POLICY REPORT

IMMIGRATION AND INTEGRATION IN AUSTRIA

REFERENCE PERIOD 1 JANUARY 2003 TO 31 JULY 2004

The opinions presented in this document are those of the NCP Austria alone and do not represent the position of the Austrian Ministry of Interior.

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FOREWORD

The following policy report "**Immigration and Integration in Austria" - Reference Period: 1 January 2003 to 31 July 2004** is another result of our work as the National Contact Point for Austria within the European Migration Network. One of the tasks for the individual contact points is the writing of selected policy reports, small-scale studies and research studies in the field of migration and asylum in Austria. These reports aim at providing a concise overview on the respective subject in all participating countries and serve both internal and external information needs by providing concise information about legislation and policy debate in Austria. Based on a common template (elaborated by the coordinating scientific unit of the Migration Network "Berliner Institut für Vergleichende Sozialforschung" – http://www.emz-berlin.de) for all participating contact points the report offers at the same time a gate for comparison and information exchange with other EU members states.

The overall scientific co-ordination lied with Dr. David Reisenzein who mastered this task with diligence and solid know how. He was competently supported by the legal assistant Mag. Sonja Grabner and equally in the area of political science by Mag. Peter Zimmermann. Mag. Brigitte Schütz enriched the report by providing statistical information and general migration data in Austria.

In order to ensure utmost accuracy the report was proofread for its legal correctness by ao. Univ. Prof. Dr. Gerhard Muzak, University of Vienna.

We trust that this report proves to be useful for the readers and thank all contributors for their input and efforts to compile a well-balanced and comprehensive report on Austria's recent immigration policy.

Dr. Erika Laubacher, IOM Vienna

Project Manager for Austria – Head of the National Contact Point Austria

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LIST OF ABBREVIATIONS

aA	andere Auffassung	contrary opinion
ABGB	Allgemeines Bürgerliches Gesetzbuch	Austrian Civil Code
AlVG	Arbeitslosenversicherungs-gesetz	Unemployment Insurance Law
AP	Österreichisches Parlament	Austrian Parliament
AsylG	Asylgesetz	Asylum Law
AsylG – DV	Asylgesetz – Durchführungsverordnung	Executive order to the Asylum Law
AuslBG	Ausländerbeschäftigungs-gesetz	Law on the Occupation of Aliens
BbetrG	Bundesbetreuungsgesetz	Federal Law Regulating the Provision of Federal Care for Asylum Seekers
BEBV	Betreuungseinrichtungen – Betretungsverordnung	Decree Regulating the Access to Federal Care Facilities
BGBl	Bundesgesetzblatt	Federal Law Gazette
B-GlBG	Bundesgleichbehandlungs-gesetz	Federal Law on Equal Treatment
BKA	Bundeskanzleramt	Federal Chancellery of Austria
BMG	Bundesministeriengesetz	Law on the Federal Ministries
BMI	Bundesministerium für Inneres	Ministry of Interior
BMJ	Bundesministerium für Justiz	Austrian Ministry of Justice
BMSG	Bundesministerium für soziale Sicherheit, Generationen und	Ministry for social security, generations and consumerism

	Konsumentenschutz	
BMWA	Bundesministerium für Wirtschaft und Arbeit	Federal Ministry of Economics and Labour of the Republic of Austria
EAST	Erstaufnahmestellen	Initial Reception Centres
EC	Europäische Kommission	European Commission
EEA	Europäischer Wirtschaftsraum	European Economic Area
EMN	Europäisches Migrationsnetzwerk	European Migration Network
FPOE	Freiheitliche Partei Österreichs	Austrian Freedom Party
FrG	Fremdengesetz	Aliens´ Law
FrG - DV	Fremdengesetz - Durchführungsverordnung	Executive Order to the Aliens´ Law
FURCHE	Die Furche	Die Furche (daily Newspaper)
GRÜNE	Die Grünen	Green Party
IOM	Internationale Organisation für Migration	International Organisation for Migration
IPR-G	Internationales Privatrechtsgesetz	International Civil Law Act
IV	Integrationsvereinbarung	Integration Agreement
IV-V	Integrationsvereinbarungs-verordnung	Integration Agreement Decree
KLEINE	Kleine Zeitung	Kleine Zeitung (daily Newspaper)
KRONE	Neue Kronen Zeitung	Neue Kronen Zeitung (daily Newspaper)
KURIER	Kurier	Kurier (daily Newspaper)
ME-	Ministerialentwurf	Ministerial proposal
NCP	Nationaler Kontaktpunkt Österreich	National Contact Point Austria

NLV	Niederlassungsverordnung	Settlement Regulation
OEIF	Österreichischer Integrationsfond	Austrian Integration Fund
OGH	Oberster Gerichtshof	Austrian Supreme Court of Justice
OEVP	Österreichische Volkspartei	Austrian Peoples Party
OOEN	Oberösterreichische Nachrichten	Oberösterreichische Nachrichten (daily Newspaper)
PR-	Presseaussendung der	Press Release of
PRESSE	Die Presse	Die Presse (daily Newspaper)
SA	Statistik Austria	Statistics Austria
SN	Salzburger Nachrichten	Salzburger Nachrichten (daily Newspaper)
SPOE	Sozialdemokratische Partei Österreichs	Social Democratic Party of Austria
STANDARD	Der Standard	Der Standard (daily Newspaper)
StbG	Staatsbürgerschaftsgesetz	Nationality Act
UBAS	Unabhängiger Bundesasylsenat	Independent Federal Asylum Review Board
VfGH	Verfassungsgerichtshof	Constitutional Court
WIF	Wiener Integrationsfonds	Viennese Integration Fund

1. INTRODUCTION

This document gives an overview of the developments in migration and integration in Austria, covering the reference period between 1 January 2003 and 31 July 2004. The report has been produced by the National Contact Point (NCP) Austria to the European Migration Network (EMN). The EMN was established to provide the national and EU-wide policy makers with objective, reliable and comparable information on migration and asylum in the European Union.

Upon nomination by the Austrian Ministry of Interior the National Contact Point has been set up within the office of the International Organization for Migration (IOM) in Vienna. Since April 2003, activities of the NCP Austria have been co-financed by the European Commission (EC) and the Bundesministerium für Inneres (BMI) (Austrian Ministry of Interior).

One of the core activities of the NCPs is to provide the European Commission with policy updates. This goes together with the task to make an inventory of the national state of play regarding legislation, case law, policy development, and the implementation of EU legislation, statistics as well as research.

1.1. General trends of immigration and emigration

As migration data for the years after 2001 is still under examination by Statistics Austria, no detailed recent figures, especially concerning the main groups of migrants who come to Austria or leave the country, may be presented yet. The same is to be stated for the resident population: the most recent data was collected through the Census 2001.

The new migration data for 2002 onwards is based on the lately developed Population Register (POPREG), which was elaborated by Statistics Austria and which is drawn from the data of the Zentrales Melderegister (Central Registration Register). Although these new statistics have not yet been presented in all details, selected figures on net immigration of foreign nationals for 2002 and

2003, which have already been published by an Austrian magazine, show a remarkable increase in immigration.

This increase is astonishing insofar, as last years immigration policy was led by the principle of “integration before new immigration”. According to the new data source, net migration of foreign nationals in 2002 amounted to 53.790 and in 2003 to 51.099, a large share of these persons being third country nationals (Profil 2004). In 2001, net migration of foreign nationals amounted to only 23.776 persons.[1] [2] It is also shown by statistics of the Ministry of the Interior, that a large number of residence and settlement titles, which do not underlie the regulations of the quota system, was issued in recent years.[3] Regarding asylum, a different development may be perceived. While the years from 1997 until 2002 were characterized by a massive increase in asylum applications (with a preliminary regression in 2000), the number of application significantly decreased at last from 39.354 applications in 2002 to 32.364 in 2003. For 2004, a further decline is expected.[4] In the future, asylum seekers will also be included in the POPREG, which will then provide more accurate data on the real amount of asylum seekers living in Austria (MOI statistics count applications instead of persons).

1.2. A summary of the main groups of migrants, refugees and asylum seekers

The share of foreign national population resident in Austria was 8,9% of the overall population by 2001. Main countries of citizenship are the countries of Ex-Yugoslavia (45,3%), followed by Turkey (17,9%) and EU-14 (14,9%). In 2001, already 12,5% of the total population resident in Austria was foreign born: 35% of

[1] Statistics Austria, ISIS database.

[2] Comparisons of migration statistics until and after 2001 have to take into consideration, that the method of calculation has changed.

[3] See Gates of Entry.

[4] BMI 2003, BMI 2004

those were born in countries of Former Yugoslavia, 19,8 in EU-14 countries and 12,5% in Turkey.[5]

Regarding the group of asylum seekers, a large number of them came from the Russian Federation (it may be estimated that many originate from Chechnya) both in the year 2003 and 2004 (until 01/08/2004). Other main countries of citizenship of asylum seekers in this period were Turkey, India, Serbia and Montenegro, Nigeria, Afghanistan and Georgia.[6] Looking at asylum decisions, recognition rates have considerably grown for asylum seekers from the Russian Federation (95,3%) and Afghanistan (86,9%), while remaining very low for others (India: 0%, Nigeria 1% - by 01/08/2004).[7] There is no official data on recognised refugees living in Austria.

[5] Statistics Austria, Census 2001

[6] BMI 2003, BMI 2004

[7] ibid. For the calculation of recognition rates non-status decisions are not considered.

2. POLITICAL DEVELOPMENTS

2.1. Political changes in Austria

On 24 November 2002, due to the collapse of the FPOEVP-coalition advanced elections to the Austrian parliament were held. The Österreichische Volkspartei (OEVP) (Austrian Peoples Party) won the elections with 42.3 %, referring the Sozialdemokratische Partei Österreichs (SPOE) (Austrian Social Democratic Party) with 36.51% to the second place. The FPOE lost (-16.9%) in its vote share and achieved 10.01%, slightly distancing DIE GRÜNEN (Green Party) with 9,47% (BMI: 2002).

The Government Programme (BKA: 2004, 6-8), signed by OEVP and the Freiheitliche Partei Österreichs (FPOE) (Austrian Freedom Party) on 28 February 2003, outlines the main objectives of the Federal Government concerning migration and asylum. These aims have been the main drivers for the legal amendments, analysed in chapter 3.

Firstly, the integration and migration policy of the Federal Government is characterized by the aim to clearly differentiate between immigration policy as an answer to voluntary migration driven by economic factors – and asylum policy, intended as protection for those suffering for prosecution.

Secondly, the Government Programme states the clear commitment to reduce the possibilities for naturalisation before a period of legal stay of 10 years. Thirdly, the Federal Government pointed out that it intends to accelerate the asylum procedure by dividing it into two separated parts: 1) admission procedure, during which it is proved by the federal authority, whether the asylum seeker is eligible for requesting an asylum application in Austria, and 2) examination procedure, which follows a positive conclusion of the first and determines the status (refugee, subsidiary protection or not) of the asylum seeker.

Moreover, the Federal Government presented in its programme the aims to include a list of safe third countries in the new Asylum Law, to re-organise the

Bundesbetreuungsgesetz (BbetrG) (Federal Law Regulating the Provision of Federal Care for Asylum Seekers) and to examine the abuses regarding the quota free immigration. Furthermore, the Coalition Parties reiterated their focus on 'integration before immigration' (BMWA: 2003 - WIF: 2003a – PR-SPOE: 2004a).

2.2. Institutional developments

Four main institutional developments took place during the reference period. All of them went hand in hand with the entry into force of three mayor legal changes. An in-depth analysis of those amendments can be found in ch. 3.

On 1 January 2003, the Integrationsvereinbarung (IV) (Integration Agreement) entered into force. Based on the new Fremdengesetz (FrG) (Aliens' Law) 1997[8], the Integrationsvereinbarungsverordnung (IV-V) (Integration Agreement Decree) 2002 establishes the competence for the Austrian Integration Funds to certify competent language schools for offering German integration courses.

With the amendment of the Bundesministeriengesetz (BMG) Law of the Federal Ministries, the Bundeskanzleramt (BKA) Federal Chancellery lost its competences regarding the Unabhängiger Bundesasylsenat (UBAS) Independent Federal Asylum Review Board. The UBAS has been organizationally assigned to the Ministry of Interior.[9]

The amendment of the Asylgesetz (AsylG) (Asylum Law) entered into force on 1 May 2004. It enables[10] the Minister of Interior to create Erstaufnahmestellen (EAST) (Initial Reception Centres) by decree. The Asylgesetz Durchführungsverordnung 2004 (AsylG – DV) (Executive Order to the Asylum Law) establishes three of the aforementioned centres in Austria, namely East, West and Airport, each responsible for determining the admission of an asylum seeker to the substantive asylum procedure within 72 hours maximum.

[8] §§ 50a ff FrG 1997.

[9] 14 BMG 1986.

[10] § 37a AsylG 1997.

Furthermore, the institution of a legal counsellor[11] has been introduced with the amended Asylum Law. This is a specially qualified person[12], who is not bound by any instructions and whose task is to assist and to advice the asylum seeker during the admission procedure.

On 1 May 2004, the Austrian federal state and its provinces concluded the Grundversorgungsvereinbarung (Basic Welfare Support Agreement), an agreement regarding the basic care for a defined group[13] of needy aliens, mainly asylum seekers. This agreement shifts part of the institutional responsibility[14] of the basic care for asylum seekers from the federal state to the nine provinces.

The last mayor change in institutional developments happened in July 2003, when the Austrian Ministry of Interior (BMI) privatised its reception and care facilities for asylum seekers. During the reference period four such facilities[15] formerly run by the BMI existed: Traiskirchen, Thalham, Schwechat and Bad Kreuzen. On behalf of the BMI,[16] European Homecare[17] has privately organised all four since July 2003.

2.3. Central policy debates

The asylum and migration policy of the Austrian Government has been covered by Austrian media extensively during the reference period.

The already mentioned Integration Agreement (IV), which entered into force on 1 January 2003 is subject of public discussion. While the members of the coalition parties praised the implementation of the IV as a major step to provide the legal residents with the needed knowledge of the German language to actively

[11] § 39a ibid.

[12] § 39b ibid.

[13] Art. 2 Grundversorgungsvereinbarung – Art. 15a B-VG 2004.

[14] Art. 4 ibid.

[15] § 1 BEBV 2004.

[16] § 4 BbetrG 1991.

[17] See http://www.eu-homecare.com

participate in the cultural, economic and civil life in Austria[18], some provisions of the IV have been criticised by members of the opposition parties and NGOs working in the field of migration. State subsidies cover a maximum of 50%, if the immigrants fulfil the obligations within the first 18 months. According to the provisions of the IV, integration courses consist of 100 teaching units and are considered to provide the participants with the stipulated knowledge of German, corresponding to the A1-level of the "Common European Framework".19 The Grundversorgungsvereinbarung (Basic Welfare Support Agreement),[20] covered in the Austrian media landscape mainly under the term Art 15a-Vereinbarung (15a - Agreement of the Federal Constitution), entered into force on 1 May 2004. This agreement divided the responsibilities for the provision of basic welfare for asylum seekers[21] between the Federal Government and the governments of the regional provinces of Austria. According to the provisions of the Basic Welfare Support Agreement the costs, incurring by virtue of the execution of the present Basic Welfare Support Agreement, are divided among the federal and the provincial governments by six to four. Since the implementation of the Basic Welfare Support Agreement, the Federal Government is responsible for the reception and registration of arriving asylum seekers in all three Initial Reception Centres (EAST) and the allocation and transport of admitted asylum seekers to the accommodation facilities in the provinces, based on a distribution key considering the results of the population census.[22] The accommodation and provision of welfare support to asylum seekers is incumbent on the provincial governments. The Agreement itself has been welcomed even by opposition parties (e.g. PR-SPOE: 2004b).

The non-fulfilment of the stipulated quotas (KURIER: 2004b)[23] by most of the provincial governments gave cause to a still ongoing debate between the federal

[18] § 50, FrG 1997.

[19] § 3 and § 7, IV-V 2002.

[20] Grundversorgungsvereinbarung – Art. 15 B-VG 2004.

[21] § 2, ibid.

[22] § 1, ibid.

[23] Burgenland: 3.4%, Carinthia: 6,9%, Lower Austria: 19,24%, Upper Austria: 17,24%, Salzburg: 6.42%, Styria: 14.73%,

and provincial authorities in Austria. By 11 May 2004, only three provinces, namely Vienna, Styria and Lower Austria, met their commitments (SN: 2004a). The provincial governors, not able to meet their obligations, excused their non-compliance to the prescribed scheme by the repeated increment of needy asylum seekers in the first months. Initiatives and efforts undertaken by BMI aimed to force the provincial governments to fulfil their obligations. Thus, numerous meetings of the Conference of Provincial Governors (KURIER: 2004a) with the Minister of Interior, Ernst Strasser, followed to solve the problem. Until the end of the reference period the involved parties could not find a compromise.[24]

Certain provisions of the new Asylum Law initiated a broad public discussion about the direction of the Austrian Asylum policy within political circles and civil society. Main points of concerns have been the possible deportation of applicants during the phase of appeal in the admission procedure (PR-AiN: 2004a), which has been claimed a lack in safeguarding the legal protection of asylum seekers, deviating from general rules of Austrian administrative law (PR-AP: 2003a),[25] and the interdiction to present new facts (*Neuerungsverbot*) after the completion of the first instance of the proceeding (PRESSE: 2003a).

These concerns culminated in the lodge of a claim to the Federal Constitutional Court by the federal governments of Upper Austria (OOEN: 2003) and Vienna together with the Unabhängiger Bundesasylsenat (UBAS) Independent Federal Asylum Review Board with the aim to declare unconstitutionality[26] of certain provisions of the Federal Law concerning the Granting of Asylum.[27]

Tyrol: 8,38%, Vorarlberg: 4.37%, Vienna: 19.30%.

[24] The consultation process between the parties of the Basic Welfare Support Agreement is still ongoing. The continuing discussion will be covered in the following reports.

[25] See statement of Wolfgang Szymanski, BMI.

[26] A final decision of the Federal Constitutional Court has been published but not within the reference period. (For further information see ch. 4.1) The final decision will be subject to the following reports.

[27] AsylG 1997.

3. CHANGES IN LEGISLATION

3.1. Migration (immigration and integration)

In Austria, two major laws control migration and integration on the labour market: the Aliens' Law[28] and the Ausländerbeschäftigungsgesetz (AuslBG) (Law on Occupation of Aliens).[29] Both laws, which are cross-linked, have been significantly amended during the reference period. The motivation to amend the laws was twofold: Community-legislation, which implied changes, and the new government programmes in the years 2000 and 2002. These discourses can be found in chapters 2.3 and 4.1.

The Aliens' Act regulates the entrance, residence and settlement of persons, who do not hold Austrian citizenship. Holders of EEA and Swiss citizenships enjoy preferential treatment. Due to the restricted length of the report the discourse is limited to other than the aforementioned citizens.

The Aliens' Act differentiates between two groups of people: those, who reside temporarily (e.g. students, temporary employed persons, commuters)[30] and those expressing *animus domiciliandi*, which means people who want to settle in Austria. Accordingly, a regime of different types of permit has been upright since 1 January 1998 when the FrG 1997 entered into force. The *Aufenthaltserlaubnis* (residence permit) is issued to people who wish to reside temporarily. People who plan to stay in Austria permanently have to apply for a *Niederlassungsbewilligung* (settlement permit) or a *Niederlassungsnachweis*[31] (proof of settlement = long term EC residence permit).[32] The treatment of both groups differs widely. While the first group stays only temporarily in Austria and the wish to be employed is only the exceptional case, the second group

[28] FrG 1997.

[29] AuslBG 1975.

[30] § 4 FrG-DV 1997.

[31] Entered into force on 1 January 2003.

[32] § 7 FrG 1997.

comprises "*aliens who have one centre of their vital interests in Austria or aliens who have taken up a domicile in Austria in order to engage in a gainful activity".*[33] The latter group is perceived and treated as (im)migrants by the Austrian legislator. Since these persons want to settle in Austria, they have to meet additional criteria in contrast to short-term residents. Thus, they enjoy special treatment such as consolidation of residence status.[34]

On 1 January 2003, the Integrationsvereinbarung[35] (IV) (Integration Agreement) entered into force. Among others, this Agreement provides for German language courses in combination with basic Austrian civic studies, at the partial expense of the concerned alien. This Agreement is compulsory for all third country nationals, who settled down in Austria after 1 January 1998, or who are granted a first settlement permit after 1 January 2003.[36] The obligations have to be fulfilled by the alien within a period of four years.[37] Aliens renewing their settlement permits between January 1998 and January 2003 enter into the Integration Agreement with the entry into force or their renewed permit. The federal state pays 50% of the costs, if the alien completes the integration course within a period of eighteen months 25% are paid during the period of 18 months and two years. Afterwards the costs have to be met by the alien himself.[38] However, there are different categories of aliens who are exempt from the IV (e.g. third country nationals who enjoy preferential status, infants, key professionals,[39] third country nationals who can prove that they have an adequate command of German language).[40] The IV serves the purpose of integrating permanently settled aliens. They should acquire the basic skills that enable them to successfully live their life in Austria. On the other hand, the alien has to expect consequences, if he/she does not want to sign the IV or does not fulfil the IV (for reasons ascribable exclusively to

[33] § 7 (3) 1-2 ibid.

[34] § 35 ibid.

[35] §§ 50a-d ibid.

[36] § 50a (1) FrG 1997.

[37] § 50c ibid.

[38] ibid.

[39] § 2(5) and § 25 AuslBG 1975.

him/herself) during the required period. In the first case, the first or subsequent settlement permit will not be granted[41] and in the second case, he/she shall be informed by administrative decision of non-compliance[42] and can ultimately be expelled by administrative decision[43] or subject to administrative punishability.[44] In this regard, it has to be mentioned that due to the non-expiration of the four years period, possible sanctions were not executed yet. Under consideration of aggravating circumstances a postponement can be accepted which may not exceed a period of two years.[45]

Trying to manage immigration into Austria, the Aliens' Law codifies different instruments. Application for a first residence/settlement permit needs to be submitted as a general rule from outside Austria to Austrian diplomatic authorities, however, as a general rule, decisions are taken by domestic authorities.[46] Exemptions are codified for aliens already residing lawfully in Austria who e.g. want to renew their permit[47] or belong to the group of favoured third country nationals. Aliens applying for a residence title have to meet preliminary conditions, meaning that no grounds of refusal must be occurant at the time of decision[48] (e.g. *ordre public* clause, refusal of signing the IV). Additionally, applicants for first settlement permits are subject to quota regulations. Such settlement permits can only be granted in accordance with the *Niederlassungsverordnung* (NLV) (Settlement Regulation).[49] The regulation limits purposes and numbers of foreigners that are allowed to receive a right of settlement according to a preliminary established threshold (quota). This regulation is valid for a period of one full year (not a calendar year) and is

[40] § 50b FrG 1997.

[41] § 12 (1a) ibid.

[42] § 34 (2a) ibid.

[43] § 34 (2b) ibid.

[44] § 108 (1a, 1b) ibid.

[45] The latest figures are due to be published by the OEIF in early 2005 on its website: www.integrationsfonds.at

[46] § 14 (2) in corroboration with §90 FrG 1997.

[47] § 14 (2) FrG 1997.

[48] §§ 10-12 ibid.

[49] § 19(1) ibid.

renewed yearly. In practice, settlement regulations are issued in congruence with the calendar year. In principle, only third country nationals, who apply for a right of settlement for the first time, are touched by the quota system. The quota is valid for the following categories of aliens: key professionals[50] or third country nationals in pursuance of self-employment as key professionals, seasonal workers and agricultural helpers, and their spouses and unmarried children under age, as well as dependent family-members of third country nationals, who have settled down in Austria before 1 January of 1998, or third country nationals who want to settle down without the intention to follow a profession.[51]

There are some other persons who do not fall under the settlement regulation. Such exceptions concern essentially staff members of media (journalists), artists,[52] persons exempted from the Law on the Occupation of Aliens[53] and citizens of Member States of the EEA and their relatives.[54] Family reunification is also ruled by the quota system. Once the quota is exhausted, the applying relative of the core family has to wait until the entry into force of the subsequent settlement decree and open quotas therein.[55]

In compliance with the European long-term Residents Directive, the Proof of Settlement has been introduced into the Alien's Law.[56] This kind of settlement permit is granted upon application to persons, who have fulfilled the IV-requirements and have settled in Austria for more than five years, as well as to preferentially treated third country nationals, with a completed period of previous residence of at least two years. The Proof of Settlement implies a universal work

[50] § 2(5-9) AuslBG 1975. (key professional: offers special knowledge, earns 60% of Höchstbeitragsgrundlage (basis for maximum tax contribution) plus special interest of an enterprise in this person, or the employment of the person creates additional jobs, or the person is a leading manager, or the employment leads to additional FDI, or the person is academically educated)

[51] See NLV 2004.

[52] § 19 (2) FrG 1997.

[53] § 1 (2,4) AuslBG 1975.

[54] § 19 (2) FrG 1997.

[55] §§ 20-22 FrG 1997.

[56] § 24 ibid.

permit[57] in Austria and is time-unlimited, whereas residence permits and settlement permits do not necessarily comprise the right to work in Austria. First-time settlement permits for key professionals are issued by local authorities with regard to the quota system and comprise, according to the amended law, a work permit (one-stop-shop).[58]

With the accession of ten new member states to the EU, the EU-Erweiterungs-Anpassungsgesetz (EU Expansion Adjustment Law) entered into force on 1 May 2004. It codifies that nationals of the new member states (except for Malta and Cyprus) still remain subject to the Law on the Occupation of Aliens, if they apply for a settlement permit after 1 May 2004. Free access to the labour market will receive those, who have been working legally in Austria for at least 12 months, or have settled in Austria for five years, or fulfil the requirements to receive a long-term work permit according to the Law on the Occupation of Aliens[59] until 1 May 2004.[60]

3.2. Asylum

Asylum issues are codified in the Austrian Asylum Act, which has been modified lately. The new version entered into force on 1 May 2004. A number of far reaching amendments have been introduced accompanied by intense public discourse.[61]

The asylum application procedure has been split into an admission procedure and the substantive asylum procedure.[62] The aim of the admission procedure is to determine within a time period of 48 to maximum 72 hours manifestly unfounded or inadmissible applications, which should lead to a more efficient and accelerated asylum system in Austria. The admission procedure must take place

[57] § 17 AuslBG 1975.

[58] § 12 AuslBG 1975 in corroboration with §89 FrG 1997.

[59] § 15 AuslBG 1975.

[60] § 32 EU-Erweiterungs-Anpassungsgesetz 2004 and ME-BMWA 2004.

[61] See ch. 2.3.

[62] § 24a AsylG 1997.

in one of the three Initial Reception Centres,[63] which have been established by way of decree in the course of the amended law.[64] Once this procedure ends with a positive decision, the asylum applicant enters the regular asylum procedure[65] and therefore starts to be subject of the Federal Law Regulating the Provision of Federal Care for Asylum Seekers. As a consequence, the asylum seeker enters the federal care system if his/her neediness is confirmed.[66] The amended Asylum Law establishes that asylum seekers have to be searched and treated by way of police identification service upon the submission of the asylum application.[67] The fingerprints are entered into the EURODAC system. Searching the asylum seeker is done to learn more about the flight routes and the possible entry via a safe third country (which would make the application in Austria inadmissible and lead to an expulsion order). During the admission procedure, an applicant cannot be expelled (*faktischer Abschiebeschutz*).[68] However, an expulsion order issued automatically with the rejection of an application due to reasons of safe third country transit is enforceable at once, meaning even before the decision of rejection becomes non-appeal able.[69] This means that an appeal against rejection due to safe third countries does not have an automatic suspensive effect[70], which, however, the UBAS is enabled to grant.[71] The Dublin II Regulation has been implemented together with a comprehensive list of safe third countries.[72] During the admission procedure, the amendment codifies the obligation that the applicant gets advice from legal counsellors about his/her rights, duties and legal possibilities during the admission procedure. To become a legal advisor, special criteria must be met e.g. special knowledge in asylum law

[63] § 24a in corroboration with §37a ibid.

[64] § 3 AsylG-DV 2004.

[65] § 24a AsylG 1997.

[66] § 1 (1) BbetrG 1991, for further information see ch. 4.1.

[67] § 24 (4) AsylG 1997.

[68] § 19 (1) ibid.

[69] §§ 4, 4a, 5, in corroboration with 5a ibid.

[70] § 29 (2) ibid.

[71] § 32 (4a) ibid.

[72] § 6 (2) ibid.

and working experience in the concerned field.[73] Special procedural criteria have been introduced for traumatised or tortured asylum seekers. Once this fact has been medically proved, the applicant is automatically admitted to the regular procedure. Applicants, subject to the regular procedure, receive a residence permission card, which is valid until the final decision of the case.[74]

The appeal system has also been changed with the new asylum law. The introduction of new means of evidence and facts are principally restricted to *nova producta*[75] and *nova reperta,*[76] defective procedure, or for applicants who medically evidenced that they were traumatised.[77] Under the headline *Neuerungsverbot* (interdiction to present new facts), this part of the amendment has been criticised.

Moreover, the term subsidiary protection,[78] and the *Familienverfahren* (Family Procedure) have been introduced meaning that the asylum procedure of all members of the core family will be treated as one single case, and the asylum applicants will therefore be subject to the same decision.[79] Applications for asylum submitted by family members at Austrian authorities abroad are at the same time applications for a visa, which has to be granted if the asylum decision of the case in Austria seems to be likely.[80] The possibility for a refugee to renounce from the granted right to asylum was introduced, too.[81] The reason for this introduction was to create a fast track for refugees, who want to renounce from their right without a formal procedure (ME-BMI: 2003).

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[73] §§ 39a, b ibid.

[74] §§ 19, 24a, b, 36b ibid.

[75] § 32 (1) 1 ibid.

[76] § 32 (1) 2 ibid.

[77] in the decision VfGH G 237/03 from 15 October 2004, the restriction to medically evidenced traumatization has been declared unconstitutional.

[78] §§ 2 (2), 8 ibid (previously used terms: temporary residence permit for rejected asylum seekers).

[79] § 10 ibid.

[80] § 16 ibid.

[81] § 13a ibid.

3.3. General legal changes affecting migrants, refugees and asylum seekers

In June 2004 amendments to the Austrian Equal Treatment laws passed the Parliament in order to implement the Racial Equality Directive[82] as well as the Employment Framework Directive,[83] whose transpositions were due on 19 July 2003 and 2 December 2003 respectively. Modifications were also motivated by Directive 2002/73/EC amending Council Directive 76/207/EEC on the implementation of the principle of equal treatment for men and women as regards access to employment, vocational training and promotion and working conditions,[84] which will have to be transposed by 5 October 2005. The new provisions entered into force 1 July 2004.

The former Law on Equal Treatment of Men and Women was changed into the Bundesgesetz über die Gleichbehandlungskommission und die Gleichbehandlungsanwaltschaft (Law on the Equal Treatment Commission and the Equal Treatment Office). It includes procedural provisions and broadens the mandate of the specialised institutions: the Equal Treatment Commission and the Equal Treatment Office. Respective substantive provisions were introduced through enactment of the Gleichbehandlungsgesetz (Equal Treatment Law), which comprises regulations on equal treatment of men and women, irrespective of race, ethnic origin, religion and belief or sexual orientation at the workplace and deals with equal treatment irrespective of race and ethnic origin in other fields, including relationships between private subjects. Additionally, it provides that the nine federal provinces have to enact some legislation to safeguard equal treatment in the following areas: social protection, social advantages, education and access to supply of goods and services, which are available to the public. Only three[85] out of the nine federal provinces adopted necessary legislation by December 2004. Other provinces transposed the

82 Council Directive 2000/43/EC.

83 Council Directive 2000/78/EC and Directive of the EP 2002/73/EC.

84 Directive of the EP 2002/73/EC.

85 Vienna, Styria and Carinthia.

Directives partly,[86] their anti-discrimination laws are still in the process of parliamentary consultation[87] or they[88] did not submit any proposal for legislation yet (STANDARD: 2004b). The Bundes-Gleichbehandlungsgesetz (Federal Equal Treatment Law),[89] whose scope is limited to the treatment of federal government civil servants, covers through its amendment all the grounds of discrimination specified in the two Directives, apart from disability, and includes additional provisions concerning sexual harassment (Schindlauer: 2004a – Schindlauer: 2004b). Regarding the issue of equal treatment of disabled, a ministerial draft of the Behinderten-Gleichstellungsgesetz (Law on the Equal Treatment of Disabled)[90] was presented to the Parliament in August 2004, but is still in the process of consultation.

As Austria did not communicate their amended legislation transposing the Directives and the federal provinces did not adopt necessary legislation, the European Commission launched an infringement procedure against Austria in July 2004 (PR-EC: 2004a – PR-EC: 2004b).

Claiming the incriminating abuse of the adoption of adult third country nationals,[91] the laws concerning the adoption of adults have been amended. The provisions regulating adoption in Austria are codified in the Austrian Civil Code (ABGB) and the International Civil Law Act (IPR-G), regarding the adoption of a third country national. Before the amendment, the Austrian law was solely applicable meaning that even if the adoption of an adult in the country of origin was interdicted, it still was possible in Austria. National law and the law of the country of origin have only been applied cumulatively to persons of minor age. With the amendment, both the personal statute of Austria and the country of origin are applied cumulatively.[92] If the adoption of an adult (because

86 Lower Austria.

87 Upper Austria and Vorarlberg.

88 Burgenland, Salzburg and Tyrol.

89 B-GlBG 1993.

90 ME-BMSG 2004.

91 ME-BMJ 2004, 3.

92 § 26 (1) IPR-G 1998.

of age not for any other reasons) in its country of origin is interdicted, it is in Austria too. A discretionary component has been introduced to the Civil Law, which states that adoption of an adult shall only be granted if a parent-child relationship exists, particularly if the adoptee has been living with the adopting parent in the household community for five years before the adoption.[93]

Two decisions of the Austrian Supreme Court of Justice have changed practices regarding the principles of federal care for asylum seekers. In the first decision, the Court fixed that an enforceable right to federal care exists,[94] contrary to the legal text in force at the time of the decision, which expressively stated that there was no legal right to federal care.[95] The reason for this decision has been that an NGO requested allowance from the Austrian state because of having fulfilled the state's obligation under the Federal Law regulating the Provision of Federal Care for Asylum Seekers. It has been determined that the state would have fulfilled its obligations, under the same circumstances, hence it is not free from debt because of a third party fulfilling state's obligations. The right to claim federal care is deduced from the principle of equal treatment extracted as a general principle of the federal care act itself. In its second decision it has been stated that if the general prerequisites of the Federal Law regulating the Provision of Federal Care for Asylum Seekers were fulfilled (the asylum seeker's cooperation in providing information about his/her identity and neediness), the asylum seeker has to be granted federal care without respect to nationality.[96] An internal directive, issued by BMI, stated that asylum seekers with defined nationalities should not receive federal care. This directive has not been published and was therefore left out of consideration by the court. The court defined that the refusal to grant federal care on the sole basis of nationality, arguing that different nationalities had minor chances to gain refugee status, cannot be deduced from the Federal Law regulating the Provision of Federal Care for Asylum Seekers and is a clear contradiction to the

[93] § 180a (1) ABGB 2004.

[94] OGH 1 Ob 272/02k, 3-8.

[95] § 3 (1) BbetrG 1991 idF. BGBl I 101/2003.

[96] OGH 9 Ob 71/03m, 1-7.

essence of this Law (Funk: 2003 – Muzak: 2003 – aA Wilhelm: 2003). By amending parts of the Federal Care Act[97] the previously challenged provisions were amended with retroactive effect.

[97] For details see BGBl I 101/2003.

4. IMPLEMENTATION OF EU-LEGISLATION IN AUSTRIA

4.1. Overview of the implementation of different EU legal instruments

Provisions of Council Directive 2003/109/EC[98] concerning the status of third-country nationals who are long-term residents were implemented in the Federal Law concerning the Entry, Residence and Settlement of Aliens (Aliens´ Law) 1997 through an amendment in 2002, which entered into force on 1 January 2003. In order to be classified as a long-term resident, the Aliens Law requires permanent settlement for five years and the proof of the applicant's ability to maintain him-/herself through a lawful gainful activity. In this regard the regulation of the Aliens Law has to be considered critically in comparison to the Directive's provisions,[99] because residence and settlement permits do not automatically imply a permission to work.[100] Moreover, the issuing of working permits is according to the Law on the Occupation of Aliens subject to the fulfilment of certain conditions (application of the quota system which reflects Austria's yearly reception capacity).[101] These prerequisites can constitute a legal restriction for third-country nationals to apply for a long-term residence permit.[102] Additionally, the Directive gives member states the possibility to impose certain integration conditions on applicants.[103] Austria has used this option introducing the Integration Agreement.[104]

Corresponding provisions to the Council Directive's (2003/86/EC) articles on the right to family reunification[105] amended the previous provisions in the Aliens'

[98] Council Directive 2003/109/EC.

[99] § 24 (1) Z 1 FrG 1997 in comparison with Art 4 and 5 Council Directive 2003/109/EC.

[100] § 4 AuslBG BGBl 1975.

[101] § 12 ibid.

[102] See ch. 3.1.

[103] Art 5 para. 2 Council Directive 2003/109/EC.

[104] §§ 50 a–d FrG 1997, see for details above.

[105] Council Directive 2003/86/EC.

Law,[106] whose quota system applies also to the regime of family reunification. As a consequence, the Aliens' Law provides neither explicit waiting period limits concerning the issuing of residence permits to family members,[107] nor explicit limits regarding the waiting time for access to the labour market.[108] However, in practice, the Austrian system of family reunification can imply longer waiting periods for applicants as provided by the Council Directive.[109] (PR-WIF: 2003b). Regarding this, the Constitutional Court stated in its decision from October 2003 that as a matter of principal the quota system for family reunification as constitutional. However, an objective order regarding the treatment of applications should, according to the Court, be established.[110] As the Aliens' Law requires the fulfilment of the Integration Agreement for issuing the proof of settlement to permanently resident family members, the fulfilment of the Agreement is also relevant in regard to family reunification.[111] Furthermore, no explicit time limits were introduced in order to bind authorities to notify applicants of the decision regarding their application for family reunification.[112]

In the area of asylum, the two following Council Regulations (Dublin II and "Eurodac") are of importance and led to amendments of the relevant national laws.[113] The so called Dublin II Regulation EC/343/2003[114] which establishes criteria and mechanisms for determining the Member State responsible for examining an asylum application lodged in one of the Member States by a third-country national, was incorporated into Austrian legislation by amending the Federal Law Concerning the Granting of Asylum (Asylum Law) 1997.[115] While

[106] § 18, 20-22 FrG 1997.

[107] Art 8 Council Directive 2003/86/EC in comparison to §§ 18 and 20-22 FrG 1997.

[108] Art 14 Council Directive 2003/86/EC in comparison to §§ 18 and 20-22 FrG 1997.

[109] According to Art 8 the maximum waiting period is 3 years.

[110] see decision VfGH G 119/03 from 8 October 2003

[111] For the Integration Agreement's compliance with the Directive, see para above.

[112] Art 5 para. 4 Council Directive 2003/86/EC in comparison to § 22 Abs 1 FrG 1997.

[113] Regulations are directly applicable in the member states and transposition *in sensu stricto* is not permitted through national legislation. But for the purpose of clarity, the incorporation or repetition of certain provisions in national laws is accepted.

[114] Council Regulation 2003/343/EC.

[115] AsylG 1997.

the Regulation considers only member states of the European Union as safe third countries, the Austrian Asylum Law also regards Switzerland and Liechtenstein as such, unless – by reason of special circumstances relating to the person of the asylum seeker - the contrary can be assumed.[116] Furthermore, the Asylum Law states a general legal assumption that certain other countries are to be assessed as safe third countries.[117] Regarding the inadmissibility of asylum applications by reason of absence of responsibility under a treaty provision or pursuant to a directly applicable act of the EU (i.e. this Regulation), the Asylum Law provides procedures in compliance with the Regulation.[118] The newly introduced list of safe countries of origin[119] does not find a corresponding provision in the Regulation, but in the view of the future Directive on minimum standards on asylum procedures,[120] the safe country of origin-concept will presumably be applied also on European level. In order to follow the detailed rules laid down in Regulation (EC) 1560/2003[121] regarding the determination of the member state responsible for examining an asylum application, respective provisions were inserted into the Asylum Law.[122]

The main purpose of the Asylum Law's amendment in 2002[123] was to harmonise the national legislation with the provisions of the Council Regulation 2725/2000 concerning the establishment of "Eurodac"[124] and with Council Regulation 407/2002, which lays down certain rules to implement the above-

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116 § 4 (2) AsylG 1997 in comparison to Art 2 Council Regulation (EC) No 343/2003.

117 e.g.: States that ratified the Geneva Convention relating to the Status of Refugees of 1950, the European Convention of Human Rights and Fundamental Freedoms of 1950 as amended by Protocol No. 11, etc., for details see § 4a AsylG 1997.

118 §§ 5, 5a and 32 (2) AsylG 1997 and Art 3, 4 and 19 para.2 Council Regulation (EC) No 343/2003. It has to be noted that the Regulation permits the granting of the suspensory effect of first instance's decisions, in case national laws allows for it. But in this regard the general exclusion of the suspensory effect (for exceptions see §§ 4, 4a, 6 and 32 (3) AsylG) of first instance's decisions in the Asylum Law (§§ 5 and 32 (2)) does not comply with the Austrian constitutional law. By decision of the Constitutional Court on October 15, 2005, the paragraphs in question were qualified as unconstitutional, BGBL I 129/2004.

119 § 6 (2) AsylG 1997.

120 Proposal for a Council Directive COM/2000/0578 final.

121 Commission Regulation 2003/1560/EC.

122 Art 24a (8) AsylG 1997.

123 AsylG 1997 idF. BGBl I 126/2002.

124 Council Regulation 2000/2725/EC.

mentioned regulation.[125] In detail, provisions on the collection, transmission and comparison of fingerprints[126] as well as the advance data erasure (before the expiry of 10 years) in case of acquisition of the citizenship of any EU member state by the asylum seeker,[127] were incorporated into the new Asylum Law, which entered into force on 1 January 2003. In order to guarantee an effective application of the Regulations, the Aliens´ Law was adapted as well. The Council Regulation 2725/2000,[128] as well as the relevant provisions in the Austrian Laws[129] state the duty of the relevant national authorities to take fingerprints etc., which means that the aforementioned provisions have been correctly incorporated into the Austrian legal system.

The Council Directive's provisions on minimum standards for the reception of asylum seekers[130] will have to be transposed into Austrian Law by 6 February 2005. In this regard several amendments to the Bundesbetreuungsgesetz (BbetrG) (Federal Law Regulating the Provision of Federal Care for Asylum Seekers) were enacted during the reference period. The Federal Law's amendment in 2003[131] established a catalogue of criteria in order to state detailed conditions for the eligibility, exclusion and restriction in regard to federal care.[132] Furthermore, it introduced a new provision on the access to reception centres, which empowers the Federal Minister of Interior to prohibit unauthorised stay for the purpose of maintaining order in an Initial Reception Centre or in a Federal Care Centre. By comparison, the Directive allows such restrictions only on grounds relating to the security of the centres but at the same time limits the general access to centres to UNHCR personnel as well as legal counsellors.[133] In order to transpose the Directive's provisions and to

[125] Council Regulation 2002/407/EC.

[126] Art 4 (1) Council Regulation 2000/2725/EC and § 35 AsylG 1997 idF BGBl I 126/2002.

[127] Art 6 and 7 Council Regulation 2000/2725/EC and § 36 (5) AsylG 1997 idF BGBl I 126/2002.

[128] Art 4 and 8 Council Regulation 2725/2000/EC.

[129] § 96 FrG 1997 – lex specialis: § 35 (1) AsylG 1997.

[130] Council Directive 2003/9/EC.

[131] BbetrG 1991 idF 101/2003.

[132] § 2 and 2a ibid.

[133] § 6 Abs. 2 BbetrG 1991 idF 101/2003 and Art 14 § 7 Council Directive 2003/9/EC.

incorporate the Basic Welfare Support Agreement,[134] the Federal Law Regulating the Provision of Federal Care to Asylum Seekers was revised again in 2004. The conclusion of the agreement, which entered into force by constitutional provision already on 1 May 2004, was – among other purposes - intended to be a next step towards the transposition of the Directive. It has to be noted that the Directive's minimum standards were in the main introduced into the Austrian system. The new Federal Law Regulating the Provision of Federal Care to Asylum Seekers, which will enter into force on 1 January 2005, establishes a legal right to assistance and a legal remedy before courts in case of negative decisions concerning the granting of assistance.[135]

Respective regulations to the Council Directive's provisions on minimum standards for giving temporary protection in the event of a mass influx[136] can be found in different legal instruments. The Aliens´ Law provides the legal basis for the Federal Government to issue a regulation in order to provide displaced persons with a temporary residence title.[137] However, according to Austrian legislation, these persons do neither receive an individual residence title nor social rights. Regarding asylum procedures, the Asylum Law states in accordance with the Directive that in cases of temporary protection, the computation of the time limit for procedures in respect of the persons concerned pursuant to the present Federal Law shall be suspended for the duration of the temporary protection.[138] As for assistance, the Basic Welfare Support Agreement is also applicable on temporary protection refugees,[139] but in cases of mass influx, support can be subject to limitations, which may not jeopardise

[134] Grundversorgungsvereinbarung - Art. 15a B-VG 2004.

[135] §§ 2 (1) in conjunction with 9 (2) BbetrG 1991 idF BGBl I 2004 and Art 21 Council Directive 2003/9/EC.

[136] Council Directive 2001/55/EC.

[137] § 29 FrG 1997 and Art. 8 (1) Council Directive 2001/55/EC.

[138] § 23 (4) AsylG 1997 and Art 19 (1) Council Directive 2001/55/EC.

[139] § 2 (1) Z 3 and § 8 Grundversorgungsvereinbarung – Art. 15a B-VG 2004.

the provision of basic needs.[140] However, limitations carry the potential to undermine the standards established in the Directive.[141]

4.2. The relation between national policies and EU in the fields of migration and asylum

In comparison to the European approach, the Austrian migration and asylum policy does not seem to have significantly distinctive features. Austria's policy, which is intended to handle asylum applications faster and to lead to more efficiency, is generally in line with European standards. In comparison to Austria, which declared specific countries as safe countries of origin and extended its list of safe third countries, the majority of European states did not establish (yet) an official list of safe countries of origin and/or safe third countries. But in practice, many states apply this concept and it has to be noted that at EU level, political agreement was found on a common list of safe countries of origin.[142] A former peculiarity of the Austrian system in the European comparison, the possibility to apply for asylum via Austria's diplomatic missions, has been abrogated through the amendment of the Asylum Law in 2003. At present, this possibility is only applicable within the family reunification procedure.[143]

[140] § 8 (4) ibid.

[141] Ch.II Art. 8 to 16 Council Directive 2001/55/EC.

[142] See the future Asylum Procedures Directive, Proposal for a directive on Minimum Standards on Procedures in Member States for Granting and withdrawing Refugee Status COM 2000/578.

[143] See §16 Asyl BGBl I 126/2002 in comparison to § 16 AsylG BGBl L 101/2003.

5. POLICY IMPLEMENTATION ISSUES

5.1. Gates of entry

In Austria there is a quota system for specific kinds of settlement permits like for key professionals (and their dependents), self-employed people working as key professionals (and their dependents), family reunification and settlement permits without the possibility to work. In 2004, the total quota was reduced to 8.050[144] settlement permits (2003: 8.070[145]). Considering the different categories of quotas, a shift can be noticed: while the quota for skilled employees and entrepreneurs was reduced in 2004, the quota for persons who want to settle permanently in Austria without intending to work was doubled compared to the preceding year (2003: 175; 2004: 360). The quota for family reunification has not been changed (5.490 in both years). As foreseen for 2005, the quota will again be reduced to 7.500 settlement permits.

Looking at the number of permits depending on the quota system, which have been effectively issued, the number amounted to 8.027 settlement permits in 2003. As for 2004, 3.378 settlement permits within the quota system have been issued until 1 August 2004.[146]

Indeed, contrary to what the quota system may indicate, it has to be considered that a much larger number of permits is issued every year, which do not underlie the quota regulation. The number of these quota-free settlement permits amounted to 26.537 in 2003. Furthermore, 35.405 residence permits have been issued.

Looking at the year 2004, 15.815 quota-free settlement permits and 21.205 residence permits have already been issued until 1 August 2004. Besides,

[144] NLV 2004.

[145] NLV 2003.

[146] BMI 2003, BMI 2004.

44.306 (2003: 71.546) persisting settlement permits and 14.143 (2003: 27.324) persisting residence permits have been extended.

The newly introduced proof of settlement, which was introduced by 1 January 2003, has been issued 70.918 times in 2003 and 31.342 times until 1 August 2004. This large amount may be traced back to the fact that many immigrants already qualify for this kind of permit because of their long duration of stay. Looking at the total amount of registered permits, 510.457 settlement permits, 38.699 residence permits and 25.251 other permits were counted at the end of the reference period.

5.2. Labour market and employment

As the right to residence does not automatically imply a right to work, the Law on the Occupation of Aliens provides three different titles of employment (*restricted work permit*, *work permit* and *long term work permit*) (Circo et al.: 2003), which are issued depending on the right and duration of residence, the previous length of employment and the fulfillment of the quota. In 2003 an amendment of the Law introduced a new regulation, exempting key professionals, who are defined as foreigners being highly qualified and demanded on the Austrian labour market,[147] from the Law's scope.[148] Key professionals can receive a residence permit including the allowance to work for a specific employee for the maximum period of one year, but only in compliance with the quota for key professionals.[149] Regarding the EU enlargement, Austria decided to introduce exceptions of the transitional period concerning the liberalisation of the labour market, (which can according to the "2+3+2 model" possibly last up to 7 years) if foreign nationals fulfill certain conditions.[150]

[147] § 2 (5) AuslBG 1975.

[148] § 1 (2) f ibid.

[149] § 12 ibid.

[150] See for details ch. 3.1.

In October 2004 out of 3,228.467 employed persons 368.332 were foreign nationals (227.533 male and 140.799 female employees). The average of the year 2003 was 349.559 foreign employees of a total of 3,184.117 employees.[151]

The amount of foreign employees with an obligatory working permit was 230.560 in October 2004, considering that already 29,4% of them hold the "proof of settlement" (combining an unlimited settlement permit with an unlimited working permit). Another 50,4% of foreign employees holding a working permit, have a long term work permit, which also provides unlimited access to the labour market. Around 60% of those foreign employees holding a working permit originate from the successor states of the Former Republic of Yugoslavia, followed by 14,2% Turkish employees.[152]

Looking at unemployment, one has to state, that out of 224.637 registered unemployed persons, 37.414 are foreign nationals.[153] In 2003, the average unemployment rate of foreign nationals was 9,83% compared to 6,65% among Austrian nationals.[154]

The Public Employment Service provides support for unemployed and employed persons in terms of qualification, training, occupation projects, advisory services, foundation of enterprises, human resources development etc. Since the beginning of 2004, 224.041 persons were supported, thereof 28.682 were foreign nationals. In 2003, a total of 253.133 persons were supported, 28.427 of them foreign nationals[155] (Public Employment Service; provisional figures for October 2004).

Regarding equal opportunities for everyone, the EC and the European Social Fund (ESF) established the EQUAL-Programme, which aims to fight existing discrimination on the European labour markets. To achieve these goals, 58

151 Data Source: Hauptverband der Sozialversicherungsträger.

152 Data Source: Public Employment Service Austria.

153 Ibid. October 2004.

154 ibid.:Austrian calculation of unemployment rate: registered unemployed persons divided through labour force (defined as the sum of registered unemployed and registered employed persons).

155 Data Source: Public Employment Service: provisional figures for October 2004.

Development Partnerships (DP)[156] have been set up so far in Austria. 12[157] of these are especially addressed to migrants and asylum seekers, targeted, on the one hand to fight racism and xenophobia on the labour market and, on the other hand to support asylum seekers in their efforts to obtain the necessary skills and working experience, needed for a successful start after obtaining permanent residency.

5.3. Housing

The most important amendment in this area is the provision of accommodation and welfare support for asylum seekers under the Basic Welfare Support Agreement, which was already discussed above.

Relating to the group of immigrants, initiatives in the field of housing are limited to activities on the local and community level. As housing issues are not part of the federal competences, there is no uniform standard throughout the country, especially concerning housing allowances.

In recent years research on housing conditions of immigrants was conducted especially in urban areas, mostly focusing on the city of Vienna. In general it can be stated, that foreign nationals do not have the same status as Austrian nationals on the housing market, e.g. allowances are restricted, access to community-owned or publicly financed flats is limited. But apart from the lack of general policies in this field, initiatives and projects are carried out on the community level. Within this framework a number of projects strengthening intercultural communities or projects fostering sustainable urban development

[156] For further Information about Development Partnerships see: EC, EQUAL. New ways of tackling discrimination and inequality in the field of employment, http://europa.eu.int/comm/employment_social/equal/data/document/broch_en.pdf

[157] For further information visit the websites of the DPs under the following addresses: : www.dontwait.at, www.epima.at, www.gleichechancen.at, www.wiso.or.at/ws_verein/navi_integr.htm, www.interkulturlotsen.at, www.jobshop.at, www.pro-spect.at/screens/projekte/proj_laufend/projekte5.1.2.htm, www.midasequal.com/en/index.html, www.oegb.at/servlet/ContentServer?pagename=OEGBZ/Page/OEGBZ_Index&n=OEGBZ_oh_4.6, http://ikoef.at, http://openup.at, : http://www.equal-noe-lak.at/frames.php?startpage=1

(with a focus on the phenomenon of segregation) have been realised during the last years until recently, e.g. in Vienna.[158]

5.4. Welfare system

As for the Austrian social welfare system, aliens are eligible to unemployment insurance if the fulfil certain criteria. The Unemployment Insurance Law, which falls under the competence of the Federal Government, applies on foreigners in case they are at the employment agency's disposal. According to the law, foreigners are at disposal if they enjoy the right of residence, are allowed to carry out an employment and have not been unemployed for almost one year during the first eight years of their residence in Austria.[159]

The Austrian Social Welfare Laws, which provide financial assistance for persons who are in need of additional support fall under the legislative competence of the Austrian federal provinces. In most federal provinces financial assistance for the assurance of foreigners' subsistence is granted under certain conditions (several months of lawful residence within the territory). Regarding handicapped persons and persons in need of care, foreign nationals do not enjoy a legal right to subsidies, but most of the laws provide exception clauses for cases of special need (*Nachsichtsklausel*). Provincial governments usually grant family allowances if one parent has resided lawfully within the territory (for 1 to 3 years) before the child's birth.

5.5. Specific integration measures

Implementation of integration policy tools has been a goal for many stakeholders of the Austrian civil society. This chapter highlights integration programmes of provincial governments and the Österreichische Integrationsfond (OEIF) Austrian Integration Fund.

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[158] See e.g. http://www.wien.gv.at; http://www.wif.wien.at; publications of the "Wiener Integrationsfonds" (WIF) (Viennese funds for integration)

[159] § 7 (3) AlVG 1977 in conjunction with § 34 (3) Z 2 FrG 1997.

The United Nations High Commissioner for Refugees and the Austrian Ministry of Interior funded the OEIF initially named “Austrian Refugee Fund of the United Nations”. The aim of OEIF is it to support refugees, during the integration process. OEIF helps them by giving assistance in the finding of appropriate accommodation facilities, by providing childcare and financial aid. OEIF runs four integration houses,[160] where refugees can live during the first time after positive notification of their asylum process. Since 1 May 2004, OEIF is managing 16 additional integration apartments, located in Haid (Upper Austria), where the residents receive the same service and support as in the integration homes.

In addition, since January 2003, OEIF is also responsible for the implementation of the Integration Agreement. The OEIF disseminates countrywide information, certifies and regularly evaluates all language institutes, offering German integration courses.

Most of the Austrian provincial governments have undertaken efforts to implement integration policies during the reference period. Some of them, like Vienna, Upper Austria, Tyrol and Vorarlberg, are already quite advanced in their efforts, while others still lack an integration concept, guiding the future work.

Although integration policies of provincial governments have been developed independently, similarities can be identified. All provincial integration policies are driven by the aim to increase the mutual understanding and to enhance the peaceful and tolerant living-together of Austrians and foreigners. The supported projects and initiatives mainly focused on:

- the provision of legal advice,
- the set-up of a knowledge-sharing-network for best-practice,
- the funding and conducting of German language courses,
- the offering of access to municipal accommodations,

[160] Kaiserebersdorf (11th district), at Nussdorferstraße (9th district), in Vorderbrühl (Mödling/Lower Austria) and in

- the support of clubs, institutions and projects addressed to integration,
- the broadening of integration measures to a regional/local level e.g. in the build-up of integration offices in districts,[161]
- the collaboration in EU-projects, addressed e.g. to fight racism and xenophobia on the labour market,
- the mediation of intercultural conflicts and
- the encouragement of migrants to participate in everyday life.

The way all these integration measures are coordinated and supervised differs widely and depends on the province. Vienna,[162] Tyrol[163] and Upper Austria[164] created separate units for integration within its administration. The other provinces regard integration policy as a cross sectional area, according to this each unit is shaping the integration policy of the provinces in its field of responsibilities.

5.6. Naturalisation

Regarding foreigners, the Austrian citizenship can - according to the Staatsbürgerschaftsgesetz (StbG) (Nationality Law) 1985 - be acquired by decree[165] or by extension on the foreigner's spouse[166] and minor children.[167]

Kapfenberg (Styria)

161 Upper Austrian regional integration offices are providing counselling and support in Braunau am Inn, Bad Ischl, Freistadt, Perg, Steyr, Traun, Vöcklabruck and Wels. Special offices for Integration have also been set up in Dornbirn and Bregenz.

162 In Vienna a new municipal unit (MA-17) has been build up by 01. July 2004, assuming the control over the responsibilities of the Viennese Funds for Integration (VFI), which has been founded in 1992 with the purpose to coordinate and fund (facilitate) the integration measures of NGOs working in this realm. MA-17 is supposed to act as a competence centre for all units of the municipal administration in order to provide them with the knowledge and experience to meet all inquiries of migrant citizens in a proper way, following the principles of diversity management.

163 Within „Amt der Tiroler Landesregierung" the Department of Integration is responsible for the coordination and supervision of the integration measures, funded by the Tyrolean Government.

164 Immigration and integration measures are coordinated in Upper Austria by the coordination centre for integration of the social department of the Upper Austrian Administration.

165 §§ 10 to 12 StbG 1985.

166 § 16 ibid.

167 § 17 ibid.

Additionally to the fulfilment of certain prerequisites (integrity, assurance of means of subsistence, etc.),[168] the Act requires different residence periods, which can last from 3 to 30 years.

Austria did not change its Nationality Law in order to facilitate integration. The Austrian approach does not use naturalisation as an instrument for integration, but considers integration as a prerequisite for the acquisition of citizenship.

According to recent trends, the number of naturalisations has significantly grown during the last years:[169] in 2003 a preliminary peak was reached with 44.694 naturalisations of foreign nationals. While after the first quarter of 2004 it still seemed that the number of naturalisations would further increase, the latest figures show a slight decline of 3% in the first three quarters of 2004 compared to the preceding year (PR-SA: 2004).

Nevertheless, the number of naturalisations still remains on a high level compared to the preceding years (see Annex). The increase in the number of naturalisations cannot be traced back to legal changes, as the Nationality Law has not been amended significantly during the last years. This increase is rather a consequence of the migration streams since the 1950s and reflects Austria's de facto strong tradition in immigration.

Looking at the main groups of citizenship of naturalised persons in 2003, the biggest group are Turkish nationals with a share of 30,6%, followed by nationals of Serbia and Montenegro with 22%, Bosnia and Herzegovina with 18,5% and Croatia with 5,8%. The data of the first three quarters of 2004 shows the same trend. In this context it has to be stated, that the Former Yugoslavian Republic and Turkey were the main countries of origin of the so-called "guestworkers", who immigrated to Austria since the early 1960s.

According to the principle of *ius sanguinis*, children of foreign nationals born in Austria do not obtain the Austrian citizenship automatically. Citizenship can be

[168] See §§ 10, 10a ibid.

[169] Data Source: Statistik Austria (Statistics Austria).

granted discretionary or by legal claim; it can be extended to minor children, if it is granted to their parents. In the first three quarters of 2004, 37,5% of naturalisations are discretionary based on legal residence in Austria of at least 10 years. 47,2% are extensions on family members of persons who were granted Austrian citizenship. 15,3% are naturalisations following a legal claim (53,3% of these are persons married to an Austrian citizen).

5.7. Return

Data on return is limited: apart from figures on forced return, there are statistics on assisted voluntary return programmes carried out by the International Organisation for Migration (IOM) available. Defining "return" in a very broad sense would also include emigration of people who return to their countries of origin voluntarily and without assistance. In 2003 net migration of foreign nationals was 51.099 (immigration around 97.000 persons, emigration around 46.000 persons);[170] but based on the total number of emigrated persons, the number of voluntarily returning persons without assistance could only be estimated, as statistics do no distinguish between persons returning to their home countries and those travelling on to other countries.

Looking at forced return, several categories can be distinguished:[171] for 2003, 8.073 deportations, 22.371 rejections at the border, 3.135 forcible returns and 7.531 expulsions are registered.[172] For the year 2004 (until 31 July 2004) 2.946 deportations, 15.454 rejections at border, 2.511 forcible returns and 3.738 expulsions are registered.[173]

[170] Data Source: Statistik Austria (Statistics Austria).

[171] Data Source: Bundesministerium für Inneres (BM.I)(Federal Ministry of the Interior).

[172] BMI 2003.

[173] BMI 2004.

Under the General Humanitarian Return Program of IOM, which assists persons who want to return voluntarily to their countries of origin, 1.063 persons returned in 2003. In 2004, until 31 July 2004, already 640 persons were repatriated.[174]

[174] Data Source: International Organisation for Migration, Vienna

6. SUMMARY

6.1. Highlights of migration and asylum politics

In the area of migration the newly introduced Integration Agreement that requires the proof of the basic knowledge of German can be considered as a remarkable change in the Austrian immigration policy. As for the highlights in the area of asylum, the amendment to the Asylum Act implies rather far-reaching modifications concerning material prerequisites for the granting of asylum (application of the safe countries of origin- and safe third counties-concept), asylum procedures (exclusion of suspensory effects) and institutional competences (creation of primary reception centres, appointment of legal advisors for the duration of the admission procedure). Furthermore, the regulation of assistance to asylum seekers underwent a change through the conclusion of the Basic Welfare Support Agreement, which divides by contract responsibilities and costs between the Federal Government and the governments of Austria's regional provinces.

6.2. Interpretation of current trends

The Federal government's policy in migration and asylum is mainly intended to identify migrants who immigrate for economic reasons and to distinguish them clearly from asylum seekers, but does not focus on an effective immigration policy and the positive aspects and advantages of migrants in Austria. In this regard, the negligence of an effective integration policy bears the evident risk of the development of parallel societies.

6.3. Neglected issues in the policy debate

As the government focuses mainly on immigration for the purpose of family and reunification and for humanitarian reasons, the settlement of aliens for the purpose of employment plays a subsidiary role. In this regard, Austria applies the approach, recruiting aliens only within the framework of the quota-system. The discourse on the benefits of immigration for the Austrian society – in demographic, economic, political and socio-cultural terms - is rather

marginalized to the field of academics and does not enter the policy discussion. Additionally, concerning the creation of consciousness, Austria still considers itself as non-immigration country (NCP: 2004, 3).

Austrian newspapers have covered the asylum debate during the reference period in different ways. While Der Standard, Die Presse, Furche, Kurier, Kleine Zeitung and Salzburger Nachrichten put emphasize in their coverage of the issue mainly on the debate, evolving around the apparent unconstitutionality (e.g. KLEINE: 2003 – FURCHE: 2003 – STANDARD: 2003 - KURIER: 2003 – PRESSE: 2004) of certain provisions of the new Asylum law,[175] the European asylum policy and the tightening situation around the provision of Basic Welfare Support to asylum seekers, the Neue Kronen Zeitung – Austria's biggest daily newspaper - interlinked in its coverage the asylum issue with trafficking (e.g. KRONE: 2003a), illegal migration (KRONE: 2003e – KRONE: 2004), drug distribution (e.g. KRONE: 2003c – KRONE: 2003d) and growing crime rate (e.g. KRONE: 2003b). The Arrangement on a timeline of its headlines, adding fuel to the asylum debate, shows, that these headlines have been published mainly before decisive political events (Adoption of the Asylum Law, commencement of the Basic Welfare Support Agreement etc.), shaping the asylum system in Austria, in order to foster the public support for the governmental asylum policy.

6.4. Areas of further analysis and research

Regarding the integration of migrants into the Austrian society, aspects that affect the material well being of a society, but are not organised through the formal market economy, are rather neglected. Furthermore, the role of migrants as consumers, their influence on the black labour market and their impact on inflation or the balance of payments has so far not been sufficiently analysed. As for the socio-political area, migrants were not perceived as political and social actors until the 1990s. In this regard it seems necessary to carry out fundamental research and analysis (NCP: 2003, 8).

[175] AsylG 1997.

7. ANNEXES

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