

Corporate Social Responsibility to Prevent Human Trafficking

The Construction Sector
in Austria - A Mapping

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List of Abbreviations

AEL	Alien Employment Law
AES	Austrian Employment Service
APA	Aliens Police Act
BUAK	Construction Workers' Annual Leave and Severance Pay Fund
CA	Control Authority
CC	Criminal Code
CoST	Construction Sector Transparency Initiative
CWSD-A	Combating Wage and Social Dumping Act
FEC	Federal Economic Chamber (WKO)
FLG	Federal Law Gazette
FMEIA	Federal Ministry of European and International Affairs
FMLSC	Federal Ministry of Labour, Social Affairs and Consumer Protection
GAI	General Accident Insurance Institution (AUVA)
GRI	Global Reporting Initiative
LI	Labour Inspectorate
NGO	Non governmental organisation
ÖGB	Austrian Trade Union Federation (<i>Österreichischer Gewerkschaftsbund</i>)
OSH	Occupational Safety and Health
s.	section
SRA	Settlement and Residence Act
THB	Trafficking in Human Beings
TU	Trade Union
WC	Works Council

1 The construction sector in Austria¹

1.1 General description of the sector

The construction sector is described as a ‘very traditional pillar’ of Austria’s economy. The sector employed in 2010 around 274.000 employees. There are around 31.000 companies in the construction sector; most of those companies are small businesses. Around 80% of these companies employed in 2010 a maximum of nine persons. Only 71 companies employed more than 250 persons in 2010.² Also the Austrian construction sector was affected by the economic crisis and investments in the construction sector decreased in 2009 and 2010. Since 2011, investments have been raising again. Prognosis estimates that the construction sector will grow faster compared to the general economic growth in Austria.³

‘Social fraud’ is very common in the construction sector. The term includes various different forms of practices which aim at evading social security payments. Some of these practices are for instance the establishment of missing traders (‘*Scheinfirmen*’), undocumented work, bogus-self employment, bogus-posting of workers or manipulation of pay-roll accounting. These practices can be found very frequently in the construction sector. Legal amendments in order to combat social fraud and undocumented work were primarily targeted at this sector.⁴ However, research shows that these practices are not limited to the Austrian construction sector anymore. Further sectors, which show these practices, are for instance catering, agriculture and labour leasing (‘*Personalleasing*’ or ‘*Leiharbeit*’).⁵

Research confirms that to a vast extent migrants are affected by so-called ‘atypical work’, such as labour leasing contracts (‘*Leiharbeit*’) in Austria. Atypical work in general has a great potential to be a precarious form of work and atypically employed workers face a higher risk of being exposed to poverty. Most of the leased workers are employed in the construction sector.⁶ Generally, 28% of all men working in the construction sector in Vienna are migrants, 41% of workers coming from the new EU-Member States work in the construction sector in Vienna.⁷ In January 2013, around 30% of all employed construction workers in Austria were migrants, most of them coming from States of former Yugoslavia.⁸

¹ The authors thank Thomas Huber and Katharina Windisch for their support during the elaboration of this mapping. The implementation of this project is partially funded by the Austrian Federal Ministry of Labour, Social Affairs and Consumer Protection.

² See information of Statistics Austria, https://www.statistik.at/web_de/services/wirtschaftsatlas_oesterreich/bauwesen/index.html (last accessed 16 May 2013). The exact number of employees in 2010 was 274.274. Numbers are based on the statistics ‘Bauunternehmen (ÖNACE 2008: Abschnitt F) - Ausgewählte Strukturmerkmale 2010 nach Beschäftigtengrößenklassen’, Statistics Austria.

³ Kunnert, *Bauwirtschaft wieder auf Wachstumskurs*, in *Österreichische Bauzeitung* 2/2012, p. 6-7.

⁴ S. Reindl-Krauskopf et al, Endbericht zum Forschungsprojekt „*Sozialbetrug, auch im Zusammenhang mit Lohn- und Sozialdumping*“, p. 248.

⁵ S. Reindl-Krauskopf et al, Endbericht zum Forschungsprojekt „*Sozialbetrug, auch im Zusammenhang mit Lohn- und Sozialdumping*“, p. 68.

⁶ M. Krenn, E. Saunders, *Prekäre Integration – Die soziale Verwundbarkeit von MigrantInnen und ihre Integration durch Erwerbsarbeit*, FORBA Forschungsbericht 4/2012, p. 21-23.

⁷ M. Krenn, E. Saunders, *Prekäre Integration – Die soziale Verwundbarkeit von MigrantInnen und ihre Integration durch Erwerbsarbeit*, FORBA Forschungsbericht 4/2012, p. 24.

⁸ Statistics of the Construction Workers’ Annual Leave and Severance Pay Fund (BUAK) concerning workers in 2013. The statistics distinguishes between ‘nationals’ and ‘non-nationals’.

Relevant for the Austrian construction sector is also the so-called “workers’ street prostitution” in Vienna. Workers, most of whom come from Bulgaria, Romania and Moldova, are waiting at the sidewalk of a main arterial road each day to be picked up by either private persons or companies for any kind of work. These workers are predominantly picked up by private persons for building for instance their private houses.⁹

1.2 Relevant actors involved

1.2.1 The company/companies’ management

The most important construction companies in Austria, ranked according to their turnover (numbers of 2010), are Strabag SE (STRABAG), Alpine Bau GmbH (ALPINE), Allgemeine Baugesellschaft – A. Porr AG (PORR), Swietelsky Baugesellschaft mbH (SWIETELSKY) and Habau Hoch- und Tiefbaugesellschaft mbH (HABAU). They were also the biggest companies in terms of number of employees they had in Austria and worldwide in 2010.

Rank	Company	Turnover 2010 (in Million €)	Turnover change 2009-2010	Revenue from ordinary business activities (in Mill. €)	Employees 2010
1	Strabag SE	12.381,0	-4,92 %	299,00	73.600
2	Alpine Bau GmbH	3.201,0	-5,85 %	23,70	15.100
3	Allgemeine Baugesellschaft - A. Porr AG	2.826,0	-1,77 %	20,70	11.654
4	Swietelsky Baugesellschaft m.b.H.	1.386,0	5,88 %	34,00	6.731
5	Habau Hoch- und Tiefbaugesellschaft m.b.H.	822,0	13,07 %	18,20	3.519

Figure 1: The Top 150 Construction Companies in Austria 2011¹⁰

The second largest construction company, ALPINE Bau GmbH, had to declare bankruptcy in late June 2013.¹¹ This is described as the biggest bankruptcy in Austria since 1945.¹² ALPINE had a very limited CSR approach. There existed neither a comprehensive CSR concept nor a

⁹ See <http://www.dasbiber.at/content/arbeiterstrich> (last accessed 08 August 2013), AT07EORG (03 July 2013), AT12EORG (02 August 2013).

¹⁰ See SOLID - Economy and Technology in Construction, <http://www.solidbau.at/top-150/uebersicht> (last accessed 31 May 2013).

¹¹ See for instance <http://wirtschaftsblatt.at/home/nachrichten/oesterreich/salzburg/1426237/Doppelter-AlpineKonkurs-18-Firmen-vor-Verkauf> (last accessed 08 August 2013).

¹² See http://www.wienerzeitung.at/dossiers/insolvenzen/555789_Eine-der-groessten-Pleiten-der-Zweiten-Republik.html (last accessed 08 August 2013).

separate CSR or sustainability report. ALPINE did also not join any relevant network and it did not refer to any human or labour rights instruments.

The remaining four companies are rather diverse as regards their CSR-strategies:

STRABAG, one of Europe's leading construction providers with numerous subsidiaries in Central and Eastern Europe, features a quite comprehensive CSR concept. The company is well aware of the ethical and social dimensions of CSR besides the environmental dimension.¹³ STRABAG's CSR management reports directly to the company's management board. There is also a CSR steering committee which includes representatives from the central service companies as well as from the operating units.¹⁴

Employees and workplace issues constitute one of STRABAG's key CSR fields of action. Amongst others, the company has identified employee recruitment and occupational health and safety to be issues of special significance. Employee numbers have constantly increased since 2006, above all due to the strong growth in Eastern Europe as well as enterprise acquisitions in Germany. By 2011, the number of employees has grown to almost 76,900, about 44,800 of which are blue-collar workers. For the workers in Germany, Austria and some Eastern European countries collective wage agreements are applicable; in all other countries of operation STRABAG abides by the minimum wage requirements. Personnel recruitment is decentralised; human resource representatives in the individual countries of operation handle the IT-supported process, which entails an applicant database and a diagnostic tool validating their decisions. With regard to the diversity of its workforce, STRABAG only states the percentages for its female employees (which are traditionally low in the construction sector: between 10-13% in 2010), but no numbers are provided concerning the countries of origin/nationality of STRABAG workers or employment circumstances.¹⁵ Nevertheless, there is a commitment to equal opportunities regardless of race, nationality, gender, sexual orientation, religion, disability or age, as well as a working environment free from discrimination, harassment or reprisals in STRABAG's Code of Ethics.¹⁶ It includes provisions on compliance with labour and social laws applicable throughout all commercial decisions and activities, both domestically and abroad, and provides for appropriate measures to be taken in response to violations of these regulations (see also section 4.1).

Moreover, STRABAG holds membership of several interest groups and working committees in the construction sector, many of which are labour-related. It actively participates inter alia in national committees and task forces on the EU's Occupational Safety and Health (OSH) Strategy 2007-2012; in the construction task force within the Prevention Forum of the General Accident Insurance Institution (AUVA); in the Austrian Standards Institute committee on

¹³ STRABAG, Our Priority, http://csr.strabag.com/databases/internet/_public/content.nsf/web/EN-STRABAG.COM-unsereprioritaet.html#?men1=5&men2=1&sid=511&h=61&l=EN (last accessed 31 May 2013).

¹⁴ STRABAG, Our Way, http://csr.strabag.com/databases/internet/_public/content.nsf/web/EN-STRABAG.COM-unserweg.html#?men1=5&men2=1&sid=513&h=61&l=EN (last accessed 31 May 2013).

¹⁵ The numbers are an annual average leaving aside the seasonal fluctuations. See STRABAG, Employee Figures, http://csr.strabag.com/databases/internet/_public/content.nsf/web/EN-STRABAG.COM-mitarbeiterkennzahlen.html#?men1=5&men2=5&sid=551&h=65&l=EN (last accessed 31 May 2013).

¹⁶ See STRABAG SE Business Conduct Guidelines, 1 October 2007, available for download at http://csr.strabag.com/databases/internet/_public/content.nsf/web/EN-STRABAG.COM-EthikKodex.html#?men1=4&sid=485&h=66 (last accessed 31 May 2013), p. 13-14.

occupational safety and health, ergonomics and safety technology; or in the Construction Sector Transparency Initiative (CoST) which will be dealt with in section 4.1.¹⁷

Among the biggest construction enterprises in Austria is equally the PORR Group, which is composed of three individual companies (Porr Construcion, TEERAG-ASDAG, Strauss&Partner Development) as well as many other subsidiaries.¹⁸ Its home markets are Austria, Germany, Switzerland and Poland, Romania, Serbia and Bulgaria as well as other Eastern and South-Eastern countries belong to PORR's core markets. On the international market, PORR is furthermore operational in Turkey, Russia, Oman, Qatar, the UAE and Saudi Arabia.¹⁹

PORR was among the first Austrian construction companies that implemented a certified quality management system in 1995. Since 2007, this has also contained binding regulations on environmental preservation, occupational health and safety.²⁰ It has also been pursuing an active CSR approach already for many decades. The company's efforts in this regard are reflected in its commitment to diverse activities, projects and programmes, covering ISO certifications, incentive schemes, medical check-ups for employees, sponsorship of cultural and charitable institutions, support of the Fairtrade initiative, and some awards it has won for safety or climate protection.²¹ PORR is member of the national CSR platform respACT.²²

According to PORR's Code of Ethics as well as its latest Sustainable Value Report 2012, there seems to be a well-balanced recognition of economical, ecological and social considerations.²³ The CSR strategy rests on three pillars, the first of which, "Recognising Value", is addressing employer-employee relations. PORR underlines its efforts to always act as a fair and friendly employer that relies on diversity by individually promoting its staff members. The appreciation of its almost 11,600 staff members is paramount and at the centerpiece of the company's economic success.²⁴ PORR provides quite detailed numbers concerning its workforce: out of 11.597 staff members the company had on average in 2011, more than 7.000 were waged workers and almost 1.500 of these were foreigners.²⁵ A breakdown according to the country of origin of the workforce shows that PORR is employing members from a total of 37 nations. From those working in Austria and not having Austrian nationality, the biggest group comes from Bosnia-Herzegovina (214), followed by Turkey (149) and Croatia (111).²⁶

PORR uses GRI's Performance Indicators for reporting. The key data table from 2012 shows that in relation to labour issues, only the indicator for equal remuneration for women and men

¹⁷ STRABAG, Memberships, <http://csr.strabag.com/databases/internet/public/content.nsf/web/EN-STRABAG.COM-mitgliedschaften.html#?men1=5&men2=1&sid=516&h=61&l=EN> (last accessed 31 May 2013).

¹⁸ PORR Austria, Subsidiaries, <http://www.porr.at/index.php?id=620&L=1> (last accessed 07 June 2013).

¹⁹ PORR Austria, Locations, <http://www.porr.at/index.php?id=570&L=1> (last accessed 07 June 2013).

²⁰ PORR Austria, PORR management system, <http://www.porr.at/index.php?id=618&L=1> (last accessed 7 June 2013).

²¹ PORR Austria, CSR, <http://www.porr.at/index.php?id=617&L=1> (last accessed 07 June 2013).

²² See <http://www.respect.at/site/mitglieder/info/article/3272.html> (last accessed 07 June 2013).

²³ PORR Code of Ethics, and PORR Sustainable Value Report 2012, both available for download at <http://www.porr.at/index.php?id=617&L=1> (last accessed 07 June 2013).

²⁴ PORR Austria, CSR, <http://www.porr.at/index.php?id=617&L=1> (last accessed 07 June 2013).

²⁵ See PORR Sustainable Value Report 2012, <http://www.porr.at/index.php?id=617&L=1> (last accessed 7 June 2013), p. 19.

²⁶ See PORR Sustainable Value Report 2012, <http://www.porr.at/index.php?id=617&L=1> (last accessed 7 June 2013), p. 23

has not been reported on; diversity aspects and the human rights indicators pertaining to investment and procuring practises have only been partially reported.²⁷ In terms of the latter, PORR refers to its human rights policy included in the Code of Ethics, which is quite concise and does not point out the means as to how it is going to be implemented or sanctioned in cases of wrongdoing, however.²⁸

The third company with a key position in the Austrian construction sector is SWIETELSKY. It employs an average of 6.900 people to date and has branches and subsidiaries in Austria and many of its neighbouring countries (including Germany, Hungary, the Czech Republic, Slovakia, Poland, Croatia, Italy, Romania, Great Britain and Serbia). However, so far there exists no statement on CSR, sustainability or the organisation of employment contracts and relationships. The company's declared aim is to continue prosperity rather than to expand. Its employees can act as entrepreneurs and participate in the company's success.²⁹ Apparently, the company is not involved in sector initiatives or CSR networks, nor does it make use of any tools that tackle issues of labour standards.

The HABAU Group on the contrary, which is a traditional, family run company with subsidiaries in various Austrian regions as well as in Germany, Hungary, Slovakia and Rumania, seems to take a very serious and committed approach to CSR.³⁰ With support by the top management and integrated within the corporate structure, it has established an organisational structure comprising employees in charge of environment, quality assurance and health and safety management. The latter has been the starting point for HABAU's CSR engagement. Due to the company structure, which allows for the management to know many employees personally, a great deal of attention is being paid to the safety and well-being of these individual workers and related CSR issues.³¹

Overall, HABAU understands CSR as an integrated management tool in its corporate conduct. Thereby it strives to strike a balance between ecological, social and economic measures. Its statement on corporate ethics underlines the respect of national legal standards as well as the open dialogue with stakeholders including its employees and clients, suppliers, research institutions and the media. In 2012, HABAU has issued its first sustainability report established on the basis of the Global Reporting Initiative (GRI). It provides comprehensive information on its vision and strategy as well as its environmental, social and economic measures.³² According to the GRI assessment, no human rights risks have been identified. Even though it seems that the issue of human rights is not very tangible in practice, HABAU's CSR representative is well aware of the threats which emanate from labour leasing. He considers leased workers to be far more often at risk to experience human rights violations than permanently employed workers.³³

²⁷ PORR, Key data related to GRI 2012, available for download at <http://www.porr.at/index.php?id=617&L=1> (last accessed 07 June 2013).

²⁸ See PORR, Code of Ethics, <http://www.porr.at/index.php?id=616&L=1> (last accessed 07 June 2013).

²⁹ See Swietelsky, About us, <http://www.swietelsky.at/index.php?id=127&L=1> (last accessed 06 June 2013).

³⁰ Habau Group, Nachhaltigkeitsbericht 2012, http://www.habau.at/fileadmin/media/Services/Downloads/HA_NHB_2012_de.pdf, p. 11, (last accessed 27 May 2013).

³¹ AT06COR (02 July 2013).

³² Habau Group, Nachhaltigkeitsbericht 2012, http://www.habau.at/fileadmin/media/Services/Downloads/HA_NHB_2012_de.pdf, p. 24-25, (last accessed 27 May 2013).

³³ AT06COR (02 July 2013).

With regard to its labour relations, HABAU addresses the issue of diversity and gender equality through leadership trainings and by striving towards gender equality in its organisational structure. The company is part of the Austrian disaster prevention network and actively supports social engagement of its employees. Moreover, it has established a specific program to reintegrate employees which had to interrupt their work due to long-term health problems, for example. Just as the other construction companies, HABAU focuses particularly on health and safety of its workers. To this end, it has engaged in a range of measures like trainings and awareness raising measures on safety, burn-out prevention and healthy lifestyle, the use of a workability index to assess the capacities of each worker and to maintain his/her workability. Parts of the HABAU group have already been certified according to the Safety Certificate Contractors (SCC) standard on work safety with the aim to extend this certification.³⁴ Furthermore, HABAU provides for medical examinations and vaccinations of its workers and has recently intensified its internal trainings and seminars on health and safety. Finally, the sustainability report gives an outlook on HABAU's future goals such as an independent audit of its CSR policy or improved selection of its contractors (see section 4.1 for already existing preventive measures).

In the following, another family run construction company will be described due to its outstanding CSR-policy.

The SPREITZER Gesellschaft m.b.H. is equally a traditional family run company headquartered in Ybbsitz which mainly operates in Austria. It employs about 50 persons and is very committed to CSR issues.³⁵ SPREITZER Bau understands CSR as a voluntary socially and ecologically responsible management concept which is directly related to the core business and ultimately contributes to sustainable development. As a member of the Austrian CSR network the company has adopted respACT's Guiding Principles on CSR which are based on a broad involvement of Austrian businesses and other stakeholders. These 16 principles include commitments such as participation and stakeholder involvement, sustainable development or transparency.

SPREITZER Bau has translated these Principles to its corporate context and underlines to live social responsibility e.g. by focusing on the relationship to its clients and employees as well as on team development and training. The management underlines the importance of a good relationship with the foremen who bear major responsibility on the construction site as well as the active involvement of the employees in decision making. Thanks to a regular cooperation with a coach the company has established a good communication and dispute resolution culture. Furthermore Spreitzer Bau offers a company pension system, flexible working time models, performance oriented salaries, first aid courses and a range of social events for its employees. The management underlines that the acquisition of good quality tools and the provision of higher standard accommodation has been a very rewarding experience in the relationship with its employees. Social CSR activities equally include sponsoring e.g. of a fountain in Africa and donations to the Austrian "Red Nose Clown Doctors" club which works with sick children or to World Vision. On the ecological level Spreitzer Bau aims e.g. at reducing energy consumption and at using regional products. Overall the company

³⁴ SCC (Safety Certificate Contractors) is an international standard for safety, health and environmental management which lays down standardized requirements for external technical service providers and subcontractors who act on behalf of the client. See Quality Austria, <http://www.qualityaustria.com/index.php?id=2335> (last accessed 07 June 2013).

³⁵ Spreitzer Bau, <http://www.spreitzer-bau.at/> (last accessed 14 August 2013); AT09COR (19 July 2013)

emphasizes its focus on the human being, in particular its employees and on responsible business conduct to contribute to future sustainable development.³⁶

The responsibility for its CSR strategy development and implementation lies with SPREITZER Bau's management.³⁷ It is aware of the fact that it is crucial to live CSR values and act as a role model. Mutual respect is considered a key value. Social expenses are rather high but this is reflected in a high worker retention and very few sick leaves. The works council has equally a very important role in the company.³⁸ Despite genuine commitment, SPREITZER has not yet issued a CSR report.

1.2.2 Affiliated companies and suppliers (including employment agencies and contractors)

In 2009 almost 10% of all workers in the construction sector had labour leasing contracts.³⁹ After the economic crisis, number of leased workers have been rising again and were estimated up to 75.000 workers in 2012. The around 680 leasing companies (temporary employment agencies) in Austria wish to get rid of their 'hire and fire'-image.⁴⁰ According to workers' representatives, leased workers are forced to agree to a termination of contract to which they often agree out of fear not to receive a new job offer by the leasing company.⁴¹

1.2.3 Employers organisations

The two main employers' organisations in Austria are the Austrian Federal Economic Chambers (FEC) and the Federation of Austrian Industries (IV). The FEC represents around 400.000 member companies.⁴² Membership for companies is compulsory. The federal FEC is supported by organisations in each province of Austria. Concerning construction, the FEC runs a specific branch office, which comprises a trade association and trade groups in Austria's provinces.⁴³ The IV is a voluntary body representing the interests of Austrian industry and comprises around 4200 members. Groups of IV-members are also organised within different bodies of the FEC. A specific group is dedicated to construction.

1.2.4 Trade Unions

The Austrian Trade Union Federation (ÖGB) represents the interests of workers based on voluntary membership. The ÖGB is an umbrella of seven member unions, one of these members focuses on construction- and wood-workers: the Union of Construction and Woodworkers (GBH).⁴⁴ This union represented in 2012 around 116.000 members.⁴⁵ One of

³⁶ Spreitzer Bau, RespACT-CSR, <http://www.spreitzer-bau.at/content.php?pageId=3940>; <http://www.spreitzer-bau.at/content.php?pageId=4196>; <http://www.spreitzer-bau.at/content.php?pageId=3942>; respACT, Mitglieder, <http://www.respect.at/site/mitglieder/info/article/3300.html> (last accessed 13 August 2013); AT09COR (19 July 2013).

³⁷ Spreitzer Bau, <http://www.spreitzer-bau.at/content.php?pageId=3943> (last accessed 13 August 2013).

³⁸ AT09COR (19 July 2013).

³⁹ H. Melzer, *Geliehene Arbeitskraft*, Österreichische Bauzeitung, 14 May 2010, <http://www.diebauzeitung.at/geliehene-arbeitskraft-103694.html> (last accessed 27 May 2013).

⁴⁰ Wiener Zeitung, *Zahl der Zeitarbeiter ist weiter im Steigen*, 30 May 2012, http://www.wienerzeitung.at/nachrichten/wirtschaft/oesterreich/461560_Zahl-der-Zeitarbeiter-ist-weiter-im-Steigen.html (last accessed 04 June 2013).

⁴¹ H. Melzer, *Geliehene Arbeitskraft*, Österreichische Bauzeitung, 14 May 2010, <http://www.diebauzeitung.at/geliehene-arbeitskraft-103694.html> (last accessed 27 May 2013).

⁴² See http://portal.wko.at/wk/startseite_dst.wk?dstid=9495 (last accessed 27 May 2013).

⁴³ See http://portal.wko.at/wk/startseite_dst.wk?AngID=1&DstID=131 (last accessed 27 May 2013).

⁴⁴ ÖGB, *Committed to Social Justice*, p. 7-9, <http://www.oegb.at/servlet/BlobServer?blobcol=urldokument&blobheadername1=content-type&blobheadername2=content->

the services for members is the possibility to have free legal aid and to be represented by a lawyer at the Labour and Social Affairs Court concerning civil actions concerning the work-relation. Research shows that migrant workers often lack confidence concerning the possible assistance offered by trade unions which is also linked to the general trade union's interest to increase inspections of work places targeted at migrant workers.⁴⁶ These tendency can also be observed concerning the Austrian GBH, which for instance 'cautions' against 'cheap migrant labour force' causing unemployment in Austria.⁴⁷ Nevertheless, GBH is actively involved in improving access to counselling for undocumented workers in Austria, which will be discussed in chapter 1.2.6.

1.2.5 Relevant State Actors

1.2.5.1 Task Force on Combating Human Trafficking and the Working Group on Labour Exploitation

Main coordination body concerning trafficking in human beings in Austria is the Task Force on combating human trafficking, which is coordinated by the Federal Ministry for European and International Affairs (FMEIA). Main aim of the Task Force is to foster cooperation between all relevant actors concerning trafficking in human beings and to intensify measures for combating THB in Austria. Members of the Task Force are representatives of all relevant ministries, federal provinces and NGOs. The Task Force's activities are determined by the third National Action Plan on combating Human Trafficking.⁴⁸

The monitoring body GRETA of the Council of Europe (CoE) Convention on Action against Trafficking in Human Beings evaluated Austria in 2011 and identified gaps concerning THB for the purpose of labour exploitation, for instance concerning identification of trafficked men.⁴⁹ The actual National Action Plan therefore stresses the importance of measures concerning THB for the purpose of labour exploitation. Besides two specific working groups dealing with trafficking in children and prostitution, a third working group has been installed which focuses on THB for the purpose of labour exploitation. The working group took up its work in 2012 and is coordinated by the Federal Ministry of Labour, Social Affairs and Consumer Protection (FMLSC).⁵⁰ Furthermore, awareness raising measures among specific occupational groups need to be implemented until 2014. Trainings on THB for labour

[disposition&blobheadervalue1=application%2Fpdf&blobheadervalue2=inline%3B+filename%3D%22%25D6GB -](#)

[Committed to social justice.pdf%22&blobkey=id&root=S06&blobnocache=false&blobtable=Dokument&blobwhere=1331046644886](#) (last accessed 21 May 2013).

⁴⁵ ÖGB, <http://www.oegb.at/servlet/BlobServer?blobcol=urldokument&blobheadervalue1=content-disposition&blobheadervalue2=inline%3B+filename%3D%22Mitglieder nach Gewerkschaft 2012.pdf%22&blobkey=id&root=S06&blobnocache=false&blobtable=Dokument&blobwhere=1336128034166> (last accessed 22 May 2013).

⁴⁶ I. Pallmann, A. Pawletta, *Menschenhandel zum Zweck der Arbeitsausbeutung – ein Thema für Gewerkschaften?*, in Friedrich et al, *Trade Unions in the Democratic Process: Ten international Contributions* (2013), p. 183.

⁴⁷ See press release of ÖGB, *Katastrophe: Trotz einem Plus von 50.000 Arbeitsplätzen steigt die Arbeitslosigkeit um weitere 10.000 an. Wie geht das?*, 1 October 2012,

http://www.ots.at/presseaussendung/OTS_20121001_OTS0105/katastrophe-trotz-einem-plus-von-50000-arbeitsplaetzen-steigt-die-arbeitslosigkeit-um-weitere-10000-an-wie-geht-das (last accessed 28 May 2013).

⁴⁸ Task Force on combating human trafficking, *National Action Plan on Combating Human Trafficking for the period 2012-2014*, adopted 20 March 2012.

⁴⁹ CoE Greta, *Report concerning Austria*, GRETA(2011)10, p. 6.

⁵⁰ Activity I.4 NAP.

exploitation particularly concerning the inspection of workplaces have to be conducted in the following years.⁵¹

1.2.5.2 Labour Inspectorate

In Austria, several different authorities are entitled to enter workplaces and in particular construction sites. All authorities have different functions and mandates. Among those different actors is the labour inspectorate.

As part of the FMLSC, the labour inspectorate's main mandate is the protection of life and health of workers. Besides premises of employers, labour inspectorates can also inspect accommodation for workers provided by the employers.⁵² There is a specific labour inspectorate for construction work, which monitors Vienna's construction sites. The labour inspectorates do not check the employment contracts of workers, the compliance with collective agreements, illegal employment or wage and social dumping.⁵³ Although THB for labour exploitation is not defined as a task within the Act on Labour Inspection, awareness concerning this issue is rising. Representatives of the labour inspectorate are involved in the working group on THB for labour exploitation coordinated by the FMLSC and a FMLSC-internal decree was issued to all labour inspectorates concerning THB for labour exploitation.⁵⁴

1.2.5.3 Construction Workers' Annual Leave and Severance Pay Fund

The Construction Workers' Annual Leave and Severance Pay Fund (*'Bauarbeiter-Urlaubs & Abfertigungskasse'*, BUAK) provides specific services to construction workers which are primarily regulated under the Act on Construction Workers' Annual Leave and Severance Pay⁵⁵, as well as further applicable collective agreements. The fund is financed by contributions of employers; the fund administrates these contributions and settles claims of workers concerning for instance severance payments. The fund acts as intermediary between employers and workers which is deemed necessary due to the typically seasonal work in construction.⁵⁶ The employer has to notify the BUAK about the workers employed within two weeks time. In order to monitor these obligatory notifications, the BUAK is mandated to conduct inspections at construction sites since 2009. Representatives of BUAK are allowed to require identity cards or passports from workers present at the construction site during an inspection.⁵⁷

In 2011 the Combating Wage and Social Dumping Act (*'Lohn- und Sozialdumpinggesetz, LSDB-G'*, CWSD-A)⁵⁸ entered into force. In reaction to the unlimited access to the Austrian labour market for citizens of the 'new EU Member States' and the realisation of freedom of services including services in the construction-sector since 2011, the Anti-Wage and Social Dumping Law aims at ensuring equal pay conditions for all employees working in Austria and ensuring the payment of minimum wages. In order to monitor the compliance of employees with this law, the competence centre for combating wage and social dumping

⁵¹ Activity II.17 NAP.

⁵² J. Planitzer, H. Sax, *Combating THB for labour exploitation in Austria*, p. 27.

⁵³ See <http://www.arbeitsinspektion.gv.at/AI/Information+in+English/The+Labour+Inspectorate/default.htm> (last accessed 28 May 2013).

⁵⁴ AT02LI (06 May 2013).

⁵⁵ FLG No. 414/1972 as amended by FLG I No. 71/2013.

⁵⁶ See BUAK, http://www.buak.at/servlet/ContentServer?pagename=BUAK/Page/Index&n=BUAK_3.1 (last accessed 04 June 2013) and Planitzer/Sax, *Combating THB for labour exploitation in Austria*, p. 28.

⁵⁷ Act on Construction Workers' Annual Leave and Severance Pay, s. 22 and s. 23a.

⁵⁸ FLG I No. 24/2011.

(CWSD Competence Centre) has been set up by the Vienna Regional Health Insurance Fund, which also conducts on-site inspections.⁵⁹

Concerning the construction sector, in addition to the competence centre, also the BUAK is since 2011 mandated to check the compliance. The BUAK is, as a consequence, obliged also to check possible cases of underpayment when doing inspections of construction sites. In case of underpayments the BUAK is obliged to report this to the competent District Administration Authority.⁶⁰ In 2012 the BUAK conducted around 4180 inspections of construction sites, which usually take place without prior notification. These inspections covered around 6600 different construction companies, of which around 1000 companies are located outside Austria. The BUAK controlled in total 24779 workers on the construction sites. Around 5000 of these workers were non-Austrian workers. Remarkably, within this group of workers, the number of cases of presumed underpayment is rather high. Around 33% of all controlled workers not coming from Austria are during inspections of BUAK identified as presumably underpaid.⁶¹

1.2.5.4 Financial Police Force

Since 2010 the Financial Police Force was established under the supervision of the custom authorities at the Federal Ministry of Finance (FMOF). The earlier Control Unit for Illegal Employment (*'Kontrolle Illegaler Arbeitnehmerbeschäftigung, KIAB'*) is integrated in the newly established Financial Police Force. The competences of the Financial Police Force are broader compared to the earlier Control Unit and the mandate is broadened to combat fiscal fraud. Main aim of the Financial Police Force is 'to prevent unfair competition as a result of (...) illegal working, social welfare fraud and fiscal fraud'.⁶² The Financial Police Force's mandate is based on different legal acts and includes for instance the compliance with the Aliens Employment Law (AEL) or combating social insurance fraud.⁶³ The mandate includes a right to have access to premises based on different legal acts. The extent of the right to enter premises depends on the legal act.⁶⁴

The construction sector is seen as one of the focus areas of the Financial Police Force's work, since this sector is a high risk sector with high numbers of illegal employment and fraud.⁶⁵

⁵⁹ See BUAK, http://www.buak.at/servlet/ContentServer?pagename=BUAK/Page/Index&n=BUAK_12.1 (last accessed 04 June 2013) and FMLSC,

http://www.bmask.gv.at/cms/siteEN/attachments/5/9/4/CH2407/CMS1320227599427/lldb-g_infosheet_en_11280.pdf. Exceptions are Romania and Bulgaria since the posting of workers from these EU-Member States is limited until the end of 2013.

⁶⁰ Parliamentary materials regarding the Combating Wage and Social Dumping Act, p. 7 and Anti-Wage and Social Dumping Law s. 7 (h).

⁶¹ AT04CA (13 May 2013), statistics of BUAK concerning the implementation of the Combating Wage and Social Dumping Act based on on-site inspections.

⁶² FMOF, <http://english.bmf.gv.at/CombatingFraud/FinancialPolice/start.htm> (last accessed 24 May 2013).

⁶³ Combating social insurance fraud encompasses for instance the criminal offence 'fraudulent withholding of social security duties' CC s. 153 (d) (*'Betrügerisches Vorenthalten von Sozialversicherungsbeiträgen und Zuschlägen nach dem Bauarbeiter-Urlaubs- und Abfertigungsgesetz'*).

⁶⁴ The right to enter premises for the Financial Police Force is regulated in Fiscal Administration Act s. 12 (which allows access to private rooms), AEL s. 26 (which does not allow the access to private rooms and apartments) and Austrian Fiscal Code s. 141 and 144. See W. Lehner and H. Houf, What is the Financial Police Force doing? (presentation, copy with author), p. 17-22.

⁶⁵ B. Affenzeller, Bau- und Immobilien Report 3/2013, p. 16-18.

Media regularly reports about ‘major raids’ conducted by the Financial Police Force of construction sites.⁶⁶

1.2.6 NGOs

NGOs which are dealing with THB in Austria are predominantly working on trafficking in women. Main NGO is LEFOE-IBF which is financed by different federal ministries. Cooperation between LEFOE-IBF and the law enforcement authorities is based on a contract and an internal decree of the Ministry of Interior is planned concerning LEFOE-IBF’s nationwide responsibility for assistance to all trafficked women in Austria. Nevertheless, further initiatives concerning trafficked women exist in Austria.⁶⁷ Assistance to male trafficked persons, and more specifically to male victims of THB for labour exploitation, needs to be established in Austria and specialised services including counselling and housing do not exist so far.⁶⁸ However, the current NAP includes an analysis and recommendations concerning services for trafficked men to be elaborated by the FMLSC.⁶⁹

Services for undocumented migrant workers such as the German model MigrAr⁷⁰ do not exist in Austria. Nevertheless, in the last years several NGOs and different units of the ÖGB started a discussion process concerning undocumented migrants in Austria. A working group on undocumented work was established which aims at improving the access to claim unpaid wages for workers. The group’s focus is to establish an institutionalised counselling centre for undocumented migrant workers in Austria. The counselling centre will take up its work in 2014. The group elaborated a pamphlet which offers comprehensive information about different forms of residence and access to the labour market for information and counselling centres.⁷¹ Besides the Chamber of Labour and various units of the ÖGB, including the Union of Construction and Woodworkers (GBH), also NGOs such as LEFOE-IBF and the PrekaerCafé.⁷²

⁶⁶ derStandard.at, *Aktion scharf gegen Pusch am Bau*, 5 October 2012 <http://derstandard.at/1348285182230/Aktion-scharf-gegen-Pusch-am-Bau>, (last accessed 04 June 2013) and A. Macho, *Razzia auf der Großbaustelle*, Kurier.at, 12 April 2013, <http://kurier.at/chronik/wien/razzia-auf-der-grossbaustelle/773.949> (last accessed 04 June 2013).

⁶⁷ J. Planitzer, H. Sax, *Combating THB for labour exploitation in Austria*, p. 44-45.

⁶⁸ J. Planitzer, H. Sax, *Combating THB for labour exploitation in Austria*, p. 61.

⁶⁹ Activity III.7 NAP.

⁷⁰ J. Planitzer, H. Sax, *Combating THB for labour exploitation in Austria*, p. 61 and I. Pallmann, A. Pawletta, *Menschenhandel zum Zweck der Arbeitsausbeutung – ein Thema für Gewerkschaften?*, in W. Friedrich et al, *Trade Unions in the Democratic Process: Ten international Contributions* (2013), p. 187.

⁷¹ Arbeitskreis Undokumentiert Arbeiten, http://wien.arbeiterkammer.at/bilder/d190/Arbeiten_ohnePapiere_3_2013.pdf (last accessed 28 May 2013).

⁷² cafe.prekaer.at (last accessed 28 May 2013).

2 Regulation of the Crime of THB for the purposes of labour exploitation

Austria was monitored by CoE's monitoring body GRETA and its findings tackled to a large extent the issue of THB for labour exploitation. In general, it identified a lack of a comprehensive approach to tackle THB in Austria which would include THB for the purpose of labour exploitation.⁷³ Further awareness-raising measures concerning labour exploitation are necessary. GRETA recommends Austria to adopt a 'proactive approach to the identification of victims of trafficking for the purpose of labour exploitation, for example by organising regular visits by labour inspectors to work sites' and develop a list of indicators.⁷⁴ Indicators are currently elaborated and labour inspection sees potential in the indicators in order to improve identification of presumably trafficked persons.⁷⁵ However, Austria implements specific steps such as the establishment of a specific working group on labour exploitation in order to improve the identification concerning THB for labour exploitation. The lack of a comprehensive data collection system however constitutes an obstacle which hampers knowledge-based policy development and awareness-raising of stakeholders.⁷⁶ Additionally, higher identification rates leads to the necessity to have an appropriate assistance mechanism in place. At the moment, Austria can not provide trafficked men with counselling, but the opening of a counselling centre for undocumented workers is envisaged for 2014.

2.1 Regulation of the crime of THB for purposes labour exploitation

2.1.1 How is THB for purposes of labour exploitation prohibited under national law?

Central provision prohibiting THB in Austria is CC s. 104a. The transposition of Directive 2011/36⁷⁷ required an amendment of this provision, mainly to increase the maximum penalty for THB and to address specific types of exploitation. As of 1 August 2013, the amended CC s. 104a will enter into force.⁷⁸

CC s. 104a (amended) reads as follows:⁷⁹

“(1) any person who recruits, houses or otherwise accommodates, transports or offers or passes on to a third party an adult using dishonest means (paragraph 2) against this adult with the deliberate intention of the adult's exploitation (paragraph 3), is to be punished with a prison sentence of at least six months up to five years.

(2) Dishonest means are defined as using force or severe threats, deceit regarding the facts, exploitation of authority, of situations of distress, of mental disease or any

⁷³ GRETA(2011)10, para. 48.

⁷⁴ GRETA(2011)10, para. 71, 92 and 155.

⁷⁵ AT02LI (6 May 2013).

⁷⁶ A. Winkler, J. Planitzer, Assisting and Reintegrating Children Victims of Trafficking: Promotion and evaluation of best practice in source and destination countries, Arechivic – Workstream 2, country report Austria (March 2012) p. 16.

⁷⁷ Directive 2011/36 on preventing and combating trafficking in human beings and protecting its victims, and replacing Council Framework Decision 2002/629/JHA [2011] OJ L101/1.

⁷⁸ Law on amending the Criminal Code (CC) concerning sexual offences 2013, Art. 4 (Materials 2366/XXIV.GP – Ausschussbericht NR - Gesetzestext).

⁷⁹ Translation by author, based on GRETA(2011)10, para. 134.

condition rendering the person defenceless, the intimidation or the granting or accepting of an advantage for surrendering control over that person.

(3) Exploitation encompasses sexual exploitation, exploitation through organ transplantation, labour exploitation, begging and exploitation of conducting criminal activities.

(4) A person who commits the criminal act in the context of a criminal association, under the use of severe violence or in such a way that the life of the person is severely endangered deliberately or by gross negligence or in such a way that particularly serious harm is caused to the person, is to be punished with a prison sentence of at least one year up to ten years.

(5) A person who recruits, houses or otherwise accommodates, transports or offers or passes on to a third party a minor (under 18 years of age with the deliberate intention of the adult's exploitation (paragraph 3), is to be punished with a prison sentence of at least one year up to ten years."

Although there is one central provision on THB, there are further provisions on criminal offences which are relevant for the context of THB for the purpose of labour exploitation. The Austrian CC contains also a provision on 'slavery' (CC s. 104) which penalises slave trade and the deprivation of liberty of a person through slavery and slavery-like practices. Furthermore, this provision criminalises also any person who causes the slavery of a person. Main characteristic of slavery is the fact that a person is seen as an object and as property which can be used at will and arbitrarily.⁸⁰ 'Slavery' would be applicable in gross cases of labour exploitation.⁸¹

Further very relevant provision concerns the 'exploitation of a foreigner' (Aliens' Police Act s. 116).⁸² Any person who exploits a person 'who resides illegally in the country, does not have a working permit or otherwise is in a particular situation of dependency' can be sentenced to a prison sentence of up to three years. The perpetrator can be punished with a higher sentence when the exploitation leads to a 'situation of hardship' of the foreigner or when the perpetrator exploits a larger number of persons.⁸³ Comparing the offence 'exploitation of a foreigner' with the definition of THB consisting of the elements action, means and purpose, the offence 'exploitation of a foreigner' does not require an action.⁸⁴

Although this offence would be highly relevant concerning THB for the purpose of labour exploitation, the application of this offence remains rather low. There is – a rather academic - debate concerning the application of CC s. 104a and APA s. 116. For practitioners it is very difficult to draw a distinction between THB (CC s. 104a) and the exploitation of a foreigner (APA s. 116).⁸⁵ Since its entering into force in 2006 until the end of 2011, only three convictions concerning the exploitation of a foreigner at court are registered.⁸⁶ After the

⁸⁰ J. Planitzer, H. Sax, *Combating THB for labour exploitation in Austria*, p. 1.

⁸¹ Law on amending the Criminal Code (CC) concerning sexual offences 2013, Materials 2319/XXIV.GP – Regierungsvorlage – Erläuterungen, p. 7.

⁸² FLG I No. 100/2005 as amended by FLG I No. 38/2011.

⁸³ Translation of APA s. 116 based on GRETA(2011)10, para. 136.

⁸⁴ J. Planitzer, H. Sax, *Combating THB for labour exploitation in Austria*, p. 13-14.

⁸⁵ J. Planitzer, H. Sax, *Combating THB for labour exploitation in Austria*, p. 14.

⁸⁶ Beclin, *Effektivere Ahndung von Kinderhandel durch Novellierung § 104a StGB?*, in ACTnow, Anti-child-trafficking, Rechtliche Herausforderung im Kampf gegen Kinderhandel, lexisnexis (2013), p. 39, <http://www.lexisnexis.at/vie/zeitschriften/ACTnow/index.html#/39/zoomed> (last accessed 04 June 2013)

amendment of CC s. 104a, the penalty of CC s. 104a will be higher than the penalty of APA s. 116 and will therefore prevail over APA s. 116.⁸⁷

Especially concerning THB for the purpose of labour exploitation, the issue of corporate liability could play a crucial role. Due to standards of the CoE and the EU⁸⁸, Austria is obliged to implement the legal possibility to prosecute legal persons and other entities such as commercial partnerships, private foundations or registered partnerships. The Statute on the Responsibility of Entities for Criminal Offenses (*‘Verbandsverantwortlichkeitsgesetz’*)⁸⁹ entered into force in 2006 already and covers all criminal offences including THB. In case THB is committed and a legal person benefits from the exploitation, the statute would be applicable. Furthermore, the statute is applicable if the offense resulted from a neglect of the due diligence required of the entity. The statute distinguishes between offenses committed by a person in a leading position and offenses committed by a person under the company’s authority (*‘staff-member’*). In general, the proceedings against a legal person are taking place in parallel with the proceedings against a natural person concerning the same act. If the prosecution of the natural person is not possible, then it is also possible to prosecute the legal person only.⁹⁰

2.1.2 How is THB for labour exploitation defined?

The recent amendment of the criminal offence on THB (CC s. 104a) led to some clarifications concerning the application of this provision with regard to labour exploitation. Labour exploitation means a ruthless exploitation of victims which leads to an infringement of the vital interests of a victim. This would be given when a victim does not receive any, or receives entirely inadequate, remuneration for his or her work for a rather lengthy period of time. Furthermore, exploitation could be fulfilled, when the working times of the victim are excessively long for certain period of time or when the victim is forced to work under unbearable or unacceptable working conditions. Only extensive and long-lasting violations of minimum standards of labour law amount to exploitation. The occasional exceeding of the maximum of working hours allowed by law and payments which are only slightly below the minimum wages are not qualified as exploitation.⁹¹ However, the lack of proper documentation concerning paid wages or working time qualifies as indicators for exploitation. Furthermore, it is clarified that Austrian labour law standards have to be applied. When a situation has to be assessed as exploitative or not, the average wage of the victim’s country of origin is irrelevant. It is stressed that this also applies to workers who are posted in Austria. In addition, it is irrelevant whether the victim was self-employed or employed.⁹²

The interpretation of exploitation of a foreigner (APA s. 116) follows established case law on exploitation of victims who are exploited by a pimp. Similar to what is elaborated concerning the offence THB (CC s. 104a), a ruthless exploitation of vital interests of a victim needs to be

⁸⁷ Law on amending the Criminal Code (CC) concerning sexual offences 2013, Materials 2319/XXIV.GP – Regierungsvorlage – Erläuterungen, p. 7.

⁸⁸ Article 5 of Dir 2011/36 and Article 22 of the CoE Convention on Action against THB.

⁸⁹ FLG I No. 151/2005 as amended by FLG I No. 112/2007.

⁹⁰ Replies by Austria: Questionnaire for the evaluation of the implementation of the Council of Europe Convention on Action against Trafficking in Human Beings by the parties (August 2010) p. 23-24 and J. Planitzer, H. Sax, *Combating THB for labour exploitation in Austria*, p. 5.

⁹¹ J. Planitzer, H. Sax, *Combating THB for labour exploitation in Austria*, p. 2. and Law on amending the Criminal Code (CC) concerning sexual offences 2013, Materials 2319/XXIV.GP – Regierungsvorlage – Erläuterungen, p. 5.

⁹² Law on amending the Criminal Code (CC) concerning sexual offences 2013, Materials 2319/XXIV.GP – Regierungsvorlage – Erläuterungen, p. 5-6.

shown. Exploitation is given for instance, when the victim receives not enough money for covering his or her basic needs or when the victim does not receive anything at all. Crucial for a situation of exploitation is the excessiveness of violations of basic labour law-standards, which includes for instance excessive working hours or an excessive underpayment.⁹³

2.1.3 Application of the legal framework

The application of the relevant provisions concerning THB is rather low. The Criminal Intelligence Service registered in 2011 in total 20 complaints of THB (CC s. 104a).⁹⁴ Concerning these complaints, 14 victims of THB (CC s. 104a) have been registered, two victims are male, 12 are female.⁹⁵ In the following year, the number of identified male victims of THB increased and in 2012, nine male victims have been identified.⁹⁶ In 2011 four male victims of THB have been identified, in 2010 in total two.⁹⁷ The judicial criminal statistics show one conviction concerning THB in 2011.⁹⁸ Also the offence concerning the exploitation of a foreigner (APA s. 116) is applied very seldom.⁹⁹ However, the number of registered complaints has been rising. The Criminal Intelligence Service registered in 2011 only seven complaints concerning the exploitation of a foreigner, in 2012 in total 12.¹⁰⁰

Availability of data is also very scarce concerning trafficking in children for labour exploitation. Data of the Ministry of Interior and two federal provinces show that in 2011, five girls have been identified who have been exploited sexually. In earlier years, several girls have been identified who were exploited by begging or pick-pocketing. No children are officially identified who have been exploited by domestic work or working in restaurants.¹⁰¹ This clearly shows that more intensive identification efforts concerning children being trafficked for the purpose of labour exploitation are needed.¹⁰²

Although already in place since 2006 the Statute on the Responsibility of Entities for Criminal Offences is far away from being used as effective tool against THB for the purpose of labour exploitation. Since 2006 no legal entity has been convicted for THB.¹⁰³ Social fraud is closely linked to the construction sector and also concerning social fraud, the application of the Statute is not existent in practice.¹⁰⁴ The Ministry of Justice evaluates the legal act and the reasons for its rather seldom application since some years, but did not publish any results thus far.¹⁰⁵

There are several reasons leading to a limited application of criminal offences concerning THB for the purpose of labour exploitation. One reason is the limited identification of

⁹³ J. Planitzer, H. Sax, *Combating THB for labour exploitation in Austria*, p. 13.

⁹⁴ Criminal Intelligence Service, Report on criminality (including statistics and analysis) 2011, B.2.

⁹⁵ Criminal Intelligence Service, Report on criminality (including statistics and analysis) 2011, B.19.

⁹⁶ AT05NGO (28 May 2013).

⁹⁷ M. Zingerle, D. Alionis, *Männer als Betroffene von Menschenhandel in Österreich*, p. 8.

⁹⁸ Judicial criminal statistics 2011 of Statistics Austria (2012) p. 109.

⁹⁹ GRETA(2011)10, para. 136.

¹⁰⁰ Information provided upon request by the Criminal Intelligence Service (Email correspondence 11 June 2013).

¹⁰¹ A. Winkler, J. Planitzer, *Assisting and Reintegrating Children Victims of Trafficking: Promotion and evaluation of best practice in source and destination countries*, Arechivic – Workstream 2, country report Austria (March 2012) p. 10.

¹⁰² H. Sax, *Assisting and Reintegrating Children Victims of Trafficking: Promotion and evaluation of best practice in source and destination countries*, Arechivic – Workstream 1, country report Austria (January 2012) p. 13.

¹⁰³ GRETA(2011)10, para. 140.

¹⁰⁴ S. Reindl-Krauskopf et al, *Endbericht zum Forschungsprojekt „Sozialbetrug, auch im Zusammenhang mit Lohn- und Sozialdumping“*, p. 205.

¹⁰⁵ GRETA(2011)10, para. 140 and J. Planitzer, H. Sax, *Combating THB for labour exploitation in Austria*, p. 5.

exploitative situations. Awareness within the labour inspectorate concerning THB for labour exploitation is increasing. An internal decree stresses the obligation of labour inspectorates to notify the state prosecution in case of presumably trafficked persons. However, to the knowledge of the interview partner, no cases have been notified thus far, mainly due to the fact that it is difficult to define THB for labour exploitation during an inspection.¹⁰⁶ Labour inspectors state that during the inspection of construction sites they would notify exploitation. However, only in cases of substantiate suspicion they are supposed to notify state prosecution. Labour inspection claims that it does not have the necessary competences in order to develop ‘substantiate suspicion’.¹⁰⁷ A further reason is that during inspections of construction sites which are conducted jointly with the Financial Police Force, exploitation is not in the centre of interest. Payment of taxes and social security contributions by companies is of higher interest.¹⁰⁸

A further reason is the lack of evidence. Gathering of evidence for investigations depends to a large extent on the information provided by the presumably exploited persons.¹⁰⁹ In 2011, police investigated a case about four men who were forced to work in the construction sector in Vienna and who were locked in an apartment by their exploiter. Police initially investigated also concerning THB (CC s. 104a) but stopped investigation in this regard due to a lack of testimonies by the victims. Victims have been seen as acting ‘uncooperatively’ in this case. However, finally the exploiter was convicted among others for exploitation of a foreigner (APA s. 116).¹¹⁰ Further example in this regard was provided by a representative of the works council of a construction company. The works council of this company itself identified 18 Albanian construction workers as presumably exploited. They worked for six months unpaid. The Chamber of Labour has been contacted, but the workers gave no information about their employer and very short time afterwards, also the workers themselves could not be found anymore on the construction site. The fear from losing the job keeps the presumably exploited workers silent. However, the cooperation of those workers is seen as essential.¹¹¹

2.2 Regulation of the labour market

2.2.1 Minimum labour requirements guaranteed under labour law

Generally, the relationship between an employee and an employer is based on an oral or written contract. Employment is characterised by a personal dependency and the economic dependency of the employee. The employee has to follow the instructions of the employer.¹¹² Minimum labour standards including wages in Austria are regulated by sector-specific collective agreements. Collective agreements are adopted by associations representing the interests of employees and employers.¹¹³ Regular working time according to the Act on Working Time is eight hours and a maximum of 40 hours a week. Collective agreements for specific sectors can deviate from that.¹¹⁴

¹⁰⁶ AT02LI (06 May 2013).

¹⁰⁷ M. Zingerle, D. Alionis, *Männer als Betroffene von Menschenhandel in Österreich*, p. 33.

¹⁰⁸ AT02LI (06 May 2013).

¹⁰⁹ M. Zingerle, D. Alionis, *Männer als Betroffene von Menschenhandel in Österreich*, p. 25.

¹¹⁰ AT05NGO (28 May 2013) and M. Zingerle, D. Alionis, *Männer als Betroffene von Menschenhandel in Österreich*, p. 24.

¹¹¹ AT03WC (8 May 2013).

¹¹² W. Brodil, M. Risak, C. Wolf, *Arbeitsrecht in Grundzügen* (2011), p. 38-44.

¹¹³ W. Brodil, M. Risak, C. Wolf, *Arbeitsrecht in Grundzügen* (2011), p. 113.

¹¹⁴ W. Brodil, M. Risak, C. Wolf, *Arbeitsrecht in Grundzügen* (2011), p. 330.

2.2.2 Specific labour requirements guaranteed under sector specific regulations

Working conditions in the labour sector are regulated by several collective agreements. The main collective agreement covers construction industry and construction business. It is complemented by additional collective agreements which are elaborated for one specific major construction site. The collective agreement regulates the working time, which is regularly 39 hours per week¹¹⁵ and sets out detailed regulation of extra working time, additional allowances and ending of the working contract. Employers have to provide workers with a room for breaks, for changing and have to offer water and showers. Rooms for the workers have to obey specific standards and need to be kept in order by the employer.¹¹⁶ The minimum wages are defined in different categories and depend on the function or level of training of the construction worker. Unskilled workers are entitled to a payment of almost 11 Euro per hour (pre-tax) or 1860 Euro per month (pre-tax).¹¹⁷ Undocumented workers in the construction sector who are working on a day-to-day basis can earn around € 4 to 5 per hour. Working, undocumented though, in an organised group on a longer basis can lead to € 8 to 10 per hour.¹¹⁸ Experience shows that construction workers are instructed and mention towards control organs the minimum wage according to the collective agreement instead of the lower wage received in reality.¹¹⁹ The Financial Police Force states that frequently bar benders at construction sites indicate a payment of € 10,63 per hour, although they would receive € 3 in reality.¹²⁰

Further specific legal acts regulate certain areas of work of construction workers. The Construction Workers' Annual Leave and Severance Pay Fund coordinates the payment of allowances to construction workers, based on the Act on Construction Workers' Annual Leave and Severance Pay. This includes for instance the information of workers by the Fund about details of their employment and about allowances they are entitled to. In a quarterly report the Fund lists which companies employed the worker for which time-periods and the minimum wage of the collective agreement for the employment-periods.¹²¹ According to a different legal act, employers are obliged to pay compensation under specific circumstances for days on which workers are not able to work on construction sites due to bad weather conditions.¹²²

The implementation of the Combating Wage and Social Dumping Act (CWSD-A) in May 2011 is heavily discussed in connection with the construction sector. The CWSD-A's entering into force was at the same time as the opening of the Austrian labour market for employees of the 'new' EU-Member States (except Bulgaria and Romania). For this group of employees, the Alien Employment Law (AEL)¹²³ is not applicable anymore after May 2011 and consequently, a possibility to control wage- and employment-standards would be missing. One aim of the CWSD-A is to fill this gap.¹²⁴ The CWSD-A aims at ensuring equal conditions on the Austrian labour market and concerning wages for all employees working in Austria.

¹¹⁵ See s. 2 of the Collective Agreement for Construction Industry and Construction Business, 01 May 2012.

¹¹⁶ See s. 11 of the Collective Agreement for Construction Industry and Construction Business, 01 May 2012.

¹¹⁷ Table of Wages, as of 01 May 2013, Collective Agreement for Construction Industry and Construction Business, 1 May 2012.

¹¹⁸ M. Krenn, E. Saunders, *Prekäre Integration – Die soziale Verwundbarkeit von MigrantInnen und ihre Integration durch Erwerbsarbeit*, FORBA Forschungsbericht 4/2012, p. 29.

¹¹⁹ AT05NGO (28 May 2013) and AT04CA (13 May 2013).

¹²⁰ M. Zingerle, D. Alionis, *Männer als Betroffene von Menschenhandel in Österreich*, p. 34.

¹²¹ Act on Construction Workers' Annual Leave and Severance Pay, s. 24 and AT04CA (13 May 2013).

¹²² FLG No. 129/1957 as amended by FLG I No. 117/2012.

¹²³ FLG I No. 218/1975 as amended by FLG I No. 72/2013.

¹²⁴ A. Ritzberger-Moser, *Neues aus der Gesetzgebung 2011*, ZAS 2012/21, p. 108.

All employees working in Austria have to receive certain minimum wages which should ensure fair competition among Austrian and non-Austrian companies. Furthermore, the act should support the payment of obligatory social contributions.¹²⁵

Austria implemented the Posting Directive¹²⁶ by amending the Employment Contract Law Adaptation Act ('*Arbeitsvertragsrechts-Anpassungsgesetz*')¹²⁷ which states in s. 7b for instance that posted workers coming from other EU-Member States and working in Austria have specific minimum claims, including minimum wages.¹²⁸ Workers, who receive less than the Austrian minimum wage determined by a collective agreement for instance, can turn to civil court procedures in order to claim wages. However, by implementing the CWSD-A further possibilities to control the payment of minimum wages by different authorities were established.¹²⁹ Before the CWSD-A entered into force, comprehensive control-mechanisms and sanctions of employees in case of non-compliance were missing.¹³⁰ In case employers, including those established outside Austria, do not pay the minimum wages regulated in collective agreements, employers conduct an administrative offence. Depending on how many workers found underpaid, the employer has to pay 1000 Euro to 10.000 Euro or up to 50.000 Euro fine per worker.¹³¹ The respective control organ, which is concerning the construction sector the Construction Workers' Annual Leave and Severance Pay Fund, is required to report the offence to the competent District Administration Authority. The authority issues the fine. Between May 2011 and April 2012 different control organs, the Construction Workers' Annual Leave and Severance Pay Fund and the Financial Police Force, found in 526 companies possible cases of underpayment. Out of these 526 companies, the majority of companies are not established in Austria. In total, 2.302 workers are reported as being presumably underpaid. However, it is shown that there is a significant difference between the number of presumably underpaid workers and actual complaints filed by the authorities. The 2.302 presumably underpaid workers led to 160 filed complaints.¹³²

Employers are obliged to pay a minimum wage ('*Grundlohn*'), which is controlled. The minimum wage includes also the payment of extra hours. However, in contrast to the term 'remuneration' ('*Entgelt*'), the term 'minimum wage' does not include also the payment of additional allowances. This is criticised and an interview partner suggests amending the term.¹³³ The term minimum wage might lead to a development that employers pay the required minimum wage, but try to evade the payment of additional allowances.¹³⁴

Employers which are established in countries other than Austria are obliged to have the documentation concerning payments of workers readily available in German. This documentation has to encompass the employment contract, payment documents and the

¹²⁵ Parliamentary materials regarding the Combating Wage and Social Dumping Act, p. 1.

¹²⁶ Council Directive 96/71 concerning the posting of workers in the framework of the provision of services [1997] OJ L018/1.

¹²⁷ FLG no. 459/1993 as amended by FLG I No. 71/3013.

¹²⁸ J. Planitzer, H. Sax, *Combating THB for labour exploitation in Austria*, p. 8.

¹²⁹ B. Hainz, J. Hutter, *Rechtsfolgen der unterkollektivvertraglichen Entlohnung samt Praxisbericht Lohn- und Sozialdumping*, ZAS 2013/22, p. 144.

¹³⁰ S. Kühteubl. S. Wieder, *Das neue Lohn- und SozialdumpingbekämpfungsgG*, ZAS 2011/36, p. 209.

¹³¹ Employment Contract Law Adaptation Act, s. 7i (3), A. Ritzberger-Moser, *Neues aus der Gesetzgebung 2011*, ZAS 2012/21, p. 108.

¹³² B. Hainz, J. /Hutter, *Rechtsfolgen der unterkollektivvertraglichen Entlohnung samt Praxisbericht Lohn- und Sozialdumping*, ZAS 2013/22, p. 145.

¹³³ AT03WC (08 May 2013).

¹³⁴ A. Ritzberger-Moser, *Neues aus der Gesetzgebung 2011*, ZAS 2012/21, p. 109.

records of hours worked. The documents have to be kept available at the construction site.¹³⁵ Furthermore, employers have to cooperate in case of inspections and have for instance to allow access to premises and rooms for workers.¹³⁶

2.2.3 Specific employment regulations concerning migrants

Generally, the entry, residence and settlement in Austria are regulated by the Settlement and Residence Act (SRA)¹³⁷ and the Aliens' Police Act (APA). Access to the labour market for migrants is determined by the Alien Employment Law (AEL).¹³⁸ Within these different sets of laws several intersections and dependencies exist concerning access to the labour market. There are in general more than twenty different forms of residence connected to different forms of access to the labour market; in addition (limited) access to the labour market exists due to asylum law.¹³⁹

Citizens of EU-Member States have unlimited access to the Austrian labour market, except citizens from Romania and Bulgaria. Until the end of 2013, citizens of Romania and Bulgaria had limited access to the Austrian labour market, but enjoyed certain privileges compared to citizens from non-EU Member States.¹⁴⁰ Access to the labour market is characterised by stages which are linked with specific residence entitlements. First stage would a temporary work permit ('*Beschäftigungsbewilligung*')¹⁴¹ which is requested by the employer at the Austrian Employment Service (AES). This allows employment at one specific employer and the work permit can only be granted after an assessment of the labour market. Next stage is the work permit ('*Arbeitserlaubnis*')¹⁴² and the certificate of exemption ('*Befreiungsschein*')¹⁴³ which allows the migrant for a certain period of time to work all over Austria.

Construction-workers from non-EU Member States and from Bulgaria and Romania who are posted in Austria by a company not based in Austria require a temporary work permit ('*Beschäftigungsbewilligung*').¹⁴⁴ Seasonal work permits for specific sectors, such as tourism and agriculture,¹⁴⁵ are not applied for the construction sector. Interview partners claim, that especially the 'opening-up of the Eastern European States' and the free movement of services and workers led to lower working standards. In the construction sector, it can be seen that also materials of lower quality are used. As a consequence, especially in border areas of Austria, a distortion of competition can be observed.¹⁴⁶

¹³⁵ Employment Contract Law Adaptation Act, s. 7d, see also FMLSC, Infosheet on CWSD-A, http://www.bmask.gv.at/cms/siteEN/attachments/5/9/4/CH2407/CMS1320227599427/lbdb-g_infosheet_en_11280.pdf (last accessed 31 May 2013).

¹³⁶ B. Hainz, J. Hutter, *Rechtsfolgen der unterkollektivvertraglichen Entlohnung samt Praxisbericht Lohn- und Sozialdumping*, ZAS 2013/22, p. 144.

¹³⁷ FLG I No. 100/2005 as amended by FLG I No. 38/2011.

¹³⁸ FLG I No. 218/1975 as amended by FLG I No. 72/2013.

¹³⁹ Arbeitskreis Undokumentiert Arbeiten, *Arbeiten ohne Papiere* (2008) p. 15.

¹⁴⁰ Information of the FMLSC concerning the access to the labour market for Romanian and Bulgarian citizens, http://www.bmask.gv.at/cms/site/attachments/7/8/3/CH2126/CMS1249542621527/uebergangsregelungen_fuer_bulgarien_und_rumaenien.pdf (last accessed 31 May 2013).

¹⁴¹ AEL s. 4.

¹⁴² AEL s. 14a.

¹⁴³ AEL s. 15.

¹⁴⁴ AEL s. 18.

¹⁴⁵ J. Planitzer, H. Sax, *Combating THB for labour exploitation in Austria*, p. 10.

¹⁴⁶ AT12EORG (02 August 2013) and AT08EORG (18 July 2013).

The 2011-reform of access to the labour market for migrants introduced the system of Red-White-Red cards¹⁴⁷, which is aimed at long-term immigration and based on personal qualification and labour market criteria. This system is applicable to specific groups, such as for instance highly qualified workers or workers of occupations which face a shortage of work-force. The Red-White-Red card entitles to work for one specific employer and only after a certain period of time, unlimited access to the labour market exists (Red-White-Red Plus).

Crucial for undocumented workers or workers who do not fulfil all relevant criteria based on the SRA or AEL is the fact that those workers are legally entitled to the same claims as persons with a regular working contract. Working contracts – whether it be an oral or written contract – between an employer and a worker who is by law not allowed to work or to reside in Austria are void. Nevertheless, concerning claims such as wages, the worker has to be treated as having a valid working contract.¹⁴⁸

2.2.4 Role of recruitment agencies in the specific sector

As shown in chapter 1.1 most of the workers who are employed based on a labour leasing contract work in the construction sector. Consequently, temporary employment agencies play a crucial role in the sector. Austria did not implement the Directive 2008/104/EC on temporary agency work¹⁴⁹ as required until December 2011, but amended the Law on temporary employment accordingly in 2012.¹⁵⁰ Most of the amendments entered into force on 1 January 2013. The Law on temporary employment should ensure non-discrimination between leased workers and permanent workers within a company. Furthermore, information for the leased worker has to be improved and temporary employment agencies have to hand over comprehensive agreements containing information on wages or the applicable collective agreements.¹⁵¹ Leased workers are supposed to be informed two weeks in advance by the temporary employment agency before an assignment ends.¹⁵²

Contrary to trade unions, temporary employment agencies fear higher costs for additional administrative work and anticipate more undocumented and illicit work.¹⁵³ Workers' representatives see for leased workers in general worse working conditions.¹⁵⁴

Also informal recruitment plays an important role in the construction sector. Recruiters look for workers through newspaper advertisements in local newspapers and promise to arrange work in Austria. Very often, these companies in Austria are also run by citizens of the country of origin of the workers. The system works, when workers, unfamiliar with the practices in the construction sector, continue working despite they are not paid. Those who are familiar with the system stop working immediately.¹⁵⁵

¹⁴⁷ SRA s. 41.

¹⁴⁸ J. Planitzer, H. Sax, *Combating THB for labour exploitation in Austria*, p. 8.

¹⁴⁹ Directive 2008/104/EC of the European Parliament and of the Council concerning temporary agency work [2008] OJ L327/9.

¹⁵⁰ FLG I No. 196/1988 as amended by FLG I No. 98/2012. The latest amendment (FLG I No. 98/2012) concerns the implementation of DIR 2008/104/EC.

¹⁵¹ Law on temporary employment s. 11.

¹⁵² Law on temporary employment s. 12.

¹⁵³ A. Staudacher, *Leiharbeiter werden oft zu niedrig entlohnt*, Kurier.at, 10 January 2013, <http://kurier.at/wirtschaft/wirtschaftspolitik/gewerkschafts-umfrage-leiharbeiter-werden-oft-zu-niedrig-entlohnt/2.419.780> (last accessed 31 May 2013).

¹⁵⁴ AT03WC (08 May 2013) and AT01TU (25 April 2013).

¹⁵⁵ AT10CHOL (25 July 2013).

3 Risk Factors in the Sector

3.1 Hiring process/recruitment

3.1.1 Limited access to the labour market

Restrictive labour market access for migrants leads to undocumented work. According to the Migrant Integration Policy Index (MIPEX) Austria's integration possibilities and its restricted access to the labour market rank Austria on place 24 out of 31 countries.¹⁵⁶ Austria's complex intertwined system of residence law and the legislation concerning access to labour market lead to situations that persons are legally residing in Austria but are not allowed to work legally. This affects in particular asylum seeking persons. In the first phase of admission to the Austrian asylum procedure as well as three months after that, asylum seeking persons do not have any access to the Austrian labour market. Afterwards, legislation allows access, which is in practice very limited. Asylum seekers can only take up seasonal work which is limited to six week or six months maximum.¹⁵⁷ The 'weak' residence status as asylum seeking person, limited access to the labour market, low social benefits and very long asylum-seeking procedures push asylum seekers into undocumented work with often bad working conditions.¹⁵⁸

This situation can be illustrated by the case of Z., an asylum-seeker in Austria, (mentioned above) who fought successfully for his unpaid wage in the construction sector. The restrictive access to the labour market forced him to take offered jobs, despite the bad working conditions. The construction company offered him to pay € 200 per week and he had working days from 9 am to 7 pm. After three weeks of being unpaid, a friend helped him to contact trade union of construction workers GBH. The company he worked for was subcontracted by a big, well-known Austrian construction company. However, his company became insolvent. GBH appointed a lawyer and finally Z received his wage paid by the governmental fund securing payments in case of insolvent employers.¹⁵⁹

3.1.2 Limited usage of the potential of socially responsible public procurement

Standards on public procurement at EU-level allow the consideration of for instance ecological and social criteria when awarding public contracts. However, these criteria always have to be reconciled with the primary aim of economic efficiency.¹⁶⁰ Austria's Public Procurement Act¹⁶¹ provides certain entry-points in order to ensure the payment of minimum wages of workers. Companies must be excluded from the procurement procedure if the companies committed severe offences against labour or social security law.¹⁶² Furthermore, the adequateness of prices of offers has to be examined which includes staff costs.¹⁶³ In the

¹⁵⁶ Mipex, Austria Press Agency, <http://www.mipex.eu/austria-presse-agenture-zuwanderer-haben-es-oesterreich-schwer> (last accessed 03 June 2013).

¹⁵⁷ M. Ammer, *Zugang zum Arbeitsmarkt für Asylsuchende aus menschenrechtlicher Perspektive*, Schriftenreihe des BIM zu den Forderungen des Refugee Protest Camp (2013), p. 1-2.

¹⁵⁸ M. Ammer, *Zugang zum Arbeitsmarkt für Asylsuchende aus menschenrechtlicher Perspektive*, Schriftenreihe des BIM zu den Forderungen des Refugee Protest Camp (2013), p. 5.

¹⁵⁹ AT01TU (25 April 2013) and PrekärCafé, 'Arbeit ist Arbeit...', malmoe Volume 59 (2012), <http://malmoe.org/artikel/verdienen/2427> (last accessed 03 June 2013).

¹⁶⁰ K., Lukas, L. Plank, C. Staritz, *Securing labour rights in global production networks* (2010), p. 9.

¹⁶¹ FLG I No. 17/2006 as amended by FLG I No. 10/2012.

¹⁶² Public Procurement Act, s. 68 (1) 5.

¹⁶³ Public Procurement Act, s. 125 (4) 1.

call for bids, it has to be determined to which extent subcontracting is allowed and that bidding companies are bound to Austrian labour and social security law.¹⁶⁴

Research shows that current initiatives concerning socially responsible public procurement focus on ‘green procurement’ and on national employment ‘without looking at labour rights further down in the production network’.¹⁶⁵ The focus on national employment and ecological procurement can be also observed in the construction sector in Austria. The Austrian National Action Plan on sustainable public procurement mentions social standards, including the payment of wages, but concerning construction, exclusively ecological measures are listed.¹⁶⁶ The Public Procurement Act allowed until the end of 2013 to appoint directly – under certain circumstances - a company up to an order volume of € 1 Mio.¹⁶⁷ The trade union of construction workers GBH sees this as possibility to support Austrian companies and warns about ‘immoral offers of companies from abroad’. It calls upon public procurers to appoint Austrian companies in order to ‘secure local jobs’.¹⁶⁸

3.2 Work place/employment

Generally, conditions of workers in the construction sector are described as unsatisfactory. Non-payment of wages and underpayment are mentioned as risk factors in construction. Very often, workers receive a part of the wage in the first month and a bit later they receive again a small amount of money. Workers continue their work, but do not receive any money later on. Currently, it is observed that workers are employed by Italian bogus-companies and received € 2-3 per hour.¹⁶⁹ 18 workers from Albania were employed by an Italian company and posted in Austria. In the first six months of work, they received accommodation and food, but no salary.¹⁷⁰ A medical centre for persons without medical insurance reports that men from Eastern European countries were promised to receive € 100 per week. They worked a week and did not receive any money.¹⁷¹ Dumping of wages differs within certain categories of construction work. Basic work such as bar bending for instance is exposed to enormous price dumping which leads to underpayment of workers. Bar bending is usually subcontracted and therefore especially problematic. In some cases workers then receive € 2-3 per hour.¹⁷²

The construction sector is characterised by chains of subcontracting, which are identified as risk factor. The system of subcontracting usually encompasses four different levels of companies. Whereas companies of the first two levels are paying social security contributions, companies of level three and four are very often bogus-companies. These companies are established especially in Vienna and for a very short time. In the first months, these companies usually pay the obligatory contributions in order not to be suspicious for the control organs. After some months, these companies are usually insolvent and are quickly replaced by other companies. The damage has to be borne by public institutions, such as the governmental fund securing payments in case of insolvent employers or the BUAk.¹⁷³ All

¹⁶⁴ Public Procurement Act, s. 83 and 84.

¹⁶⁵ K. Lukas, L. Plank, C. Staritz, *Securing labour rights in global production networks* (2010), p. 11.

¹⁶⁶ Federal Chancellery, Austrian National Action Plan for sustainable public procurement, June 2010, p. 50-56. See <http://www.bka.gv.at/DocView.axd?CobId=40217> (last accessed 03 June 2013).

¹⁶⁷ FLG II No. 95/2012 as amended by FLG II No. 461/2012.

¹⁶⁸ GBH, Bau-Holz, Volume 107, 9-12/2012, p. 13.

¹⁶⁹ M. Zingerle, D. Alionis, *Männer als Betroffene von Menschenhandel in Österreich*, p. 24.

¹⁷⁰ AT03WC (08 May 2013).

¹⁷¹ M. Zingerle, D. Alionis, *Männer als Betroffene von Menschenhandel in Österreich*, p. 31.

¹⁷² AT05NGO (28 May 2013) and AT06COR (02 July 2013).

¹⁷³ S. Reindl-Krauskopf et al, Endbericht zum Forschungsprojekt „Sozialbetrug, auch im Zusammenhang mit Lohn- und Sozialdumping“, p. 105 and AT12EORG (02 August 2013).

subcontracted companies seek to profit as much as possible, which has a direct impact on the wages of the workers. Wages of the workers are minimised or workers might not get paid at all at the end. When the company does not pay anymore, workers react differently based on their experience. Experienced workers 'know the game' and immediately stop working for this company when they are not paid. Others, rather inexperienced workers, continue working and hope for payment.¹⁷⁴ Underpaid workers at the end of this subcontracting chain are usually not very supportive in identifying involved companies since they are too afraid of losing their jobs.¹⁷⁵

Recently, more workers in construction are employed only part-time. Also more and more leased workers are employed part-time, which makes controls about the payment of minimum wages and the working time in practice even more difficult. Further measures would be necessary in order to better control temporary employment agencies.¹⁷⁶ The part-time employment can have a negative impact on social security payments. Very often, workers do not know that they are employed part-time. At the beginning they are officially employed full-time, but later the company changes the registration without the knowledge of the worker.¹⁷⁷

In addition, the practice to be paid on a per-piece rate in construction can have negative impacts too. Wages in the collective agreement are based on wages per hour. When workers claim to be underpaid it is very difficult to assess the per-piece rate compared to the minimum wages in the collective agreement.¹⁷⁸ One interview-partner states that the groups working on a per-piece rate, in tiling for instance, know how to evade laws and work with methods which are close to illegality.¹⁷⁹

A further very common phenomenon in the construction sector is bogus-self-employment. Workers are officially self-employed which helps companies to evade any minimum standards of workers' protection. Labour inspections report that at construction sites for instance ten officially self-employed persons work in one room. However, if a person receives instructions by another person and has to implement them, then this person is not self-employed but an employee. Labour inspectors during inspections focus on the actual circumstances and treat bogus-self-employed as workers to whom for instance security regulations apply.¹⁸⁰ Generally, the regional administrative authorities have to grant – after checking the relevant qualifications – an authorisation for pursuing a business if a person intends to be self-employed. In the construction sector though, authorities grant authorisations for 'businesses' such as 'lifting heavy weights' or 'cleaning of staircases'.¹⁸¹ This practice leads to bogus-self-employment and an evasion of labour law standards.

Further inspections or monitoring of construction sites would be necessary but are not possible due to limited resources. The number of inspections has increased in the last years. The inspections have also raised the awareness among workers. Workers state that sometimes control authorities during inspections made them aware about inconsistencies in their work contracts.¹⁸² Cooperation between different control organs is described as good, but it could

¹⁷⁴ AT10CHOL (25 July 2013), AT03WC (08 May 2013) and AT02LI (06 May 2013).

¹⁷⁵ AT03WC (08 May 2013).

¹⁷⁶ AT03WC (08 May 2013) and AT01TU (25 April 2013).

¹⁷⁷ AT10CHOL (25 July 2013),

¹⁷⁸ AT10CHOL (25 July 2013),

¹⁷⁹ AT06COR (02 July 2013).

¹⁸⁰ AT02LI (06 May 2013).

¹⁸¹ B. Affenzeller, Bau- und Immobilien Report 3/2013, p. 18 and AT03WC (08 May 2013).

¹⁸² AT10CHOL (25 July 2013).

be further improved.¹⁸³ However, it is criticized that the mandate of the labour inspection is too limited in order to be effective concerning the practices described above. Labour inspectors for instance are not allowed to inspect labour contracts when they suspect exploitation. Having access to the contracts would be necessary in order to have a substantiated suspicion which could be notified to the state prosecutors.¹⁸⁴ Jointly conducted inspections can to a certain extent be helpful, but at the same time the work of each specific control organ can be hampered by the work of another control organ.¹⁸⁵

3.3 Other conditions imposed on labourers not directly linked to labour law

Transportation, accommodation and food offered by the employer are seen as factors which can expose workers to exploitation. Compared to other sectors, workers in the construction sector constantly have different places of work. Workers therefore very often depend on an employer who organises transportation and accommodation. This can make construction workers rather exploitable.¹⁸⁶

In one documented case, four men working in the construction sector have been locked in an apartment by their employer and were not able to leave the apartment except they were picked up for work.¹⁸⁷ In several cases, accommodation for workers is a mattress in an old house for which they have to pay.¹⁸⁸ One interview partner stated that the lack of food or appropriate working clothes may indicate a high number of exploited workers in construction. Sometimes, other workers of the same construction site notice bad working conditions of their colleagues and pass on the information. Workers may not get food or are not able to pay for food or lack proper clothing.¹⁸⁹ Missing safety equipment can equally indicate that labour laws and standards are not fulfilled. Providing workers with safety equipment requires a certain level of logistics. If a company cannot provide that, this might indicate for instance undocumented work.¹⁹⁰ The practice of deducting costs for accommodation and food are seen as frequent phenomenon in Austria.¹⁹¹ In some cases, workers even had to pay for food and accommodation beforehand and are promised to get the money back when the wages are paid. However, wages are not paid then.¹⁹² Companies even transfer the salary on a bank account, but oblige the worker at the same time to pay back in cash costs for accommodation or transportation.¹⁹³

A further risk factor constitutes the limited access to the labour market for migrant workers in the construction sector. Migrant workers who are working undocumented or who are not allowed to work based on the current residence permit are facing expulsion. The Austrian regulation of residence for trafficked persons who are coming from States outside the EU is considered unsatisfactory and the protection against expulsion is not implemented properly.¹⁹⁴ In an interview it is described that an Albanian man smuggled to Austria had to pay off the

¹⁸³ AT12EORG (02 August 2013).

¹⁸⁴ M. Zingerle, D. Alionis, *Männer als Betroffene von Menschenhandel in Österreich*, p. 52.

¹⁸⁵ AT03WC (08 May 2013), AT02LI (6 May 2013) and AT01TU (25 April 2013).

¹⁸⁶ AT03WC (08 May 2013).

¹⁸⁷ AT05NGO (28 May 2013).

¹⁸⁸ AT03WC (08 May 2013).

¹⁸⁹ AT03WC (08 May 2013).

¹⁹⁰ AT06COR (02 July 2013).

¹⁹¹ K. Lukas, L. Plank, C. Staritz, *Securing labour rights in global production networks* (2010), p. 8.

¹⁹² AT10CHOL (25 July 2013).

¹⁹³ AT03WC (08 May 2013).

¹⁹⁴ J. Planitzer, H. Sax, *Combating THB for labour exploitation in Austria*, p. 62.

smuggling by working on a construction site. After paying off he continued working but did not receive any payments. During the raid of the financial police and aliens' police he was identified but deported at the end due to this irregular residence status.¹⁹⁵

Besides the aspect of an unsecure residence or the fear from being deported, there is a rather limited possibility to claim unpaid wages in practice. Legally, workers who do not fulfil all requirements concerning residence and employment of migrants are entitled to claim their wages in the same way as persons with regular working contracts. However, a support structure in order to help workers in this regard is still missing. In the above mentioned case of Z., Z. found his way to the trade union by the help of friends. He did not know whether the trade union was able to support him. Information about possibilities to support undocumented workers is lacking and ways for distributing the information among undocumented workers need to be identified.¹⁹⁶ The working group on undocumented work published a pamphlet for counselling centres which support undocumented workers. The pamphlet explains that residence may be threatened, but not in all cases. It further includes also a template letter, NGOs or trade unions can use when supporting an undocumented worker. The letter stresses the obligation of States to ensure for third-country nationals the possibility to claim wages based in the 'Sanctions-Directive'.¹⁹⁷ An additional step is the establishment of a counselling centre for undocumented workers who claim wages, which is planned for 2014.¹⁹⁸

The CWSD-A is a fairly young legal act and needs to be further implemented in practice. As shown above, there are many cases of presumably underpaid workers notified by the relevant authorities, but only concerning a small number of companies compared to that a complaint is filed.¹⁹⁹ In concluding, the existing CWSD-A contains a potential for an increasing compliance with Austrian minimum wages. However, ensuring that all workers in Austria receive at least the minimum wage is one out of several aims of the law. It seems that another aim, the payment of social contributions of companies, receives greater attention at the moment than supporting workers in claiming their right to the payment of minimum wages.

3.4 Business relationships: production in affiliated companies and by suppliers

As shown in chapter 3.2 the construction sector is characterised by often long chains of subcontracting. Whereas the bigger, well-known companies usually comply with labour standards, these standards might be violated by the smaller companies which are subcontracted by the bigger companies. However, bigger companies claim not be liable for these violations since they would not have any influence on the working methods of these smaller companies.²⁰⁰

Legal acts establishing a liability regime implemented since 2009 intend to tackle this characteristic of the construction sector. Company A (customer) subcontracts company B (contractor) for delivering a specific service within a construction site. Based on different

¹⁹⁵ AT05NGO (28 May 2013) and M. Zingerle, D. Alionis, *Männer als Betroffene von Menschenhandel in Österreich*, p. 31.

¹⁹⁶ PrekärCafé, 'Arbeit ist Arbeit...', malmoe Volume 59 (2012), <http://malmoe.org/artikel/verdienen/2427> (last accessed 03 June 2013).

¹⁹⁷ DIR 2009/52/EC of 18 June 2009 providing for minimum standards on sanctions and measures against employers of illegally staying third-country nationals [2009] OJ L168/24.

¹⁹⁸ AT05NGO (28 May 2013).

¹⁹⁹ See chapter 2.2.2 and B. Hainz, J. Hutter, *Rechtsfolgen der unterkollektivvertraglichen Entlohnung samt Praxisbericht Lohn- und Sozialdumping*, ZAS 2013/22, p. 145.

²⁰⁰ AT10CHOL (25 July 2013).

legal acts, company A can be held liable for (1) payment of social security contributions²⁰¹, (2) payment of income taxes²⁰² and (3) payment of wages and social security contributions of leased workers²⁰³, in case company B does not pay accordingly. Whereas the first two grounds of liability are applicable to Austrian companies, the latter (payment of wages and social security contributions of leased workers) applies also to leased workers of agencies coming from outside Austria.

The Austrian company A can avoid being held liable for social security and income tax payments, when the company A subcontracts only companies which are registered in a list. In case company B would be registered in this list, company A cannot be held liable. Companies can get registered in this list of reliable companies (*‘Liste der haftungsfreistellenden Unternehmen’*) after being three years in the business and having paid all obligatory social security payments.²⁰⁴ The list is coordinated and monitored by the social security authorities. Second option for an exemption of liability is the payment of 20% social security contributions and 5% of the subcontracting sum to the social security authorities.

The Insurance Funds see already a positive impact of these fairly new legal acts. The list of companies has in the meantime a very dominant role to play and is accepted by companies in the construction sector as ‘green list’ of trustworthy companies for subcontracting.²⁰⁵ Also interview partners representing the interests of both sides, workers and employers, confirm the positive impact of this liability regime.²⁰⁶ Despite the positive impact, it is also shown that these regulations can be evaded. In the chains of subcontracting, in the recent years more and more companies from abroad are involved. At the very bottom of the chain, an Austrian missing trader acts. The Austrian missing trader is subcontracted by a company abroad. However, the rules on liability concerning social security and income taxes are not applicable to companies which are not based in Austria²⁰⁷, which leads to an evasion of these rules.

An interview showed that the list might have a positive impact concerning certain payments for the State, the individual worker would not benefit from it. The current liability regime does not cover liability for unpaid wages of workers. The current legal possibilities are too limited and do not allow for a liability of the company which subcontracts another company for misconduct of the subcontracted company.²⁰⁸ The liability of companies for the payment of wages and social security contributions of leased workers of subcontracted companies is a fairly young provision. It entered into force in January 2013 and it needs to be assessed to which extent the liability will be enforced. The chamber of labour which represents the interests of workers lobbies for an extension of the liability to unpaid wages in the subcontracting chain. It is expected that companies would chose subcontractors with more caution and would monitor the working conditions of subcontracted companies more thoroughly.²⁰⁹

²⁰¹ General Social Security Act, s. 67a-67d, FLG No. 189/1995 as amended by FLG I No. 58/2010.

²⁰² Income Tax Act, s. 82a, FLG No. 400/1988 as amended by FLG I No. 105/2010.

²⁰³ Law on temporary employment, s. 14, FLG 196/1988 as amended by FLG I No. 98/2012.

²⁰⁴ S. Reindl-Krauskopf et al, Endbericht zum Forschungsprojekt „Sozialbetrug, auch im Zusammenhang mit Lohn- und Sozialdumping“, p. 105.

²⁰⁵ S. Reindl-Krauskopf et al, Endbericht zum Forschungsprojekt „Sozialbetrug, auch im Zusammenhang mit Lohn- und Sozialdumping“, p. 110.

²⁰⁶ AT12EORG (2 August 2013) and AT10CHOL (25 July 2013).

²⁰⁷ S. Reindl-Krauskopf et al, Endbericht zum Forschungsprojekt „Sozialbetrug, auch im Zusammenhang mit Lohn- und Sozialdumping“, p. 48.

²⁰⁸ AT01TU (25 April 2013).

²⁰⁹ AT10CHOL (25 July 2013).

4 Existing preventive measures in the sector

4.1 Preventive corporate measures (both within the company as well as in their business relationships)

The analysis of the Austrian construction companies (see section 1.2.1) reveals that there exist no explicit preventive measures for avoiding instances of THB for labour exploitation. As far as these companies do have CSR approaches – SWIETELSKY has none, ALPINE seemed at a very early stage in this regard – their content differs. Many strategies may still be classified as “sponsoring” rather than genuine efforts to improve human rights in the core business. Some companies, however, particularly focused on improving labour rights and health and safety issues. Publically available information on companies’ efforts in the field of CSR is generally scarce; often it is not evident by which organisational structure the CSR and sustainability measures are being implemented or monitored.

STRABAG has elaborated a Code of Ethics, a self-regulation instrument, which stipulates that generally legal labour and social provisions and standards have to be observed within the entire company including business partners. Accordingly the non-conclusion or the termination of contracts with suppliers or subcontractors is required in cases where they are considered to violate the respective laws and provisions.²¹⁰ Generally, violations have to be reported to an Ombudsman, the so-called employee interest representative. Provided that employees are only marginally involved in the breach, they won’t face disciplinary and labour law sanctions (which may range from warnings to dismissals). There exist equally regional Ombudsmen in larger countries where STRABAG is operational, as well as an external Ombudsman for anonymous reporting.²¹¹ The Code of Ethics is available in twelve different languages and also reflected in the instructions and guidelines of the company’s individual divisions. All employees are expected to follow the values and principles set out therein. However, as a self-regulation instrument, it is not legally binding for STRABAG, which means no legal claims may be lodged by company employees or other persons.²¹²

According to the company analysis, “health and safety” is the best elaborated aspect of all company policies regarding labour relations. From a human rights perspective this is a valuable starting point which should be further elaborated also with regard to other labour and human rights that are relevant for the construction sector. Most companies refer to the Austrian domestic legal framework only and do not take account of international human or labour rights standards. For instance, HABAU’s CSR approach including health and safety issues seems very committed and genuinely grown out of the corporate culture. The company has however not joined any relevant initiatives, neither on the national (e.g. respACT), nor on the international level, for instance the UN Global Compact or Social Accountability 8000 (see section 4.6).

²¹⁰ See STRABAG SE Business Conduct Guidelines, 1 October 2007, available for download at http://csr.strabag.com/databases/internet/_public/content.nsf/web/EN-STRABAG.COM-EthikKodex.html#?men1=4&sid=485&h=66 (last accessed 31 May 2013), p. 21.

²¹¹ See STRABAG SE Business Conduct Guidelines, 01 October 2007, available for download at http://csr.strabag.com/databases/internet/_public/content.nsf/web/EN-STRABAG.COM-EthikKodex.html#?men1=4&sid=485&h=66 (last accessed 31 May 2013), p. 27-28.

²¹² See STRABAG SE Business Conduct Guidelines, 01 October 2007, available for download at http://csr.strabag.com/databases/internet/_public/content.nsf/web/EN-STRABAG.COM-EthikKodex.html#?men1=4&sid=485&h=66 (last accessed 31 May 2013), p. 32.

Concerning the selection of subcontractors, the employers' representative FEC states that the list of reliable companies (*'Liste der haftungsfreistellenden Unternehmen'*) plays a very important role in the meantime. It is a prerequisite to be on the list in order to be eligible as subcontracted company. Furthermore, the Austrian Register of Tenderers (ANKO) runs also a list of reliable companies. ANKO is established by several public authorities and interest unions such as FEC or the chamber of labour and its purpose is to support public procurement procedures.²¹³

SPREITZER works with subcontractors from a local network which it usually knows personally. Over the last years, it has not cooperated with employment agencies as there was no need for further staff. In the past, some formerly posted workers were taken over by the company. However, the risk of labour exploitation was considered to be low in a family run local company. Nevertheless, the SPREITZER management acknowledged that it is likely to increase with the competitive pressure which is particularly felt by small subcontractors often participating in public construction projects.²¹⁴ This concern was equally shared by HABAU's CSR representative. In his opinion, there is a certain saturation of the construction market which might force companies to get the price down in order to be competitive.²¹⁵

For HABAU the most problematic aspect is leasing work. Many companies treat leasing workers differently from those permanently employed. The company therefore draws on an internal list of labour leasing and recruitment agencies which have been reviewed by HABAU's legal department in order to ensure that all legal provisions are fulfilled. Moreover, the costs for leased workers are being negotiated by the purchasing department already in advance. In case any legal problems arise in spite of all that, a contractual penalty has to be paid by these agencies.²¹⁶

Subcontracting companies are not listed; however, certain criteria are applicable regarding the selection of subcontractors which are equally laid down in HABAU's CSR report. It immediately ceases cooperation with a subcontractor in the event that these criteria are grossly violated by this company. Moreover, the contracts between HABAU and their subcontractors stipulate that the latter may assign a job to another, third subcontracting party only with the prior consent of HABAU. It has, however, no possibility to check whether the work contracts issued by a subcontractor conform to the applicable wage agreements. Nevertheless, HABAU is ready to intervene and remedy shortcomings like e.g. the lack of protective equipment of subcontracted workers. The respective costs are passed on the subcontractor. This constitutes one part of the company's risk management since accidents or instances of lacking concessions in the subcontracting chain would be attributable to HABAU, which might in turn be struck off the list of reliable companies (see above).²¹⁷

For companies, which are coordinating bigger construction sites, it is important to know, which workers are actually working on the construction site. Systems, such as ISHAP,²¹⁸ help companies to have an overview who is working at the site. Based on ID-cards produced by the computerized tool, which equally provides an overview of all necessary documents according to the workers' nationalities, it is clearly documented who is working on the site, including the workers of subcontracting companies. The formerly second largest Austrian construction

²¹³ AT12EORG (02 August 2013), <https://www.ankoe.at> (last accessed 09 August 2013).

²¹⁴ AT09COR (19 July 2013).

²¹⁵ AT06COR (02 July 2013).

²¹⁶ AT06COR (02 July 2013).

²¹⁷ AT06COR (02 July 2013).

²¹⁸ See <http://www.ishap.at/> (last accessed 14 August 2013).

company ALPINE was the first one that applied ISHAP and realized the legal documentation requirements as of May 2011.²¹⁹ HABAU, which is also using the tool, states that prior to the implementation of this system they had to control the workers at their construction sites several times a day. Otherwise, subcontracted companies would send different workers to the site each day, or they even subcontracted the service again without informing HABAU.²²⁰

4.2 Preventive measures taken by sector's employers' organisation

The employers' representative FEC runs the initiative 'BAUfair!' ['Buildfair!'] since several years. Combating undeclared and undocumented work and bogus-companies in construction is one of the main targets of this initiative. Some of the measures are implemented already: The FEC lobbied for an obligatory registration of workers by the employer to the health and social insurance already prior to the official start of the employment. Furthermore, it supported the development of the CWSD-A and the existing liability regime in subcontracting chains. In addition to that, FEC is in favour of enhanced inspections of construction sites by the different control authorities.²²¹

As described in chapter 3.4 companies can be held liable for unpaid wages and social security payments of leased workers, in case the temporary employment agency does not pay. Also leased workers employed by an agency abroad are able to sue the company in Austria which the leased employee has been working for. The employers' representative FEC therefore advises Austrian construction companies to cooperate only with very reliable and liquid temporary employment agencies. In addition, it is advised to require a bank guarantee from the temporary employment agency.²²² The liability of companies for the payment of wages of leased workers of subcontracted companies has only been force for six months. The legal mechanism exists, however practice will show to which extent this regulation will be used by employers' representatives as preventative measure in the future.

According to FEC, measures and legislation need to focus more on smaller, private construction sites, such as building houses by private individuals. Also in this area, a lot of undocumented and undeclared work is taking place. FEC suggests to implement fiscal measures which should make it unattractive for private persons to have services undeclared.²²³

The national leading platform for CSR is respACT, which stands for "responsible action". It supports its member companies on their way to implementing social responsibility in their daily business through exchange of best practices, knowledge transfer and education as well as the establishment and administration of a national CSR network.²²⁴ With support from the Federal Economic Chamber (FEC) and the FMLSC, respACT has developed a concise CSR-guidance for the construction industry.²²⁵ It aims at raising awareness on CSR practices in particular among small and medium-sized enterprises that do not have the resources to have a special CSR manager or even department like it's often the case with bigger companies. It

²¹⁹ Gary, *Gegen Betrug und Pfusch*, in Die Bauzeitung, 29 April 2011, <http://www.diebauzeitung.at/ireds-112447.html> (last accessed 14 August 2013).

²²⁰ AT06COR (02 July 2013).

²²¹ AT12EORG (02 August 2013), <http://www.baufair.at/> (last accessed 09 August 2013).

²²² K. Mayr, *Arbeitskräfteüberlassung nach Österreich*, in Steinlechner et al (eds.), *Arbeit und Soziales, Der gemeinsame Arbeitsmarkt ab Mai 2011* (April 2011, WKÖ) p. 41.

²²³ AT12EORG (02 August 2013).

²²⁴ See <http://www.respect.at/site/english> (last accessed 07 June 2013).

²²⁵ respACT, CSR-Leitfaden Bauwirtschaft, available for download at <http://www.respect.at/site/angebote/toolsinstrumente/branchenspezifischetools/article/5473.html> (last accessed 07 June 2013).

points out the added value of addressing CSR issues and clearly illustrates the important issue areas and possible measures for the construction sector. It also features a self test for companies in order to assess their status-quo with regard to CSR.²²⁶ According to respACT, prevention is primarily a matter of awareness-raising and exchange of best practices among companies. Companies love to learn from other companies, which is due to the fact that most companies merely do not have the time to work their way into theoretical guides or tools but rather hear from others how they have handled particular problems and just follow their example.²²⁷

4.3 Preventive measures taken by trade unions and further workers' representatives

The working group on undocumented work supported by different trade unions and the Chamber of Labour elaborated the pamphlet concerning rights for undocumented workers which will support in future the counselling of undocumented workers, also within trade unions. A representative of the works council of a major company in the construction sector stresses the importance of the outreach work of the works council in order to reach also workers of subcontracted companies. Members of the work council visit construction sites or some members of the council are working on the site themselves. Furthermore, members of the works council would come to construction sites and offer information to workers what to do in case of violations of labour law standards.²²⁸

4.4 Preventive measures taken by labour inspectors and further control organs

There are different authorities (see section 1.2.5) which have access to construction sites. As shown in previous research concerning this topic, authorities have clearly defined responsibilities during inspections of construction sites, which do not necessarily include THB for labour exploitation.²²⁹ Awareness concerning THB for labour exploitation within the labour inspection is growing and preventive measures are planned but not strategically implemented at the moment. First step is the elaboration of indicators which should support the work of the inspectors and help them to make substantiated notifications to the state prosecution. Further future steps after the elaboration of indicators will be specific trainings for inspectors. The interview partner mentioned also the possibility to conduct inspections in the future jointly with the Chamber of Labour, which would then be able to offer counselling concerning labour rights during an inspection. On a longer term, awareness raising within labour inspection can lead to awareness raising among companies. The interview partner stresses that it would be necessary to raise awareness among companies with the help of for instance Austrian Economic Chambers.²³⁰ Concerning a different control organ, the interview showed that for instance inspectors usually speak further languages such as Hungarian or Czech. During an inspection they communicate with workers; they do not only control the papers of the worker, they also answer questions of workers.²³¹ However, a high number of presumable cases of underpayment are registered, awareness concerning THB for the purpose of labour exploitation seems to be rather low.

²²⁶ <http://www.respect.at/site/angebote/toolsinstrumente/branchenspezifischetools/article/5473.html> (last accessed 07 June 2013).

²²⁷ AT07EORG (03 July 2013).

²²⁸ AT03WC (08 May 2013).

²²⁹ J. Planitzer, H. Sax, *Combating THB for labour exploitation in Austria*, p. 61.

²³⁰ AT02LI (06 May 2013).

²³¹ AT04CA (13 May 2013).

4.5 Preventive measures taken by NGOs

The working group on undocumented work as well as conferences or actions of the group PrekaerCafé raised the awareness concerning undocumented work and the risks of being exploited. The NGO LEFOE-IBF has a long-standing experience concerning trafficking in women and supports also women who have been exploited in households for instance. However, concerning men, assistance is limited. Nevertheless, current initiatives such as the assessment by the FMLSC concerning counselling for trafficked men in Austria²³² and the planned instalment of a counselling centre for undocumented workers will also lead to enhanced action and to a raised awareness among companies. Future measures concerning THB for labour exploitation needs according to an interview-partner besides legal counselling also psycho-social counselling tailored to men in order to be successful. According to law enforcement, men are less cooperative than women in investigation. Men would rather not see themselves as ‘victims’ and also law enforcement would rather see them as ‘illicit worker’.²³³

4.6 Preventive measures taken by multi-stakeholder initiatives

The Construction Sector Transparency Initiative (CoST) aims at enhancing the transparency and accountability of both procuring bodies and construction companies in publicly financed construction. It is funded by the UK Department for International Development and the World Bank.²³⁴ The Austrian construction company STRABAG is a supporter of the initiative.²³⁵ The actors involved include government procuring entities and oversight agencies, private sector consultants and contractors, as well as civil society groups. Their approach is to disclose basic non-sensitive information derived from existing oversight bodies, to translate it into non-technical language so that it is understood by the different stakeholder groups. It might then be used to hold the responsible parties accountable for mismanagement, waste, corruption or severe safety defects occurring in the context construction projects. CoST does not replace a state’s supervisory, audit, regulatory, investigative, and judicial functions. It rather complements them in order to ensure that key information is being publicly disclosed throughout the project cycle and thus improve fairness in competition for contracts and increase the flow of foreign direct investment and development finance into a country’s construction sector.²³⁶ CoST is state-based and up to now has been implemented in eight different countries.²³⁷ For participation, countries need to submit a letter to the CoST Board including endorsement by the government and an implementation plan for CoST. Implementation requires establishing a Multi-Stakeholder Group (MSG) in order to operate according to CoST’s objectives on the domestic level. This includes that the national procuring entities disclose information for relevant projects and respond to any reactions or requests for such information; an independent assurance team evaluates and reports on these disclosures; periodic monitoring and reporting tracks progress in the programme and evaluates the results. For countries, the aspiration is to improve the use of funds in public

²³² AT05NGO (28 May 2013).

²³³ AT05NGO (28 May 2013).

²³⁴ CoST, <http://www.constructiontransparency.org/> (last accessed 5 June 2013).

²³⁵ See STRABAG, Code of Ethics, http://csr.strabag.com/databases/internet/_public/content.nsf/web/EN-STRABAG.COM-EthikKodex.html#?men1=4&sid=485&h=66 (last accessed 31 May 2013).

²³⁶ See CoST Factsheet, available at http://www.constructiontransparency.org/the_initiative.cfm (last accessed 05 June 2013).

²³⁷ El Salvador, Ethiopia, Guatemala, Malawi, Philippines, Tanzania, UK, Vietnam and Zambia; see http://www.constructiontransparency.org/cost_countries.cfm (last accessed 05 June 2013).

construction and thus obtain a more reliable infrastructure; to freeing savings to be able to extend social and economic services; and to generally raise investor confidence.²³⁸

Social Accountability 8000 (SA 8000) provides a useful tool to identify labour exploitation. It constitutes a verifiable standard and management system based on international human rights and labour laws that can protect and empower personnel within a company's scope of control and influence. It is provided by an international multi-stakeholder initiative formed by Social Accountability International (SAI), trade unions, multinational enterprises, NGOs, academics, investment companies and third party certification bodies. The aim of the voluntary SA 8000 Standard is to promote workers' rights and to enable employers to sustainably implement a systems-based approach to ensuring decent work and working conditions. It allows external and internal auditors as well as consultants to prepare for and carry out audits, to specify the necessary follow-up, or to run internal monitoring programs with suppliers. Many aspects relevant for preventing labour exploitation such as child labour, forced labour, freedom of association and the right to collective bargaining, discrimination, disciplinary practices, working hours and remuneration are covered. Above all, supply chain management is a core element of SA 8000. The tool specifically refers to suppliers and contractors and gives detailed advice and recommendations on ensuring their compliance with the labour standards laid down in it.²³⁹

²³⁸ See CoST Factsheet, available at http://www.constructiontransparency.org/the_initiative.cfm (last accessed 05 June 2013).

²³⁹ Labour-Rights-Responsibilities-Guide (LARRGE), Social Accountability 8000 Standard (SA 8000) and Guidance Document, [http://www.larrge.eu/de/larrgeguide/larrge-guide-inhaltsverzeichnis/larrge-guide-single-page.html?tx_larrgeguide_pi1\[getPage\]=78&cHash=74bb3bd469b755dec64920c91ca66e50](http://www.larrge.eu/de/larrgeguide/larrge-guide-inhaltsverzeichnis/larrge-guide-single-page.html?tx_larrgeguide_pi1[getPage]=78&cHash=74bb3bd469b755dec64920c91ca66e50) (last accessed 07 June 2013).

5 Bibliography

B. Affenzeller, Bau- und Immobilien Report 3/2013.

M. Ammer, *Zugang zum Arbeitsmarkt für Asylsuchende aus menschenrechtlicher Perspektive*, Schriftenreihe des BIM zu den Forderungen des Refugee Protest Camp (2013).

Arbeitskreis Undokumentiert Arbeiten, *Arbeiten ohne Papiere* (Chamber of Labour, Vienna, 2012).

W. Brodil, M. Risak, C. Wolf, *Arbeitsrecht in Grundzügen*, 7th edn., LexisNexis (2011)

K. Beclin, *Effektivere Ahndung von Kinderhandel durch Novellierung § 104a StGB?*, in ACTnow, Anti-child-trafficking, Rechtliche Herausforderung im Kampf gegen Kinderhandel, Lexisnexis (2013),
<http://www.lexisnexis.at/vie/zeitschriften/ACTnow/index.html#/39/zoomed> (last accessed 04 June 2013)

Council of Europe/GRETA, *Report concerning Austria*, GRETA(2011)10

derStandard.at, Aktion scharf gegen Pfusch am Bau, 5 October 2012
<http://derstandard.at/1348285182230/Aktion-scharf-gegen-Pfusch-am-Bau>, (last accessed 04 June 2013)

Federal Chancellery, Austrian National Action Plan for sustainable public procurement, June 2010, <http://www.bka.gv.at/DocView.axd?CobId=40217> (last accessed 03 June 2013).

W. Friedrich et al, Trade Unions in the Democratic Process: Ten international Contributions (2013)

G. Gary, Gegen Betrug und Pfusch, in Die Bauzeitung, 29 April 2011,
<http://www.diebauzeitung.at/ireds-112447.html> (last accessed 14 August 2013)

GBH, Bau-Holz, Volume 107, 9-12/2012, http://www.bau-holz.at/servlet/BlobServer?blobcol=urldokument&blobheadername1=content-type&blobheadername2=content-disposition&blobheadervalue1=application%2Fpdf&blobheadervalue2=inline%3B+filename%3D%22Bau-Holz_9-12%25F2012%252C_Siemermark-Ausgabe_-_Alle_Bundesl%25C3%25A4nder-Ausgaben_bei_den_L%25C3%25A4ndernews%2521.pdf%22&blobkey=id&root=D01&blobnocache=false&blobtable=Dokument&blobwhere=1353945626305 (last accessed 03 June 2013).

Habau Group, Nachhaltigkeitsbericht 2012,
http://www.habau.at/fileadmin/media/Services/Downloads/HA_NHB_2012_de.pdf, (last accessed 27 May 2013)

B. Hainz, J. Hutter, *Rechtsfolgen der unterkollektivvertraglichen Entlohnung samt Praxisbericht Lohn- und Sozialdumping*, ZAS 2013/22

S. Kühteubl, S. Wieder, *Das neue Lohn- und SozialdumpingbekämpfungsgG*, ZAS 2011/36

A. Kunnert, *Bauwirtschaft wieder auf Wachstumskurs*, in Österreichische Bauzeitung 2/2012

Kurier.at, Razzia auf der Großbaustelle, 12 April 2013, <http://kurier.at/chronik/wien/razzia-auf-der-grossbaustelle/773.949> (last accessed 04 June 2013)

M. Krenn, E. Saunders, *Prekäre Integration – Die soziale Verwundbarkeit von MigrantInnen und ihre Integration durch Erwerbsarbeit*, FORBA Forschungsbericht 4/2012

Labour-Rights-Responsibilities-Guide (LARRGE), available at <http://www.larrge.eu/de/larrgeguide/larrge-guide-inhaltsverzeichnis.html> (last accessed 7 June 2013)

K. Lukas, L. Plank, C. Staritz, *Securing labour rights in global production networks – Legal Instruments and Policy Options* (Study commissioned by the Chamber of Labour, Vienna, 2010)

K. Mayr, *Arbeitskräfteüberlassung nach Österreich*, in Steinlechner/Maska/Pircher/Dupont (eds.), *Arbeit und Soziales, Der gemeinsame Arbeitsmarkt ab Mai 2011* (WKO, April 2011).

H. Melzer, *Geliehene Arbeitskraft*, Österreichische Bauzeitung, 14 May 2010, <http://www.diebauzeitung.at/geliehene-arbeitskraft-103694.html> (last accessed 27 May 2013).

ÖGB, Committed to Social Justice,
http://www.oegb.at/servlet/BlobServer?blobcol=urldokument&blobheadername1=content-type&blobheadername2=content-disposition&blobheadervalue1=application%2Fpdf&blobheadervalue2=inline%3B+filename%3D%22%25D6GB_-_Committed_to_social_justice.pdf%22&blobkey=id&root=S06&blobnocache=false&blobtable=Dokument&blobwhere=1331046644886

I. Pallmann, A. Pawletta, *Menschenhandel zum Zweck der Arbeitsausbeutung – ein Thema für Gewerkschaften?*, in W.Friedrich, Ch. Schwarz, S.Voigt, *Trade Unions in the Democratic Process: Ten international Contributions* (2013),
http://www.boeckler.de/pdf/p_edition_hbs_278.pdf.

J. Planitzer, H. Sax, *Combating THB for labour exploitation in Austria*, in C. Rijken (ed.) *Combating Trafficking in Human Beings for Labour Exploitation* (Wolf Legal Publishers, 2011).

PORR, Code of Ethics, available for download at <http://www.porr.at/index.php?id=617&L=1> (last accessed 7 June 2013)

PORR, Sustainable Value Report 2012, available for download at <http://www.porr.at/index.php?id=617&L=1> (last accessed 7 June 2013)

PORR, Key data related to GRI 2012, available for download at <http://www.porr.at/index.php?id=617&L=1> (last accessed 7 June 2013)

PrekärCafé ‘*Arbeit ist Arbeit...*’, malmoe Volume 59 (2012),
<http://malmoe.org/artikel/verdienen/2427> (last accessed 03 June 2013).

S. Reindl-Krauskopf, S. Kirchmayr-Schliesselberger, M. Windisch-Graetz, M. Meissnitzer, *Endbericht zum Forschungsprojekt „Sozialbetrug, auch im Zusammenhang mit Lohn- und Sozialdumping“* (15 March 2012)

respACT, CSR-Leitfaden Bauwirtschaft, available for download at <http://www.respect.at/site/angebote/toolsinstrumente/branchenspezifischetools/article/5473.html> (last accessed 7 June 2013)

A. Ritzberger-Moser, *Neues aus der Gesetzgebung 2011*, ZAS 2012/21.

H. Sax, Assisting and Reintegrating Children Victims of Trafficking: Promotion and evaluation of best practice in source and destination countries, Arechivic – Workstream 1, country report Austria (January 2012)

A. Staudacher, *Leiharbeiter werden oft zu niedrig entlohnt*, kurier.at, 10 January 2013, <http://kurier.at/wirtschaft/wirtschaftspolitik/gewerkschafts-umfrage-leiharbeiter-werden-oft-zu-niedrig-entlohnt/2.419.780> (last accessed 31 May 2013)

Task Force on combating human trafficking, *National Action Plan on Combating Human Trafficking for the period 2012-2014*, adopted 20 March 2012

Wiener Zeitung, *Zahl der Zeitarbeiter ist weiter im Steigen*, 30 May 2012, http://www.wienerzeitung.at/nachrichten/wirtschaft/oesterreich/461560_Zahl-der-Zeitarbeiter-ist-weiter-im-Steigen.html (last accessed 04 June 2013)

A. Winkler, J. Planitzer, Assisting and Reintegrating Children Victims of Trafficking: Promotion and evaluation of best practice in source and destination countries, Arechivic – Workstream 2, country report Austria (March 2012)

M. Zingerle, D. Alionis, *Männer als Betroffene von Menschenhandel in Österreich*, a study conducted by MEN (Männergesundheitszentrum) for the FMLSC (June 2013)

Sources from the Internet

https://www.statistik.at/web_de/services/wirtschaftsatlas_oesterreich/bauwesen/index.html (last accessed 16 May 2013)

<http://www.solidbau.at/top-150/uebersicht> (last accessed 31 May 2013)

http://csr.strabag.com/databases/internet/_public/content.nsf/web/EN-STRABAG.COM-unsereprioritaet.html?men1=5&men2=1&sid=511&h=61&l=EN (last accessed 31 May 2013)

http://csr.strabag.com/databases/internet/_public/content.nsf/web/EN-STRABAG.COM-unserweg.html?men1=5&men2=1&sid=513&h=61&l=EN (last accessed 31 May 2013)

http://csr.strabag.com/databases/internet/_public/content.nsf/web/EN-STRABAG.COM-mitarbeiterkennzahlen.html?men1=5&men2=5&sid=551&h=65&l=EN (last accessed 31 May 2013)

http://csr.strabag.com/databases/internet/_public/content.nsf/web/EN-STRABAG.COM-EthikKodex.html#?men1=4&sid=485&h=66 (last accessed 31 May 2013)

http://csr.strabag.com/databases/internet/_public/content.nsf/web/EN-STRABAG.COM-mitgliedschaften.html#?men1=5&men2=1&sid=516&h=61&l=EN (last accessed 31 May 2013)

http://portal.wko.at/wk/startseite_dst.wk?dstid=9495 (last accessed 27 May 2013)

http://portal.wko.at/wk/startseite_dst.wk?AngID=1&DstID=131 (last accessed 27 May 2013)

http://www.oegb.at/servlet/BlobServer?blobcol=urldokument&blobheadernam1=content-type&blobheadernam2=content-disposition&blobheadervalue1=application%2Fpdf&blobheadervalue2=inline%3B+filename%3D%22Mitglieder_nach_Gewerkschaft_2012.pdf%22&blobkey=id&root=S06&blobnocache=false&blobtable=Dokument&blobwhere=1336128034166 (last accessed 22 May 2013)

http://www.ots.at/presseaussendung/OTS_20121001_OTS0105/katastrophe-trotz-einem-plus-von-50000-arbeitsplaetzen-steigt-die-arbeitslosigkeit-um-weitere-10000-an-wie-geht-das (last accessed 28 May 2013)

<http://www.arbeitsinspektion.gv.at/AI/Information+in+English/The+Labour+Inspectorate/default.htm> (last accessed 28 May 2013)

http://www.buak.at/servlet/ContentServer?pagename=BUAK/Page/Index&n=BUAK_3.1 (last accessed 04 June 2013)

http://www.buak.at/servlet/ContentServer?pagename=BUAK/Page/Index&n=BUAK_12.1 (last accessed 04 June 2013)

http://english.bmf.gv.at/CombatingFraud/FinancialPolice/_start.htm (last accessed 24 May 2013)

http://wien.arbeiterkammer.at/bilder/d190/Arbeiten_ohnePapiere_3_2013.pdf (last accessed 28 May 2013).

cafe.prekaer.at (last accessed 28 May 2013)

<http://www.mipex.eu/austria-presse-agenture-zuwanderer-haben-es-oesterreich-schwer> (last accessed 03 June 2013)

http://csr.strabag.com/databases/internet/_public/content.nsf/web/EN-STRABAG.COM-EthikKodex.html#?men1=4&sid=485&h=66 (last accessed 31 May 2013)

<http://www.swietelsky.at/index.php?id=127&L=1> (last accessed 06 June 2013)

<http://www.qualityaustria.com/index.php?id=2335> (last accessed 07 June 2013)

<http://www.porr.at/index.php?id=620&L=1> (last accessed 07 June 2013)

<http://www.porr.at/index.php?id=570&L=1> (last accessed 07 June 2013)

<http://www.porr.at/index.php?id=618&L=1> (last accessed 07 June 2013)

<http://www.porr.at/index.php?id=617&L=1> (last accessed 07 June 2013)

<http://www.respect.at/site/mitglieder/info/article/3272.html> (last accessed 07 June 2013)

<http://www.baufair.at/> (last accessed 09 August 2013)

<https://www.ankoe.at> (last accessed 09 August 2013)

Interviews

Interview Code	Stakeholder	Date
AT01TU	Trade Union	25 April 2013
AT02LI	Labour Inspection	06 May 2013
AT03WC	Works Council	08 May 2013
AT04CA	Control Authority, specifically for construction sector	13 May 2013
AT05NGO	NGO - counselling for men	28 May 2013
AT06COR	Corporation	02 July 2013
AT07EORG	Employer's Organisation	03 July 2013
AT08EORG	Employer's Organisation	18 July 2013
AT09COR	Corporation	19 July 2013
AT10CHOL	Chamber of Labour (Employee's Organisation)	25 July 2013
AT11COR	Corporation	31 July 2013
AT12EORG	Employer's Organisation	02 August 2013



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