shall include the following details:

1. employer's name and address;
2. name of the person authorised pursuant to Para 1 no. 4;

3. name and address of the domestic client (general contractor);
4. the names, birth dates, social security numbers and nationalities of the workers posted to Austria;
5. commencement and expected duration of employment in Austria;
6. amount of remuneration due to the individual worker;
7. place of employment in Austria (other work sites in Austria as well);
8. type of work and deployment of the worker;
9. the authority issuing the permit as well as the reference code, issue date and period of validity or a copy of the permit, provided that an official permit is required to employ the posted workers in the country where the employer is established;
10. the authority issuing the permit as well as the reference code, issue date and period of validity or a copy of the permit, provided that an official permit is required to employ the posted workers in the country where the employer is established.

(5) If the worker is not subject to obligatory social security in Austria, employers as defined by Para 1 or agents mentioned in Para 1 no. 4 or the worker (Para 3) shall have documents on the reporting of the worker to a social security institution (social security document E 101 in accordance with the Regulation (EEC) No. 1408/71, social security document A 1 in accordance with the regulation No. 883/04 (EC)) as well as a copy of the report pursuant to Paras 3 and 4 readily available at the place/site of work in Austria. If an official permit is required to employ a posted worker in the country where the employer is established, the permit shall be kept readily available.

(6) Officials of the tax authorities shall be authorised to access the workplace to check whether the documents pursuant to Para 5 are kept readily available, and to make copies of these documents. If an employee works in different places on the same day, the required documents shall be kept readily available at the first place/site of work. If an inspection is carried out in one of the other places/sites of work, the documents shall demonstrably be handed over to the inspecting official within 24 hours.

(7) In accordance with provisions under the data protection law, the authorities shall also cooperate with authorities of other EEA member states which are in charge of monitoring adherence to labour law and social law provisions or of fighting illegal employment or are able to tell whether an employer complies with the working conditions as defined by Para 1, as well as provide information in case of justified requests by authorities from other member states. Administrative assistance (*Amtshilfe*) to these authorities shall be exempt from stamp duties and other charges.

(8) The parties to a collective agreement shall make the collective agreements they entered into available in an adequate fashion. As far as construction activities are concerned, information shall be provided by the Construction Workers' Holiday and Severance Pay Fund in accordance with the *BUAG*.

(9) Anyone who, in the capacity of employer or agent mentioned in Para 1 no. 4, does not

1. submit the report as defined by Para 3 in time; or
2. keep the required documents readily available contrary to Para 5,

commits an offence under administrative law and shall be fined by the District Administration Authority to pay EUR 500 up to EUR 5,000, and EUR 1,000 up to 10,000 in case of repetition of the offence.

(10) Paras. 1 to 9 shall also apply to employees who are posted to Austria by an employer established in the Swiss Confederation for the purpose of performing continued work.

#### **Liability of the general contractor**

**Section 7c.** (1) Anyone who, within the scope of his/her entrepreneurial activities, subcontracts at least part of the work he/she shall perform under a project to a different entrepreneur (subcontractor), except for employers pursuant to Section 7a, shall be a general contractor.

(2) If the general contractor has subcontracted a project or part of a project in a way that is unlawful pursuant to the provisions of the Purchase Contract Awards Act (*Bundesvergabegesetz*) 1997, Federal Law Gazette I no. 56/1997, or any other similar legal provisions or the contractual provisions, he/she shall, pursuant to Section 1355 of the General Civil Code (*Allgemeines Bürgerliches Gesetzbuch; ABGB*), be liable as guarantor for the remuneration entitlements determined by law, ordinance or collective agreement for the workers employed by the subcontractor to carry out the work and to which they are entitled within the scope of the agreed performance of work. The same shall apply if a subcontractor unlawfully subcontracts a project or part of a project.

(3) Pursuant to Section 1356 *ABGB*, the general contractor shall be liable as deficiency guarantor for entitlements to the remuneration determined by law, ordinance or collective agreement for the workers employed by the subcontractor to carry out work at construction sites as defined by Section 2 Para 3 of

the Health and Safety at Work Act (*ArbeitnehmerInnenschutzgesetz; ASchG*), and to which they are entitled within the scope of the agreed performance of work. If the worker has not taken legal action to claim remuneration entitlements as defined by the first sentence vis-à-vis the employer within six months after the end of performing work, the general contractor can no longer be held liable as deficiency guarantor.

(4) Para 3 shall not apply if the general contractor is already liable pursuant to Para 2.

(5) In case of the subcontractor's insolvency, the general contractor shall not be liable pursuant to Para 3.

#### **Obligation to keep pay documents readily available**

**Section 7d.** (1) Employers as defined in Section 7, Section 7a Para. 1 or Section 7b Para. 1 shall keep readily available at the place/site of work and for the duration of the employee's employment such documents in German as are required for verifying the remuneration payable to the employee pursuant to Austrian law (pay documents). If an employee works in different places on the same day, the pay documents shall be kept readily available at the first place/site of work. If it cannot be reasonably expected for the documents to be kept readily available at the place/site of work, the documents shall in any case be kept readily available within the country and be demonstrably handed over on the request of the tax authorities within 24 hours.

(2) If the employer as defined in Section 7b Para. 1 has appointed an agent pursuant to Section 7b Para. 1 no. 4, the obligation pursuant to Para. 1 shall apply to the agent. In the case of cross-border temporary agency work, the obligation to keep the pay documents readily available shall apply to the user undertaking, in which case the temporary agency shall make the documents available to the user undertaking.

#### **CWSD Competence Centre**

**Section 7e.** (1) For the purpose of verifying compliance with the base pay to which an employee not subject to the General Social Insurance Act (*Allgemeines Sozialversicherungsgesetz, ASVG*) is entitled in Austria as stipulated in a law, ordinance or collective agreement under consideration of the individual classification criteria, the Vienna Regional Health Insurance Fund (*Wiener Gebietskrankenkasse*) shall be instated as a competence centre for combating wage and social dumping (CWSD Competence Centre) having the following responsibilities within the scope of transferred competence subject to the instructions of the Federal Minister of Labour, Social Affairs and Consumer Protection:

1. receipt of the results of investigations by the officials of the tax authorities;
2. requests to the officials of the tax authorities to conduct further investigations (to be specifically defined) into previously received results of investigations;
3. reporting an offence pursuant to Para. 3;
4. maintaining the record of administrative offences and providing information pursuant to Section 7l;
5. assuming the role of a party in proceedings as well as exercising the related rights pursuant to Section 7i Para. 6.

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

(3) If the CWSD Competence Centre determines that the employer does not compensate the employee as defined in Para. 1 with at least the base pay to which the employee is entitled as stipulated in a law, ordinance or collective agreement under consideration of the individual classification criteria, the CWSD Competence Centre shall report the offence to the competent District Administration Authority. A specific level of penalty shall be applied for when reporting the offence. A photocopy of the report shall be submitted for the information of the tax authorities for the purpose of levying the unpaid charges.

(4) The CWSD Competence Centre may hear the parties who concluded the collective agreement relevant for the employee in order to determine the base pay to which the employee is entitled under consideration of the individual classification criteria. The CWSD Competence Centre shall hear the parties to the collective agreement in the case of any substantiated objections which the employer might raise against the classification assumed by the CWSD Competence Centre. Any statement by the parties to the collective agreement must be a joint one. Unless otherwise stipulated in the collective agreement, any reimbursement of costs and expenses or remuneration in kind must not be taken into account for determining the base pay according to the collective agreement.

(5) If the CWSD Competence Centre determines that the pay level is only slightly below the base pay level to which the employee is entitled under consideration of the individual classification criteria or that the employer's fault is negligible, the CWSD Competence Centre shall refrain from reporting the

offence to the competent District Administration Authority, provided that: upon notification by the CWSD Competence Centre the employer demonstrably compensates the employee with the difference between the remuneration actually paid to the employee and the amount to which the employee is entitled pursuant to Austrian law within a period set by the CWSD Competence Centre; and that it is the first case where the employer has paid less than the base pay level. Section 21 Para. 1b of the Administrative Penalties Act (*Verwaltungsstrafgesetz, VStG*) 1991, Federal Law Gazette no. 52 shall not apply.

(6) The CWSD Competence Centre shall be entitled to mandate other regional health insurance funds to represent, against reimbursements of costs, the CWSD Competence Centre before the District Administration Authority and the regional independent administrative tribunals (UVS). Cost refunding shall be based on lump sum amounts to be specified in an ordinance issued by the Federal Minister of Labour, Social Affairs and Consumer Protection.

#### **Investigations to verify base pay compliance**

**Section 7f.** (1) The officials of the tax authorities shall be entitled to conduct investigations for the purpose of verifying compliance with the base pay to which an employee not subject to the *ASVG* is entitled in Austria as stipulated in a law, ordinance or collective agreement under consideration of the individual classification criteria, and to:

1. freely access the place of employment, premises and any external workplaces as well as the day rooms of the employees and to use roads, even where public access is otherwise prohibited;
2. request from the individuals encountered there information concerning all facts relevant for the investigation pursuant to Para. 1, if there are grounds for assuming that those individuals are employers or employees;
3. inspect the documents required for the investigation and to make copies of these documents. If the place/site of work changes within one working day and the inspection is not carried out at the first place/site of work, the documents shall demonstrably be handed over to the inspecting official within 24 hours. No reimbursement of expenses shall be due for submitting the documents.

(2) The officials of the tax authorities shall submit to the CWSD Competence Centre the results of the investigations pursuant to Para. 1 and at the request of the CWSD Competence Centre conduct further investigations, which must be specifically defined, into previously submitted results of investigations.

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

**Section 7g.** (1) If as part of its activities the competent health insurance provider finds out that the employer does not pay at least the base pay to which the employee subject to the *ASVG* is entitled as stipulated in a law, ordinance or collective agreement under consideration of the individual classification criteria, Section 7e Paras. 3 to 5 shall apply with the proviso that the CWSD Competence Centre shall be replaced by the health insurance provider.

(2) The competent health insurance provider shall be entitled to inspect the documents required for the activities pursuant to Para. 1 and to make copies of these documents. Employers shall submit on request the required documents or photocopies. No reimbursement of expenses shall be due for submitting the documents.

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

**Section 7h.** (1) If as part of its activities the Construction Workers' Holiday and Severance Pay Fund finds out that the employer does not pay at least the base pay to which the employee as defined in Chapter I of the *BUAG* or as defined in Section 33d of the *BUAG* is entitled as stipulated in a law, ordinance or collective agreement under consideration of the individual classification criteria, Section 7e Para. 3, Para. 4 last sentence and Para. 5 shall apply with the proviso that the CWSD Competence Centre shall be replaced by the Construction Workers' Holiday and Severance Pay Fund.

#### **Penal provisions**

**Section 7i.** (1) Any employer who violates Section 7f Para. 1 by refusing access to the place of employment, premises and any external workplaces as well as the day rooms of the employees and the related use of roads or provision of information, or by otherwise impeding or hindering the inspection of documents or verification, commits an administrative offence and shall be fined by the District Administration Authority to pay between EUR 500 and EUR 5,000 and, in case of repetition, between EUR 1,000 and EUR 10,000. Any employer who violates Section 7g Para. 2 by refusing the inspection or the submission of documents shall also be fined.

(2) Any employer as defined in Sections 7, 7a Para. 1 or Section 7b Para. 1 or any agent as defined in Section 7b Para. 1 no. 4 who violates Section 7d by not keeping readily available the pay documents

or, in the case of cross-border temporary agency work, any temporary employment agency that does not make the pay documents available to the user undertaking commits an administrative offence and shall be fined by the District Administration Authority to pay between EUR 500 and EUR 5,000 and, in case of repetition, between EUR 1,000 and EUR 10,000.

(3) Any employer who employs or has employed an employee without paying the employee at least the base pay to which the employee is entitled as stipulated in a law, ordinance or collective agreement under consideration of the individual classification criteria, commits an administrative offence and shall be fined by the District Administration Authority, unless the offence constitutes a criminal offence falling under the jurisdiction of the courts. If the underpayment affects no more than three employees, the fine shall be between EUR 1,000 and EUR 10,000 for each employee and in case of repetition between EUR 2,000 and EUR 20,000; if more than three employees are affected, the fine shall be between EUR 2,000 and EUR 20,000 for each employee and in case of repetition between EUR 4,000 and EUR 50,000.

(4) If the District Administration Authority determines that only slightly less than the base pay level has been paid or that the employer's fault is negligible, the District Administration Authority shall refrain from imposing a penalty, provided that: the employer demonstrably compensates the employee with the difference between the remuneration actually paid to the employee and the amount to which the employee is entitled pursuant to Austrian law within a period set by the authority; and that it is the first case where the employer has paid less than the base pay level. If, in the first case where the employer has paid less than the base pay level, the CWSD Competence Centre, the competent health insurance provider or the Construction Workers' Holiday and Severance Pay Fund has refrained from reporting the offence or the District Administration Authority has refrained from imposing a penalty, at least the minimum penalty shall be imposed for the first repeated case of paying less than the base pay level. In the case of the first and second sentence, Section 21 Para. 1 of the *VSzG* shall not apply. If the employer provides to the District Administration Authority evidence that he or she has paid the difference between the remuneration actually paid to the employee and the amount to which the employee is entitled pursuant to Austrian law, this shall be taken into account with mitigating effect when deciding on the penalty.

(5) The period of limitation (Section 31 Para. 2 *VSzG*) shall be one year in the case of administrative offences pursuant to Para 3.

(6) In cases as specified in Para. 1 first sentence and Para. 2 the tax authorities shall be entitled to be a party in proceedings, with the same applying to the CWSD Competence Centre in cases as specified in Para. 3 in conjunction with Section 7e; the tax authorities and the CWSD Competence Centre shall be entitled to file an appeal and complaint against the ruling with the Administrative Court (*Verwaltungsgerichtshof*).

(7) In the case specified in Para. 3 in conjunction with Section 7g and in the case specified in Para. 1 last sentence, the competent health insurance institution shall be entitled to be a party in proceedings and to file an appeal and complaint against the ruling with the Administrative Court.

(8) In the case specified in Para. 3 in conjunction with Section 7h, the Construction Workers' Holiday and Severance Pay Fund shall be entitled to be a party in proceedings and to file an appeal and complaint against the ruling with the Administrative Court.

(9) In cases of cross-border posting and temporary agency work, the administrative offence shall be deemed to have been committed in the area of jurisdiction of the District Administration Authority in which the place/site of work of the employee posted to Austria or of the temporary agency worker is located and at the place of inspection in the case of changing places/sites of work.

#### **Prohibition of services**

**Section 7j.** (1) The competent District Administration Authority shall prohibit the employer as defined in Section 7, Section 7a Para. 1 or Section 7b Para. 1 from carrying out the work constituting the object of the service for the period of at least one year, if the employer has been fined with final effect for paying less than the base pay level to more than three employees or due to a repeated offence for the first time or a further repetition pursuant to Section 7i Para. 3.

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

#### **Security deposit**

**Section 7k.** (1) If there is reasonable suspicion of an administrative offence pursuant to Section 7i Para. 3 and if on the basis of certain facts it must be assumed that prosecution of the offence or execution

of the penalty will be impossible or substantially impeded for reasons lying with the employer (contractor) or the temporary employment agency, the District Administration Authority may issue an administrative decision ordering the client or, in the case of temporary agency work, the user undertaking to deposit as a security a portion of the outstanding compensation or remuneration for the temporary agency work. Section 37 *VStG* shall not apply in such cases unless otherwise stipulated in this provision.

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

(3) The remittance of funds pursuant to Para. 1 shall have the effect of releasing the client or the user undertaking from obligations vis-à-vis the contractor or the temporary employment agency in the amount of the funds remitted.

(4) Except in the case cited in the second sentence, the security deposit shall not be less than EUR 5,000 and in no case greater than the maximum amount of the impending fine. If the compensation or remuneration for the temporary agency work is less than EUR 5,000, the security deposit must not exceed the amount of the compensation or remuneration for the temporary agency work, in which case the client or the user undertaking shall be obliged to inform upon request the District Administration Authority of the amount of the compensation or remuneration for the temporary agency work. If the client asserts the existence of a liability pursuant to Section 67a of the *ASVG* or Section 82a of the Austrian Income Tax Act (*Einkommensteuergesetz, EStG*) 1988, Federal Law Gazette no. 400, this fact shall be taken into account when deciding on the amount of the security deposit, unless the outstanding compensation payment is sufficient to cover the sum of the liability after deduction of the impending security deposit.

(5) Appeals filed against administrative decisions pursuant to Para. 1 do not suspend the effect of the decision.

(6) The District Administration Authority shall declare the security deposit released if the proceedings are dismissed or the fine imposed on the contractor or temporary employment agency has been executed or if the security deposit is not declared lapsed within one year. The security deposit shall also be declared released if it has been deposited by the contractor or the temporary employment agency. Released security deposits shall be paid out to the client or the user undertaking.

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

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

#### **Record of administrative penal proceedings pursuant to Sections 7i and 7j**

**Section 7i.** (1) For the purpose of suggesting and deciding on the level of penalty, of prohibiting services and of determining whether work has been carried out contrary to a prohibition, the CWSD Competence Centre shall maintain a record of final administrative decisions in administrative penal proceedings pursuant to Sections 7i and 7j. The record may be maintained using EDP-support.

(2) The District Administration Authorities and the regional Independent Administrative Tribunals shall submit to the CWSD Competence Centre without delay official copies in EDP-supported form of any final administrative decisions issued in penal proceedings as defined in Section 7i or Section 7j. The aforementioned shall also serve official copies of final administrative decisions imposing a fine pursuant to Section 7i on responsible agents as defined in Section 9 Para. 2 last sentence and Para. 3 of the *VStG* to the undertaking to which the punishment pursuant to Para. 4 second sentence is to be attributed. The penal decision shall include mention of the fact that, as a result of the final punishment, the accused as well as the undertaking to which the punishment is to be attributed will be entered into the record.

(3) The CWSD Competence Centre shall delete any data pertaining to penal proceedings no later than five years after the corresponding decision has been issued.

(4) The CWSD Competence Centre shall within two weeks provide information on request to any District Administration Authority, the health insurance provider, the Central Co-ordinating Agency Charged with Investigating Illegal Employment (*Zentrale Koordinationsstelle für die Kontrolle der illegalen Beschäftigung*) pursuant to the Employment of Foreigners Act (*Ausländerbeschäftigungsgesetz, AuslBG*) and the Employment Contract Law Adaptation Act (*Arbeitsvertragsrechts-Anpassungsgesetz, AVRAG*) of the Federal Ministry of Finance, or the Construction Workers' Holiday and Severance Pay Fund, specifically with regard to suggesting a level of penalty, prohibiting services or determining whether work is being carried out contrary to a prohibition; this information shall include details as to

whether any record of final punishment pursuant to Section 7i or Section 7j exists for or is to be attributed to the employer indicated in the information request. A punishment is to be attributed to the employer if a penalty has been imposed with final effect either on a responsible official (Section 9 Para. 1 *VStG*) or on a responsible agent (Section 9 Para. 2 or 3 *VStG*). The information shall either indicate the number of punishments, including the relevant data of the penal decisions (penal authority, case reference number, date of the decision and of entry into legal effect, name and date of birth of the penalised party, fines imposed), or state that no punishment exists. Such information must not be provided any later than five years after the penal decision was issued.

(5) The District Administration Authority shall report to the CWSD Competence Centre on an annual basis concerning the execution of fines pursuant to Section 7i and Section 7j Para. 2 imposed in penal proceedings.

#### **Service of documents**

**Section 7m.** The external place/site of work or place of employment in Austria where the employee of the employer works shall also be deemed a place of delivery (*Abgabestelle*) as defined in Section 2 no. 4 of the Service of Documents Act (*Zustellgesetz, ZustG*), Federal Law Gazette no. 200/1982, for the purpose of applying Sections 7 to 7k. Any employee of the addressee encountered there shall be deemed a substitute addressee as defined in Section 16 *ZustG*; Section 16 Para. 3 *ZustG* shall not apply.