IOM International Organization for Migration

EMN European Migration Network

PRACTICAL MEASURES FOR REDUCING IRREGULAR MIGRATION IN AUSTRIA

Study of the National Contact Point Austria in the European Migration Network

Katerina Kratzmann
Adel-Naim Reyhani

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The opinions presented in the study are those of the authors and do not necessarily represent the position of the Federal Ministry of the Interior and/or the International Organization for Migration (IOM).

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THE EUROPEAN MIGRATION NETWORK

The European Migration Network (EMN) was launched in 2003 by the European Commission based on a decision of the European Council to satisfy the need for regular exchange of reliable information in the field of migration and asylum on the European level. Council Decision 2008/381/EC constitutes the legal basis of the EMN; subsequently, National Contact Points were established in the European Union Member States (with the exception of Denmark, which has observer status) plus Norway.

The EMN's role is to meet the information needs of European Union (EU) institutions and of Member States' authorities and institutions, by providing up-to-date, objective, reliable and comparable information on migration and asylum, with a view to supporting policymaking in the EU in these areas. The EMN also has a role in providing such information to the wider public.

The National Contact Point for Austria is located at the International Organization for Migration (IOM) in Vienna. Austria was one of the first members of the organisation, establishing a local office in 1952, which since then analyses national migration issues and emerging trends and develops and implements national projects and programmes to address these. The main task of the National Contact Points is to implement the annual work programme of the EMN including drafting the Annual Policy Report and thematic studies, publishing studies, answering Ad-Hoc Queries from other National Contact Points, carrying out a visibility strategy as well as networking in relevant forums. Furthermore, the National Contact Points in each country set up national networks consisting of organisations, institutions and individuals working in the field of migration and asylum.

In general, the National Contact Points should not conduct primary research, but rather collect and analyse pre-existing data; however, exceptions might occur if existing data and information is not sufficient. EMN studies are elaborated in accordance with uniform specifications valid for all European Union Member States (EU MS) plus Norway in order to achieve comparable EU-wide results. Since the comparability of the results is fre-

quently accompanied by challenges, the EMN has also elaborated a Glossary, which should assure the application of a similar terminology in all national reports. Upon completion of the national reports, the European Commission (EC) issues a synthesis report, which summarises the most significant results of the individual national reports. All national studies and synthesis reports as well as the Glossary are available on the website of the EMN at www.emn.europa.eu.

The present study was drafted by Katerina Kratzmann (Head of Research) and Adel-Naim Reyhani (Legal Assistant), who wrote the legal parts of the study. The statistical annex as well as chapter 6 were compiled and elaborated by Elisabeth Petzl (Research Associate). Special thanks go to Mária Temesvári (Legal Advisor) for reviewing the report at various stages, to Katie Klaffenböck (Project Assistant) for proofreading the document and to Alisa Mayer (Intern) for her support in drafting the study.

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English term	English Abbre-viation	German term	German Abbre-viation
Aliens' Information File	**-**	**Fremdeninformationssystem**	**FIS**
Aliens' Police Act	**-**	**Fremdenpolizeigesetz**	**FPG**
Asylum Act	**-**	**Asylgesetz**	**AsylG**
Asylum Court	**-**	**Asylgerichtshof**	**AsylGH**
Asylum Seekers' Information File	**-**	**Asylwerber-Informationssystem**	**AIS**
Central Population Register	**-**	**Zentrales Melderegister**	**ZMR**
Central Service Combating Human Smuggling and Human Trafficking	**-**	**Zentralstelle zur Bekämpfung der Schlepperkriminalität und des Menschenhandels**	**-**
Constitutional Court	**-**	**Verfassungsgerichtshof**	**VfGH**
Control Unit for Illegal Foreign Employment	**-**	**Kontrolle illegaler Beschäftigung**	**KIAB**
Criminal Code	**-**	**Strafgesetzbuch**	**StGB**
Criminal Intelligence Service Austria	**-**	**Bundeskriminalamt**	**BK**
Employers Sanctions Directive	**-**	**Sanktionsrichtlinie**	**-**
European Convention for Human Rights	**ECHR**	**Europäische Menschenrechtskon-vention**	**EMRK**
European Court of Human Rights	**ECtHR**	**Europäischer Gerichtshof für Menschenrechte**	**EGMR**
European Economic Area	**EEA**	**Europäischer Wirtschaftsraum**	**EWR**
European Union Member States	**EU MS**	**Mitgliedsstaaten der Europäischen Union**	**MS EU**
European Migration Network	**EMN**	**Europäisches Migrationsnetzwerk**	**EMN**
European Return Fund	**RF**	**Europäischer Rückkehrfonds**	**RF**
European Union	**EU**	**Europäische Union**	**EU**
European Border Surveillance System	**Eurosur**	**Europäisches Grenzkontrollsystem**	**-**
Federal Asylum Office	**-**	**Bundesasylamt**	**BAA**
Federal Ministry of European and International Affairs	**FMEIA**	**Bundesministerium für Europäische und internationale Angelegenheiten**	**BMEIA**
Federal Ministry of Labour, Social Affairs and Consumer Protection	**-**	**Bundesministerium für Arbeit, Soziales und Konsumentenschutz**	**BMASK**
Federal Ministry of the Interior	**FMI**	**Bundesministerium für Inneres**	**BMI**
First Reception Centres	**-**	**Erstaufnahmestelle**	**EAST**

Gambling Act	-	Glückspielgesetz	GSpG
General Social Insurance Act	-	Allgemeines Sozialversicherungsgesetz	ASVG
Immigration Liaison Officers	-	Verbindungsbeamte	-
Independent Administrative Senates	-	Unabhängige Verwaltungssenate	UVS
Industrial Code	-	Gewerbeordnung	GewO
International Organization for Migration	IOM	Internationale Organisation für Migration	IOM
Red-White-Red Card	-	Rot-Weiß-Rot Karte	-
Return Directive	-	Rückführungsrichtlinie	-
Schengen Borders Code	-	Schengener Grenzkodex	-
Schengen Information System	SIS	Schengen Informationssystem	SIS
Society of the Austrian Social Security Underwriters	-	Hauptverband der österreichischen Sozialversicherungsträger	-
Unemployed Insurance Act	-	Arbeitslosenversicherungsgesetz	AIVG
United Nations High Commissioner for Refugees	UNHCR	Hoher Flüchtlingskommissar der Vereinten Nationen	-
Visa Code	-	Visa Kodex	-
Visa Information System	VIS	Visa Informationssystem	VIS

EXECUTIVE SUMMARY

The phenomenon of irregular migration remains a highly relevant topic for migration policy, as most of the European countries consider it to be a problem and the political and public pressure to reduce irregular migration is constantly rising on the EU and national level. Therefore, the study at hand was chosen for the EMN work programme 2010 to gain an up-to-date understanding of the different practical measures used by the European Union Member States (EU MS) to reduce irregular migration.

The study is based on common specifications valid for all EU MS plus Norway in order to achieve comparable EU-wide results as much as possible. It follows up on the former EMN study "Illegally Resident Third-country Nationals in EU Member States: State Approaches towards them, their Profile and Social Situation" from the year 2007. The objective of the national report is to provide an overview of the existing approaches, mechanisms and practical measures implemented by Austrian institutions and authorities and considered the most effective by policy makers to reduce irregular migration. The study does not reflect on connected issues such as the fundamental rights of irregular migrants or the security discourse that defines these migrants as a specific group with potentially threatening characteristics. The following content is included in the study:

After an introduction outlining the objectives, the definitions and the methodology in chapter one, the policy and legal framework regarding irregular migration in Austria is described in chapter two. The relevant legislative developments are characterised by several major amendments made to the aliens' law in the years 2005, 2009 and 2011, which led to a highly complex legal situation. Furthermore, Austrian authorities see irregular migration as one of the major international challenges for the EU and Austria, and understand it as a negative phenomenon for all parties involved (countries of destination and transit, countries of origin and migrants). Consequently, the efforts to reduce irregular migration are high on the political agenda in Austria and include a variety of policy and practical measures as well as forms of international cooperation.

The description of the legal framework is divided into four phases, namely: entry, termination of stay, prolongation or regularisation of stay as well as return and removal. In addition, penalties and sanctions in cases of irregularity are described. Regarding the prevention of unlawful entry, the Schengen Borders Code is applicable in Austria; inter alia, third-country nationals who do not fulfil all entry conditions of the Schengen Borders Code and do not belong to the categories of persons outlined therein must be refused entry to the territories of the Schengen Member States. To terminate an irregular stay, Austrian legislation provides various possibilities, mainly depending on the status of the person concerned; whereby these legal instruments – namely return decisions (in conjunction with entry bans), return bans and forcible return ("Zurückschiebung") – cannot be compared as different procedures apply. Besides legal instruments aiming at terminating the stay of irregular migrants, Austrian legislation also provides for possibilities to obtain a residence title or other forms of status (e.g. toleration) in cases of irregularity. Furthermore, the Aliens' Police Act is relevant for the forced removal of irregular migrants, providing legislation on deportation and detention pending deportation or more lenient measures. According to these provisions, irregular migrants can be deported, if they have failed to comply in due time with their obligation to depart. Finally, various sanctions in cases of irregularity are foreseen, which are divided into administrative and criminal offences.

In chapter three the practical measures to reduce irregular migration in Austria are described; these are also divided in four sub-sections: the pre-entry level, the entry phase, the stay of irregular migrants as well as pathways out of irregularity. Within the course of the research for this study and the interviews with three experts the following practical measures to reduce irregular migration in Austria have been identified: At the pre-entry level (before arrival), existing visa schemes, immigration liaison officers and document advisors as well as the identification of migration routes are considered to be effective in reducing irregular migration. At an entry stage (at Austrian borders), border control, the usage of technologies and data storage systems, integrated border management and combating of smuggling of human beings are relevant, whilst the stay of irregular migrants (on Austrian territory) is addressed by identity control and apprehensions, targeted controls of accommodations as well as work place inspections. Pathways

out of irregularity include three options: obtaining a legal status, the status of toleration for persons who cannot be deported, and return.

Following the description of practical measures to reduce irregular migration, transnational cooperation is outlined in chapter four. Cooperation agreements consist mainly of EU readmission agreements as well as bilateral readmission agreements, both of which facilitate the return of persons residing without authorisation in Austria to their country of origin. Furthermore, other bilateral agreements and initiatives such as police cooperation and special initiatives – e.g. an intensive cooperation between Austria and Hungary in form of a "5-points-cooperation programme" in September 2011 – play an important role in transnational cooperation as well.

Following a short description of the impact of EU policy and legislation on the national level with a focus on the transposition of the Employers Sanctions Directive and the Return Directive in chapter five, estimates and statistics on the irregular migrant population in Austria are offered in chapter six. The number of third-country nationals "found to be irregularly present" in Austria has decreased to a large extent during the period 2005-2010: in 2005 and 2006 respectively, 38,789 and 38,579 people, were apprehended in Austria. By 2009, this number had significantly dropped to 14,216 persons and since then remained about at this level. The latest estimates on the stocks of irregular migrants in Austria show a minimum of 18,439 and a maximum of 54,064 irregularly resident persons in Austria in 2008. Unfortunately, there are no more recent estimates available on the stock of irregular migrants in Austria.

To close the study, conclusions summarising the main findings are provided in chapter seven.

1. INTRODUCTION: OBJECTIVES, DEFINITIONS AND METHODOLOGY

1.1 Objectives

Irregular migration is a topic of great importance within the EU policy context and policymakers are increasingly "under political and public pressure to reduce irregular migration, with majorities across countries viewing it as a problem" (Blomfield/Morehouse 2011: 2). The main policy instruments at EU level at the time of the preparation of the study were the European Pact on Immigration and Asylum, the Stockholm Programme and the EC's Communication on Migration from May 2011. The relevance of these instruments with regards to irregular migration is outlined below.

The European Pact on Immigration and Asylum, adopted by the Council of the EU in October 2008, includes five commitments: organising legal immigration, combating irregular migration, making border controls more effective, improving the asylum system and developing partnerships with countries of origin and transit. The commitment on fighting irregular migration specifically mentions "to control illegal immigration by ensuring that illegal immigrants return to their countries of origin or to a country of transit." (Council of the European Union 2008: 4). In this respect, the Pact outlines eight action points including the conclusion of readmission agreements and other forms of cooperation with third countries, to assist voluntary return and introducing dissuasive penalties against those who exploit irregular migrants.

The Stockholm Programme, adopted in December 2009, commits the EU to providing "an open and secure Europe serving and protecting citizen" (European Council 2010) and highlights the goal of effective policies to combat irregular migration as an essential element within a common EU immigration policy. Furthermore, the Stockholm Programme aims at the consolidation and implementation of the goals of the Global Approach to

Migration and the Global Approach to Migration and Mobility [1] in subsequence. The specific commitments outlined in the Stockholm Programme strengthen, among others, the approach to return irregular migrants in line with the Pact[2]. However, the Action Plan implementing the Stockholm Programme also focuses on the fundamental rights of irregular migrants, stating that: "The prevention and reduction of irregular immigration in line with the Charter of Fundamental Rights is equally important for the credibility and success of EU polices in this area" (European Commission 2010: 7). The major challenges to introducing policy measures, meeting both the needs for law enforcement of the EU MS (including return measures) and an approach based on the (fundamental) rights of migrants, are reflected here.

The Communication on Migration released by the EC on 4 May 2011 after the events in the framework of the "Arab Spring" in Northern Africa also highlights the importance of irregular migration in the EU policy context, especially in calling for solidarity in the management of migration movements to the EU: "Some Member States, such as Italy, Malta, Greece and Cyprus are more directly exposed to massive arrivals of irregular migrants and, to a limited extent, of persons in need of international protection. This is not a national problem alone, but needs also to be addressed at the EU level and requires true solidarity amongst Member States" (European Commission 2011: 3). The EC considers selection mechanisms to be very important with regards to "mixed migration" (Cholewinski 2010) – meaning migration movements including different groups of migrants such as irregular migrants, economically motivated migrants and persons in need of international protection – and calls for "appropriate tools in or-

1 For further information see European Commission, Global Approach to Migration, Press Release, 5 December 2007, available at http://europa.eu/rapid/pressReleasesAction.do?reference=MEMO /07/549 (accessed on 14 May 2012); European Commission, Communication on the Global Approach to Migration and Mobility, Brussels, 18 November 2011, COM(2011) 743 final, available at http://ec.europa.eu/home-affairs/news/intro/docs/1_EN_ACT_part1 _v9.pdf (accessed on 14 May 2012).

2 Specific points in the Stockholm Programme addressing irregular migration included: improving the exchange of national information on regularisations; encouraging voluntary return; and Member States should be assistance to EU MS facing a disproportionate pressure due to large numbers of irregular migrants, cooperation with the Agency for the Management of Operational co-operation at the External Borders of The Member States of the European Union (Frontex) and Member States on a voluntary basis to ensure the effectiveness of return policies.

der to prevent large number of economic migrants crossing the borders irregularly. To reach these objectives effective management of the EU's borders is a condition of credibility inside and outside the Union" (European Commission 2011: 3). In the Communication the EC refers to measures addressing irregular migration in Europe, such as minimising the shadow economy, supporting the fight against human trafficking and implementing coherent and effective EU return policy in order to strengthen the credibility and to not jeopardise the EU immigration policies.

The quantity of the influx of migrants to Europe in the framework of the "Arab Spring" should be put into perspective in this context. As IOM pointed out, "the media have often promoted the perception that the crisis in North Africa would result in much more irregular migration to Europe. In reality, a very small proportion of those displaced by the conflict took boats to cross the Mediterranean, with the others seeking return to Libya or assistance to move to another country in Africa or Asia" (IOM 2011b: 50).

Within this wider EU policy context, this EMN study on "Practical Measures for Reducing Irregular Migration" was chosen for the work programme 2010 to gain an up-to-date understanding of the different practical measures used by the EU MS to reduce the phenomenon of irregular migration.

The objective of the national study is to provide an overview of existing approaches, mechanisms and measures implemented by Austrian policy makers and authorities. The more specific aims are to examine the political approach towards irregular migration in Austria; to outline the legal framework with regard to preventing, detecting, addressing and reducing irregular migration; and to outline the practical measures adopted as well as the data available and applying transnational cooperation in the area of irregular migration. The comprehensive overview serves also the aim to draw conclusions about the effectiveness of the adopted practical measures to reduce irregular migration.

The groups of migrants of interest agreed upon in the specifications for this study are[3]: persons who have entered the Member States' territo-

3 The categories of irregular migrants defined can vary. For example Blomfield and Morehouse (2011:4) set out eight principle ways to become an unauthorised migrant, whilst other representatives/authors pool certain groups together. The categories identified by Blomfield and Morehouse are: illegal entry; entry using false documents; entry using legal documents with false information; overstaying ; loss of status because

ry without authorisation (e.g. via smuggling, crossing a border with false documents, or fraudulently stating the purpose of their stay); persons who have overstayed their visa (or their maximum visa waiver period); persons who have violated the conditions of their visa, work permit or permit to stay (i.e. the conditions for granting the visa/permit are no longer satisfied); persons who have not left the Member State territory upon a (final) negative decision on their application for international protection; and persons who have absconded during the application process for international protection and did not leave the Member State or the EU.

The following issues are not or only to a limited extend included in the study:

The study will address human smuggling to a limited extend, as measures to combat smuggling constitute an important part of Austrian policy measures to reduce irregular migration. However, in order to maintain a narrow focus, the study will not address practical measures to fight human trafficking, even though it can include forms of irregular migration.

Also the visa issuance process is only addressed to a limited extend, as it is sufficiently described in the EMN study on "Visa Policy as Migration Channel in Austria" (Temesvári 2012).

Recent research on the phenomenon of irregular migration includes a variety of studies and policy papers focussing on the daily life situation and human rights of irregular migrants[4] that highlight the vulnerability of

of nonrenewal of permit for failing to meet residence requirements or breaching conditions of residence; being born into irregularity; absconding during the asylum procedure or failing to leave a host state after a negative decision; a state´s failure to enforce a return decision for legal or practical reasons (toleration) (ibid.).

4 Carrera, Sergio/Merlino, Massimo, Undocumented Immigrants and Rights in the EU. Addressing the Gap between Social Science Research and Policy-making in the Stockholm Programme, December 2009, available at http://www.ceps.eu/book/undocumented-immigrants-and-rights-eu-addressing-gap-between-social-sciences-research-and-polic (accessed on 14 May 2012);
Carrera, Sergio/Merlino, Massimo, Assessing EU Policy on Irregular Immigration under the Stockholm Programme, October 2010, available at http://www.ceps.eu/book/assessing-eu-policy-irregular-immigration-under-stockholm-programme (accessed on 14 May 2012);
International Council on Human Rights Policy, Irregular Migration, Migrants Smuggling and Human Rights: Towards Coherence, Geneva, 2010, available at http://www.ichrp.org/files/reports/56/122_report_en.pdf (accessed on 14 May 2012);
European Union Agency for Fundamental Rights, Fundamental rights of migrants in an irregular situation in the European Union, Luxembourg, 2011, available at http://

this group.[5] The study at hand does explicitly not concentrate on these very important issues as these are covered by other institutions. Nevertheless, it should be stressed that the measures described in this study can "have a negative and often disproportionate impact on the effective exercise" (European Union Agency for Fundamental Rights 2011: 7) of the fundamental rights of irregular migrants.

Finally, the study does neither reflect on related theoretical issues such as the "conception of uncontrolled immigration as a societal and cultural threat and its linkage with other security issues such as organised crime, terrorism or Islamic fundamentalism (which) blurs the distinction between internal and external security" (Lavenex 2006: 330), nor on the discourse that defines these migrants as a specific group with potentially threatening characteristics (Karakayali 2008). However, a more holistic approach, including these topics, could be useful to discuss irregular migration in a wider context and facilitate a rational discourse on national and EU level.

The study at hand serves to inform policy makers and practitioners in the field of irregular migration about the practical measures regarding irregular migration. Therefore, the main target audiences for the study are: policy makers (relevant ministries and policy officers concerned with developing and implementing policy related to irregular migration), national experts (from universities, research institutions and think-tanks), other stakeholders and practitioners such as staff of relevant NGOs dealing with the subject as well as members of the wider public with an interest in irregular migration and representatives of the media.

1.2 Definitions

The second edition of the IOM International Migration Law "Glossary on Migration" (IOM 2011a) highlights the fact that there is no clear definition of the term "irregular migration". This source defines irregular migration as follows:

fra.europa.eu/fraWebsite/research/publications/publications_per_year/2011/pub-migrants-in-an-irregular-situation_en.htm (accessed on 14 May 2012).

5 Vulnerability in this context might include: limited access to fundamental rights, conditions on the labour markets of the EU Member States and accompanying problems of exploitation as well as the insecure social situation of irregular migrants with regards to housing, health care and education.

> Movement that takes place outside the regulatory norms of the sending, transit or receiving countries. There is no clear or universally accepted definition of irregular migration. From the perspectives of destination countries it is entry, stay or work in a country without the necessary authorization or documents required under immigration regulations. From the perspective of the sending country, the irregularity is for example seen in cases in which a person crosses an international boundary without a valid passport or travel documents or does not fulfil the administrative requirements for leaving the country. There is, however, a tendency to restrict the use of the term 'illegal migration' to cases of smuggling of migrants and trafficking in persons.

Also in the Austrian context, there is a lack of a clear definition and a variety of terms are used to describe the phenomenon of irregular migration such as "illegal migration", "undocumented migration" or "clandestine migration".

Austrian legislation and the Schengen Borders Code stipulate requirements for legal entry and stay (see chapter 2.1 and 2.2) and thus provide (legal) definitions of legal or regular migration. As a consequence, irregular migration in the context of the Austrian legal framework can be defined as a situation in which the requirements for legal entry and stay are not or no longer present. Thus, this definition also encompasses overstayers as well as cases in which the migrant has lost his/her title because of tightened regulations.

Within the context of a debate in 2011 highlighting the absconding of asylum seekers, the Federal Ministry of the Interior (FMI) presented a partly different concept of irregularity, naming three groups of "persons who are illegally present" in Austria: asylum seekers who abscond[6]; persons who do not exit Austria after a negative decision in the asylum procedure[7]; and persons who irregularly enter Austria or overstay their residence title.

In an EU legal context, the Return Directive (2008/115/EC) defines "illegal stay" as: "The presence on the territory of a Member State, of a third-country national who does not fulfil, or no longer fulfils the condi-

6 According to Art. 13 Asylum Act, such persons are not entitled to stay in Austria if their asylum procedure was closed as a consequence of absconding.

7 If a negative decision on an application for international protection becomes legally binding, the person concerned automatically loses his/her right to stay according to Art. 13 Asylum Act.

tions of entry as set out in Article 5 of the Schengen Borders Code or other conditions for entry, stay or residence in that Member State." Even though the EC often uses the term "third-country national found to be illegally present" as defined in the Regulation on Migration Statistics (2007/862/EC), the definition offered in the Return Directive serves also as the basis for the definition of the terms "illegal stay" and "irregular migrant" in the second edition of the EMN Glossary and therefore constitutes an important reference point for this study (EMN 2011).

In the second edition of the EMN Glossary "irregular migrant" is defined as:

> In EU context, a third-country national who does not fulfil, or no longer fulfils the conditions of entry as set out in Article 5 of the Schengen Borders Code or other conditions for entry, stay or residence in that Member State;
> In a global context, someone who, owing to illegal entry or the expiry of his or her legal basis for entering and residing, lacks legal status in a transit or host country.
> Synonym: insufficiently documented/ undocumented /illegal/ clandestine/ unauthorised migrant
> Narrower Term: Third-country national found to be illegally present
> Related Terms: Illegal stay, Illegal entry, Illegal employment, irregular migration, Overstay(er)

In several contexts, there were (and still are) extensive discussions on the usage of the terms "irregular" and "illegal". The Council of Europe Parliamentary Assembly stated already in 2006 that it "prefers to use the term 'irregular migrant' to other terms such as 'illegal migrant' or 'migrant without papers'. This term is more neutral and does not carry, for example, the stigmatisation of the term 'illegal'. It is also the term increasingly favoured by international organisations working on migration issues" (Council of Europe 2006, Art. 7).

This understanding is also broadly reflected in current debates, publications and projects; for example the Clandestino project[8] used the term "irregular" to describe the wider phenomenon and the term "illegal" exclusively when referring to a status – "but not in relation to a person" (Clandestino 2009a: 1). Also the study entitled "Fundamental rights of migrants

8 For further information on the Clandestino project see Clandestino, http://clandestino.eliamep.gr.(accessed on 14 May 2012).

in an irregular situation in the European Union" from the European Union Agency for Fundamental Rights uses the term "irregular migration" rather than "illegal migration" (European Union Agency for Fundamental Rights 2011: 16).

In line with a general trend toward the usage of the term "irregular" instead of "illegal" – also to highlight that the phenomenon itself and the person concerned should not face general criminalisation – the terms "irregular migrant" and "irregular migration" will mainly be used for this study.[9] The term "illegal" is used where it appears in the source.

Furthermore, it seems most suitable to use the above-mentioned definitions derived from the Return Directive in conjunction with the definitions indirectly provided through Austrian legislation.

1.3 Methodology

The study at hand is based on common specifications that are valid for all EU MS plus Norway in order to achieve comparable EU-wide results as much as possible. It follows up on the national report "Illegal Immigration in Austria" (IOM 2006), the Austrian contribution to the EMN study "Illegally Resident Third-country nationals in EU Member States: State Approaches towards them, their Profile and Social Situation" (EMN 2007). While the former study also included aspects of the social situation of irregular migrants in the EU MS, the study at hand focuses preliminary on practical measures implemented by national authorities to reduce irregular migration movements.

The study is based on recent information available at the national, European and international level including publications, existing studies and statistics, press releases and media documents as well as internet resources. The desk research included a collection of material on the legal situation in Austria. An overview of the sources of information is available in the bibliography in the Annex.

During the desk research it became apparent that publications and studies on irregular migration in general are overwhelmingly diverse, also

9 In the opposite, other studies in the German-speaking context decide to use the term „illegal migration" on purpose, mainly to highlight tendencies of criminalisation and illegalisation of the phenomenon, to reflect on the defensive posture of most EU Member States and to deconstruct the terms used. For further information see Alt/ Bommes 2006, Bade 2002 and Karakayali 2008.

regarding the situation in Austria. However, the available material focussing on practical measures to reduce irregular migration was rather limited. In order to round out the research, qualitative semi-structured face-to-face interviews were carried out with three experts in the field of border control, international cooperation and combat of smuggling of human beings. These were Gerhard Reischer, Head of Unit II/3 (Aliens' Police and Border Control), FMI; Johann Riedl, Unit II/2/e (National Contact Frontex, Border Service, Airport and Flight Security), FMI and Colonel Gerald Tatzgern, Head of the Central Service Combating Human Smuggling and Human Trafficking (Criminal Intelligence Service Austria), FMI.

The three interviewees also represent the main authorities involved in combating irregular migration in Austria: Unit II/3 is the competent state authority regarding irregular migration and Unit II/2/e is responsible for the implementation of operational measures; and the Central Service of the Criminal Intelligence Service Austria concentrates on combating smuggling of human beings and human trafficking.

Depending on the specific expertise of each interviewee, the interviews provided detailed information on specific issues; the experts from Unit II/3 and Unit II/2/e were interviewed together. The interview guidelines were developed beforehand and covered all aspects relevant for this national study, but left enough room for responding to the particularities of the different interview partners. All interviews were carried out by staff members of the National Contact Point Austria in the EMN. The interviews were transcribed and the content included in the study was sent to the experts prior to publication for verification.

2. POLICY AND LEGAL FRAMEWORK ON IRREGULAR MIGRATION IN AUSTRIA

2.1 Policy Framework

"From a historical perspective, the explicit regulation of international migration is a relatively recent phenomenon, and so is the very notion of irregular migration, which has emerged as an object of distinct state policies only in the latter half of the 19th century, in tandem with the birth of modern migration policies" (Kraler/Hollomey 2010: 41). Although migrants are crossing international borders (also) without permission for a considerable time, the phenomenon only became a more debated subject in European countries, and likewise in Austria, in the early 1990s when the fall of the Berlin Wall, the break-down of the Soviet Union and the war in former Yugoslavia triggered fundamental socio-political change.

In 1993 the Residence Act and in 1997 the Aliens Act were introduced, fortifying regulation of immigration, stay and working conditions. Significant amendments to the Asylum Act took place in the years 1991, 1997 and 2003. The current aliens' law is based on major amendments to the entire aliens' law legislation in 2005. Since then, legislation connected to irregular migration has been repeatedly amended; in 2009 and 2011, major changes to the aliens' law were made. In 2009, amendments encompassed, inter alia, tightened regulations on detention pending deportation, regularisation possibilities for humanitarian reasons[10] as well as the introduction of the status of toleration and a residence title for "individual protection".[11] The amendments in 2011 came for the most part into effect as of 1 July and introduced a wide range of regulations in the framework of

10 These so called "humanitarian residence titles" were reformed several times in the past and are regularly accompanied by debates in the media. For detailed information consult the Austrian Annual Policy Report 2009, available at http://www.emn.at/images/stories/APR_2009_AT.pdf (accessed on 14 May 2012).

11 Amendments to the Aliens' Law in 2009, Government Proposals, Explanatory Notes, available at http://www.parla ment.gv.at/PAKT/VHG/XXIV/I/I_00330/fnameorig_167909.html and _150562.html (both accessed on 14 May 2012).

the Aliens' Police Act, the Asylum Act, the Settlement and Residence Act and the Aliens' Employment Act directly or indirectly addressing irregular migration (Bichl/Schmid/Szymanski 2011: 49). These provisions included the transposition of the Return Directive (2008/115/EC) and the introduction of new regulations on detention pending deportation.[12]

Austrian authorities see irregular migration as one of the major international challenges for the EU and Austria (FMI 2009: 5). It is further understood as a negative phenomenon for all parties involved, namely countries of origin, countries of transit and destination and migrants. Accordingly, efforts to reduce irregular migration are high on the political agenda. According to the interview partners the main problem in 2011 was an increased inflow of asylum seekers[13] (especially from Afghanistan) due to a lack of border control at the Turkish-Greek border and the suspension of Dublin II transfers to Greece.[14]

Also Frontex reported in their Annual Risk Analysis 2011 on this situation in the EU:

> By far the most dramatic change of 2010 occurred at the Greek borders with Turkey (land and sea), which recorded a 45% increase between 2009 and 2010. Here, detections of irregular border crossing soared on previous years as the dominant routes used by migrant smugglers continued to shift. The Greek-Turkish land border in particular saw massive increases in migratory pressure, peaking at around 350 irregular migrants a day predominantly crossing a 12.5-km section of land border in the Evros river region, mainly around the Greek city of Orestiada.

Austria's policy approach to resolve this situation focused on international cooperation as outlined in chapter 4.2.

Apart from legislative amendments but also in conjunction with these, Austrian policy makers regularly set policy measures addressing irregular migration. As an example, in August 2011, the Federal Minister of the In-

12 Aliens' Law Amendment 2011, Government Proposal, Explanatory Notes, available at http://www.parlament.gv.at/PAKT/VHG/XXIV/I/I_01078/index.shtml (accessed on 14 May 2012).

13 Asylum seekers are provided a right to stay in Austria during asylum proceedings according to Art. 13 Asylum Act, although their entry may have been unauthorised.

14 Gerhard Reischer, Head of Unit II/3, Foreign Police and Border Control, and Johann Riedl, Unit II/2/e, National Frontex Point of Contact, Border Service, Aviation Security, 3 October 2011.

terior, Johanna Mikl-Leitner, presented a "7-Point-Package" of measures to combat irregular migration with a focus on preventing the absconding of asylum seekers.[15] This package included among others the following points[16]:

- The "duty to collaborate" ("Mitwirkungspflicht"): asylum seekers are not allowed to leave the first reception centre for a maximum of 7 days after filing their asylum application in order to prevent absconding and to clarify whether Austria is responsible for the respective application;
- Restructuring of the aliens' police authorities: in every Provincial Police Command, additional sections for border and aliens' police matters were created to intensify controls at "hotspots" (border areas, main traffic routes, black market, red-light districts and main cities);
- Intensifying (police) cooperation on the international level: partnerships with Germany, Hungary, Poland, Czech Republic and Slovakia are of special importance.

Legislative amendments and policy measures are regularly criticised by NGOs working in the field of migration and asylum. There were, as an example, extensive debates about the "duty to collaborate" and the detention pending deportation for minors.[17] Also the general criticism of NGOs and lawyers that the aliens' law is becoming more and more complicated is repeatedly mentioned (Einwallner 2010: 68). Furthermore, a major critic of

15 Federal Ministry of the Interior, Press Release, 12 August 2011, Maßnahmenpaket gegen das "Abtauchen" in die Illegalität (Measure package againdt absconding in illegality), available at http://www.bmi.gv.at/cms/bmi/_news/bmi.aspx?id=756B677A776241723866303D&page=0&view=1 (accessed on 14 May 2012).

16 The other four points of the programme were: to increase constraints, if absconding is likely (lodgement of documents and money; duty to report to the police; and detention); to use technical possibilities (quick notification in case of an arrest; analysis of social networks); to frequently use the Central Population Register to detect irregular migrants in Austria and to introduce a special task force against irregular migration.

17 The debate on minors in detention pending deportation was dominated by the argument that the legal situation in Austria would not be in line with the Convention on the Rights of the Child. For further information see UNHCR, Positionspapier zu den geplanten Gesetzesnovellen (Position Paper on the planned Law Amendment), Press Release, 18 March 2001, available at http://www.unhcr.at/presse/pressemitteilungen/artikel/05f45d5577e22f5f527eee677298db17/unhcr-positionspapier-zu-den-geplanten-gesetzesnovellen.html (accessed on 14 May 2012).

civil society actors with regards to policy measures is that these address individuals, rather than structural deficiencies.[18]

2.2 Legislative Framework

In Austria's legislation, various provisions can be identified that are directly or indirectly aimed at reducing irregular migration, whereby all measures are limited by the general and absolute "principle of non-refoulement"[19]. Accordingly, these cannot be implemented, if a violation of (inter alia) Art. 3 ECHR[20] is to be assumed.

The legislation is highly complex, and encompasses: the Aliens' Police Act (containing provisions on competencies of the Aliens' Police, entry into Austrian territory in conjunction with the Schengen Borders Code and the Visa Code, issuance of documents as well as return measures and sanctions in cases of irregularity), the Asylum Act (providing regulations on the procedure following an application on international protection), the Settlement and Residence Act (mainly entailing provisions on different residence titles and respective procedures) and the Aliens' Employment Act (containing sanctions in cases of irregular employment).

Below, these provisions are divided into entry, termination of stay, regularisation of stay as well as return and removal. In addition, penalties and sanctions in cases of irregularity are outlined.

18 As an example, following the presentation of the "7-Point-Package", NGOs presented a 10-point-programme against "nationally produced illegality" expressing criticism against the measures introduced by the FMI. For more information refer to SOS Mitmensch, 10 Punkte Programm gegen staatlich produzierte Illegalität (10 Point Programme against state-made illegality), available at http://www.sosmitmensch.at/stories/4378/ (accessed on 21 May 2012).

19 This principle is explicitly mentioned in Art. 50 of the Aliens' Police Act.

20 This article prohibits torture and inhuman or degrading treatment or punishment and there are no exceptions or limitations on this right.

2.2.1 Entry

The Schengen Borders Code must be applied regarding the prevention of irregular entry[21] into Austria[22]. However, systematic border control – encompassing identity verification according to Art. 7 of the Schengen Borders Code – can only be carried out at the international airports (Eberwein/Pfleger 2011: 26). Third-country nationals who do not fulfil all entry conditions of the Schengen Borders Code[23] and do not belong to the categories of persons outlined therein[24] must be refused entry to the territories of the Schengen Member States.[25] Entry can only be refused by a substantiated decision stating the precise reasons for the refusal. For this purpose, a standard form[26] is used. A refusal of entry constitutes an act of power of command and power of enforcement, and an appeal to the Independent Administrative Senates is possible (Eberwein/Pfleger 2011: 30).

To guarantee the effectiveness of refusal to entry as defined in Art.13 of the Schengen Borders Code, a third-country national who cannot leave the border-crossing area immediately for legal or practical reasons can be instructed to remain at a specified place, notwithstanding his/her right to leave the Austrian territory any time. Third-country nationals whose entry took place on board of an aircraft, land vehicle or vessel can be prohibited from disembarking from said vehicle or be ordered to leave Austrian terri-

21 The entry conditions are outlined in Art. 15 para 1 and 2 Aliens' Police Act. In general, third-country nationals require a valid travel document and visa for legal entry to Austria.

22 Although the Schengen Borders Code is directly applicable, Austrian legislation contains separate regulations on the prevention of illegal entry. According to these provisions, police are authorised to prevent a third-country national who, inter alia, attempts to illegally enter Austrian territory (Art. 41 para 2 Aliens' Police Act). This competency of the Aliens' Police is called "rejection at the border". Before deciding on the admissibility of entry, authorities must question the third-country national and consequently decide by reason of the facts of the case that were made credible by him or are known otherwise (Art. 41 para 3 Aliens' Police Act).

23 Art. 5 para 1 of the Schengen Borders Code.

24 According to Article 5 para 4 of the Schengen Borders Code, these are: third-country nationals holding a residence permit or a re-entry visa issued by one of the Member States; if a visa is issued at the border in accordance with Regulation 2003/415/EC of 27 February 2003; on humanitarian grounds, on grounds of national interest or because of international obligations; asylum seekers.

25 Art. 13 Schengen Borders Code.

26 As set out in Annex V, Part B of the Schengen Borders Code.

tory.[27] The competent aliens' police authorities can further instruct public security service officers (further referred to as: the police) to escort a third-country national on his/her return flight.[28]

2.2.2 Termination of Stay

The Aliens' Police Act lists the elements and facts required to fulfil lawful residency in Austria. Among these are: entitlement to settlement or residence by virtue of a residence permit or documentation, right of residence during asylum proceedings and holding a work permit under the Aliens' Employment Act with a period of validity up to six months.[29] If none of these elements or facts apply, residence is defined as unlawful.[30] Third-country nationals are generally obliged to carry travel documents or other residence documents on person or keep them within such distance that they can be obtained without undue delay. If a verification of identity does not clarify the lawfulness of a non-national's entry and stay, the police is authorised to check further means, if certain facts[31] justify the assumption of irregular entry or stay.[32]

Austrian legislation provides various possibilities, mainly depending on the legal status of the person concerned, for terminating an irregular

27 Art. 42 para 1 and 2 Aliens' Police Act.

28 Art. 44 Aliens' Police Act.

29 Further forms of lawful residence according to Art. 31 para 1 Aliens' Police Act are: if third-country nationals have lawfully entered and, during their residence in the federal territory, have not violated the limitations or conditions of the entry permit or the duration or residence determined by international agreements, federal act or ordinance; if third-country nationals hold a residence permit issued by a contracting state; unless third-country nationals had to be readmitted by virtue of a readmission agreement or international practices or have entered by virtue of a transit declaration, other international agreements or at the request for transit by a Member State of the European Union or by virtue of a transit permit; provided that such residence results from other regulations under federal act.

30 Art. 31 para 1a Aliens' Police Act. Nonetheless, Art. 31 para 1a of the Aliens' Police Act additionally contains a list of cases of stay in Austria's territory, which are explicitly defined as unlawful. These refer to third-country nationals who had to be readmitted by virtue of a readmission agreement or international practices, who have entered by virtue of a transit declaration, other international agreements or at the request for transit by a Member State of the European Union or by virtue of a transit permit, or to whom a period for voluntary departure was granted (Art. 55 Aliens' Police Act).

31 These are not further defined by Austrian legislation.

32 Art. 32 and 35 Aliens' Police Act.

stay, whereby these legal instruments – namely return decisions (in conjunction with entry bans), return bans and forcible return ("Zurückschiebung") – cannot directly be compared, because different procedures apply.

In the case of an unlawful stay of a third-country national, the aliens' police authorities (must) issue a return decision that is, as a rule, accompanied by an entry ban. Entry bans are valid for a minimum 18 months[33] and in principal do not exceed 5 years, depending on the relevant circumstance of the individual case. As an exemption, return decisions may not be issued if forcible return ("Zurückschiebung") as described below is possible and a readmission agreement with the respective third-country national's country of origin exists.[34] Return decisions should provide for a period of voluntary departure of 14 days; if special circumstances are given, the period may be prolonged.[35] Authorities must only refrain from determining a period of voluntary departure if the suspensive effect of the appeal has been denied. If a period for voluntary departure is not granted, return decisions compel the third-country national to immediately depart to the country of origin, a transit country or another third country.[36] The possibility of an appeal to the Independent Administrative Senates against a return decision is given.[37]

Third-country nationals whose stay in Austria is unlawful, but who hold a residence title of another Member State, are obliged to depart immediately to this Member State. If the third-country national does not comply with this duty, a return decision must be issued.[38] In specific cases[39], a

33 In December 2011 the Austrian Administrative High Court ruled that this regulation contradicts the respective provisions of the Return Directive as it does not provide for entry bans with a period of less than 18 month.

34 Art. 52 para 1 and 3, Art. 53 para 1 Aliens' Police Act. In these cases, the third-country national will be ordered to return to foreign territory by police on behalf of the authorities.

35 Such as, inter alia, the (long) duration of the previous stay in Austria or the completion of the running school term.

36 Art. 52 para 1 and Art. 55 Aliens' Police Act.

37 Art. 9 para 1a Aliens' Police Act.

38 Art. 52 para 2 Aliens' Police Act.

39 The return decision is justified by the serious and imminent threat to public security and order or national security and is based on a criminal conviction that carries a period of imprisonment of at least one year or, has been issued on substantiated grounds that the third-country national has committed serious crimes or there is specific evidence that he plans to commit the same in the territory of a Member State or; the return decision has been issued because the third-country national has violated the provisions on entry and residence of the state taking the decision.

legally binding and enforceable return decision of a Member State of the European Economic Area (EEA) to a third-country national not entitled to residence equals an (enforceable) Austrian return decision.[40]

Asylum seekers are not issued a return decision in conjunction with an entry ban, as their stay during asylum proceedings[41] is explicitly defined as legal.[42] Instead, a return ban is issued, if certain facts justify the assumption that his/her stay jeopardises public order or other public interests[43]. A return ban equals the withdrawal of the right to stay and is valid for a period of a minimum of 18 months and must, in principal, not exceed 5 years, depending on the relevant circumstance of the individual case.[44] In conjunction with these, restrictions can be imposed on the person concerned.[45]

As a further legal instrument against irregularity – aiming at the prevention of irregular entry and stay – the so-called forcible return ("Zurückschiebung") is foreseen in the Austrian legal framework: non-nationals can be ordered to return to foreign territory by the police on behalf of the aliens' police authority, if, for example, they have not lawfully entered the federal territory and are discovered within seven days.[46] In cases of forcible return, the authority may instruct police to escort the non-national.[47] Forcible return also constitutes an act of power of command and power of enforcement and an appeal to the Independent Administrative Senates is possible (Eberwein/Pfleger 2011: 38).

40 Art. 46 b para 1 Aliens' Police Act.

41 Please note that negative decisions of asylum authorities on applications for international protection always include an expulsion order, whereby Art. 8 ECHR must be considered (Art. 10 Asylum Act). Accordingly, the competent asylum authorities (Federal Asylum Office or Asylum Court) must assess, if the asylum seekers' interest to uphold a private or family life according to Art. 8 ECHR in Austria overweighs the public interest of an orderly aliens' law system.

42 Art. 13 Asylum Act.

43 These interests are mentioned in Art. 8 para 2 ECHR.

44 Asylum seekers must generally not be deported from Austria if the asylum procedure is still open.

45 Art. 54 Aliens' Police Act. These restrictions can be the following duties: to not leave the territory of the respective Federal Province, to regularly report to police authorities, or to lodge documents.

46 Forcible return is further possible in case the non-national had to be readmitted by Austria (also within seven days of entry) or their stay – subject to visa exceptions or not – is unlawful, within seven days (Art. 45 para 1 subpara 2 and 3 Aliens' Police Act).

47 Art. 45 para 2 Aliens' Police Act.

2.2.3 Regularisation of Stay

Apart from legal instruments to terminate stay, Austrian legislation also provides for possibilities to obtain a residence title or other forms of status in cases of irregularity. Third-country nationals residing in Austria are issued (ex officio or following an application) a "Settlement Permit" ("Niederlassungsbewilligung"), if their stay is necessary to uphold their private and family life according to Art. 8 ECHR, and specific grounds for refusal[48] are not present. Thus, the competent authority must weigh the interest of the person concerned to remain in Austria to uphold his/her private and family life[49] according to Art. 8 ECHR compared to the public interest. If the interest of the third-country national is considered to have more weight, a "Settlement Permit" is issued. If, additionally, the first module of the Integration Agreement[50] has been fulfilled, a "Red-White-Red Card plus" (providing unlimited access to the labour market) is issued.[51]

A residence permit can further be issued to third-country nationals residing in Austria if they can substantiate their continuous stay since 1 May 2004; half of the stay must have been lawful. In such a case, the settlement and residence authority must consider the extent of the third-country national's integration in Austria, especially his/her ability to sustain him- or herself, level of education and vocational training, employment status and knowledge of the German language. Again, if the first module of the Integration Agreement has been fulfilled, a "Red-White-Red Card plus" can be issued. Applications for these titles do not constitute a residence title or right to stay. However, if such applications were filed prior to the expulsion

48 These are listed in Art. 11 para 1 subpara 1, 2 or 4 Settlement and Residence Act.

49 According to Art. 11 para 3 Settlement and Residence Act, the following aspects must be considered when examining the interests of a third-country national and the public interests respectively: the type and duration of the previous stay, especially if the stay was lawful or not; the actual existence of family life; if the private life is worth protection; the level of integration; the bonds to the country of origin; whether the third-country national is without previous convictions; violations against public order, especially the aliens' law; whether the family life was formed at a time when the third-country national knew about his/her uncertain status; if the stay was delayed by the authorities.

50 German language knowledge at A2 level of the Common European Framework of Reference for Languages.

51 Art. 41a para 9, Art. 43 para 3 and Art. 44b para 3 Settlement and Residence Act.

procedures and a positive decision is likely, the execution of removal is pending until a legally binding decision has been made.[52]

Both of the outlined residence titles – "Settlement Permit" or "Red-White-Red Card plus" –apply for well-integrated third-country nationals without valid papers to legalise their status.[53]

Additional possibilities to obtain a legal status apply to persons in need of individual protection ("Besonderer Schutz"). This title is issued in the following cases:

- To safeguard criminal prosecution or the enforcement of charges in connection with such criminal offences, especially regarding witnesses or victims of trafficking in human beings or cross-border prostitution business.
- If the irregularly staying third-country national has become a victim of violence and an interim injunction has been issued or could have been issued and the third-country national substantiates that the issuance of the residence title is necessary for the further protection from violence.
- To unaccompanied minors or minors without a residence title who are in custody of foster parents or the youth welfare authority.[54]

Furthermore, non-nationals residing in Austria, inter alia, must be issued (ex officio or following an application) a residence title for individual protection, if they have been tolerated[55] for at least one year, the requirements for toleration still exist and they are without previous criminal convictions.

The status of toleration is provided as long as the removal of the person concerned is inadmissible according to the "principle of non-refoulement" (ex lege), or if the authority, ex officio, determines that the removal of a person is impossible due to factual reasons that do not lie within the responsibility of that person. Non-nationals whose residence in Austria is tolerated are issued an identity card that is valid for one year with the possibility of

52 Art. 43 para 4 and 5, Art. 14a and Art. 41a para 10 and 11 Settlement and Residence Act.

53 According to Article 44a para 2 Settlement and Residence Act, third-country nationals holding a residence title are not allowed to apply for the abovementioned titles. Thus, a third-country national who fulfils the criteria for obtaining a "Red-White-Red Card plus" due to his/her strong level of integration in Austria, but holds a different title with no access to the labour market, must "irregularise" his/her status prior to an application for a "Red-White-Red Card plus".

54 Art. 23 para 4 Settlement and Residence Act.

55 Art. 46a para 1 subpara 1 and para 1a Aliens' Police Act.

extension. Residence of non-nationals being tolerated is explicitly determined as "illegal".[56]

2.2.4 Return and Removal

The Aliens' Police Act is relevant for forced removal of irregular migrants, providing legislation on deportation and detention pending deportation or more lenient measures. Irregular migrants can be deported, if they have failed to comply in due time with their obligation to depart.[57] If the non-national does not hold a travel document and deportation cannot be carried out, the aliens' police can, inter alia, obtain a replacement travel document for deportation from the competent representation authority (embassy).[58]

To guarantee the effective execution of deportation or forcible return ("Zurückschiebung"), or as a procedural guarantee in connection with the imposition of a return decision, irregular migrants can be arrested and detained. The authorities must endeavour to keep detention pending deportation as short as possible and use it as a means of last resort. In general, detention pending deportation can continue until the reason for its imposition has ceased to exist or its purpose is no longer achievable. However, the duration (concerning persons older than 18) must not exceed four months, whereby exceptions[59] can apply.[60] If the aliens' police find that the purpose of detention pending deportation can be achieved by using more lenient measures[61], these apply.[62] In line with the Return Directive[63], the lawfulness of detention pending deportation is subject to a speedy judicial review, if

56 Art. 31a para 2 subpara 3 and Art. 46a para 1, 3 and 4 Aliens' Police Act.

57 Further cases are: if control of their departure appears necessary for reasons relating to the maintenance of public order or security or; it is to be feared, on the basis of certain facts, that they will not comply with their obligation to depart; or they have returned to the federal territory in violation of the entry ban or exclusion order.

58 Art. 46 Aliens' Police Act.

59 Exceptions apply in cases under Art. 80 para 3 and 4 Aliens' Police Act.

60 As an absolute maximum duration, 10 months within a period of 18 months are postulated.

61 A more lenient measure may be, in particular, an order to take up accommodation in premises specified by the authority to report, at regular intervals, to the police command specified to the non-national or to provide financial security.

62 Art. 76 para1, Art. 77 and 80 para 1 Aliens' Police Act.

63 Art. 15 para 2b and 3 of the Return Directive.

requested by the non-national concerned and a periodic (every four weeks) judicial review, ex officio, respectively.[64]

Austria's aliens' law also contains specific provisions concerning minors and unaccompanied minors affected by return and removal. In the case of minors aged 14 to 16, the aliens' police must use more lenient measures (unless certain facts justify the assumption that the purpose of detention pending deportation cannot be achieved thereby). If detention pending deportation is imposed on minors from the age of 14 to 18, its duration must not exceed two months. Minors under the age of 14, as a rule, must not be kept in detention pending deportation.[65] Prior to removal of unaccompanied minors, the authorities make sure that these are committed to the care of a family member, an official guardian or an institution for accommodation in the country of origin.[66]

2.2.5 Penalties and Sanctions in Cases of Irregularity

Austria's legislation provides various sanctions that are directly or indirectly connected to irregularity of migrants. These provisions can generally be divided into two groups, namely offences falling under the responsibility of administration authorities and those under the responsibility of criminal courts. In the framework of the Aliens' Police Act, administrative offences must be applied subsidiary to criminal offences.[67] Smuggling in human beings in return for payment, facilitation of unauthorised residence in return for payment, exploitation of non-nationals, contracting and arranging marriages (also registered partnerships) and adoptions of convenience and the unlawful claiming of social benefits are defined as criminal offences. Administrative penalties are, inter alia, provided in cases of unlawful entry/residence, knowingly submitting wrong information, smuggling and facilitation of unauthorised residence without payment as well as against carriers not complying with their duties and in cases of unauthorised employment (Eberwein/Pfleger 2011: 68f).

Smuggling in return for payment is defined as a criminal offence. Any person who, with intent to unjustly enrich himself or a third person, assists in the unlawful entry or transit of a non-national into or through a Mem-

64 Art. 80 para 6 and Art. 82 para 1 Aliens' Police Act.
65 Art. 76 para 1a, Art. 77 para 1 and Art. 80 para 2 subpara 1 Aliens' Police Act.
66 Art. 46 para 3 Aliens' Police Act.
67 Art. 122 Aliens' Police Act.

ber State or neighbouring state of Austria, must be sentenced to a term of imprisonment of up to two years. If a person has already been convicted within the last five years for human smuggling, he/she must be sentenced to a term of up to three years.[68] It has to be noted that the term "assist" must be understood broadly in this context; accordingly, also the provision of a travel document is encompassed by this regulation (Eberwein/Pfleger 2011: 68).

If smuggling is committed on a commercial basis, concerning a larger number of persons, or in a manner that subjects the person concerned to a state of torture for a prolonged period of time, a sentence to a term of six months to five years is foreseen. As a member of a criminal organisation or in a manner that poses a threat to the life of a person, offenders are to be sentenced to a term of one to ten years.[69]

In both cases (commercial or not), non-nationals whose unlawful entry or transit has been assisted by such acts are not to be punished as parties to the offence. However, their removal may be delayed as long as this is necessary to question them on the facts of the case. In such cases, the police is authorised under certain circumstances to seize items carried by the offender and used for the commission of the offence.[70] Both offences fall within the competence of a single judge located at the Regional Criminal Court; appeals are possible.[71]

"Illegal entry and residence" of non-nationals are defined as administrative offences. Non-nationals are sentenced with fines of 100 to 1,000 euros for "illegal entry", fines of 500 to 2,500 euros for "illegal residence" or, if not collectable, with terms of imprisonment of up to two weeks. A person who repeatedly commits such offence must be sentenced to pay a fine of 1,000 to 5,000 euros or to three weeks imprisonment for "illegal entry" and a fine of 2,500 to 7,500 euros and four weeks imprisonment for "illegal residence". If a non-national has already been sanctioned for unlawful stay, a sentence regarding unlawful entry is not possible.[72]

However, in specific cases it is possible for the non-national not to be punishable for "illegal stay", even if all facts of the offence are present. As

68 Art. 114 para 1 and 2 Aliens' Police Act.
69 Art. 114 para 3 and 4 Aliens' Police Act.
70 Art. 114 para 5 and 6 Aliens' Police Act.
71 Art. 31 para 4 subpara 1 Criminal Procedure Code.
72 Art. 120 Aliens' Police Act.

an example, persons with the status of toleration as described under chapter 2.2.3 are exempt from the abovementioned administrative penalties, although their status is defined as "illegal". During asylum proceedings, the administrative penal procedure is interrupted, as a non-national who has been granted international protection cannot be sanctioned due to unlawful entry.[73] An appeal against decisions of the local administrative authorities as first instance to the Independent Administrative Senates is possible.[74]

2.3 Institutional Framework

The overall responsibility for immigration and asylum policies lies with the FMI and to a degree with the Ministry for Labour, Social Affairs and Consumer Protection, which partly sets the conditions for the issuance of work permits as well as with Federal Ministry of European and International Affairs (FMEIA) that is responsible for issuing visas.

The police[75] have a number of competencies regarding the lawfulness of non-nationals' entry and stay and are authorised to examine the lawfulness of non-nationals' entry and stay, if certain facts (which are not defined further by the Aliens' Police Act) justify suspicion of irregularity.[76] In this context, the task force "Soko Ost" also undertakes checks on individuals within Austrian territory, mainly within the framework of compensatory measures. A special task force against irregular migration was established in the year 2011 within the "Soko Ost".

In aliens' police proceedings, the Independent Administrative Senates are, according to the wording of the respective article, competent to decide on appeals against decisions of the aliens' police authorities (in cases concerning EEA-citizens, Swiss citizens and privileged third-country nationals) as well as return decisions. All further cases generally fall within the competence of the Security Headquarters ("Sicherheitsdirektion"). Austria's Administrative High Court ruled in May 2011 that exclusion orders and expulsion orders must be understood as return decisions according to the Return Directive (Eberwein/Pfleger 2011: 38). Through this and subse-

73 Art. 120 para 5 and 7 Aliens' Police Act.
74 Art. 67a General Administrative Procedure Act.
75 Border control is implemented by the border police and inland control by the aliens' police.
76 Art. 35 Aliens' Police Act.

quent rulings, the competence of the Security Headquarters has been significantly restricted.

The governors of the Federal States, who, typically, delegate this competence to the district administration authority, make a first instance decision according to the Settlement and Residence Act. The FMI decides on appeals against decisions of the first instance (Eberwein/Pfleger 2010: 94).

The responsibility for processing asylum applications in the first instance[77] lies with the Federal Asylum Office and its three first reception centres[78] and seven branch offices[79]. If an asylum application is rejected and the person concerned files an appeal, the Asylum Court acts as second instance deciding on the appeal. The possibility to appeal to the Administrative High Court was abolished in July 2008.[80]

77 The asylum procedure in Austria is divided into two phases involving different actors and institutions at different levels. Phase one corresponds to an admission procedure clarifying the competence of Austria with regard to Regulation 343/2003 (Dublin Regulation) and the principle of international protection in a safe third country. In the second phase, if Austria is found to be competent for the case, an assessment of the application for international protection with regard to the Geneva Convention and Art. 3 and 8 ECHR is carried out. (EMN 2009: 26).

78 The first reception centres are: Centre East (Traiskirchen), Centre West (Thalham) and Centre Airport Schwechat.

79 Branch offices are in Eisenstadt, Graz, Innsbruck, Linz, Salzburg, Traiskirchen and Vienna.

80 Federal Ministry of the Interior, Asylwesen, available at http://www.bmi.gv.at/cms/BMI_Asylwesen/informationen/start.aspx (accessed on 14 May 2012).

3. PRACTICAL MEASURES TO REDUCE IRREGULAR MIGRATION

Practical measures and control mechanisms can broadly be divided in two categories: external control mechanisms and internal control mechanisms (Brochmann/Hammar 1999: 12). External controls are concerned with the control of entry and borders including visa regulations and other preventive measures. Internal controls are pursued when the migrant is already present in a respective country; these focus on requirements of residence and work permits, employer sanctions, establishment of identity, inspections of work places, and access to welfare entitlement, amongst others. In the framework of Austria's approach to reduce irregular migrations, measures from both categories apply.

3.1 Pre-Entry

3.1.1 Visa Schemes

According to the interview partners, an important factor for pre-entry measures addressing the reduction of irregular migration are the Austrian diplomatic representations abroad responsible for issuing visas to third-country nationals in accordance with the Schengen acquis – and applying the Visa Code since 5 April 2010 – as well as national legislation concerning national visas.

The Austrian diplomatic representation authorities abroad fall under the responsibility of the FMEIA. Training for staff is organised on a permanent basis and technical support for the performance of an effective examination of visa applications is offered. The granting or non-granting of national visas depends on the fulfilment of specific criteria such as secured departure.[81] According to the interviewees, such criteria can also be an effective tool to prevent potential overstayers from entering Austrian territory, even if this is not the intended aim of visa schemes.

81 An exception applies to the job seeker visa according to Art. 24a Aliens' Police Act.

At present, certain third-country nationals require a visa in order to enter Austrian territory[82]; furthermore "nationals from Afghanistan, Bangladesh, Congo, Ghana, Iran, Iraq, Libya, Nigeria, North Korea, Pakistan, Saudi Arabia, Sudan, Togo and Yemen […] can only be issued (a visa) after consultation with the Federal Ministry of the Interior."

In Austria, three different types of visa are relevant (Temesvári 2012)[83]:

- Visa A (Airport Transit Visa): mandatory for nationals from Afghanistan, Bangladesh, Eritrea, Ethiopia, Ghana, Iraq, Iran, DR of Korea, Liberia, Nigeria, Pakistan, Somalia and Sri Lanka for transit at airports. It must be requested before the journey and may not be issued at the border;
- Visa C (Short Stay Visa): standard tourist visa entitling the holder to residence up to 90 days within 180 days in the Schengen Area; this visa can also be issued for the purpose of taking up a merely temporary independent gainful occupation, a merely temporary dependent gainful occupation, or seasonal work;[84]
- Visa D (Residence Visa or National Visa): national visa entitling to a stay and travel for 91 days up to six months and partly free movement in the Schengen Area. It is issued by an Austrian diplomatic or consular authority for different purposes. Typically it is issued for the one-time obtainment of a residence title (or when granting international protection) in subsequence when the issuance of this title is already fixed as the visa is issued, or the purpose of courses not falling in the scope of residence titles, as well as study stays not exceeding six months (Peyrl/Schumacher 2007: 28). National visas can also be issued for the purpose of taking up a temporary independent gainful occupation, a temporary dependent gainful occupation, or seasonal work.[85] Since July 2011, national visas can also be issued to highly skilled workers for

82 A list of countries whose nationals require a visa to enter Austria, in adherence to the common list of countries whose nationals require a visa to enter the Schengen area, is available at http://www.bmi.gv.at/cms/BMI_Fremdenpolizei/visumspflichten/start.aspx (accessed on 14 May 2012).

83 For more general information on visa issuing in Austria refer to the FMEIA at http://www.bmeia.gv.at/aussenministerium/buergerservice/pass-und-visum.html (accessed on 14 May 2012).

84 Art. 24 para 1 Aliens' Police Act.

85 Ibid.

the purpose of seeking a job. Consequently the residence title "Red-White-Red – Card" can be obtained.[86]

In 2008, 377,836 visas were issued worldwide, in 2009 the numbers dropped to 317,300 visas and in the year 2010 figures dropped again to 292,699 visas issued to third-country nationals. The Visa Information System (VIS) is operational in Austria since 11 October 2011 (Temesvári 2012: 11).

"If I can identify everyone not entitled to come to Austria at the external borders, meaning the diplomatic representations abroad not issuing a visa, than we do not need to bring that person back forcibly".[87] Visa requirements, however, "could not be fully effective at preventing irregular migrants from reaching Austrian borders without the execution of other legal and practical tools. This was where the introduction of so-called carrier-liabilities became an effective instrument of pre-entry control" (Jandl 2008: 32). Carrier liability has to be mentioned here specifically. It was introduced in Austria in 1991 to prevent persons not holding a valid visa from boarding planes and since 2001 carriers can be sanctioned if they transport unauthorised persons[88] (see also Chapter 2.2.1). Consequently, the airline examines the validity of visas of passengers when checking in at the airport (Guild 2003).

According to the authorities interviewed in the course of this study, due to the carrier sanctions, the arrival of a third-country national without a valid visa in Austria by plane is very unlikely. Therefore, it can be concluded that especially carrier liabilities and carrier sanctions constitute a very relevant pre-entry measure to reduce irregular migration.

86 Art. 24a Aliens' Police Act.

87 Interview with Gerhard Reischer, Head of Unit II/3 (Foreign Police and Border Control) and Johann Riedl, Unit II/2/e (National Frontex Point of Contact, Border Service, Aviation Security) on 3 October 2011.

88 According to the Regulation 2001/539/EC of 15 March 2001 a fine of 3,000 to 5,000 euros can be issued for carrying an irregular migrant.

3.1.2 Immigration Liaison Officers and Document Advisors

Immigration Liaison Officers[89] (ILOs, also Police Attachés) and Document Advisors abroad provide training and know-how to embassies, consulates and carriers on visa processing, document fraud and control mechanisms, which are also considered to be an important part of pre-entry preventive measures to reduce irregular migration.

The main responsibility of ILOs lies in their role as intermediaries between national and foreign investigations and supporting foreign authorities and administrative bodies with their know-how. "Even before the full establishment of the EU network of Immigration Liaison Officers (ILOs) in important countries of origin and transit, Austria has sent several ILOs abroad on the basis of the Amsterdam and Schengen treaties and bilateral agreements. These ILOs were part of an 'early warning' campaign conducted in consultation with authorities in other countries to combat irregular migration and to implement readmission agreements. As emissaries from the Ministry of Interior, Austrian ILOs were deployed to Belgium, Italy, Slovakia, Hungary, Yugoslavia, Romania, Turkey and Jordan in 2001. In 2002, they were deployed in Poland, the Czech Republic, Slovenia, Ukraine and Russia; to Morocco in 2003; and to Spain, Croatia, Bosnia and Bulgaria in 2005" (Jandl 2008: 33).[90] In 2010 Austria posted 23 ILOs in several locations.[91] From 11 -14 October 2011, the annual conference of ILOs of the FMI took place bringing all ILOs together to exchange information, up-date each other on political developments and discuss organisational matters.[92]

ILOs are also responsible for spreading information directly in the countries of origin in urgent cases. For example, within the context of rising

89 In Austria, the work of ILOs is carried out by Liasion Officers, whose field of activity encompasses also immigration issues.

90 An EU network of Immigration Liaison Officers was established through Regulation 2004/377/EC, as of 19 February 2004.

91 For further information on the duty stations see Federal Ministry of European and International Affairs, available at http://www.cda-austria.at/seite.php?35-00 (accessed on 14 May 2012).

92 Federal Ministry of the Interior, Internationale Zusammenarbeit: Jahreskonferenz der Verbindungsbeamten des Innenministeriums (International Cooperation: Annual Conference of the Immigration Liaison Officers abroad of the Federal Ministry of the Interior), Press Release, 11 October 2011, available at http://www.bmi.gv.at/cms/bmi/_ news/bmi.aspx?id=6F6E484C59345678766A553D&page=0&view=1 (accessed on 14 May 2012).

asylum applications of Macedonian nationals in 2010, the Austrian ILO in Macedonia organised an information campaign in cooperation with the Macedonian Federal Ministry of the Interior to raise the Macedonian public's awareness of the fact that Macedonian nationals have a low chance of receiving international protection in Austria. The awareness-raising campaign had a notable impact: after placing spots in radio and television in Macedonia, a significant decrease in asylum applications from Macedonian nationals in Austria could be observed.

Document Advisors have a similar function as ILOs; they have no sovereign competence, but work as trainers and advisors. Based on their official duties as well as interests and qualifications these officers are accredited to embassies at certain locations to implement trainings and offer consultation on a variety of subjects, most commonly document forgeries and fraud. The main target groups of Document Advisors are the staff in embassies and consulates as well as airline staff. In 2010, Austrian Document Advisors were active in Bangkok (Thailand), Cairo (Egypt), Damascus (Lebanon) and New Delhi (India).[93]

3.1.3 Identification of Migration Routes

Identifying specific routes of irregular migrants is understood as a relevant pre-entry measure to reduce irregular migration flows by Frontex, and the interviewees highlighted its relevance also for the Austrian context. Executive authorities, the Federal Asylum Office and the Criminal Intelligence Service Austria closely co-operate to identify routes of irregular migrants and smugglers. Based on the information provided by migrants in interrogations (mainly asylum seekers) routes can be identified, and these are placed under observation in further consequence, also making use of international police cooperation. In 2010 and 2011 one of the major routes identified is the so-called "Balkan-Route"[94] from the countries of origin further to Turkey and Greece over Macedonia and Serbia to Hungary and finally Austria.[95]

93 Other destinations are covered according to demand clarified in cooperation between the Federal Ministry of the Interior, the Federal Ministry for European and International Affaires as well as the airlines.

94 For more information on the Balkan Route refer to I-MAP, available at http://www.imap-migration.org/index.php?id=2&L=0 (accessed on 14 May 2012).

95 Austrian Press Agency, Illegale Einwanderung in die EU stark angestiegen. (Illegal migration to the EU strongly increases), 16 November 2011, available at http://diepresse.com/

According to the FMI, the border city Subotica (in Serbia at the Hungarian border) became one of the smugglers' hot spots in 2010, where migrants were accommodated and taken to pensions or private houses (FMI 2010: 235) to be further transported to the EU. According to the interviewees, smugglers' usage of this route increased in the year 2011 and, as a consequence, the international policy cooperation outlined below (see chapter 4.2) especially intensified between Austria and Hungary were implemented in order to reduce practices of smugglers and human traffickers on these migration routes.

Two other major routes were identified in 2010 and 2011 to and through Austria: from the countries of origin to Turkey and Greece and then Italy (transport via sea to Italy was organised by boats and ferries)[96]; and the other route leads from the countries of origin to Turkey and Greece, then over Bulgaria and Rumania to Hungary and into or through Austria.

Compared to the situation in 2005, when four routes dominated irregular migration movements in Austria (Kratzmann 2007: 116f.), the situation has changed noticeably. Migration routes are under constant change and highly depend on the context in the countries of origin as well as the legal framework plus border control measures in the countries of transit and destination.

3.2 Entry

3.2.1 Border Control

Practical measures undertaken to address irregular migration at the entry stage typically encompass border control. At present, border control is seen as a matter falling under the competence and responsibility of sovereign states. In Austria, the Department II/3 (Aliens' police and border control) as well as Unit II/2/e (National Frontex Point of Contact, Border Service and Aviation Security) of the FMI is responsible.

Since the expansion of the EU in May 2004 and the accession of the EU 10 to the Schengen agreement in 2007, Austria's external border regime has changed significantly. Today, Austria is surrounded by eight Schengen

home/politik/eu/709243/Illegale-Einwanderung-in-die-EU-steigt-stark-an (accessed on 14 May 2012).

96 Heute, Mikl-Leitner will Polizei-Abkommen gegen Menschenschmuggler (Mikl-Leitner wants police cooperation against smugglers), 1 December 2011, p. 5.

Member States, two of which are non-EU MS (Switzerland and Liechtenstein). Consequently, the importance of external border controls has decreased since 2007 and border control is mainly carried out at the Austrian international airports representing the Schengen border.

A major development since 2004 is the increased cooperation with neighbouring EU countries, on the basis of which Austria has developed five police cooperation centres that carry out mixed patrols in Nickelsdorf/Hegyeshalom (to Hungary); Kittsee/Jarovce (to Slovakia); Thörl-Maglern (to Italy); Dolga Vas (to Hungary, Slovenia and Croatia) and Tisis/Schaanwald (to Liechtenstein/Switzerland). The collaboration through these police cooperation centres was confirmed as very productive by the interviewees as on-going exchange and cooperation offers first-hand information and the provision of a realistic picture of the actual situation at the Schengen external borders, which also allows for planning adequate measures in Austria.

Border control also played a major role in light of the "Arab Spring" and following debates in the EU. Austrian authorities took a rather conservative position regarding the proposal of Commissioner Cecilia Malmström to introduce a mechanism to "allow the Union to handle situations where either a Member State is not fulfilling its obligations to control its section of the external border, or where a particular portion of the external border comes under unexpected and heavy pressure due to external events." [97] Whilst the introduction of a mechanism for the reintroduction of temporary border controls was generally welcomed[98], the proposal to select EU MS who can reintroduce temporary border controls as well as to set the time frame for these measures on the European level was not an option, according to Federal Minister of the Interior Johanna Mikl-Leitner.[99]

97 Communication from the Commission to the European Parliament, the Council, the Economic and Social Committee and the Committee of the Regions, Communication on migration, Brussels, 4 May 2011 COM(2011) 248 final, p. 8, available at http://ec.europa.eu/home-affairs/news/intro/docs/1_EN_ACT_part1_v11.pdf (accessed on 14 May 2012).

98 Der Standard, "Anlassbezogene Kontrollen", keine Libyen-Flüchtlinge (Temporary border controls, no Libyan Refugees), 12 May 2011, available at http://derstandard.at/1304551694322/Mikl-Leitner-Anlassbezogene-Kontrollen-keine-Libyen-Fluechtlinge (accessed on 14 May 2012).

99 Wiener Zeitung.at, Abstimmung zu Schengen Erweiterung geplatzt (Vote on Schengen enlargement disintegrates), 22 September 11, available at http://www.wienerzeitung.at/nachrichten/politik/europa /398839_Abstimmung-zu-Schengen-Erweiterung-geplatzt.html (accessed on 14 May 2012).

A number of third-country nationals entered Austria in the course of migration movements from Northern Africa to Lampedusa and into Europe following the "Arab Spring" and the crisis thereafter.[100] In this context, migrants who were apprehended by the authorities and were not tourists prima facie or did not have enough financial resources to sustain themselves during their stay were refused entry to Austria in accordance with the Schengen Borders Code.[101]

3.2.2 Usage of Technologies and Data Storage Systems

Certain technologies are necessary for the implementation of control measures. To carry out border control, Austria, inter alia, makes use of thermal imaging equipment (also on vehicles), and makes these available to neighbouring countries such as Hungary to control movements at the green border between the border crossing points during the night. "Plus, in the area of border crossing control, we have a lot of possibilities through the modern passport technology and related chip technology, as we can access the data on the chip by chip readers. New passport readers with a UV light and infrared light simultaneously increase the possibility of recognising forgery features more easily."[102]

100 In April 2011 Italy and Tunisia signed an agreement saying that Tunisians who arrived in Italy before the 5th of April could stay in Italy for six month with temporary residence permits and that Tunisia in turn would simplify the return procedures for those migrants arriving after April the 5th. In this context, the Italian authorities issued temporary residence permits to migrants, which allowed them to travel in the EU, which was highly criticised by other EU Member States. For further information see relevant. at, 27 EU-Staaten, 22.000 Flüchtlinge, keine Lösung (27 EU States, 22,000 refugees, no solution), 11 April 2011, available at http://relevant.at/meinung/109576/eu-fluechtlinge-lampedusa.story (accessed on 14 May 2012); Africa-news.eu, Maroni: Italy-Tunisia agreement working, 16 April 2011, available at http://www.africa-news.eu/ immigration-news/italy/2410-maroni-italy-tunisia-agreement-working.html (accessed on 14 May 2012).

101 According to Art. 5 para 1 (c) of the Schengen Borders Code, migrants must "justify the purpose and conditions of the intended stay, and they have (to have) sufficient means of subsistence, both for the duration of the intended stay and for the return to their country of origin or transit to a third country into which they are certain to be admitted, or are in a position to acquire such means lawfully.".

102 Interview with Gerhard Reischer, Head of Unit II/3 (Foreign Police and Border Control) and Johann Riedl, Unit II/2/e (National Frontex Point of Contact, Border Service, Aviation Security) on 3 October 2011.

For data storage, Austria uses the Schengen Information System (SIS) – a database on persons and pieces of property circulated as wanted, not having the right to enter or missing. Thus, it is of great importance in the context of irregular migration. Legally binding and enforceable return decisions along with entry, residence as well as return bans respectively were entered into the SIS, according to the Schengen Implementing Convention.

The Visa Information System (VIS), a database on visa applications of third-country nationals[103], is perceived as becoming more and more important. In connection with the VIS, the FMI has introduced e-passport scanners and a new user interface with the possibility of tracing and requesting information. At the Vienna airport Schwechat automated e-gates are foreseen and boarding-card scanners were positioned in April 2011.

The Eurodac (European Dactyloscopy), a database of fingerprints of asylum seekers which has been operational since 2003, is also an important tool for data storage, data analysis and data sharing as part of an external control mechanism. Eurodac supports Regulation 343/2003 (Dublin Regulation) and therefore plays a key role in controlling irregular migration: "This became evident in May 2004, when four of Austria's neighbours […] acceded to the EU and to the Dublin regime, which included the Eurodac system. Within the first few months of the accessions, there was a noticeable drop in asylum applications at Austria's borders, and there have been continued decreases in the periods since then." (Jandl 2008: 31)

The planned European Border Surveillance System (Eurosur)[104] will create a "system of systems", which will offer the EU Member States a technical framework "to act efficiently at local level, command at national level, coordinate at European level and cooperate with third countries in order to detect, identify, track and intercept persons attempting to enter the EU illegally outside border crossing points."[105] Eurosur will provide an instrument

103 For more information on the Visa Information System refer to Council Decision 2004/512/EC, available at http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2004:213:0005:0007:EN:PDF (accessed on 2 July 2012).

104 For further information on EUROSUR refer to European Commission, http://europa.eu/legislation_summaries/justice_freedom_security/free_movement_of_persons_asylum_immigration/l14579_de.htm (accessed on 14 May 2012).

105 European Commission: Communication Examining the creation of a European Border Surveillance System (EUROSUR), Brussels 13 February 2008, COM (2008) 68 final, p. 4.

for a 24-hour communication between authorities and makes use of data and information sharing.

3.2.3 Integrated Border Management

Austria follows an approach of integrated border management, meaning that cooperation between different (levels within) stakeholders, bodies and different countries is actively practised to make border management as effective as possible. In the framework of an integrated border management, Austria actively participates in cooperation at the EU external borders, for example in Frontex actions and joint operations.[106]

The FMI also provides human resources for Frontex, the specialised and independent EU agency "tasked to coordinate the operational cooperation between Member States in the field of border security"[107]. The head of Department II/2 within the FMI (Einsatzangelegenheiten; Operational Affairs) with the Unit II/2/e (National Frontex Point of Contact Security), Major General Robert Strondl, is the Chairperson of the Management Board of Frontex.[108] In this function he also contributes to secure the permanent access to and exchange of information at the European level and reinforces Austria's active participation. Additionally, eleven police officers supported the Frontex focal points at EU external borders as permanent staff in 2010 and seventeen officials supported the Rapid Border Intervention Teams (RABIT) at the Turkish-Greek land border; furthermore, Austria participated in seven other Frontex Operations.[109]

106 With regard to forced return, Austria has coordinated 12 EU Joint Return Operations in 2010; the 20 Joint Return Operations were basically bi- or multilaterally shared return charter flights. Furthermore Austria participated in eight additional operations, e.g. four flights took place in the scope of a bilateral cooperation with Poland. For more information refer to IOM (2010), Annual Policy Report 2010, available at http://www.emn.at/images/stories/APR_AT_2010.pdf (accessed on 14 May 2012).

107 Quote from the Frontex webpage, available at http://www.frontex.europa.eu/ (accessed on 14 May 2012).

108 For further information refer to Frontex, http://www.frontex.europa.eu/structure/management_board/ (accessed on 14 May 2012).

109 Namely Attica (screening); Poseidon (air and land borders in Greece, Albania, FYROM and Serbia); Agelaus (air borders); Minerva (land and sea borders Spain- North Africa); Jupiter (border control in Poland, Slovakia, Finland, Estonia, Latvia and Lithuania); Neptune (border control at Greek-Albanian, Slovenian-Croatian and Hungarian-Serbian borders). Additionally, the authorities supported the international airports in Frankfurt, Rome, Madrid and Athens.

A further aspect of integrated border management is evidence-based risk analyses, which are produced by the Frontex Risk Analysis Unit (RAU). This analysis is fed with information from different levels, implementing a bottom up approach (information from officers on the ground) as well as a top down approach (information from EU level is provided to officers). In Austria, the national office for Frontex is located in Eisenstadt, which serves as a connective link between the national perspective and the supranational level processing all information.

Similar to police cooperation, the close cooperation with Frontex allows for the availability of a wide range of information to the Austrian authorities, again also regarding the situation at the EU's external borders. Having this information available is seen as a highly valuable advantage that contributes to the adoption of adequate measures to reduce irregular migration movements in Austria.

3.2.4 Combating Smuggling of Human Beings

In 2010 16,383 persons were apprehended in the context of organised smuggling crime (FMI 2010: 231), which constitutes a decrease of 12% compared to 2009, when 18,571 persons were apprehended for the same reason. The persons apprehended are categorised in three different groups by the Criminal Intelligence Service Austria: smugglers[110] (who committed a criminal offence or are suspected to have done so), smuggled persons (who entered Austrian territory with organised smugglers) and persons who unlawfully entered or stayed in Austria (where no organised smugglers were involved in crossing the border).[111]

According to this classification, in 2010, 301 smugglers, 6,664 smuggled persons[112] and 9,418 persons who unlawfully entered to or stayed in Austria were registered. Compared to 2009, this constitutes a decrease in

110 According to the Schlepperbericht 2011 of the Criminal Intelligence Service Austria, available at http://www.bmi.gv.at/cms/BK/publikationen/files/Jahresbericht_Schlepper_2011.pdf (accessed on 4 July 2011), 12 % of smugglers were women.

111 Interview with Gerald Tatzgern, Head of the Central Service Combating Human Smuggling and Human Trafficking, Criminal Intelligence Service Austria on 7 October 2011.

112 Most of them (2,917) were between 19 and 30 years old. For more information also refer to Federal Ministry of the Interior, Reply to a Parliamentary Request, 7155/AB XXIV. GP, 21 February 2011, available at http://www.parlament.gv.at/PAKT/VHG/XXIV/AB/AB_07155/imfname_206718.pdf (accessed on 14 May 2012).

the numbers of apprehended smugglers and smuggled persons and an increase in persons who unlawfully entered to or stayed in Austria.

The main nationalities of smugglers in 2010 were Austria, Greece, Turkey, Afghanistan and Pakistan; whilst most smuggled persons were nationals of Afghanistan, the Russian Federation, Nigeria, Kosovo[113] and India and most persons who unlawfully entered or stayed in Austria were citizens of India, Nigeria, Serbia, China and Turkey (FMI 2010: 233f).

In the framework of the below mentioned policy measures that Austria introduced in 2011 (see chapter 4.2), the fight against smuggling of persons played a dominant role. The phenomenon and increasing numbers of smuggling were raised several times in the media throughout 2011, especially regarding the apprehension of smuggling gangs/rings and single smugglers.[114] For example, in May 2011, the media reported that a smuggling ring was dismantled by Austrian and Spanish authorities; six suspects were arrested in Austria and nine in Spain.[115] In August 2011, the press reported the arrest of two smugglers who had brought eight Syrian nationals and ten Afghan nationals from Austria to Germany[116]. In the same month

113 Under UN Resolution 1244, hereafter referred to as Kosovo.

114 Just to mention a few articles: Salzburger Nachrichten, Schlepper werben für Österreich (Human smugglers promote Austria), 25 February 2010, available at http://search.salzburg.com/articles/8561192?highlight=Schlepper+werben +f%C3%BCr+%C3%96sterreich (accessed on 20 March 2012);
Salzburger Nachrichten, Schlepper kam im Touristenbus (Human Smuggler arrived in tourist bus), 26 August 2010, available at http://search.salzburg.com /articles/12623309?highlight=Schlepper+kam+im+Touristenbus (accessed on 20 March 2012);
Südtirol Online – stol.it, , Italienerin als Drahtzieherin einer Schlepperbande in Tirol verhaftet Italian arrested pulling the strings of a smuggingr gang in Tyrol), 9 September 2011, available at http://www.stol.it/Artikel/Chronik-im-Ueberblick/Chronik/Italienerin-als-Drahtzieherin-einer-Schlepperbande-in-Tirol-verhaftet (accessed on 14 May 2012);
bvz.at, Schlepper-LkW an Nickelsdofer Grenze gestoppt (Smuggler's lorry stopped at Nickelsdorfer border), 23 September 2011, available at http://www.bvz.at/lokales/bvz-ausgaben/neusiedl/aktuell/art 5635,348262 (accessed on 14 May 2012);
salzburg.orf.at, Internationaler Schlepperring ausgehoben (International smuggling ring taken out), 16 December 2011, available at http://salzburg.orf.at/news/stories/2513451/ (accessed on 14 May 2012);

115 Der Standard, Schlepperring schleuste 1500 Iraner in den Westen (Smuggler ring smuggled 1500 Iranians into the West), 31 May 2011, p. 9.

116 Der Standard Online, Schlepper mit 18 Afghanen und Syrer am Brenner in Tirol aufgegriffen (Smuggler with 18 Afghans and Syrians arrested at Brenner in Tyrol), 21 August 2011, available at http://derstandard.at/13130247 30608/Tirol-Schlepper-mit-18-Afghanen-und-Syrern-am-Brenner-aufgegriffen (accessed on 14 May 2012).

human rights violations through smugglers were reported, such as the practice of rebuilding cars and lorries and transport migrants under cruel conditions, e.g. not supplying enough water for the journey or hiding persons in small spaces.[117] In some reports, it remained unclear whether the apprehended migrants were smuggled or not, and in general, the three groups outlined above were not differentiated by the press.

Gerald Tatzgern, Head of the Central Service Combating Human Smuggling and Human Trafficking, sees his main responsibility in fighting criminal groups profiting from smuggling and trafficking in human beings, not necessarily in fighting irregular immigrants as single individuals. Asked for the main reason triggering irregular migration, he stated that irregular migration movements highly depend on the political, socioeconomic and cultural setting in the countries of origin: "Political crisis, also the financial and economic crises are relevant for criminal groups profiting from smuggling irregular migrants."[118] Through carrying out (often separate) enquiries with apprehended migrants and using "intelligence"[119], his team investigates cases of smuggling and trafficking in human beings in Austria. Gerald Tatzgern reported on major developments in 2011, namely that Greece is the "biggest hub right now", especially in the light of the ruling of the ECtHR against Greece and Belgium in January 2011[120]. At present, even persons from Somalia and Ghana use this route to enter the territory of the Member States.[121]

117 Die Presse.com, Hintergrund: Die skrupellosen Methoden der Schlepper (Background: the unscrupulous methods of smugglers), 31 August 2011, available at http://diepresse.com/home/panorama/oesterreich/ 689730/Hintergrund_Die-skrupellosen-Methoden-der-Schlepper (accessed on 14 May 2012).

118 Gerald Tatzgern, Head Central Service Combating Human Smuggling and Human Trafficking, Criminal Intelligence Service Austria, 7 October 2011.

119 Intelligence means connecting hard facts to support a broader understanding of the merits of a case.

120 ECHR Judgment, M.S.S v. Belgium and Greece, 21 January 2011, 30696/09. Der Standard Online, Europäischer Gerichtshof für Menschenrechte untersagt Abschiebungen nach Griechenland (European Court of Human Rights bars removal to Greece), 21 January 2011, available at http://derstandard.at/12955 70514406/Urteil-Europaeischer-Gerichtshof-fuer-Menschenrechte-untersagt-Abschiebungen-nach-Griechenland (accessed on 14 May 2012).

121 Gerald Tatzgern, Head Central Service Combating Human Smuggling and Human Trafficking, Criminal Intelligence Service Austria, 7 October 2011.

According to him, the costs involved to be smuggled from Greece to Austria lay between 2,000 and 3,000 euros and from Pakistan, Afghanistan and Libya (mostly through Turkey) to Austria and further at approximately 3,000 to 5,000 euros.[122]

"Indeed, one by-product of tighter border controls has been the increasing sophistication of smugglers trying to facilitate illegal entry, including by diverting flows to less accessible areas or by circumventing enforcement measures at official ports of entry." (Koslowski 2011: 1) With this general development, Gerald Tatzgern highlighted another trend, also mentioned in the media: "Re-building vehicles so that human beings can travel hidden from authorities is common practice since years, but the space allocated to migrants becomes smaller and smaller." At present in certain cases these practices become life threatening as the migrants might not be able to breathe properly or lack water and food supply, Tatzgern reported.

In order to fight human smuggling and trafficking, the reporting of cases of smuggling and trafficking of human beings is very important. Therefore, the Central Service Combating Human Smuggling and Human Trafficking operate a hotline. The hotline focuses on reporting of cases offers information on victim protection.[123]

3.3 Stay

In 2008, Jandl described several practical measures undertaken to control irregular migration and detect irregular migrants on Austrian territory (Jandl 2008). These included police checks, targeted sweeps (e.g. in rundown houses), work place inspections as well as the usage of databases. In 2011, the main practical measures to reduce the amount of irregular stay on Austrian territory as identified in the course of this study were similar: identity checks and apprehensions of persons without valid papers; targeted checks of accommodations of non-nationals; work place inspections carried out by a special unit at the Federal Ministry of Finance (financial police) as well as indirect measures such as reporting obligations for the authorities of civil status in case of marriages to third-country nationals.

122 Burgenland.orf.at, Kooperation im Kampf gegen Schlepperwesen (Cooperation in the fight against smugglers), 8 September 2011, available at http://burgenland.orf.at/stories/536524 (accessed on 14 May 2012).

123 The telephone hotline is available at http://www.bmi.gv.at/cms/BK/meldestellen/menschenhandel/start.aspx (accessed on 14 May 2012).

3.3.1 Identity Control and Apprehensions

Every person residing in Austria must register with the local authorities;[124] this data is fed into the Central Population Register.[125] The register covers all cities and communities and has been operational since 2002. In general, residence registration is mandatory in Austria and is not connected to irregular migration; therefore, the legal status of a person is not checked at the registration, only the identity and place of accommodation. Until 2002, the registration was carried out at police offices, but since 2002 the registration has been carried out by municipal offices. There is anecdotal evidence that this change in competence increased the likelihood that irregular migrants would register to get a confirmation of registry, which is needed for other administrative procedures including "signing up for gas and electricity services, registering motor vehicles and parking-fee exemptions, securing mobile phones, bank accounts and other services such as rentals from libraries and video stores." (Jandl 2008: 35).

A main practical measure for identifying irregular migrants is identity checks and – if the person concerned does not have a confirmation of residence or regular permit to stay in Austria – apprehensions of alleged irregular migrants. The police regularly check individuals on the streets, in public places (train stations, tourist meeting places, etc.) especially in major cities and carries out car controls on main traffic routes. These measures are implemented in a wider context (see also chapter 2.1 and 3.2) in order to combat international crime, irregular migration and smuggling and trafficking of human beings.

In 2010 and 2011, hot spot actions and car checks on certain motorways proved to be a valuable instrument to implement control measures and carry out apprehensions. The measures taken ranged from mobile, randomised checks to tangible controls. For example, the "Soko Ost" implemented an action on 19 and 20 March 2010 with 900 officials checking the main routes through Austria in the Federal States of Vienna, Lower Austria, Burgenland, Styria and Carinthia; as a result, six alleged irregular migrants were arrested.[126] Furthermore, 100 officers of the "Soko Ost" inspected cars

124 Art. 2 et. seq. Registration Act.

125 For further information on the Central Registry System see http://zmr.bmi.gv.at/pages/home.htm (accessed on 14 May 2012).

126 Federal Ministry of the Interior, Schwerpunktaktion zur Bekämpfung der Kriminalität und der illegalen Migration (Hot spot action to combat crime and illegal migration), Press

on the "Nordautobahn" (motorway from Vienna to the Czech Republic) in the night to 17 May 2011. In total, 11,200 cars were checked and two irregular migrants were arrested.[127]

Control measures were carried also out in the framework of the World Economic Forum from 4 to 7 June 2011, which took taking place in the Vienna Hofburg; containers were positioned to post 700 police officers at border crossing points to Germany, Italy, Slovakia and Slovenia.[128] Another "hot spot" action was implemented on 21 October 2011 when 270 police officers from Vienna, Lower Austria and the Burgenland arrested 16 persons, seized a stolen car, one false passport as well as stolen property.[129]

3.3.2 Targeted Controls of Accommodations

Within the interviews conducted, targeted controls of accommodations of non-nationals were also highlighted as an effective measure to identify irregular migrants. The aliens' police check new registrations in the Central Population Register and visit accommodations in which several non-nationals are registered. At first the identity of persons is checked and if the suspicion is substantiated that more than five non-nationals are staying in the accommodation and persons without a valid permission to stay in Austria might be among this group, then the aliens' police have the permission to enter the premises to carry out further investigations. If irregular migrants are detected in the course of these controls and a need for securing the execution of aliens' police procedures through detention is given, the person concerned can be taken into detention pending deportation (see also 2.2.4).

According to the interviewees, the increased usage and linkage of data systems such as the Central Population Register, but also data collected by

Release, available at http://www.bmi.gv.at/cms/cs03documentsbmi/845.pdf (accessed on 14 May 2012).

127 ORF.at, Soko Ost macht "scharf" gegen Kriminelle (Soko Ost gets ready for criminals), 17 May 2011, available at http://noe.orf.at/stories/516083/ (accessed on 14 May 2012).

128 Federal Ministry of the Interior, Grenzkontrollen zu Nachbarstaaten anlässlich des World Economic Forum (Border controls on the occasion of the World Economic Forum), Press Release, 26 May 2011, available at http://www.bmi.gv.at/cms/BMI_Presse/_news/aussendungen.aspx?id=2B57324936326547376B4D3D&page=5&view=1 (accessed on 14 may 2012).

129 Federal Ministry of the Interior, 16 Festnahmen bei Schwerpunktaktion der Soko Ost (16 apprehensions at the hot spot action from the Soko Ost), Press Release, 21 October 2011, available at http://www.bmi.gv.at/cms/bmi/_ news/bmi.aspx?id=717761675A504A587456553D&page=0&view=1 (accessed on 14 may 2012).

the Society of the Austrian Social Security Underwriters[130], the Aliens' Information File and the Asylum Seekers' Information File, are under discussion and might play a more dominant role in the future to detect irregular migrants.

3.3.3 Workplace Inspections

Also prior to the implementation of the Employers Sanctions Directive 2009/52/EC the inspections of irregular work was an important subject in Austria: "To control the seeming growing illegal employment of foreigners, Austria established a special unit within the Ministry of Economy and Labour (MEL) in the early 1990s. In July 2002, the Control Unit for Illegal Foreign Employment (KIAB), came under the supervision of the customs authority in the Ministry of Finance (MoF) and, in 2004, the unit was renamed the Control Unit for Illegal Employment." (Jandl 2008: 36) The re-naming of the unit proved that irregular employment was (and is) not necessarily a phenomenon exclusively related to third-country nationals or non-nationals, but also applies to Austrian nationals.

Since January 2007, the KIAB has been an organ of the tax authorities[131] and one KIAB team has been present in every tax office. The main aim of the KIAB was to minimise the negative effects of tax and duty fraud and to strengthen the security of Austria's economy. The measures set by the KIAB were to inspect companies to find out if persons (non-nationals and nationals) were employed irregularly and/or if there were any offenses of industrial law, social insurance law, health or environmental protection law as well as duty or trade law. The inspected companies were either randomly picked or the KIAB had received information from the Austrian Labour Market Service or other units of the tax offices, which were both obliged to report if they had sound suspicions. In 2009, 26,787 companies were inspected in Austria and 11,890 non-nationals working in an irregular manner were recorded.[132]

In 2007, authors stated that the majority of interviewed experts for the study Migration and Irregular Work in Austria: Results of a Delphi-Study

130 For further information see Sozialversicherung.at, http://www.sozialversicherung.at/portal27/ portal/esvportal/start/startWindow?action=2&p_menuid=2&p_tabid=1 (accessed on 14 May 2012).

131 Until 31 December 2006 the KIAB was an organ of the customs authority.

132 Data of the KIAB, Overview of controls, Federal Ministry of Finances.

found that irregular work had a negative effect on the Austrian economy (Jandl/Hollomey/Stepien 2007: 6). They also found that the KIAB controls at the workplace face limitations due to a variety of factors, such as the fact that controls are selective, low fines for irregular employment, economic interests, no controls in private households, etc. (Jandl/Hollomey/Stepien 2007: 39). In sum, the "effectiveness of controls (at the work place) and sanctions is predominantly seen as limited. Controls in private households […] are widely seen as problematic and inefficient, border controls are judged to be increasingly irrelevant for controlling IMW [irregular migrant work] in Austria, and the majority of respondents call for more comprehensive measures at the political level." (Jandl/Hollomey/Stepien 2007: 8).

This situation has not improved significantly in the following years, even given the high numbers of inspections the KIAB carried out, as certain factors limiting the success of inspections were still present. Consequently, the responsibilities of the KIAB were exceeded and since the entry into force of the Fraud Combating Act 2010 the KIAB was renamed as "the financial police". The former structure – one unit in every tax office – continued and the main tasks are: detection of irregularly employed persons, tax control, control of proper retention and submission of employee on-costs, control of social security fraud, control of compliance with the General Social Insurance Act, control of the compliance with the duty to report according to the Unemployed Insurance Act and control of violations against rules concerning the Gambling Act, the Industrial Code and the Criminal Code.[133]

The powers of the financial police lie in the area of entry and access premises as well as establishment of identity and the right to stop a person.[134] Accordingly, the financial police have, inter alia, the permission to ask any person for information to be used as evidence in case of a trial, to check books and documentation of any person and to arrest a person.[135]

133 For further information refer to Austrian Economic Chamber, http://portal.wko.at/wk/format_detail.wk?angid=1&stid=468272&dstid=725 (accessed on 14 May 2012); http://portal.wko.at/wk/format_detail.wk?angid=1&stid=440239&dstid=686 (accessed on 14 May 2012); or http://www.akstmk.at/bilder/d147/Finanzpolizei_Schloegl.pdf (accessed on 14 May 2012);.

134 Art. 12 Tax Administration Organisation Act.

135 Art. 143 and 144 Federal Charges Code.

3.4 Pathways Out of Irregularity

Kraler and Hollomey identify five major pathways out of irregularity in the Austrian context[136]: "(1) regularization proper; (2) regularization by entitlement; (3) informal regularizations; (4) voluntary return after enforcement action has been initiated and forced removals; and (5) unrecorded voluntary return or onward migration" (Kraler/Hollomey 2010: 61). To simplify matters one could say that there are, basically, three options out of irregularity: legalisation of the status in the country, return of the respective migrant to the country of origin (or onward migration to another country); plus (if applicable) cases of non-removability. All three options are described below.

3.4.1 Obtaining a Legal Status

As described in chapter 2.2.2, various possibilities exist for well-integrated but irregularly resident third-country nationals to obtain a legal status, depending on the previous status and the period of the concerned person's residence in Austria as well as his/her language skills. In addition, persons in need for individual protection can obtain a respective residence title.

General amnesties for irregular migrants are viewed sceptically by Austria's policy makers for two interconnected reasons[137]: firstly, granting amnesty is seen as a measure that might instigate irregular migration to Austria, as could be observed for example in the case of Belgium after the regularisation measures in 1999[138]; and secondly, even though at first sight these measures would lead to a drop in numbers of irregular migrants by providing a legal status, the experiences in other countries showed that regularisations have to be repeated, otherwise they would not sustainably decrease numbers of irregular migrants. Consequently, "regularization proper has been of minor importance in the Austrian context" (Kraler/Hollomey 2010: 61).

Even though there might be a "principled opposition to large-scale regularisations or regularisations as such" (Kraler 2009: 32) in certain EU

136 For further details see Clandestino (2009b), Policy Brief – Austria: Irregular migration in Austria, available at http://clandestino.eliamep.gr/wp-content/uploads/2009/11/austria-policy-brief_july-20091.pdf (accessed on 14 May 2012).

137 For an overview of regularisations in the EU refer to the REGINE Project, available at http://research.icmpd.org/1184.html (accessed on 14 May 2012).

138 European Commission, Communication on the study on the links between legal and illegal migration, COM (2004) 412 final, 4 June 2004, p. 11, available at http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2004:0412:FIN:EN:PDF (accessed on 2 July 2012).

Member States, related measures are sometimes necessary. In the Austrian context, in 1990 a total of 30,000 foreign nationals were legalised in response to rising unauthorised employment, and a temporary protection programme for Bosnian refugees in 1998 "can be interpreted as a regularization programme of sort, although it was never conceived as such" (Kraler/Hollomey 2010: 61). Additionally, an amnesty for irregularly employed care workers in 2008 mainly targeting EU migrants working in breach of labour market regulations was discussed as a form of regularisation in the Austrian press.[139]

Regarding regularisation due to humanitarian reasons, Kraler and Hollomey stated in 2010 that "humanitarian residence titles are now – at least in theory – a systematic mechanism to address the situation of irregular migrants who had been staying in Austria for an extended period of time and those who cannot be deported on grounds of Article 8 ECHR (private and family live)" (Kraler/Hollomey 2010: 61). For the legal situation concerning residence titles for humanitarian reasons, see 2.2.3.

3.4.2 Return

Austria is very active in return measures, which play a major role in the policies aiming at addressing irregular migration and are based on co-operation with countries of origin and transit. With regards to forced measures, as the Annual EMN Policy Report 2010 outlines, Austria was one of the most active Member States concerning EU Joint Return Operations. In the year 2010, Austria co-ordinated 12 EU Joint Return Operations and participated in 8 additional operations. Additionally, four flights took place in the framework of a bilateral cooperation with Poland (EMN 2010: 17). Furthermore, in 2010, the number of Austrian personnel active in Frontex operations was raised. In this context, eleven focal points were staffed at the

139 Die Presse.com, Pflege-Amnestie endet in drei Wochen (Care amnesty ends in three weeks), 9 December 2007, available at http://diepresse.com/home/politik/innenpolitik/348204/PflegeAmnestie-endet-in-drei-Wochen (accessed on 14 May 2012);
Der Standard Online, Pflege: Gusenbauer denkt an Verlängerung der Amnestieregelung Care: Gusenbauer thinks about extension of the amnesty regulation), 11 May 2007, available at http://derstandard.at/2849510 (accessed on 14 May 2012);
Wiener Zeitung.at, Kein Ende der Pflegedebatte in Sicht (No end to debate about care in sight), 21 November 2007, available at http://www.wienerzeitung.at/nachrichten/politik/oesterreich/91322_Kein-Ende-der-Pflegedebatte-in-Sicht.html (accessed on 14 May 2012).

external borders of the EU, and Austrian officials participated in Joint Operations in the area of land and air frontiers. In addition, thirteen Austrian police officers supported Frontex Focal Points at the Hungarian-Serbian, Hungarian-Romanian, Hungarian-Ukrainian, Slovakian-Ukrainian, Romanian-Moldovan, Polish-Belarusian, Bulgarian-Turkish and Greek-Turkish borders. The Frontex Focal Points are established along the EU external frontier in order to provide high level security and are staffed by mixed teams of police officers from EU MS and the respective border countries. According to the interviewees, the aim of the Austrian contribution is to support the local border police, to foster the exchange of experience and information as well as to serve as training for operations at EU external borders.

"The relation of assisted return and forced removal is not regulated explicitly under Austrian law; however, assisted return is generally favoured over forced removal in Austria" (Kratzmann/Petzl/Temesvári 2010: 35), which is also visible in numbers as assisted (voluntary) returns surpassed the numbers of forced removals by 39% in 2009 (Kratzmann/Petzl/Temesvári 2010: 75). A trend that was stable in 2010 and 2011. Assisted (voluntary) return measures are available for asylum seekers, recognised refugees, persons under subsidiary protection, and persons who do not or no longer fulfil the conditions for staying in Austria and wish to return to the country of origin. Assisted (voluntary) returns from Austria are carried out by IOM under the "General Humanitarian Return Programme for Voluntary Returnees", which is based on a Memorandum of Understanding between IOM and the FMI. Assisted (voluntary) return is particularly encouraged through reintegration support measures in certain countries (in 2011 with the target countries Kosovo, Georgia, Nigeria and the Russian Federation/ Chechen Republic) offering support for reintegrating into the society.

3.4.3 Toleration

The status of toleration is provided, as long as the removal of the person concerned is inadmissible according to the "principle of non-refoulement" (ex lege), or if the authority, ex officio, determines that the removal of a person is impossible due to factual reasons that do not lie within the responsibility of that person. Tolerated non-nationals are considered irregular migrants, but possibilities of regularisation exist after one year through the obtainment of a title for individual protection.

4. TRANSNATIONAL COOPERATION

4.1 Cooperation Agreements

Readmission agreements have the purpose of facilitating the readmission of persons residing without authorisation in Austria to their country of origin. Specifically, these contain conditions on procedures for the assessment of citizenship and return, transfer modalities, issuance of possible travel document substitutes/laissez passer.

Austria has concluded bilateral readmission agreements with the following third countries:

- Bosnia and Herzegovina (entry into force, 1 September 2007)
- Kosovo (entry into force, 1 March 2011)
- Croatia (entry into force, 1 November 1998)
- FYROM (entry into force, 1 February 2007)
- Montenegro (entry into force, 29 April 2004)
- Serbia (entry into force, 29 April 2004)
- Tunisia (entry into force, 1 August 1965)

With the following EEA/EU MS Austria has concluded bilateral readmission agreements:

- Switzerland (entry into force, 1 January 2001)
- Liechtenstein (entry into force 1 January 2001)
- Belgium (entry into force, 1 April 1965)
- Bulgaria (entry into force, 30 November 1998)
- Germany (entry into force, 15 January 1998)
- Estonia (entry into force, 1 September 2001)
- France (entry into force, 1 November 2007)
- Italy (entry into force, 1 April 1998)
- Latvia (entry into force, 1 September 2000)
- Luxembourg (entry into force, 1 April 1965)
- Netherlands (entry into force, 1 April 1965)
- Poland (entry into force, 30 May 2005)
- Romania (entry into force, 6 February 2002)
- Slovakia (entry into force, 1 October 2002)

- Slovenia (entry into force, 1 September 1993)
- Czech Republic (entry into force, 9 October 2005)
- Hungary (entry into force, 20 April 1995).[140]

The FMI in cooperation with the FMEIA aims to conclude readmission agreements and implementing protocols. With some states, with which Austria has not concluded a readmission agreement, the obtainment and issuance of travel document substitutes/laissez passer faces a number of challenges. The FMI aims to overcome these obstacles through intensified contact and exchange with the countries of origin, for example by means of inviting delegates.

Austrian policy makers also support the conclusion of readmission agreements by the EU. According to the FMI, a sustainable return policy is an important part of a functioning migration system (including the removal of irregular migrants) and the conclusion of readmission agreements should be a priority of the EU.[141] Consequently, Austria has concluded implementing protocols to the EU's readmission agreements with the following third countries: Russian Federation (entry into force, 3 June 2011), Serbia (entry into force, 4 April 2011), Moldova (entry into force, 6 November 2010) and FYROM (entry into force, 18 July 2011).[142]

Besides readmission agreements, Austria has signed, among other, a police cooperation agreement with the Kosovo in August 2009.[143] The agreement contains provisions concerning the combating of irregular migration such as the mutual support and implementation of organisational measures in the field of irregular migration, the identification and readmission of nationals who irregularly reside in or have entered the states parties'

140 Presiding Officer of Austrian Parliament, Reply to a Parliamentary Request, BMI-LR2220/0126-II/3/2011, 4 April 2011.

141 Ibid; Report of the Federal Ministry of the Interior to the Austrian parliament, Legislative and Work Programme of the European Commission 2011, p. 20, available at http://www.parlament.gv.at/PAKT/VHG/XXIV/III/III_00210/imfname_206270.pdf (accessed on 14 May 2012).

142 Presiding Officer of Austrian Parliament, Reply to a Parliamentary Request, BMI-LR2220/0126-II/3/2011, 4 April 2011.

143 Agreement between the Federal Minster of the Interior of the Republic of Austria and the Minister of the Interior of the Republic of Kosovo on police cooperation, available at https://www.ris.bka.gv.at/Dokumente/ BgblAuth/BGBLA_2010_III_65/COO_2026_100_2_606160.html (accessed on 14 May 2012).

territories without authorisation, the exchange of expert's experience on combating irregular migration and the conducting of expert meetings.[144]

Police cooperation on the European level is influenced by numerous agreements, programmes and measures, making a decent and comprehensive overview of this area of cooperation a very difficult task, if not almost impossible (Litzka 2010).

Furthermore, Austria signed bilateral cooperation agreements in the area of organised crime, human trafficking and irregular migration with Georgia and Moldova in 2010; and bilateral security agreements focused on supporting visa liberation versus procedures against irregular migration, migrant smuggling and human trafficking with Albania and Bosnia-Herzegovina.

4.2 Other Forms of Cooperation

Due to the fact that one of the main routes of smugglers to and through Austria is the so-called "Balkan Route", Austria and Hungary decided on an intensive cooperation to reduce irregular migration and agreed on a "5 point cooperation programme"[145] in September 2011. The programme included common border operations, reinforced controls in the interior, daily information exchange, new analysis and investigation group and intensified cooperation at the EU level.

Within the context of the common border operations, up to 30 Austrian officials were sent to the Hungarian-Serbian border to support Hungary in the efforts to stop irregular migrants at the border crossing point in Röszke.[146] Within the framework of cooperation at the EU level, Austria's and Hungary's (Federal) Ministers of the Interior authored a common letter arguing for common actions of the EU to reduce irregular migration flows from the Arabic and Asian regions.[147] They warned that the situation

144 Art. 2 para 1 of this agreement.

145 Wiener Zeitung.at, Kampf gegen Schlepper gemeinsam mit Ungarn (Fight against smugglers together with Hungary), 6 September 2011, available at http://www.wienerzeitung.at/nachrichten/politik/oesterreich/394688_Kampf-gegen-Schlepper-gemeinsam-mit-Ungarn.html (accessed on 14 May 2012).

146 News, An der Flüchtlingsfront (At the refugee front line), 15 September 2011, p. 32-37.

147 Die Presse, Österreich fordert Grenzschutz zu Serbien (Austria is calling for border control towards Serbia), 21 September 2011, available at http://diepresse.com/home/politik/eu/695002/Oesterreich-fordert-Grenzschutz-zu-Serbien?from=simarchiv (accessed on 14 May 2012); Wiener Zeitung.at, Schlepper wieder auf Balkanroute (Smugglers once

at the border to Serbia might worsen if no common security measures, e.g. by Frontex, are implemented.

Furthermore, the Federal Minister of the Interior, Johanna Mikl-Leitner, promoted a so-called "safety net"[148], for fighting smuggling in human beings and supported increased border controls at the Greek-Turkish border. After a meeting of the Austrian, Hungarian and Serbian Ministers of the Interior held in October 2011, the participation of Serbia in the cooperation against irregular migration and smuggling was announced. Thus, Serbia takes part in the analysis and investigation group, the daily information exchange between countries as well as Frontex operations initiated by Austria and Hungary.[149]

The Western Balkans are seen as an irregular migration "hot spot" by policy makers, signifying top priority for cooperation on security matters, especially because of the geographical proximity and the high proportion of persons from this region residing in Austria (FMI 2009). Cooperation exists in a number of initiatives, e.g. in the areas of governance as well as the fight against organised crime, drug trafficking and smuggling of migrants. Just to mention a few:

- The "Police Equal Performance" Initiative (PEP) is a regional strategy aiming at the development and usage of similar police practices and methods to improve the operational cooperation between EU MS and Western Balkan Police forces.
- The "Forum Salzburg" plays an important role as it developed into the most important regional security partnership in the last ten years (since 2000). It is a platform for multilateral dialogue and cooperation on issues of regional security matters.

more on the Balkan route), 22 September 2011, available at http://www.wienerzeitung.at/ nachrichten/politik/europa/398678_Schlepper-wieder-auf-Balkanroute.html (accessed on 14 May 2012).

148 Der Standard, Mikl-Leitner will "Schutzschirm" gegen illegale Migranten (Mikl-Leitner wants „safety net" against illegal migration), 27 October 2011, available at http://derstandard.at/1319181392683/Einwanderung-Mikl-Leitner-will-Schutzschirm-gegen-illegale-Migranten (accessed on 14 May 2012).

149 Federal Ministry of the Interior: Mikl-Leitner: Bekämpfung der Schlepperkriminalität wird intensiviert (Mikl-Leitner: Fight against illegal immigration networks to be intensified), Press Release, 10 October 2011, available at http://www.bmi.gv.at/cms/bmi/_news/bmi.aspx?id=48486B6238766E313155553D&page=0&view=1 (accessed on 14 May 2012).

- **The EU project "Establishment of International Law Enforcement Coordination Units" (ILECUs) was implemented from September 2008 to March 2011. The aim of the initiative was to establish and enforce International Law Enforcement Coordination Units in the countries of the Western Balkans for the Improvement of strategic and operative cooperation. The main goals of the project were to increase information and data exchange, save financial and human resources and to simplify procedures and processes within the network of coordinated units. Austria contributed to the project by providing experience and sending four experts to the sub-teams built for every country involved in the initiative.**
- **Finally, the twinning-project "Implementation of the Integrated Border Management Strategy in the Republic of Serbia" which is a follow-up on an Integrated Border Management strategy adopted by the Serbian government in January 2006, must be mentioned. It was running from September 2009 and in Austria the Austrian Agency for European Integration and Economic Development functioned as a senior and the Hungarian National Police as a junior partner. The main aim of the EU-funded 18 month project was to support the implementation of the IBM Strategic Action Plan to introduce and enhance border security in the region in compliance with EU standards.**

5. IMPACT OF EU POLICY AND LEGISLATION

According to the common specifications regarding this study, this sub-section will outline the effects and consequences of EU policy and legislation on the national level with a focus on the transposition of the Employers Sanctions Directive 2009/52/EC and the Return Directive (2008/115/EC). And to what extent the activities funded by the External Border Fund and European Return Fund have contributed to the implementation of practical responses to irregular migration will be mentioned. In order to ensure comparability with the studies of other EU MS, only limited description is offered here.

Austria's aliens' law was significantly amended, inter alia, as a consequence of the country's obligation to implement the Return Directive which, according to policy makers, decisively contributes to harmonised return systems among EU MS.[150] Accordingly, Austrian lawmakers have implemented the instrument of "return decisions" (in conjunction with entry bans and a period for voluntary departure) as described under 2.2.2 to address irregular migration. Also as a consequence of the implementation of the respective provisions of the Return Directive in the course of the aforementioned amendments to aliens' law, the Aliens' Police Act now provides for a comprehensive system of free legal aid.[151]

Following the implementation of the Employers Sanctions Directive, the Aliens' Police Act now states that a person employing a third-country national under violation of the provisions of the Aliens' Employment Act must compensate the resulting costs if a return decision, a return ban or an exclusion order is issued due to illegal employment.[152] The main contrac-

150 Aliens' Law Amendment 2011, Government Proposal, Explanatory Notes, available at: http://www.parlament.gv.at/PAKT/VHG/XXIV/I/I_01078/index.shtml.(accessed on 14 May 2012).

151 Ibid. A system of free legal aid was introduced to Austria's asylum legislation as a consequence of similar provisions regarding legal aid in the aliens' law procedure and respective judiciary of Austria's Constitutional Court.

152 Art. 113 para 2 Aliens' Police Act.

tor and contractors who have knowingly tolerated the illegal employment are liable.[153]

Austria bases return measures (see also chapter 3.4.2) on bilateral and EU readmission agreements. These are seen to have a significant role in the framework of return measures in Austria to address irregular migration movements.

The activities funded by the European Return Fund do not necessarily focus on reducing irregular migration, but also contribute to support, for example, assisted (voluntary) returns. Within the framework of the European Return Fund 2011, the following projects were chosen in Austria: preparation of return in detention pending deportation; counselling on voluntary return and the organisation of return for the target group of the fund; measures for country and/or target group specific return and reintegration (for Nigeria, Georgia, Kosovo and the Russian Federation/the Chechen Republic) as well as a pilot project to develop organisational structures to support the voluntary return of female victims of trafficking in Moldova.

153 Aliens' Law Amendment 2011, Government Proposal, Explanatory Notes, available at: http://www.parlament.gv.at/PAKT/VHG/XXIV/I/I_01078/index.shtml.(accessed on 14 May 2012).

6. ESTIMATES AND STATISTICS ON THE IRREGULAR MIGRANT POPULATION

The actual numbers of irregular migrants are difficult to assess, and estimates and recorded cases of irregular migration in official statistics can only show a fragmentary picture of the real situation (cf. IOM 2006: 36). Additionally, due to changes in the legal framework relating to migration (see chapter 2), the number of persons irregularly residing and working in Austria has been subject to significant variations over time. As such, in particular the last two rounds of EU enlargement in 2004 and 2007 had an impact on the Austrian practices, which are clearly reflected in statistics on apprehensions and refusals of entry at the border, which have sharply decreased since 2006.

Having the limited illustrative power of statistics on the full dimension of irregular migration in mind, administrative records of cases of irregular migration are still important for migration management. As such, the collection and sharing of information and statistics on irregular migration by the main responsible authorities represents an important segment of methods that are employed to prevent irregular migration.

The most commonly used sources are statistical indicators that are derived from various administrative datasets, notably police records on the number of apprehended "persons found to be illegally present" or refusals at borders and statistics on asylum applications (cf. Kraler/Reichel/Hollomey 2009). These are usually used for illustrative rather than analytical purposes and primarily refer to irregular migration flows rather than stocks. There are relatively few estimates of irregular migration stocks in Austria and even fewer are methodologically founded (cf. ibid; IOM 2006). The most relevant statistical indicators used and the (few) estimates available are described in the following sub-chapters.

Data on irregular migration included in this chapter is provided in line with the common specifications of the study for the years 2005-2010. According to Regulation 862/2007/EC, national data on irregular migration is provided to Eurostat since 2008 based on common definitions. For

this reason, statistics for the years 2008-2010 have been compiled mainly through extracts from the Eurostat database.

National data is also presented in this study, indicating the respective sources. It should be noted that there are some discrepancies between national and Eurostat statistics due to factors such as compilation basis, time and the Eurostat practice of rounding figures to the nearest five, which must be taken into consideration when examining the statistics. Furthermore, the entry-into-force of new aliens' and asylum laws in 2006 limited the comparability of statistics for the period 2005-2007.

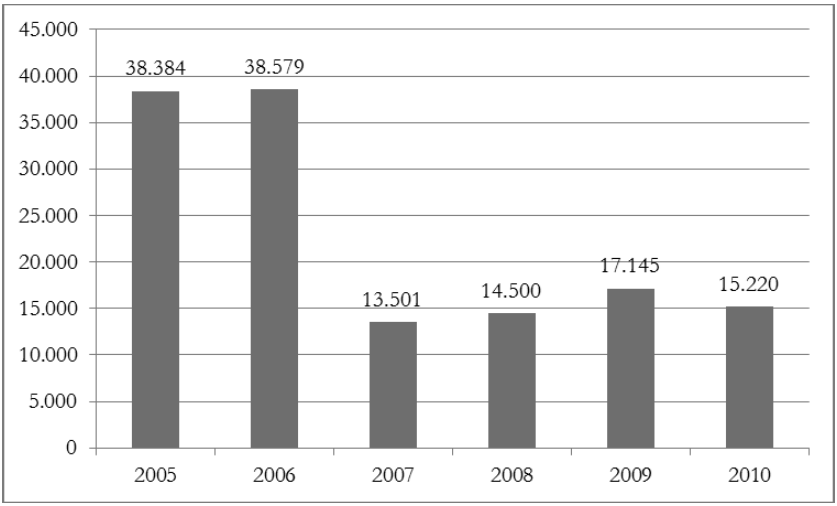
6.1 National Statistics (Eurostat)[154]

6.1.1 Third-country Nationals found to be Illegally Present

The number of third-country nationals found to be illegally present in Austria decreased to a large extent during the period 2005-2010: While 38,384 and 38,579 persons were apprehended in Austria in 2005 and 2006, respectively, these numbers dropped to 13,501 persons in 2007, a decrease of more than 50 per cent, and have remained at about this level since then. Kraler, Reichel and Hollomey (2009) ascribe this decrease mainly to the recent round of EU enlargement in 2007 as well as the decrease of irregular inflows from third countries to Austria, which is again, partly related to EU enlargement.

154 The categories used for this chapter are taken from Eurostat and thus terms may not comply with the wording of this study.

Figure 1: Number of third-country nationals found to be illegally present, 2005-2010



Source: For the years 2005-2007, Federal Ministry of the Interior; for the years 2008-2010, Eurostat (rounded data).

Table 1: Sex of third-country nationals found to be illegally present, 2008-2010

	2008		2009		2010	
Male	11,095	77%	13,660	80%	12,430	82%
Female	3,405	23%	3,485	20%	2,790	18%
Total	14,500		17,145		15,220	

Source: For the years 2005-2007, Federal Ministry of the Interior; for the years 2008-2010, Eurostat (rounded data).

From 2008 to 2010, the great majority of apprehended persons were male (2010: 82%); the dominant age group was between 18-34 years. A further quarter of apprehended persons were aged 35 and over. Approximately 15 per cent of apprehended persons were minors.

Table 2: Age groups of third-country nationals found to be illegally present, 2008-2010

Age Groups	2008		2009		2010	
Fewer than 14 years	1,450	10%	1,410	8%	1,075	7%
From 14 to 17 years	1,195	8%	1,445	8%	1,200	8%
From 18 to 34 years	8,330	57%	10,330	60%	9,075	60%
35 years or over	3,525	24%	3,960	23%	3,870	25%
Total	14,500		17,145		15,220	

Source: For the years 2005-2007, Federal Ministry of the Interior; for the years 2008-2010, Eurostat (rounded data).

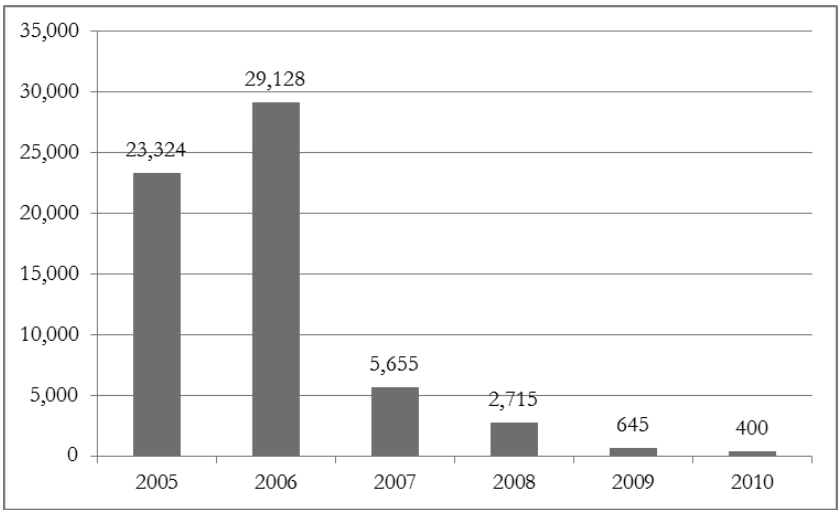
In the years 2005 and 2006, with 12,286 and 21,430 persons, the most apprehended persons by far were Romanian nationals. Following Romania's accession to the EU in 2007, the main nationalities most frequently found to be illegally present in Austria in 2008-2010 were citizens from the Russian Federation (6,050), Afghanistan (4,455) and Serbia (4,425).

6.1.2 Third-country Nationals Refused Entry at the External Borders

Similar to the number of apprehensions, the number of third-country nationals refused at the border has also decreased significantly over the reference period since the year 2007. Whereas 23,324 persons were refused entry in 2005 and 29,128 persons in 2006, in 2007 it was only 5,655 persons, signifying a decrease of 81 per cent on a year to year basis. The numbers further decreased to 2,715 in 2008, to 645 in 2009 and 400 recorded apprehensions in 2010. This development must again be seen in context of the EU enlargement in 2007. In 2005 and 2006, the two main nationalities of refused persons were Romania (2005: 12,710; 2006: 17,774) and Bulgaria (2005: 4,317; 2006: 3,610). Until Switzerland's accession to the Schengen Agreement in December 2008, also Swiss nationals figured among the main nationalities of persons refused at the border (2005-2008: 4,878). Nationals from Serbia[155] (2005-2010: 3,292) and Turkey (2005-2010: 1,303) figured among the main nationals refused throughout the entire reference period.

155 Until 2007, Yugoslavia.

Figure 2: Number of third-country nationals refused entry at the external borders, 2005-2010



Source: For the years 2005-2007, Federal Ministry of the Interior; for the years 2008-2010, Eurostat (rounded data).

From 2005-2008, the great majority of refusals were made at the land border (89-98%). This distribution changed in 2009 and 2010, when the majority of persons (69-79%) were refused at the air border.

Table 3: Number of third-country nationals refused entry at the external borders by type of border, 2005-2010

	2005	2006	2007	2008	2009	2010
Land Border	22,953	28,614	5,306	2,425	205	85
Air Border	371	514	349	290	445	315

Source: For the years 2005-2007, Federal Ministry of the Interior; for the years 2008-2010, Eurostat (rounded data).

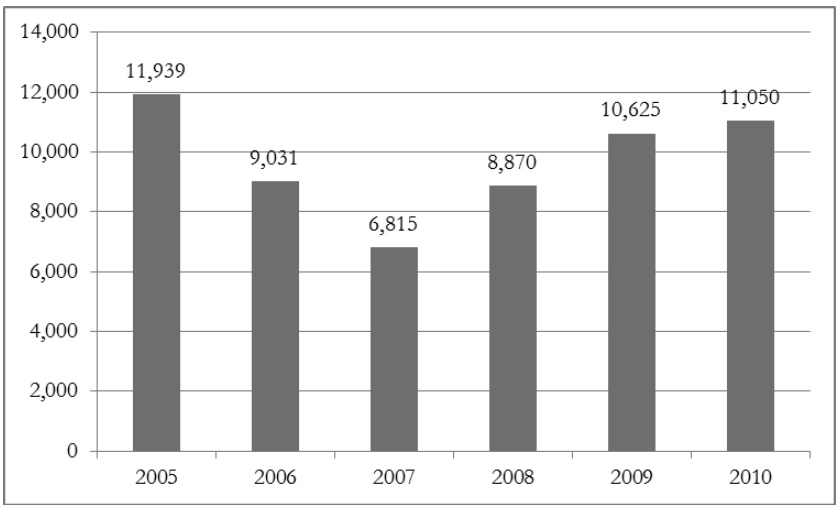
The main reasons for refusals in 2008 were the lack of valid travel documents (1,865) and the lack of valid visas or residence permits (640). These two grounds were also the main reasons for refusal during 2009 and 2010. Other grounds to a lesser extent were false travel documents, false visa or

residence permits, no sufficient means of subsistence or the purpose and conditions of stay were not justified. In 2010, in 85 cases alerts were issued.

6.1.3 Third-country Nationals Ordered to Leave[156]

The total annual numbers first declined and then increased again during the reference period: while 11,939 persons were ordered to leave Austria in 2005, annual numbers almost halved in 2007 to 6,815. Since 2008, the numbers again increased from 8,870 in 2008 to 11,050 in 2010.

Figure 3: Number of third-country nationals ordered to leave, 2005-2010



Source: For the years 2005-2007, Federal Ministry of the Interior; for the years 2008-2010, Eurostat (rounded data).

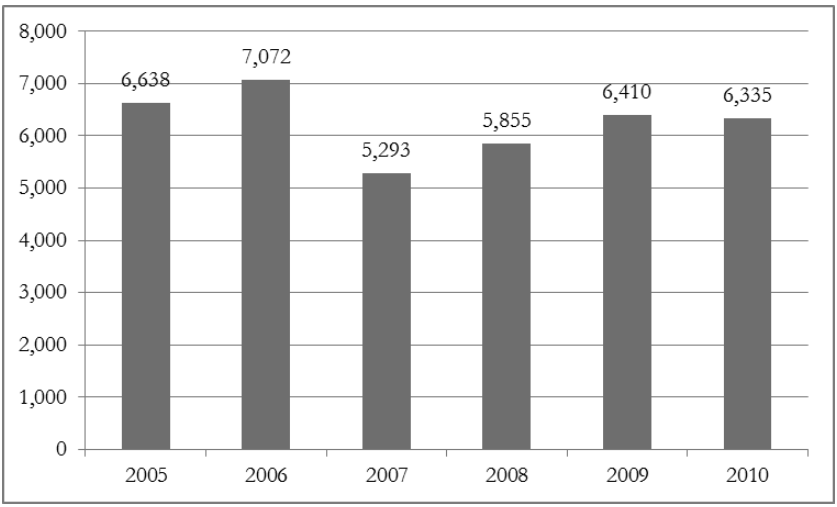
As data disaggregated by nationality for the years 2005-2007 is not available, information on nationals cannot be provided for these years. During the period 2008-2010, the three main nationalities of persons ordered to leave Austria were Serbia with a total of 4,805 persons ordered to leave, Nigeria (2,220) and Kosovo (2,065).

156 This section refers to third-country nationals "found to be illegally present" in Austria who were subject to an administrative or judicial decision or act stating or declaring that their stay is unauthorised and imposing an obligation to leave Austrian territory.

6.1.4 Third-country Nationals Returned Following an Order to Leave

The annual numbers of third-country nationals who returned following an order to leave oscillated between a high of 7,072 in 2006 and a low of 5,293 in 2007.

Figure 4: Number of third-country nationals returned following an order to leave, 2005-2010



Source: For the years 2005-2007, Federal Ministry of the Interior; for the years 2008-2010, Eurostat (rounded data).

Similar to previous statistics, the main countries of citizenship of persons who returned between 2008-2010 following an order to leave were Serbia (3,240), Kosovo (2,245) and the Russian Federation (2,110).

6.1.5 Third-country Nationals whose Applications for Asylum have been Rejected

The annual numbers of third-country nationals whose asylum applications were rejected are shown in the table below. In the period 2008-2010, a total of 31,140 applications were rejected in the first instance and 26,235 were rejected in the second instance.

Table 4: Number of third-country nationals whose applications for asylum have been rejected, 2008-2010

Instance	2008	2009	2010
in the first instance	9,215	11,600	10,325
following a final decision	7,055	10,075	9,105

Source: Eurostat (rounded data).

The main nationalities of persons whose application was rejected at the first instance were the Russian Federation (7,705), Afghanistan (2,300) and Kosovo (2,140). Following a final decision, the highest numbers of rejected applications were from Russian nationals (5,155), Serbian nationals (2,705) and nationals of Nigeria (2,530).

6.1.6 Third-country Nationals whose Status has been Withdrawn

The numbers of third-country nationals whose status was withdrawn were very low. In the years 2008-2010, the total number of third-country nationals whose status was withdrawn was 95. The main nationalities of persons concerned were Serbia, Georgia and the Russian Federation.

Table 5: Number of third-country nationals whose status has been withdrawn, 2008-2010

2008	2009	2010
5	35	55

Source: Eurostat (rounded data).

6.2 Other National Statistics

For a comprehensive overview of estimates and statistical indicators on irregular migration available in Austria, see the country report of the Clandestino project (Kraler/Reichel/Hollomey 2009).

6.2.1 Estimates on the Stock of Irregular Migrants

There are only few estimates on the total stock of irregular migrants and even fewer that are methodologically founded (cf. IOM 2006: 36; Kraler/Reichel/Hollomey 2009). According to the estimates of Jandl who used a multiplier method based on police apprehension data, a number of 36,252 persons (central estimate) were resident without authorisation in Austria in

2008, which is very low compared to other Western European countries (Jandl 2009). The estimate assumes that numbers of irregularly resident persons in Austria have decreased from 49,506 in 2005. According to the Clandestino project, it is a rather conservative estimate with medium quality due to a lack of empirical basis for crucial assumptions.[157]

Table 6: Estimates on the stock of irregular migrants, 2005-2008

Year	Minimum	Central	Maximum
2005	25,174	49,506	73,838
2006	22,905	45,442	67,978
2007	22,981	43,243	63,504
2008	18,439	36,252	54,064

Source: Jandl 2009.

The other available estimates refer to earlier reference years. An estimate by the Federal Government for Health and Women (BMGF 2003), representing a ministry expert estimate based on data on apprehensions of irregular persons on the border and in the interior, put the numbers at 80,000 (minimum estimate) and 100,000 (maximum estimate) for the year 2002. An earlier estimate by Jandl including EU and assumed numbers for non-working irregular foreign residents and persons with fake papers and identities, estimates the numbers of irregular staying migrants in Austria at 70,000 (Jandl 2003).

6.2.2 Estimates on Flows of Irregular Migrants

No estimates exist for inflows or outflows of irregular migrants in Austria. However, the refusals of persons at the borders, the removal of irregularly residing foreigners (see chapter 6.1) as well as voluntary departures and apprehended smuggled persons can be referred to as statistical indicators.

According to the FMI, a number of 6,664 smuggled persons were apprehended in 2010. This was the lowest number in apprehensions of smuggled persons in the last five years.

157 Clandestino, Stocks for Irregular Migrants: Estimates for Austria, available at http://irregular-migration.net/typo3_upload/groups/31/3.Database_on_IrregMig/3.2.Stock_Tables/Austria_Estimates_IrregularMigration_Oct09.pdf (accessed on 14 May 2012).

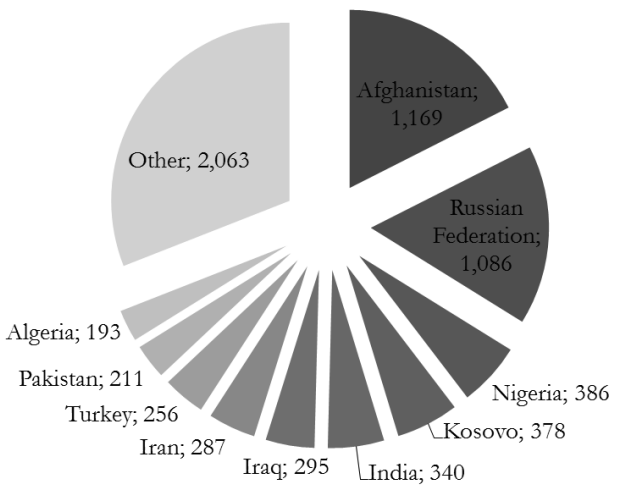
Table 7: Numbers of smuggled persons and smugglers, 2005-2010

	Smuggled persons	Smugglers
2005	20,807	696
2006	12,571	817
2007	9,987	682
2008	8,892	410
2009	10,248	438
2010	6,664	301

Source: Organised Human Smuggling Crime, Illegal migration. Annual reports 2010, Criminal Intelligence Service Austria.

The main nationalities of smuggled persons in 2010 were Afghanistan (1,169) and the Russian Federation (1,086). Smugglers were mainly from Austria and Greece (27 persons each), followed by Turkey (21) and Afghanistan (16). The decline in numbers of recorded smuggled persons (-35 %) and smugglers (-31%) compared to 2009 has been associated with positive developments in Afghanistan, the Russian Federation (the Chechen Republic), Serbia and Kosovo.

Figure 5: Main nationalities of smuggled persons, 2010



Source: Organised Human Smuggling Crime, Illegal migration. Annual reports 2010, Criminal Intelligence Service Austria.

6.2.3 Marriages of Convenience

Only few statistics are available on marriages of convenience: The table below illustrates the cases in which the aliens' police imposed an exclusion order or return ban on a third-county national due to a marriage of convenience. However, it does not encompass cases in which misuse could not be sufficiently proven, in which aliens' police measures were not taken for other reasons or where the marriage of convenience was not detected. Thus, it is not possible to determine the scope of the issue.

Table 8: Number of exclusion orders[158] and return bans[159] for marriages of convenience, 2007-2011

	2007	2008	2009	2010	Jan – Jun 2011	Jul – Dec 2011
Exclusion orders	399	231	163	94	22	9
Return bans	21	2	4	2	0	2 (entry bans)

Source: Eurostat (rounded data).

6.2.4 Estimates on Irregular Employment

Most estimates on irregular migration refer to irregularly employed persons reflecting the importance of labour market related irregularity in the Austrian context (Kraler/Reichel/Hollomey 2009: 22). The project "Migration and Irregular Employment in Austria" (MIGIWE) (Jandl/Hollomey/Stepien 2007), based on the results of a Delphi study, estimated that about 165,000 persons were employed irregularly in 2006. However, according to the Prominstat project, the quality of this estimation is seen as rather low.

In 2002, an estimate was carried out by Schneider (2002) based on an econometric estimate of the shadow economy including assumptions about the share of foreign employees in the shadow economy and their working hours. According to this estimate, 97,000 people were irregularly working in Austria. However, this estimate was also assessed by the Clandestino project as low quality due to a lack of documentation, including a lack of transparency of the indicators and methods used and a lack of transparency regarding the calculation of the share of foreigners.[160]

158 Since July 2011, exclusion orders cannot be issued against asylum seekers.

159 From July to December 2011, return decisions in conjunction with entry bans are meant; no return bans were issued. Return decisions cannot be issued against asylum seekers.

160 For further information refer to the Clandestino country report, where the quality of all the estimation methods is discussed in detail.

7. CONCLUSIONS

This study aims at providing an overview of existing approaches, mechanisms and measures implemented by Austrian authorities that are regarded as most effective to reduce irregular migration by policy makers. It follows up on the EMN study "Illegally Resident Third-country nationals in EU MS: State Approaches towards them, their Profile and Social Situation" from 2006; and is based on common specifications valid for all EU MS plus Norway in order to achieve comparable EU-wide results.

The groups of migrants of interest for this study are: persons who have entered the territory of a Member State illegally (e.g. via smuggling, crossing a border with false documents, or fraudulently stating the purpose of their stay); persons who have overstayed their visa (or their maximum visa waiver period); persons who have violated the conditions of their visa, work permit or permit to stay (i.e. the conditions for granting the visa/permit are no longer satisfied); persons who have not left the Member State territory upon a (final) negative decision on their application for international protection; and persons who have absconded during the application process for international protection and have not left the Member State or the EU.

Definitions used in the study are derived from definitions of the Return Directive in conjunction with the definitions indirectly provided through Austrian legislation. The Return Directive defines "illegal stay" as: "The presence on the territory of a Member State, of a third-country national who does not fulfil, or no longer fulfils the conditions of entry as set out in Article 5 of the Schengen Borders Code or other conditions for entry, stay or residence in that Member State." This definition also serves as the basis for the definition of the terms "illegal stay" and "irregular migrant" in the second edition of the EMN Glossary; and therefore constitutes an important reference point for this report. In the context of Austrian law, irregular migration can be defined as a situation in which the requirements for legal entry and stay were not present or are no longer present. Thus, this definition encompasses overstayers as well as cases in which migrants lost their titles due to tightened legal regulations.

The details offered in the study are based on recent information available at the national, European and international level including publications, existing studies and statistics, press and other media documents as well as internet resources. The desk research included a collection of material on the legal situation in Austria, which revealed that publications and studies on irregular migration in general are overwhelmingly diverse, also regarding the situation in Austria. However, the material available focussing on practical measures to reduce irregular migration was rather limited. In order to complete the information gained through desk research, interviews were carried out with three experts in the field of border control, international cooperation and smuggling of human beings.

In Austria, irregular migration is widely understood as a negative phenomenon for all parties involved (countries of origin, countries of transit and destination as well as migrants), so that the efforts to reduce irregular migration are set high on the political agenda. According to the interviewees, in 2011 the main challenge for authorities with regards to irregular migration was an increased inflow of asylum seekers (especially from Afghanistan) to Austria, due to a lack of border control at the EU external borders in Greece and the suspension of transfers under the Dublin Regulation to Greece.

The current aliens' law underwent major amendments in 2005, 2009 and 2011. The amendments in 2011, which for the most part came into effect on 1 July 2011, implemented a wide range of provisions in the context of irregular migration. Among these are provisions from the Return Directive, new provisions on detention pending deportation and the introduction of the obligation of asylum seekers to remain in the first reception centres during the admission procedure.

In Austria's legislation, various provisions can be identified that directly or indirectly aim to reduce irregular migration. This meanwhile highly complex legislation encompasses: the Aliens' Police Act, which contains provisions on competencies of the Aliens' Police, entry to Austrian territory in conjunction with the Schengen Borders Code and the Visa Code, issuance of documents, and return measures as well as sanctions in cases of irregularity; the Asylum Act, which regulates the procedure following an application on international protection; the Settlement and Residence Act, which mainly entails provisions on various residence titles; as well as the

Aliens' Employment Act, which contains sanctions in cases of illegal employment.

The overall responsibility for immigration and asylum policies lies with the FMI and to a degree with the Ministry for Labour, Social Affairs and Consumer Protection, which partly sets the conditions for the issuance of work permits as well as with the FMEIA responsible for issuing visas. Other institutions in relation to irregular migration are the police, the task force "Soko Ost", the aliens' police authorities as well as the settlement and residence authority, the Federal Asylum Office under the FMI, the Asylum Court as well as the Independent Administrative Senates.

With regards to practical measures and control mechanisms, these can broadly be divided in two categories: external control mechanisms and internal control mechanisms. External controls are concerned with the control of entry and borders including visa regulations and preventive measures, whilst internal controls are pursued when the migrant is already present in a respective country; internal controls focus on requirements of residence and work permits, employers sanctions, establishment of identities, inspections of work places and access to welfare entitlement, amongst others. In the framework of Austria's approach measures of both categories apply.

Within the course of the research for this study the following practical measures contributing to the reduction of irregular migration were identified:

In the pre-entry phase, three measures were highlighted as being effective; these were: the existence of visa schemes, the usage of Immigration Liaison Officers and Document Advisors and the identification of migration routes. Even though they are not directly related to irregular migration (like visa schemes), all three measures support the reduction of irregular migration to Austria at a pre-entry level.

Measures undertaken in the entry-phase, which were considered by interviewees to be effective, included border controls and collaboration of the police cooperation centres; and the usage of technology and data storage systems such as the Visa Information System, the Schengen Information System and Eurodac. Furthermore, integrated border management and risk assessment were mentioned as having a telling effect on the reduction of irregular migration in Austria, as well as practical measures to combat smuggling of human beings are of high importance.

Concerning the practical measures undertaken to control irregular migration on Austrian territory, the most forceful measures were identity checks and apprehensions of irregular migrants as well as targeted controls of accommodations of non-nationals and workplace inspections implemented by the police or the "financial police" (a special unit within the Federal Ministry of Finance that is responsible for the detection of irregular work, tax control, control of proper retention and submission of employee on-costs, etc.).

Pathways out of irregularity in Austria are threefold. Either irregular migrants can obtain a residence title, the status of toleration or return to the country of origin (or migrate further) as a pathway out of irregularity. Regularisation takes place on an individual basis as general amnesties for irregular migrants are viewed very sceptically by Austria's policy makers. There are different possibilities for obtaining a legal status for well-integrated but irregularly resident third-country nationals; depending on his/her previous status and considerations regarding Art. 8 ECHR as well as for persons in need for individual protection. The latter title can (amongst others) also be obtained by persons who are provided the status of toleration after one year.

Measures to reduce irregular migration also take place within the framework of international and bilateral cooperation. Cooperation agreements consist mainly of EU readmission agreements as well as bilateral readmission agreements both facilitating the return of persons residing without authorisation in Austria to their country of origin; a field in which Austria is very active.

Concerning other bilateral agreements, Austria has for example signed a police cooperation agreement with Kosovo and bilateral cooperation agreements in the area of organised crime, human trafficking and irregular migration with Georgia and Moldova. Other bilateral initiatives such as a "safety net" play an important role in transnational cooperation as well especially with regards to fighting smuggling in human beings and supporting increased border controls at the Greek-Turkish border. The intensive cooperation between Austria and Hungary to combat irregular migration in form of a "5 point cooperation programme" in September 2011 must be mentioned in this context as well.

The impact of EU policy and legislation on the national level could be observed with regards to the Return Directive and Employers Sanctions Directive. Austrian legislation implemented the instrument of "return de-

cisions" (in conjunction with entry bans and a period for voluntary departure) and provides for an encompassing system of free legal aid in the aliens' police proceedings. Following the implementation of the Employers Sanctions Directive, the Aliens' Police Act stipulates that a person employing a third-country national under violation of the legal provisions must compensate the resulting costs if a return decision, a return ban or an exclusion order is issued due to illegal employment.

The actual numbers of irregular migrants in Austria is difficult to assess. However, efforts are still made to gauge this phenomenon and methods employed to prevent irregular migration encompass the collection and sharing of information and statistics by the main responsible authorities. The number of "third-country nationals found to be illegally present" in Austria decreased to a large extent during the period 2005-2010: While 38,789 and 38,579 persons were apprehended in Austria in 2005 and 2006, respectively, their number dropped to 14,216 persons in 2009 and has remained at this approximate level since then. The main explanations for this decrease are the recent round of EU enlargement in 2007 as well as the decrease of irregular inflows from third countries to Austria, which is also partly related to EU enlargement. The latest estimates on the stocks of irregular migrants in Austria were undertaken 2008. Based on the estimates of Jandl, it can be assumed that a minimum of 18,439 and a maximum of 54,064 irregular migrants resided in Austria in 2008. The estimate further assumes that numbers of unauthorised migrants in Austria have decreased over the years.

Finally, one has to keep in mind that irregular migration flows highly depend on the political, socioeconomic and cultural settings in the countries of origin. Without addressing these, practical measures might have no or only limited effects, leave alone being sustainable. Furthermore, as irregular migration is an international phenomenon, forceful practical measures increasingly rely on international cooperation, and national measures exclusively do not suffice to address the present challenges any more.

Without doubt, given the opportunity, migrants prefer to move in a legal and safe way. Therefore, one of the major tasks for the future seems to be the development of balanced migration policy measures, considering both the needs and human rights of migrants in general and irregular migrants in particular as well as the right of states to execute their sovereignty and control migration effectively.

ANNEX

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2. Standardised Tables

2.1. Third-country nationals found to be illegally present

Number of third-country nationals found to be illegally present

2005	2006	2007	2008	2009	2010
38,384	38,579	13,501	14,500	17,145	15,220

Source: For the years 2005-2007, Federal Ministry of the Interior; for the years 2008-2010, Eurostat (rounded data)

Age of third-country nationals found to be illegally present

Age groups	2008	2009	2010
Fewer than 14 years	1,450	1,410	1,075
From 14 to 17 years	1,195	1,445	1,200
From 18 to 34 years	8,330	10,330	9,075
35 years or over	3,525	3,960	3,870

Source: For the years 2008-2010, Eurostat (rounded data). For the years 2005-2007, statistics disaggregated by age are not available

Sex of third-country nationals found to be illegally present

Sex	2008	2009	2010
Male	11,095	13,660	12,430
Female	3,405	3,485	2,790

Source: For the years 2008-2010, Eurostat (rounded data). For the years 2005-2007, statistics disaggregated by sex are not available.

Main 10 countries of citizenship

#	Country of citizenship	Total	Country of citizenship	Total	Country of citizenship	Total
		2005		2006		2007
1st	Romania	12,286	Romania	21,430	Serbia/Montenegro	2,050
2nd	Yugoslavia, Fed. Rep. of	4,166	Yugoslavia, Fed. Rep. of	2,719	Russian Federation	1,830
3rd	Russian Federation	3,783	Russian Federation	1,695	Moldova, Rep. of	947
4th	Bulgaria	1,982	Moldova, Rep. of	1,446	Ukraine	941
5th	Moldova, Rep. of	1,899	Bulgaria	1,392	Turkey	715
6th	India	1,538	Ukraine	999	Iraq	667
7th	Ukraine	1,491	Turkey	766	India	554
8th	Turkey	1,007	Georgia	640	Georgia	439
9th	Georgia	989	India	623	Nigeria	377
10th	Nigeria	790	Mongolia	504	China	374
		2008		2009		2010
1st	Russian Federation	2,380	Russian Federation	2,230	Afghanistan	1,545
2nd	Serbia	2,290	Afghanistan	1,865	Russian Federation	1,440
3rd	Afghanistan	1,045	Kosovo	1,390	India	1,385
4th	Iraq	665	Serbia	1,280	Nigeria	1,185
5th	India	630	Nigeria	1,090	Serbia	855
6th	Nigeria	630	Georgia	895	Kosovo	740
7th	Turkey	595	India	885	China	725
8th	Georgia	490	China	720	Turkey	695
9th	China	460	Turkey	685	Algeria	485
10th	Moldova, Rep. of	445	Iraq	460	Iraq	460

Source: For the years 2005-2007: Federal Ministry of the Interior; for the years 2008-2010, Eurostat (rounded data).

Number of third-country nationals refused entry

2005	2006	2007	2008	2009	2010
23,324	29,128	5,655	2,715	645	400

Source: For the years 2005-2007, Federal Ministry of the Interior; for the years 2008-2010, Eurostat (rounded data).

Grounds for refusal

Grounds for refusals	2008	2009	2010
No valid travel document	1,865	145	75
False/ counterfeit/forged travel document	45	50	30
No valid visa or residence permit	640	325	70
False visa or residence permit	25	35	20
Purpose and conditions of stay not justified	5	20	10
Person already stayed 3 months in a 6-months period	-	-	5
No sufficient means of subsistence	15	35	10
An alert has been issued	110	35	85
Person considered to be a public threat	-	-	-

Source: For the years 2008-2010, Eurostat. For the years 2005-2007, statistics disaggregated by these reasons are not available.

Type of border where refused entry

Type of Border	2005	2006	2007	2008	2009	2010
Land Border	22,953	28,614	5,306	2,425	205	85
Air Border	371	514	349	290	445	315

Source: For the years 2005-2007, FMI. For the years 2008-2010, Eurostat. Sea Border is not applicable for Austria.

Main 10 countries of citizenship of third-country nationals refused entry

#	Country of citizenship	Total	Country of citizenship	Total	Country of citizenship	Total
		2005		2006		2007
1st	Romania	12,710	Romania	17,774	Switzerland	1,061
2nd	Bulgaria	4,317	Bulgaria	3,610	Serbia	882
3rd	Switzerland	1,625	Switzerland	1,307	Bosnia and Herzegovina	416
4th	Federal Rep. of Yugos.	740	Federal Rep. of Yugosl.	1,095	Ukraine	352
5th	Croatia	717	Croatia	550	Croatia	290
6th	Ukraine	659	Turkey	408	Turkey	286
7th	Turkey	364	Ukraine	401	Macedonia	262
8th	Bosnia and Herzegovina	297	Macedonia	390	China	253
9th	Moldova, Rep. Of	251	Bosnia and Herzegovina	320	Moldova, Rep. Of	157
10th	Macedonia	215	Liechtenstein	226	Russian Federation	147
		2008		2009		2010
1st	Switzerland	885	Turkey	65	Serbia	70
2nd	Serbia	450	Serbia	55	Turkey	30
3rd	Liechtenstein	285	China	55	Albania	30
4th	FYROM	175	Russian Federation	40	Russian Federation	25
5th	Turkey	150	Ukraine	30	FYROM	25
6th	Bosnia and Herzegovina	125	Albania	25	India	20
7th	Georgia	50	India	25	China	15
8th	Albania	45	Vietnam	25	Ukraine	10
9th	Moldova, Rep. of	45	FYROM	20	Bosnia and Herzegovina	10
10th	China	45	Bosnia and Herzegovina	20	Egypt	10

Source: For the years 2005-2007, FMI. For the years 2008-2010, Eurostat.

2.3 Third-country nationals ordered to leave (after being found illegally present)

Number of third-country nationals ordered to leave (after being found to be illegally present)

2005	2006	2007	2008	2009	2010
11,939	9,031	6,815	8,870	10,625	11,050

Source: Data for 2005-2007, Federal Ministry of the Interior. For the years 2008-2010, Eurostat (rounded data).

Main 10 countries of citizenship of third-country national ordered to leave

#	Country of citizenship	Total	Country of citizenship	Total	Country of citizenship	Total
		2008		2009		2010
1st	Serbia	2,305	Serbia	1,460	Serbia	1,040
2nd	Turkey	680	Kosovo	1,065	Kosovo	1,000
3rd	Nigeria	580	Russian Federation	800	Nigeria	895
4th	Russia	445	Turkey	775	Russian Federation	725
5th	India	430	Nigeria	745	India	665
6th	Georgia	355	Georgia	650	Georgia	485
7th	Moldova	325	India	580	Turkmenistan	435
8th	Armenia	285	Armenia	420	FYROM	430
9th	Iraq	275	China	390	Armenia	405
10th	FYROM	255	FYROM	310	China	380

Source: For the years 2008-2010, Eurostat. Data for 2005-2007 is not available.

2.4 Third-country nationals returned following an order to leave (after being found to be illegally present)

Overall trend

Groups of third-country nationals returned	2005	2006	2007	2008	2009	2010
Total number of third-country nationals returned following an order to leave	6,638	7,072	5,293	5,855	6,410	6,335
Number of third-country nationals returned to a third country following an order to leave	na	na	na	4,155	4,975	5,355

Source: For the years 2005-2007: Federal Ministry of the Interior; for the years 2008-2010, Eurostat (rounded data).

Main 10 countries of citizenship of person returned

#	Country of citizenship	Total	Country of citizenship	Total	Country of citizenship	Total
		2005		2006		2007
1st	Romania	1,150	Federal Rep. of Yugosl.	1,288	Serbia	1,416
2nd	Federal Rep. of Yugosl.	933	Romania	1,169	Moldova, Rep. of	496
3rd	Moldova, Rep. of	631	Moldova, Rep. of	615	Ukraine	484
4th	Ukraine	620	Ukraine	540	Turkey	279
5th	Bulgaria	400	Georgia	332	Russian Federation	275
6th	Georgia	323	Bulgaria	313	Iraq	210
7th	Russian Federation	223	Turkey	283	Macedonia	149
8th	Turkey	349	Nigeria	169	Georgia	141
9th	Nigeria	170	China	150	India	137
10th	Belarus	142	Iraq	146	Nigeria	131
		2008		2009		2010
1st	Serbia	1,635	Kosovo	1,230	Kosovo	1,015
2nd	Russia	485	Russia	960	Serbia	790
3rd	Turkey	380	Serbia	815	Russia	665
4th	Moldova	310	Turkey	250	Nigeria	375
5th	Iraq	305	Iraq	240	FYROM	315
6th	India	195	India	235	Turkey	305
7th	FYROM	190	Nigeria	220	Georgia	275
8th	Ukraine	165	FYROM	210	Moldova	245
9th	Nigeria	165	Moldova	205	India	230
10th	Afghanistan	145	Georgia	195	China	220

Source: For the years 2005-2007: Federal Ministry of the Interior; for the years 2008-2010, Eurostat (rounded data).

Main 10 countries to which third-country nationals are returned following an order to leave

#	Country of citizenship	Total	Country of citizenship	Total	Country of citizenship	Total
		2008		2009		2010
1st	Serbia	1,460	Kosovo	1,125	Kosovo	975
2nd	Russia	445	Russia	930	Serbia	760
3rd	Turkey	355	Serbia	765	Russia	645
4th	Moldova, Rep. of	260	Turkey	225	Nigeria	320
5th	FYROM	160	Georgia	185	FYROM	300
6th	India	155	FYROM	180	Turkey	290
7th	Ukraine	145	Moldova	175	Georgia	260
8th	Bosnia and Herzegovina	125	India	175	Moldova	230
9th	Georgia	110	Nigeria	145	China	190
10th	Nigeria	100	China	135	Mongolia	180

Source: Eurostat (rounded data).

2.5 Third-country nationals whose application for asylum has been rejected

Main 10 countries of citizenship of applicants whose application has been rejected in the first instance

#	Country of citizenship	Total	Country of citizenship	Total	Country of citizenship	Total
		2008		2009		2010
1st	Russian Federation	2,765	Russian Federation	2,895	Russian Federation	2,045
2nd	Serbia	920	Kosovo	1,040	Afghanistan	1,115
3rd	Nigeria	555	Afghanistan	890	Nigeria	705
4th	Kosovo	505	Georgia	875	Kosovo	595
5th	Turkey	410	Nigeria	785	Georgia	495
6th	India	395	Serbia	680	India	490
7th	Armenia	385	Turkey	415	Armenia	430
8th	Georgia	375	India	400	Turkey	380
9th	Afghanistan	295	Armenia	400	Serbia	365
10th	China	200	China	310	Pakistan	310

Source: Eurostat (rounded data).

Main 10 countries of citizenship of applicants whose application has been rejected (following a final decision)

#	Country of citizenship	Total	Country of citizenship	Total	Country of citizenship	Total
		2008		2009		2010
1st	Russian Federation	1,610	Russian Federation	2,045	Russian Federation	1,500
2nd	Serbia	1,005	Serbia	965	Nigeria	915
3rd	Nigeria	795	Turkey	825	Turkey	755
4th	Turkey	455	Nigeria	820	Serbia	735
5th	India	385	Georgia	705	Armenia	655
6th	Armenia	365	Armenia	545	Afghanistan	520
7th	Georgia	330	Kosovo	545	Georgia	505
8th	Ukraine	195	India	510	India	480
9th	FYROM	185	Afghanistan	420	Kosovo	430
10th	Kosovo	160	China	375	China	365

Source: Eurostat (rounded data).

Number of third-country nationals whose status has been withdrawn (following a final decision)

#	Country of citizenship	Total	Country of citizenship	Total
		2009		2010
1st	Georgia	10	Serbia	10
2nd	Serbia	10	Russian Federation	10
3rd	Russian Federation	5	Georgia	5
4th	Ukraine	5	Armenia	5
5th	-	0	Kosovo	5
6th	-	0	Moldova, Rep. of	5
7th	-	0	Mongolia	5
8th	-	0	Turkey	5
9th	-	0	-	0
10th	-	0	-	0

Source: Eurostat (rounded data).

3. Interview Guideline

Name of the interviewee:

Please give a short description of your position and your main responsibilities?

Since when have you been working in this position?

To what extent are you engaged in the field of irregular migration?

I. PRACTICAL MEASURES FOR REDUCING IRREGULAR MIGRATION

Please give three examples, explain the context and the experience gained with these measures.

1.) Pre-Entry: Which practical measures are undertaken by Austria to combat irregular migration before the migrant enters Austria?

- **Information campaigns;**
- **Controls and checks prior to entry/at border (carrier sanctions, visa regulations);**
- **Training of border police;**
- **Equipment;**
- **Development of the network of Immigration Liaison Officers (ILOs);**
- **Identification of irregular migration routes to Austria.**

2.) Entry: Which practical measures are undertaken to identify irregular migrants at borders?

- **Border control and technology for surveillance;**
- **Information exchange;**
- **Risk assessment (e.g. through cooperation with Frontex' Risk Analysis Unit);**
- **Identification of irregular entry of specific categories of migrants at the border;**
- **Rejection of migrants who have been denied by other states;**
- **Identification and registration of fake documents at the border;**
- **Strengthening police cooperation (readmission agreements);**
- **Cooperation with Frontex.**

3.) Stay: Which practical measures are undertaken to control irregular stay of migrants in Austria's territory?

- **Apprehensions of irregular migrants and controls on streets;**
- **Identification of irregularly resident migrants;**
- **Measures to prevent illegal work, including sanctions against employers and inspections at workplaces;**

- **Detection of fraudulent means to irregularly stay in Austria, e.g. marriages of convenience and false declarations of paternity;**
- **Indirect methods of detecting and monitoring irregularly resident migrants through public registration and access-based systems (for example, through migrants' access to social security, health care systems, accommodation and education).**

4.) What are the costs of the respective measures? (Implementation, staff, etc.)

II. PATHWAYS OUT OF IRREGULARITY

1.) What experiences have been made concerning the status of toleration (since 1 January 2010)? How many respective identity cards have been issued? Is it apparent whether the status of toleration leads to regularisation or return in subsequence?

2.) What is the Austrian position on general amnesties?

III. TRANS-NATIONAL COOPERATION IN REDUCING IRREGULAR MIGRATION

1.) Please provide a brief overview of non-legislative cooperation with third country states, e.g.:

- **Co-management practices of border crossings;**
- **Networks of Immigration Liaison Officers in countries of origin and transit;**
- **Strengthening the dialogue on Mediterranean Transit Migration (MTM);**
- **Twinning projects;**
- **Bilateral/multilateral agreements to support deportations, e.g. joint charter flights or agreements on returning particular nationalities.**

2.) Please provide a brief overview of cooperation with the following institutions:

- **EU agencies;**
- **Other institutions/international organisations.**

3.) How effective is cooperation with countries of origin?

- **Communication between countries/authorities (note of entry bans in the SIS);**
- **Preparation of the authorities for the return of migrants (assisted voluntary return and deportation);**

- **Consequences (pick-up service at the airport, detention, etc.) and experiences with cooperation.**

IV. IMPACT OF EU POLICY AND LEGISLATION

1.) **Was there an impact of EU agreements (e.g. readmission agreements) on practical measures against irregular migration in Austria?**
2.) **To what extent did activities funded by the EU External Border Fund and/or the European Return Fund contribute to practical measures against irregular migration?**

V. OTHER

1.) **Important aspects which have not been mentioned so far.**