

# The Legal Status of Austrian Teachers

Rainer Palmstorfer\*

## I. The main categories of Austrian teachers

Owing to the federal-state nature of Austria, the Austrian school laws have been adopted either by the federal or by the provincial legislators. This is due to the constitutional allocation of legislative and administrative powers to the federal level (i.e. the 'Bund') and the provincial level (i.e. the 9 'Länder'). This allocation is dealt with in Articles 10 et seq of the Austrian Federal Constitutional Act ('Bundes-Verfassungsgesetz' – B-VG), Federal Law Gazette (BGBl) No 1/1930, as last amended by Federal Law Gazette (BGBl) I No 164/2013. Interestingly enough, 2 Articles (i.e. Arts 14 and 14a B-VG) out of the 8 B-VG Articles dealing with above allocation cover the Austrian school system. Concerning the service laws of teachers – except for teachers at agricultural and forestry schools the service laws of which are to be adopted by the respective province (cf Art 14a para 1 B-VG<sup>1</sup>) – the federal legislator is the competent institution (cf Art 14 para 2 B-VG<sup>2</sup>). Owing to the little relevance of agricultural and forestry schools in terms of teacher numbers (in 2011/2012, only 2401 out of 124972 Austrian teachers taught at such schools), this group will not be dealt with in this questionnaire, which will focus on the main types in the Austrian school system.

This being said, Austrian teachers may be divided into different categories, the most important of which – in terms of service laws – is the distinction between civil servants ('verbeamtete Lehrer') and contract teachers ('Vertragslehrer'). Depending on the employer, one may furthermore distinguish between federal teachers ('Bundeslehrer'), that is, teachers employed by the federal state, provincial teachers ('Landeslehrer')<sup>3</sup> and private teachers (i.e. teachers not employed by a public employer). As there is no special service law for the latter category (general employment law applies), it will not be elaborated on.

These groups of teachers are governed by different laws: Whilst the working conditions of those federal teachers who are civil servants are governed by the Civil Servants Employment Act 1979 ('Beamten-Dienstrechtsgesetz' – BDG), Federal Law Gazette (BGBl) No 333/1979, as last amended by Federal Law Gazette (BGBl) I No 147/2013, the ones of federal contract teachers are governed by the Contract Agent Act 1948 ('Vertragsbedienstetengesetz' – VBG), Federal Law Gazette (BGBl) No 86/1948, as last amended by Federal Law Gazette (BGBl) I No 147/2013<sup>4</sup>. In terms of schools, federal teachers

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\* Dr Rainer Palmstorfer (rainer.palmstorfer@sbg.ac.at) has made a doctorate in the field of European Union and Austrian Constitutional Law. Since December 2010 he has been working as a research fellow for the Department of Public Law at Salzburg University. His areas of special interests are Austrian and European constitutional law, fundamental rights, educational law and international economic law.

1 Article 14a para 1 B-VG: 'Save as provided otherwise in the following paragraphs, legislation and execution are the business of the Laender with regard to agricultural and forestry schooling as well as with regard to agricultural and forestry education in matters pertaining to student hostels and in matters pertaining to the service code for and staff representation rights of teachers and educational assistants at the schools and student hostels falling under this Article. Matters pertaining to college and university training do not fall under agricultural and forestry schooling.'

2 Cf Article 14 para 2 B-VG: 'Save as provided otherwise by para 4 subpara a below, legislation is the business of the Federation, execution the business of the Laender in matters pertaining to the service code for and staff representation rights of teachers at public compulsory schools.(...).'

3 Nevertheless, the main groups of provincial teachers are administered by the Federal Ministry of Education.

4 According to the terminology of both the BDG and the VBG, also professors and other academics teaching at universities are referred to as 'teachers' (cf § 154 BDG: 'Universitätslehrer'). However, this group will not be considered in this report.

teach at the following school types: academic secondary schools ('Allgemeinbildende Höhere Schule'), colleges for higher vocational education ('Berufsbildende Höhere Schulen'), secondary technical and vocational schools ('Berufsbildende mittlere Schulen').

This duality can also be found as regards provincial teachers, with the Provincial Teachers Employment Act 1984 ('Landeslehrer-Dienstrechtsgesetz' – LDG), which – ironically – is a federal act (see Federal Law Gazette (BGBl) No 302/1984, as last amended by Federal Law Gazette (BGBl) I No 151/2013), being applied to those provincial teachers that have the status of civil servants. By contrast, the Provincial Contract Teachers Act 1966 ('Landesvertragslehrpersonengesetz' – LVG), Federal Law Gazette (BGBl) No 172/1966, as last amended by Federal Law Gazette (BGBl) I No 24/2013, applies to contract teachers. Pursuant to § 1 LDG and § 1 LVG, provincial teachers teach at compulsory schools, that is, primary schools ('Volksschulen'), new secondary schools ('Neue Mittelschulen')<sup>5</sup>, general secondary schools ('Hauptschulen'), special schools ('Sonderschulen'), polytechnic schools ('Polytechnische Schulen') and vocational schools ('Berufsschulen').

## II. Qualifications of Austrian teachers

To answer this question one has to take into account the respective school type. Before going into details, let me draw your attention to the fact that in recent years the required qualifications or, better, the training of teachers has undergone considerable changes. In 2005, a new Pedagogical Universities Act ('Hochschulgesetz' – HG), Federal Law Gazette (BGBl) I No 30/2006, as last amended by Federal Law Gazette (BGBl) I No 124/2013, has been enacted, applying to teachers for primary schools ('Volksschulen'), general secondary schools ('Hauptschulen')<sup>6</sup>, special schools ('Sonderschulen'), polytechnic schools ('Polytechnische Schulen'). These studies take 6 semesters (§ 35 para 1 HG) and students obtain a bachelor's degree in education (§ 38 para 2 HG). The recently (summer 2013) adopted Federal-Framework-For-Introducing-A-New-Training-For-Teachers Act (hereafter: Framework Act), Federal Law Gazette (BGBl) I No 124/2013, extends the bachelor studies to 8 semesters. At present, 13 out of 14 pedagogical universities ('Pädagogische Hochschulen') offer these studies.<sup>7</sup> Prior to the HG, the training of future teachers for these school types was governed by the Academy Studies Act 1999 ('Akademien-Studiengesetz' – AstG)<sup>8</sup>, which did not provide for academic degrees for above teacher categories. Apart from introducing academic degrees, the HG 2005 also brought about a change of the organization, with 51 academies merging into 14 pedagogical universities. The recently adopted Framework Act allows also general universities to offer bachelor and master studies for primary schools, new secondary schools, general secondary schools, special schools and polytechnic schools (cf § 54 para 6c UG) in cooperation with pedagogical universities.<sup>9</sup>

Coming back to the qualification requirements, one has to look into the LDG as far as provincial teachers are concerned. For teachers at primary schools, new secondary schools, general secondary schools, special schools and polytechnic schools Article II of the Annex of the LDG requires a bachelor's degree in education pursuant to § 65 para 1 HG or a diploma pursuant to the AStG (i.e. the regime prior to the coming into force of the HG). The same holds true for the LVG, that is, contract teachers (§ 2 para 2 lit i LVG refers to Annex of the LDG). As regards other requirements, the LDG differentiates between general and special requirements. § 4 para 1 LDG lists the following general requirements: (i) Austrian citizenship or unrestricted access to the Austrian labour market, (ii) legal capacity, (iii) personal and subject-specific capacity (eg adequate command of the German language) and (iv) age of 18. Special

5 The new secondary schools will replace the general secondary schools by 2018/2019. Also federal teachers (i.e. teachers having a qualification to teach at academic secondary schools) teach at new secondary schools, which makes the latter school type a kind of hybrid between general secondary schools and academic secondary schools.

6 These teachers also teach at new secondary schools ('Neue Mittelschulen').

7 There is also a pedagogical university specializing on the training of teachers for agricultural and forestry schools.

8 The AStG expired on 30 September 2007.

9 The duality of teachers (i.e. compulsory-school teachers vs non-compulsory-school teachers) is thus also expressed in teacher training, with the pedagogical universities being competent for the training of compulsory-school teachers. By contrast, non-compulsory-school teachers are trained by the general universities.

requirements are dealt with in the Annex of the LDG. Apart from the required degrees/diplomas, also the issue of recognition of foreign certificates is dealt with (Article 1 paras 6-11 of Annex of the LDG). According to §28a LDG, functions that require a special attachment to Austria, may only be assigned to Austrian citizens (e.g. sovereign functions safeguarding the general interests of the state). § 39 LDG requires a residence that does not impair the performance of the teacher's duties.

Concerning provincial teachers working on a contract basis, the LVG refers to the VBG (see § 2 para 1 lit a LVG). § 3 para 1 VBG lists the following requirements: (i) Austrian citizenship or unrestricted access to the Austrian labour market, (ii) legal capacity, (iii) personal and subject-specific capacity (eg adequate command of the German language) as well as the meeting of special requirements listed in special provisions (i.e. § 2 para 2 lit i LVG) and (iv) minimum age of 15.<sup>10</sup> On top of that, the VBG has the same provision concerning the necessity of Austrian citizenship as the LDG (cf 6c para 1 VBG and §28a LDG), which is due to the fact that both acts are federal acts. Unlike the LDG, the VBG does not contain a residence requirement. However, as not provided otherwise contract teachers are governed by the VBG (see § 2 para 1 lit a VBG) and the latter contains a provision identical with § 39 LDG (cf § 5 para 1 VBG referring to § 55a para 1 BDG).

Regarding federal teachers having the status of a civil servant, the BDG requires the completion of university studies with a teacher training component ('Lehramt'), that is, a university degree in two subjects (see recital 23.1 of Annex 1 of the BDG).<sup>11</sup> These studies are offered by the Austrian general universities. These institutions are governed by the University Act 2002 ('Universitätsgesetz' – UG), Federal Law Gazette (BGBl) I No 120/2002, as last amended by Federal Law Gazette (BGBl) I No 176/2013.<sup>12</sup> The BDG partly necessitates further qualifications depending on the category of teachers.<sup>13</sup> For example, teachers in certain subjects at colleges for higher vocational education need to have at least two years of professional practice (see recital 23.1 para 2 of Annex 1 of the BDG). Like above acts, the BDG also contains general requirements. § 4 para 1 BDG reads almost identical to § 4 para 1 LDG. On top of that, § 42a BDG almost has the same wording as §28a LDG. § 55a para 1 BDG contains the same residence provision as § 39 LDG.

Federal contract teachers are governed by the VBG. This act refers to Annex 1 of the BDG with respect to necessary academic qualifications (§ 40 para 2 VBG). Apart from that, we find the general requirements in the above mentioned § 3 para 1 VBG and 6c para 1 VBG. Again we find a residence provision, according to which the performance of the duties may not be impaired by the residence (cf § 5 para 1 VBG referring to § 55a para 1 BDG). To sum up, the fact that the laws on teachers are enacted by the federal legislator explains the similarity of working conditions of federal and provincial teachers.

Depending on the nature of their employment, provincial teachers have a contract with (§ 2 para 2 lit a LVG) or a civil servant of the respective province (§§ 3 et seq LDG). By contrast, federal teachers work for the federal state which is also their contract partner (§ 1 para 1 VBG) or which has issued the civil servant appointment decision (cf §§ 2 et seq BDG).

According to the planned reform of the teacher's service law<sup>14</sup>, as rule a permanent position of any teacher will require the completion of master studies (2-4 semesters) following bachelor studies. What is more, the reform aims at the introduction of an induction phase at the start of a teacher's professional career. This reform would concern both federal and provincial teachers. Whether the bill will pass the Austrian Parliament remains to be seen, as there is considerable resistance from the union of public service.

<sup>10</sup> This shows that the VBG does not only apply to teachers.

<sup>11</sup> Teachers at non-compulsory schools have always needed a university degree as teaching qualification.

<sup>12</sup> Thus, there are two different types of institutions offering teacher training: pedagogical universities and universities.

<sup>13</sup> The respective requirements comprise some 20 A-4 pages of the BDG, which demonstrates the complexity of the Austrian laws on teachers.

<sup>14</sup> The planned bill is now (August 2013) being surveyed (i.e. evaluation process before the bill is introduced into parliament).

### III. Civil servants and contract teachers in numbers

According to the Austrian Ministry of Education, in 2011/2012 49.2 % of teachers (this does not include the teachers at agricultural and forestry schools) were civil servants, with 50.8 % being contract teachers. Interestingly enough, in compulsory schools (see above) the percentage of teachers being civil servants (59 %) is higher than in non-compulsory schools (e.g. academic secondary schools), where only 32.6% of the teachers are still civil servants.

Concerning the applicable laws (see above), the BDG 1979 applies to federal teachers who are civil servants, the VBG 1948 applies to federal teachers who are contract teachers. For the provincial level, the LDG 1984 governs the service law of provincial teachers with the status of civil servants, whilst the LVG 1966 applies to provincial contract teachers.

### IV. Recruitment

As far as entrance requirements are concerned, pedagogical universities may carry out aptitude assessments (§ 51 para 3 HG), which is for example done in the form of workshops. By contrast, there are generally no aptitude assessments at general universities (an exception is sports). There is an orientation phase at the beginning of the studies. However, only recently did the federal legislator enact a law that does provide for such aptitude assessments at general universities for future students, for the above mentioned Framework Act adds a 12<sup>th</sup> paragraph to § 63 UG. Pursuant to § 63 para 12 UG, which will be applied from the fall of 2014 onwards, the aptitude of prospective pedagogues has to be assessed.

### V. Permanent appointments

Under the BDG, a federal teacher starts with a provisional appointment. After 6 years, this appointment may be turned into a permanent one (§ 11 para 1 BDG). Federal contract teachers get a permanent contract after 5 years (§§ 42e para 1, 42g para 1 VBG). The situation of provincial teachers is comparable to the one of federal teachers. A provisional appointment is followed after 6 years by a permanent one as regards civil servants (§§ 9, 10 LDG) and contract teachers get a permanent contract after 5 years (§ 2 para 1 lit a LVG, §§ 42e para 1, 42g para 1 VBG). Thus it is mainly time that allows for a permanent employment.

However, in 1997, the federal government excluded the possibility to become a civil servant for federal teachers with the exception of leading positions.

### VI. Few career possibilities

Both federal and provincial teachers are governed by the Remuneration Act 1956 ('Gehaltsgesetz' – GehG). The Remuneration Act differentiates between several remuneration groups. Each teacher category is assigned to a certain remuneration group (e.g. recital 23.1 of Annex 1 of the BDG). The remuneration rises every 2 years. There are 19 remuneration steps. There are a series of functions that involve extra remuneration (e.g. being a class teacher, cf § 61a GehG). However, there are hardly any leading positions for teachers apart from the position of a headmaster or positions in the supervising school authorities.

An important issue – also with regard to the plans of the government – is extra hours. In order to reduce them, the government is planning to increase the teaching duties (from 20 to 24 hours per week). On top of that, the federal government is planning to reduce the number of above remuneration steps and

introduce higher remuneration at the start of a teacher's career. As mentioned above, these plans have met with strong opposition from the union. In brief, it is not clear whether these plans will be realized.

## VII. Transfer to another school

Pursuant to § 6 para 1 VBG, an involuntary transfer to another school is only possible if this transfer is in the interest of the service and if this transfer lies within the transfer scope of the competent department. There is also the possibility of voluntary transfer in case of teaching capacities (i.e. demand in the respective school or district). By contrast, a federal teacher who is a civil servant having a permanent appointment may only be involuntarily transferred if there is an important interest of the service (cf § 38 para 2 BDG). Therefore, civil servants having a permanent appointment have a better protection against involuntary transfer as contract teachers or provisionally appointed federal teachers. Provincial teachers having the status of civil servants may be involuntarily transferred any time to another school or to the pool of reserve teachers (§ 19 para 2 LDG). The length of service and social aspects have to be taken into consideration as long as interests of the service are not impaired. A transfer is not allowed if this leads to a considerable economic disadvantage provided that another teacher – not being threatened by such a disadvantage – would be available (§ 19 para 4 LDG). The teacher has two weeks to object to a planned transfer and may also bring an appeal against a transfer decision (§ 19 paras 5 and 6 LDG). As regards contract teachers of the provinces, § 6 para 1 VBG applies to them with the exception that they may also be assigned to a pool of reserve teachers.

## VIII. Part-time teaching

Under § 50a para 1 BDG, the weekly working time may be reduced by the half on the servant's motion provided that this does not run counter to important interests of service. In addition, there is also the possibility of reducing working time for the sake of childcare (§ 50b para 1 BDG). For contract teachers, § 50a and 50b BDG also apply (§ 20 VBG). Thus a part-time teaching job is feasible for federal teachers. For provincial teachers, the law is similar. Like § 50a para 1 BDG, § 45 LDG allows for the reduction of the teaching obligations by half provided that this does not run counter to important interests of service. Contract teachers of provinces who want to reduce their working time have to comply with § 20 VBG (§ 2 para 1 lit a LVG refers to the VBG in this respect).

## IX. Teaching and side-line

Side-line is not allowed if it impairs the fulfilment of the federal teacher's duties, if it creates the impression of having conflict of interests or if it endangers other important interests of service (§ 56 para 2 BDG). Each side-line on a commercial basis has to be notified. If the working time has been reduced pursuant to §§ 50a or 50b BDG, side-line requires the permission of the administrative authority (§ 56 paras 3 and 4 BDG). The same provision also applies to federal contract teachers (§ 5 VBG). A corresponding provision applies to provincial teachers being civil servants (§ 40 LDG) or contract teachers (§ 2 para 1 lit a LVG refers to § 5 VB which in turn refers to 56 BDG).

## X. In-service training

There is the possibility of in-service training. Teachers receive in-service training during their working hours. § 58 BDG imposes a duty on federal civil servants to take part in further training. Such duties can also be found in the LDG. Pursuant to § 29 para 3 LDG, provincial teachers have to strive after further training, with § 43 para 3 subpara 4 LDG prescribing an amount of 15 hours of further training per year.

## XI. Leave and absence

There are several possibilities of absence under Austrian law. Federal teachers may take a sabbatical (civil servants: § 78e, § 213a BDG; contract teachers: § 20a, §47a VBG) for a school year, which requires a proportional cut in the salary in a timeframe of 2-5 years. Sabbatical is only possible if this does not run counter to important interests of service and if the servant has been in federal service for at least 5 years. This possibility also exists for provincial teachers (civil servants: § 58d LDG; contract teachers: § 2 para 1 lit a LVG referring to the VBG).

As regards vacation (see § 219 para 1 BDG), federal teachers (pursuant to § 47 para 1 VBG, § 219 paras 1-5 BDG, i.e. the provision for civil servants, also applies to contract teachers) do not have to be present at the place of their teaching during the main holidays (9 weeks in summer) unless there are special obligations (eg if the teacher has to represent the headmaster, exams). During the other holidays, teachers may leave their place of employment (notification required) unless there are special employment duties that require the presence of the teachers (§ 219 para 2 BDG). The framework for provincial teachers is drafted slightly differently, for under § 56 para 1 LDG the teacher is on holidays during the school holiday unless there are special obligations (eg if the teacher has to represent the headmaster, exams). This provision also applies to provincial teachers working on a contract basis (§ 2 para 2 lit e LVG refers to § 56 LDG). Concerning holidays<sup>15</sup>, the School Time Act 1985 ('Schulzeitgesetz' – SchZG), Federal Law Gazette (BGBl) No 77/1985, as last amended by Federal Law Gazette (BGBl) I No 75/2013, provides for the following holidays (see § 2 SchZG): 1 week semester holidays (in February), major holidays, Christmas holidays (2 weeks), Easter holidays (Saturday before Palm Sunday to Tuesday after Easter Monday), Whitsun holidays (Saturday before Whitsun to Tuesday after Whitsun).

§ 74 BDG provides for special paid leave ('Sonderurlaub') on the federal civil servant's request for important personal, family or other reasons provided that this does not run counter to important interests of service. Within a year, special paid leave may not be longer than the working hours of 12 weeks. A circular of the Minister elaborates on § 74 BDG allowing, for example, 3 days of special paid leave in the case of marriage. Also federal contract teachers have this possibility (§29a VBG). The same holds true for provincial teachers (civil servants: § 57 LDG; contract teachers: § 2 para 1 lit a LVG refers to the VBG); however there are certain deviations: First, there is the possibility of special leave up to a year for certain categories of teachers qualifying for a different school type (§ 117 LDG, § 4 LVG). Second, § 57 para 1a LDG provides for special leave up to 3 months for acquiring additional IT skills.

Apart from that, there is also the possibility of unpaid special leaves for federal teachers up to 10 years provided that there are no compelling interests of service (§ 75 BDG: civil servants; § 29b VBG: contract teachers). This does necessitate certain reasons on the side of the teacher. The same applies to provincial teachers (§ 58 LDG: civil servants; § 2 para 1 lit a LVG refers to the VBG).

There are special provisions for unpaid leaves for certain reasons: for the sake of taking care of retarded children or care-dependent family members (§ 75c BDG: civil servants; § 29e VBG: contract teachers), paternity leave (§ 75d BDG: civil servants; § 29o VBG: contract teachers) and end-of-life care (§ 78d BDG). Corresponding provisions can be found in the LDG (cf § 58c LDG: care of retarded children or care-dependent family members; § 58d LDG: paternity leave; § 59d LDG: end-of-life care). For provincial teachers working on a contract basis, § 2 para 1 lit a LVG refers to the above-mentioned provisions of the VBG. Under general Austrian labour law (cf § 11 Labour Contract Law Adaptation Act – 'Arbeitsvertragsrechts-Anpassungsgesetz'), Federal Law Gazette (BGBl) No 459/1993, as last amended by Federal Law Gazette (BGBl) I No 138/2013, there is the possibility of paid special leave for the sake of vocational training ('Bildungskarenz') for persons employed on a contract basis.

15 Regarding semester holidays and main holidays, they start in Burgenland, Lower Austria and Vienna one week earlier than in Upper Austria, Salzburg, Styria, Carinthia, the Tyrol and Vorarlberg (Cf § 2 para 2 lit 1 b and lit 2 SchZG).

Furthermore, § 79 BDG provides for a leave for the sake of staying at a health resort ('Kuraufenthalt'), which is considered as sick leave (§ 79 para 5 BDG). § 76 BDG provides for special leave, especially for the sake of nursing or taking care of sick close relatives living in the same household as the teacher (§ 76 para 1 BDG). § 76 BDG allows for a special leave for all in all up to two weeks within one year. Leave under § 76 BDG is paid. This kind of special leaves can also be found with regard to federal contract teachers (§ 29f VBG), provincial civil servants (§ 59 LDG) and provincial contract teachers (§ 2 para 2 lit f VBG refers to § 59 LDG).

## **XII. Liability**

No, as far as liability is concerned the general Public Liability Act 1948 ('Amtshaftungsgesetz' – AHG), Federal Law Gazette (BGBl) No 20/1949, as last amended by Federal Law Gazette (BGBl) I No 122/2013, applies. Under the AHG, a damaged person may sue the federal state (Art 14 para 1 B-VG) for damages due to illegal behaviour of and culpably caused (i.e. negligence or intent) by a teacher while implementing the laws. In such a case, the respective teacher cannot be sued (§ 9 para 5 AHG), but the state may reimburse itself, with the teacher only being subject to such a recovery in the case of intent and gross negligence.

## **XIII. Disciplinary status**

There is no special code for teacher's ethics. Depending on the status of teachers, different laws apply. Civil servants are governed by §§ 91 et seq BDG (federal teachers) and, respectively, by §§ 69 et seq LDG (provincial teachers). These proceedings presuppose the culpable infringement of official duties and may lead to the dismissal of the teacher as ultima ratio. Interestingly enough, even the LDG – an act only dealing with teachers – is rather vague on the teacher's duties as far as teaching is concerned (cf § 31 LDG). Concerning the main duties of teachers, both LDG (§ 51 LDG) and BDG (§ 211 BDG) mention teaching, complying with the prescribed class time and further obligations relating to the teaching position. As regards contract teachers, there is no special disciplinary procedure.

## **XIV. Controversial Reforms**

As already mentioned, the Federal government is working on a reform of the teachers' service law. The cornerstone element of this reform would be the increase of the respective teaching duties. So far, the teaching duties (of federal teachers) comprise 20 hours/week, with the subjects having different units of value (see §2 of the Federal Teachers' Teaching Duties Act 1965, 'Bundeslehrer-Lehrverpflichtungsgesetz' – BLVG), Federal Law Gazette (BGBl) No 244/1965, as last amended by Federal Law Gazette (BGBl) I No 120/2012. The Government is planning an increase from 20 hours/week to 24 hours/week as standard. Certain subjects should be better paid (e.g. maths in the upper levels of secondary academic schools). However, this plan meets strong resistance from the union, which is clearly demonstrated by 33 (!) negotiation rounds which have not lead to a result so far. In August 2013, the government decided to start the evaluation process with regard to the planned reform bill.

So far, there is also no comprehensive strategy at the federal level as regards dealing with this issue. One way of making the teacher job more attractive for people coming from the private industries is to offer special contracts. This done for the sake of easing unattractive rules on credited periods (i.e. periods of prior employment) for those teachers that need to have professional-practice experiences. Another way would be higher initial salaries. However, as shown above, the teacher law reform package is still being negotiated.