Topics in our issue:

The new salary scheme of the collective bargaining agreement for employees in the trade sector

Enterprises in the trade sector have been given a transition period until 1 December 2021 for changing to the NEW salary scheme for their employees. Given the administrative input required for the change it is advisable to start planning in good time.

The reform of the salary scheme, which became effective already on 1 December 2017, intended to reduce the number of salary schedules and, in particular, to create a modern scheme of employment groups, obtain more legal certainty in job grading and, not least, combat age discrimination by capping the eligible number of years of service with previous employers.

The eight salary schedules for two categories of the OLD salary scheme were reduced to a **single salary schedule** which applies to all employees in the trade sector **throughout Austria**. The six former employment groups have been increased to eight (A to H), which are worded in more general and abstract terms. The starting salary was raised, and, in compensation, the income curve was flattened. Now there are only five salary levels (except in employment groups A and B), so that not more than four incremental steps are possible within a given employment group, after three, six, nine and twelve years respectively. For better orientation, each employment group has been assigned exemplary reference functions (typical activities) based on seven working spheres (*procurement, sales & distribution, commercial & administrative services, marketing & communication, logistics, technical service, IT*). Nevertheless, the final criterion for classification is the description of the employment group, with delimiters along the lines of *autonomous working, responsibilities, authorisations, social skills, technical know-how and qualification requirements*.

Fixed changeover date: no gradual change

Changeover to the NEW system is subject to a clear **key date regulation**: the change must apply jointly to all employees of a given company on the same date. Thus, the company will not have to handle two salary schemes in parallel, but the OLD salary scheme applies also to new employees until the changeover. Newly established companies or companies which apply the

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collective bargaining agreement in the trade sector for the first time (e.g. because they change to this collective bargaining agreement) will have to classify their employees in line with the NEW salary scheme. Otherwise the changeover date (which must be the first day of a given month) needs to be defined by a shop agreement. If no works council has been set up, the undertaking may determine the date, but needs to inform employees in writing not later than three months prior to the planned changeover. Next, employees need to be transferred to the NEW salary scheme (with the collaboration of the works council if one has been established) and informed of this by a NEW notice of employment ("Dienstzettel") not later than four weeks prior to the changeover date.

Classification in the NEW salary scheme

Employees of the previous employment groups 1 to 6 must be assigned to employment groups A to H within the new employment group scheme, depending on their activities. They are classified in the **next higher minimum salary of the relevant employment group under the collective bargaining agreement**, where previous years of service are of no relevance – the employee will always be assigned to the first year of the new level. Such increases in the minimum salary may be **credited** against existing (non-earmarked) **overpayments**. If the OLD minimum salary under the collective bargaining agreement should be higher than the NEW minimum salary of the fifth level, the employee nevertheless must be assigned to this level. The difference between the NEW minimum salary and the OLD minimum salary is shown as "reform amount 1" and increased annually same as the salaries under the collective bargaining agreement (a "reform amount 2" which may have to be paid for transfers up to 1 November 2019 is not discussed here). This "reform amount 1" must not be credited against existing overpayments nor used to pay for additional working hours, overtime, premiums, commissions, supplements, allowances or compensation for travel expenses. Reform amounts must be included in the assessment basis for calculating salary-dependent claims.

For the classification in the NEW scheme, the previous date for incremental salary increases still applies. Individual incremental advancement dates will therefore not be changed. If a reclassification in the NEW scheme coincides with an incremental advancement date, the increment needs to be carried out first, followed by the NEW classification. The first incremental advancement after the changeover date takes place in the third year on the first day of the month which corresponds to the incremental advancement month prior to the changeover to the NEW salary scheme.

The NEW classification is subject to a **ban on disadvantaging the employee**. No employee may suffer any disadvantage from the NEW classification and a disagreement on how to classify him/her. Legal entitlements of an employee due to his/her reclassification in the NEW salary scheme on the changeover date **lapse** (only) upon the expiry of three years.

Other novelties

The NEW salary scheme provides for new formal requirements for all-in contracts which will have to include a detailed breakdown. They must state the amount of the basic salary for normal working hours, the amount of the lump-sum payment, and which components of the pay it covers (including but not limited to overtime on Sundays and holidays), whether commissions, if any, are used to cover other components of the pay, and if so, which, and other components of the pay such as dedicated supplements and the total compensation (except for those employees who receive commissions). An annual cover calculation is mandatory and must be submitted to the employees in the first quarter of the following year.

Also newly regulated are the **eligible years of service with former employers** when an employee starts working with a new employer. It should be noted that not more than seven such years of service are eligible for the NEW salary scheme; however, half such periods are now eligible from a previous employment relationship as a blue-collar worker. Parental leave and child-care periods are eligible for a maximum of 24 months.

Conclusion

Even though employers still have until December 2021 to implement the NEW salary scheme, the changeover should be planned in good time. Each individual employee must be assigned to a new employment group and reclassified. The newly issued "Dienstzettel" must comply with the new formal requirements for all-in salaries. Coordination with the works council, if any has been established, should be considered in the time schedule.

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Information duties to be complied with by website operators for social media implementations

In its judgment "FashionID" (C-40/17 of 29 July 2019), the European Court of Justice (ECJ) substantiates its previous rulings on the joint responsibility of website operators and social media providers. Even though the ECJ restricts their responsibility to processes that can be actually attributed to and controlled by them, ultimately the website operator still needs to meet some obligations.

When websites implement contents of social media services such as Facebook, Twitter or YouTube, personal data of website visitors are normally transmitted from the website to such services. In the case of the Facebook "like" button, which was at issue in the ECJ ruling, IP address, browser information and information on the content are sent to Facebook Ireland, regardless of whether or not the website visitor is a member of Facebook and/or clicks the button. The situation is similar regarding other website-embedded contents such as YouTube-videos or Twitter-posts. Since in doing so the website operator enables the service to process the visitor's data, the ECJ considers this as leading to the **joint responsibility of the website operator and the service**.

Nevertheless, the ECJ limits the website operator's joint responsibility to processing steps with regard to which it actually decides on the purposes and means, thus generally **only for the collection and transmission of personal data**. It is not responsible for up- or downstream steps, and in particular for data processing at the service itself. Yet it can be concluded from the ECJ's decision that the website operator's and the service's responsibility may thus be quite different; specifically, the different degrees of responsibility may lead to different competences and different degrees of liability.

The website operator's competence thus extends primarily to the duties of information which under Articles 13 and 14 of the General Data Protection Regulation (GDPR) need to be complied with at the time the data are collected, and, if necessary, to obtaining the website visitor's consent. The latter is required when it comes to cookies (Article 96 (3) of the Telecommunications Act (TKG) of 2003). As to other data, legitimate interests (Article 6 (1) f GDPR) would suffice to justify data processing, but would need to be existing both on the side of the website operator and on that of the service.

As to any embedded social media content, the website operator's duty of information may extend only to the collection and transmission of the data, especially since it decides on the purposes and means only in this respect. The website operator must thus inform the visitor at least regarding the **circumstances** (e.g. always or only when the visitor has logged in with the service, or already when selecting the (sub)site on which the content is embedded, or only when clicking the content) under which **data are to be transmitted to which social media service for which purpose** and, possibly, which suitable guarantees are available when transmitting to a third-party country. Supplementary to this, a reference/link should be given to the privacy policy of the social media service, together with the comment that any further data processing by the service is neither known nor controllable. In line with the principles of the GDPR, the basic settings should be as **data-protection-friendly as possible** and data be transmitted only when the visitor actually clicks and thus "activates" the content or when the visitor's consent has been obtained for the general activation of social media contents and thus the collection and transmission of relevant data.

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New EU thresholds in procurement law

As of 1 January 2020, new EU thresholds will become effective for government procurement, to be applied in 2020 and 2021. The relevant regulations have been published in the Official Journal of the Community on 30 October 2019. The publication in the Austrian Federal Law Gazette has not yet taken place but is expected to occur in the course of this year.

The amendment affects only the EU values of relevance for defining thresholds. The national Austrian Threshold Ordinance of 2018 (Federal Law Gazette II no. 211/2018) will remain effective without any change until 31 December 2020; direct awards of public supply, service and works contracts will therefore still be possible up to a value of EUR 100,000.00 (excluding VAT).

	Current thresholds	*Thresholds applicable as of 1 January 2020*
Public works contracts	EUR 5,548,000	EUR 5,350,000
Concessions	EUR 5,548,000	EUR 5,350,000
Supply and service contracts awarded by central contracting authorities	EUR 144,000	EUR 139,000
Supply and service contracts awarded by other contracting authorities	EUR 221,000	EUR 214,000
Supply and service contracts awarded by sectoral contracting authorities	EUR 443,000	EUR 428,000
Supply and service contracts awarded in the field of defence and security	EUR 443,000	EUR 428,000

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