



International Organization for Migration (IOM)



THE ORGANIZATION OF ASYLUM AND MIGRATION POLICIES IN AUSTRIA

National Contact Point Austria in the European Migration Network

Co-funded by the
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REPUBLIC OF AUSTRIA
FEDERAL MINISTRY OF THE INTERIOR

The European Migration Network (EMN) is co-ordinated by the European Commission with National Contact Points (EMN NCPs) established in each EU Member State plus Norway. The National Contact Point Austria in the EMN is financially supported by the European Commission and the Austrian Federal Ministry of the Interior.

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IOM is committed to the principle that humane and orderly migration benefits migrants and society. As an intergovernmental organization, IOM acts with its partners in the international community to: assist in meeting the operational challenges of migration; advance understanding of migration issues; encourage social and economic development through migration; and uphold the human dignity and well-being of migrants.

Cover Design and print: AV+Astoria Druckzentrum

Publisher: International Organization for Migration, Country Office for Austria
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EUROPEAN MIGRATION NETWORK

The European Migration Network (EMN) was launched in 2003 by the European Commission by order of the European Council in order to satisfy the need of a regular exchange of reliable information in the field of migration and asylum at the European level. Since 2008, Council Decision 2008/381/EC has constituted the legal basis of the EMN and National Contact Points (NCPs) have been established in the EU 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 NCP for Austria is located in the Research and Migration Law Department of the Country Office Austria of the International Organization for Migration (IOM) in Vienna, which was established in 1952 when Austria became one of the first members of the organization. The main responsibility of the IOM Country Office is to analyse national migration issues and emerging trends and to develop and implement respective national projects and programmes.

The main task of the NCPs is to implement the annual work programme of the EMN including the drafting of the annual policy report and topic-specific focussed and main studies, answering Ad-Hoc Queries launched by other NCPs, carrying out visibility activities and networking in several forums. Furthermore, the NCPs in each country set up national networks consisting of organizations, institutions and individuals working in the field of migration and asylum.

In general, the NCPs do not conduct primary research but collect and analyse existing data. Exceptions might occur when existing data and information is not sufficient. EMN studies are elaborated in accordance with uniform specifications valid for all EU Member States plus Norway in order to achieve comparable EU-wide results. Since the comparability of the results is frequently challenging, the EMN has produced a Glossary, which assures the application of similar definitions and terminology in all national reports.

Upon completion of national reports, the European Commission with the support of a service provider drafts a synthesis report, which summarizes the most significant results of the individual national reports. In addition, topic-based policy briefs, so called EMN Informs, are produced in order to present and compare selected topics in a concise manner. All national studies, synthesis reports, informs and the Glossary are available on the website of the European Commission Directorate-General Migration and Home Affairs.

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1. INTRODUCTION

The present study has been conducted by the National Contact Point (NCP) Austria in the European Migration Network (EMN). The main aim of this EMN study is to provide an up-to-date reference document on the organization of asylum and migration policies in Austria. This study comprises three distinct parts. Firstly, the study provides overview of the organization of the political, legislative and institutional framework regulating Austria's migration and asylum policy (chapter 2). Secondly, a brief historical overview of the different asylum and migration phases and the evolution of the Austrian migration law is outlined (chapter 3). Finally, the study provides close analysis of the current asylum and migration policy, procedures and laws, and how migration policy links to other policy areas (chapter 4). In line with the EMN mandate, this study focuses exclusively on the asylum and migration policies in respect of 'third-country nationals' as defined in Council Regulation EC No 862/2007: "Any person who is not citizen of the Union within the meaning of Article 17(1) of the Treaty, including stateless persons".

The first version of this study was accomplished in the framework of the EMN Work Programme in 2008. As the Austrian migration law has known several important legal reforms since 2008, an update is necessary in order to preserve its continuing value. The Act Amending the Aliens Law 2015¹ has been the latest amendment of the Austrian migration law. The study encompasses these last legal reforms.

Regarding the methodology of the study, it is primarily based on desk research, including available literature, articles, studies, statistics, Austrian legislation and case law, as well as media documents and information provided from governmental websites and those of key institutions and organizations. During the elaboration of the study, no updated literature with regard to the most recent legal changes existed, thus for description of the latest changes to the present asylum and migration policies and procedures the respective legal acts and the explanatory remarks to the government bill of the Act Amending the Aliens Law 2015 served as the main source. An overview of all sources used is provided in the bibliography.

This updated version of the study is presented in the form of a handbook in order to facilitate the reading and understanding of this complex legal material, to give a general overview and to, therefore, provide a practical use in a user friendly way.

In order to improve comparability between EU Member States, terms and definitions from the EMN Glossary are used, publicly accessible on the EMN website. Terms specific to Austria are included in the translation list (Annex 1).

This handbook is accompanied by an "Institutional Chart" presenting a schematic overview of the institutional framework of Austria's migration and asylum system. The Institutional Chart shows the main actors and their tasks (Annex A.2).

¹ Federal Law Gazette (FLG) I No. 70/2015.

Annex 3 presents a list of relevant institutions and organizations in Austria working in the field of migration and asylum that are mentioned in the study, including contact details for easy reference and follow-up.

Tamara Buschek-Chauvel (Consultant, IOM) drafted this updated study under the supervision of Julia Rutz (Head of Research and Migration Law, IOM). Special thanks go to Katerina Kratzmann (Head of Office, IOM) for reviewing the draft study. Thanks go also to Rainer Lukits and Haleh Chahrokh (Legal Associates, IOM) and Saskia Koppenberg (Research Associate, IOM) for providing input and reviewing the draft study.

2. OVERVIEW OF THE ORGANIZATION OF THE POLITICAL, LEGISLATIVE AND INSTITUTIONAL FRAMEWORK IN AUSTRIA

2.1 Political Framework

Austria is a democratic republic founded on the separation of powers. The three powers – legislative, administrative and judicial – are essential elements of the rule of law and are enshrined in the constitution.

By virtue of Austria's Declaration of Neutrality, which was passed on 26 October 1955, Austria has become a permanently neutral state (Federal Chancellery, 2000: 84).

After a referendum on European Union (EU) membership on 12 June 1994 (66.6% in favour), Austria joined the EU on 1 January 1995 (Federal Ministry of the Interior, 1994: 7).

The federal principle is also stipulated in the constitution and, as such, is a further fundamental principle in Austrian law. Austria is a federation consisting of nine provinces. Each province is governed by a provincial government, which is under the leadership of the governor of the province.² The respective provincial parliament elects the governor of the province. The provincial parliaments represent the interests of the citizens in the respective province and are in charge of the provincial legislation and the election of the provincial government (Fallend, 2006: 979).

Table 1: Overview of the Austrian provinces and capital cities

Province	Capital city
Burgenland	Eisenstadt
Carinthia	Klagenfurt
Lower Austria	St. Pölten
Salzburg	Salzburg
Styria	Graz
Tyrol	Innsbruck
Upper Austria	Linz
Vienna	Vienna
Vorarlberg	Bregenz

Legislative and executive jurisdiction is divided between the Federal State and the provinces. Art. 10 to 15 of the Federal Constitution regulate this division of competencies. The Austrian aliens and asylum law belongs mainly within the Federal State's sphere of authority.

The **legislative power** consists of passing laws and the surveillance of their implementation. The legislative branch is exercised by the Parliament and the provincial governments. The Austrian Parliament is composed of two chambers – the National Council and the Federal Council.

² Advantage Austria, *Political System*, available at www.advantageaustria.org/international/zentral/business-guide-oesterreich/zahlen-und-fakten/auf-einen-blick/politisches-system.en.html (accessed on 5 June 2015).

The National Council is the main legislative body. The 183 members of the National Council, who are directly elected by the people every five years, propose, debate, and adopt laws. The National Council also performs a controlling function over the Federal Government, which comprises the Federal Chancellor, who heads the Federal Government, the Vice-Chancellor, and the other Federal Ministers. One of its most important legal competencies is the passing of bills.

The Federal Council represents the provinces' interests in the legislative process at the federal level through its members (currently 61) who are – depending on the election results – delegated by the provincial governments of the provinces in proportion to the number of seats each of the parties hold on the provincial level (Federal Chancellery, 2000: 59–63).³

Box 1: Process of passing a bill

Normally, experts in the relevant ministries draft the legislative proposals. These ministerial proposals are sent to interested bodies and expert groups who are entitled to express their views and criticism in the so-called expert reviews. The thereupon elaborated government bill is then submitted for adoption to the National Council. Once the bill is adopted by the National Council, it is referred to as a National Council enactment. Every National Council enactment is transferred to the Federal Council without delay. The Federal Council has a right to object to bills adopted by the National Council within eight weeks.⁴

The implementation of the legislation is the task of the **executive branch**. The executive branch consists of two components – the administration and the judiciary.⁵

The third pillar in Austria is the **judiciary**. The judicial branch is independent of the administrative and the legislative power.

The court system in Austria is marked by a division between ordinary courts, dealing with civil and criminal cases, and public law tribunals for constitutional and administrative law (including asylum law).

There are four levels of ordinary courts:

- District courts;
- Regional courts;
- Higher regional courts;
- Supreme Court.

³ Migration Platform of the Federal Government, *The Political, Administrative and Legal Systems*, available at www.migration.gv.at/en/living-and-working-in-austria/austria-at-a-glance/the-political-administrative-and-legal-systems.html (accessed on 5 June 2015).

⁴ Austrian Parliament, *How laws are made*, available at www.parlament.gv.at/ENGL/PERK/GES/ (accessed on 5 June 2015).

⁵ Austrian Parliament, *The Separation of Powers – Why is it Necessary?*, available at www.parlament.gv.at/ENGL/PERK/PARL/POL/ParluGewaltenteilung/index.shtml (accessed on 5 June 2015).

The administrative jurisdiction is exercised:

- At first instance by the Federal Administrative Court, the Federal Fiscal Court and the provincial administrative courts;
- At second instance by the Administrative High Court, which is one of the two High Courts of public law in Austria. The Administrative High Court rules on appeals against decisions of the administrative courts.

The constitutional jurisdiction is exercised:

- By the Constitutional Court – the second High Court of public law in Austria. The Constitutional Court is primarily reviewing the constitutionality of federal and provincial laws. Furthermore, it reviews decisions taken by the administrative courts as well as the lawfulness of administrative regulations and is entitled to repeal them if necessary (Art. 139, 140 and 144 Federal Constitutional Act).

Austria's judiciary has recently undergone significant restructuring due to a wide-ranging reform of the Austrian system of administrative jurisdiction, which took effect on 1 January 2014. This reform created the so-called "9+2 model": nine provincial administrative courts, a Federal Administrative Court and a Federal Fiscal Court. This structure replaced approximately 120 administrative bodies. In the course of this reform a two-staged administrative jurisdiction was established. From now on certain administrative acts can be contested before one of the eleven administrative courts (Grassl, 2013).

During the course of this administrative reform a restructuring of the asylum and aliens authorities also took place. In this respect the main change was the establishment of the Federal Office for Immigration and Asylum, which since 1 January 2014 has replaced the former Federal Asylum Office (→ for details see 2.3.1).

→ Regarding the courts that are relevant in the field of asylum and migration see 2.3.3.

The head of state is embodied by the **Federal President of Austria**. He/she is directly elected by the Austrian people once every six years. Despite his/her important role in controlling the government's works, the Federal President's main role is rather representative.

Political parties dominate Austria's political system. The most influential are the parties that are currently (XXV legislative period) represented in the National Council: the two governing parties are the Social Democratic Party of Austria (SPÖ) and the Austrian People's Party (ÖVP). The other parliamentary parties include: the Austrian Freedom Party (FPÖ), the Austrian Green Party, Team Stronach and the NEOS–The New Austria. The SPÖ currently holds the highest number of seats in the National Council with 52 seats. The governing coalition partner ÖVP holds 47 seats, while the FPÖ is in third place with 40 seats. The Austrian Green Party holds 24 and Team Stronach and NEOS–The New Austria hold 9 seats each.⁶

⁶ Austrian Parliament, *Zusammensetzung des Nationalrates seit 1945*, available at www.parlament.gv.at/WWER/NR/MandateNr1945/ (accessed on 8 June 2015).

Another important element of the Austrian political system is the voluntary cooperation on economic and social issues between the government and the major economic interest groups – the “**Austrian Social Partnership**”. The social partners (in particular the Chamber of Labour, the Austrian Economic Chamber, the Austrian Trade Union Federation and the Austrian Chamber of Agriculture) are inter alia entitled to evaluate or draft texts for legislation and to express recommendations to law-making institutions. They are also represented in several commissions, advisory boards and committees with regard to their field of interest.⁷

2.2 Legislative Framework

The Austrian migration law has been amended several times in recent years and has, therefore, become one of the most complex legal materials.

→For details on the evolution of the Austrian migration law and the specific amendments see chapter 3.

The current migration law is based on a broad reform of the whole migration law that took place in 2005.

The so-called **Aliens Law Package 2005**,⁸ which has profoundly restructured the Austrian migration law, has – inter alia – transposed several European Union directives. The revision of the aliens law at the beginning of 2006 resulted in the split of the former Aliens Act 1997⁹ into the **Aliens Police Act 2005** (hereinafter Aliens Police Act) and the **Settlement and Residence Act**. Additionally, the Asylum Act was revised and became the **Asylum Act 2005** (hereinafter Asylum Act).

The Aliens Police Act governs the exercise of aliens police, the issuance of documents for aliens and the granting of entry permits for stays of less than six months. The Aliens Police Act has especially transposed Council Directive 2004/82/EC of 29 April 2004 on the obligation of carriers to communicate passenger data.

The Settlement and Residence Act governs residence permits for aliens who reside or want to reside in the federal territory for longer than six months, as well as the documentation of the right to residence under European Union law. The Settlement and Residence Act has inter alia transposed Council Directive 2003/109/EC of 25 November 2003 concerning the status of third-country nationals who are long-term residents and Council Directive 2003/86/EC of 22 September 2003 on the right to family reunification. Further, the Settlement and Residence Act has implemented Council Regulation (EC) No 1030/2002 of 13 June 2002 laying down a uniform format for residence permits for third-country nationals.

The Asylum Act regulates the granting and withdrawal of asylum status and subsidiary protection status in Austria. The Asylum Act 2005 has particularly transposed the Qualification Directive (2004/83/EC).

⁷ Wirtschaftskammer Österreich, *Die österreichische Sozialpartnerschaft*, available at www.wko.at/Content.Node/Interessenvertretung/Standort-und-Innovation/Gesellschaftspolitik/Die_oesterreichische_Sozialpartnerschaft.html (accessed on 8 June 2015).

⁸ FLG I No. 100/2005.

⁹ FLG I No. 75/1997.

On 1 January 2010 the **Act Amending the Aliens Law 2009**,¹⁰ which represents the most comprehensive amendment to the Austrian aliens law since 2005, became effective.

A further considerable aliens law reform was carried out in 2011 by the **Act Amending the Aliens Law 2011**¹¹ (also called Aliens Law Package 2011) which entered into force on 1 July 2011. It amended inter alia the Settlement and Residence Act, the Asylum Act and the Aliens Police Act.¹²

In addition to these laws, a number of regulations containing provisions on details implementing the new immigration laws have been set into force: **Regulation on the Implementation of the Settlement and Residence Act**,¹³ **Regulation on the Integration Agreement**,¹⁴ **Regulation on the Implementation of the Aliens Police Act**,¹⁵ **Settlement Regulation**.¹⁶

Moreover, there are a number of Austrian laws, such as the **Act Governing the Employment of Foreigners** and respective laws of the Austrian provinces, that are relevant for the rights of migrants once they arrive in Austria in terms of employment, education, etc.

Another relevant act is the **Citizenship Act**,¹⁷ which regulates the requirements for the award of the Austrian citizenship.

The last amendment of the Austrian asylum and migration law was accomplished by the **Act Amending the Aliens Law 2015**, which entered into force on 20 July 2015 (→ for details see chapter 3.4.1 and 4).

2.3 Institutional Framework

In the field of migration, legislative and executive powers lie mainly within the competence of the Federal State (Art. 10 para 1 subpara 3 of the Federal Constitutional Act).¹⁸ Many further tasks are performed by a variety of actors on various levels.

2.3.1 Ministries and Associated Bodies

The **Federal Ministry of the Interior** holds the main responsibility for the area of asylum and migration policies.

Pursuant to the Federal Ministry Law¹⁹ the main tasks of the Federal Ministry of the Interior in this regard are:

¹⁰ FLG I No. 122/2009.

¹¹ FLG I No. 38/2011.

¹² The Aliens Law Package 2011 replaced for immigrants from non EU-Member States the 'quota system' by a catalogue of criteria and introduced the so-called Red-White-Red Card for highly skilled immigrants or key-labour forces (academic professions, skilled workers) from non EU-Member States.

¹³ FLG II No. 451/2005.

¹⁴ FLG II No. 449/2005.

¹⁵ FLG II No. 450/2005.

¹⁶ FLG II No. 361/2014.

¹⁷ FLG No. 311/1985, in the version of FLG I No. 104/2014.

¹⁸ FLG No. 1/1930, in the version of FLG I No. 102/2014.

- Monitoring entries into or exits from the federal territory;
- Aliens police issues;
- Immigration and emigration matters;
- Exclusion orders, expulsions and removals;
- Asylum matters;
- Extradition matters (as far as they do not have to be fulfilled by judicial authorities);
- Citizenship matters;
- Participation in the implementation of the National Action Plan for Integration.

The Federal Ministry of the Interior has established the so-called **Migration Council for Austria**. This body consists of experts from academia and public life and assists with the development of a comprehensive migration strategy.²⁰

The **Federal Office for Immigration and Asylum** is under the responsibility of the Federal Ministry of the Interior and, since 1 January 2014, is the first instance authority in asylum procedures. The Federal Office for Immigration and Asylum is headquartered in Vienna and has a regional directorate in each of the provinces. The Federal Office for Immigration and Asylum fulfills following core competencies:

- Granting and withdrawal of refugee status and subsidiary protection status;
- Imposing return decisions, entry bans and enforcement orders;
- Granting residence permits in cases of exceptional circumstances;
- Issuance of documents related to asylum proceedings;
- Decisions on detention pending removal and more lenient measures;
- Procurement of return certificates;
- Execution of the Federal Basic Welfare Support Act²¹ as federal authority;
- Voluntary returns (Federal Office for Immigration and Asylum, n.d.).

Police officers and the **police administrations of the provinces** are also under the responsibility of the Federal Ministry of the Interior and play an important role in the implementation and execution of tasks in the field of asylum and migration. According to Art. 2 para 2 of the Aliens Police Act, the aliens police are responsible for:

- Prevention of irregular entries of aliens;
- Surveillance of the residence of aliens;
- Issuance of certificates of non-objection;
- Implementation of repatriation and transit of aliens;
- Prevention and termination of criminal offences under the Aliens Police Act.

¹⁹ Annex to Art. 2 part 2 section H Federal Ministry Law.

²⁰ Federal Ministry of the Interior, "*Migrationsrat für Österreich*" vorgestellt. Press Release, Vienna, 3 April 2014, available at www.bmi.gv.at/cms/bmi/_news/bmi.aspx?id=5458593070466150436C303D&view=1 (accessed on 30 June 2015).

²¹ FLG I No. 405/1991, in the version of FLG I No. 70/2015.

The **Federal Ministry for Europe, Integration and Foreign Affairs** is specifically responsible for integration issues and is, according to the Federal Ministry Law,²² inter alia responsible for:

- Visa procedures and consular fees;
- Matters of development cooperation and coordination of the international development policy;
- Matters of cooperation with the United Nations High Commissioner for Refugees and the International Committee of the Red Cross;
- Matters of integration:
 - Matters of social integration and the coexistence of people with and without a migrant background;
 - Coordination of the common integration policy;
 - Management of advisory boards and expert groups with regard to integration issues;
 - Allocation of funding in the field of integration, including for foundations and funds.

The **Austrian Integration Fund** is a partner of the Federal Ministry for Europe, Integration and Foreign Affairs and supports recognized refugees and migrants in their integration process. In this context it is in charge of:

- The implementation of the “Integration Agreement” (→ for details see 4.1.3 and 4.2.3);
- The management of projects financed by the Asylum, Migration and Integration Fund on behalf of the Federal Ministry for Europe, Integration and Foreign Affairs;²³
- The administration of projects financed by the European Integration Fund.²⁴

The **Federal Ministry of Labour, Social Affairs and Consumer Protection** is inter alia responsible for labour market policies and, therefore, also for policies linked to employment of foreigners. Its other core areas include social policy, social insurance, long-term care and initiatives for people with disabilities, senior citizens' policy, employment law, health, safety and consumer protection.²⁵

The **Public Employment Service** Austria is commissioned by the Federal Ministry of Labour, Social Affairs and Consumer Protection and assumes its role as an enterprise under public law in close cooperation with labour and employers' organizations. The Public Employment Service is Austria's leading provider of labour market related services and is inter alia in charge of the issuance and administration of work permits. Migrants are thus in direct contact with this body when seeking permission to work in Austria.²⁶

²² Annex to Art. 2 part 2 section B Federal Ministry Law.

²³ Austrian Integration Fund, *AMIF 2014–2020*, available at www.integrationsfonds.at/themen/eu-fonds/amif-asyl-migrations-und-integrationsfonds/ (accessed on 10 June 2015).

²⁴ Austrian Integration Fund, *About the ÖIF*, available at www.integrationsfonds.at/en/news/detail/article/en-oeif-beim-intercultural-achievement-award/ (accessed on 15 January 2016).

²⁵ Federal Ministry of Labour, Social Affairs and Consumer Protection, www.sozialministerium.at//cms/siteEN/ (accessed on 10 June 2015).

²⁶ Public Employment Service Austria (AMS), *About the AMS*, available at www.ams.at/en/public-employment-service-austria-ams/about-ams (accessed on 10 June 2015).

2.3.2 *Provincial Authorities*

The provinces hold joint competencies with the Federal State in the area of temporarily granted basic welfare support for aliens in need of assistance and protection. The responsibilities of the provinces are specified in Art. 4 para 1 of the Basic Welfare Support Agreement.²⁷ The Federal State is mainly responsible for asylum-seekers in the admission procedure, while in later stages of the asylum procedure the provinces are competent to provide housing, food, medical insurance, etc. Costs are shared between the Federal State and the provinces according to a defined ratio and maximum amounts (→for details see 4.2.2).

2.3.3 *Courts*

Following courts have jurisdiction in the field of asylum and migration:

The **Federal Administrative Court** decides on appeals against the decisions of the Federal Office for Immigration and Asylum;

The **provincial administrative courts** in particular decide on appeals against decisions related to the Settlement and Residence Act, including the issuance of residence permits provided therein;

The **Administrative High Court** and the **Constitutional Court** decide on appeals against decisions of the Federal Administrative Court and the provincial administrative courts (Federal Ministry of Justice, 2014: 14–15).

→For details on Austria's judiciary see 2.1.

2.3.4 *Other Important Actors*

In addition to the state actors a wide range of other actors also play an important role by influencing and implementing migration and asylum policies in Austria. These actors include the Social Partners, international organizations, non-governmental organizations (NGOs) and immigrant community associations.

The abovementioned **social partners** (→ see 2.1) are involved in the area of labour market policies, and have contributed inter alia to the introduction of the current criteria-based system of immigration for qualified migrants (Schumacher/Peyrl/Neugschwendtner, 2012: 77).

The **United Nations High Commissioner for Refugees** (UNHCR) heads an UN agency with a branch office in Vienna, which was opened in 1951, the founding year of UNHCR. This makes the UNHCR the longest serving UN agency in Austria.

Since 1952, when Austria joined the **International Organization for Migration** (IOM) as one of its founding Member States, the IOM has worked to assist migrants to promote adequate responses

²⁷ FLG I No. 80/2004, in the version of FLG I No. 46/2013.

to migration issues, bearing in mind the well-being of migrants and the interests of states and their societies. The IOM in Austria currently consists of two offices, the IOM Country Office for Austria and the IOM Regional Office for South-Eastern Europe, Eastern Europe and Central Asia.

In 2003, the IOM Country Office for Austria was nominated as National Contact Point Austria in the European Migration Network (EMN) by the Federal Ministry of the Interior and is, consequently, responsible for ensuring the implementation of activities in Austria in accordance with the work programme of the EMN.

The **European Union Agency for Fundamental Rights** (FRA) is one of the EU's decentralized agencies and is located in Vienna. However, the FRA does not interfere with Austrian migration and asylum policies but provides expert advice to EU institutions and Member States on a wide range of fundamental rights issues. It does so by collecting and analysing data that helps EU institutions and EU Member States understand and respond to fundamental rights challenges in the EU.²⁸

The **International Centre for Migration Policy Development** (ICMPD), an intergovernmental organization with UN observer status, which was created in 1993 at the initiative of Switzerland and Austria, is headquartered in Vienna. The ICMPD does not mainly focus on Austrian asylum and migration policies. It promotes innovative, comprehensive and sustainable migration policies and functions as a service exchange mechanism for governments and organizations of its 15 Member States.²⁹

A number of **NGOs** are working in the field of asylum and migration and, thus, make a major contribution to important issues with regard to the often vulnerable situation of asylum-seekers and migrants. Examples are Asyl in Not, Asylkoordination, Caritas, Diakonie Flüchtlingsdienst, Flüchtlingsprojekt Ute Bock, helping hands, Integrationshaus, Austrian Red Cross, Verein menschen.leben, Verein Menschenrechte Österreich, Volkshilfe Österreich and many more.

→ Annex 3 provides a list of Austrian NGOs working in this field and mentioned in the present study.

Another relevant group of actors are **immigrant community associations**. Only limited comprehensive data and research about Austrian immigrant community associations is available. These actors provide integration work and aim at strengthening the rights of immigrants.³⁰

There are also several organizations conducting **research** in the field of asylum and migration. Some examples are the Ludwig Boltzmann Institute of Human Rights, the Austrian Human Rights Institute, the UNHCR, the International Organization for Migration and various universities.

²⁸ FRA, *About the FRA*, available at <http://fra.europa.eu/en/about-fra> (accessed on 10 June 2015).

²⁹ ICMPD, *About us*, available at www.icmpd.org/ABOUT-US.1513.0.html (accessed on 10 June 2015).

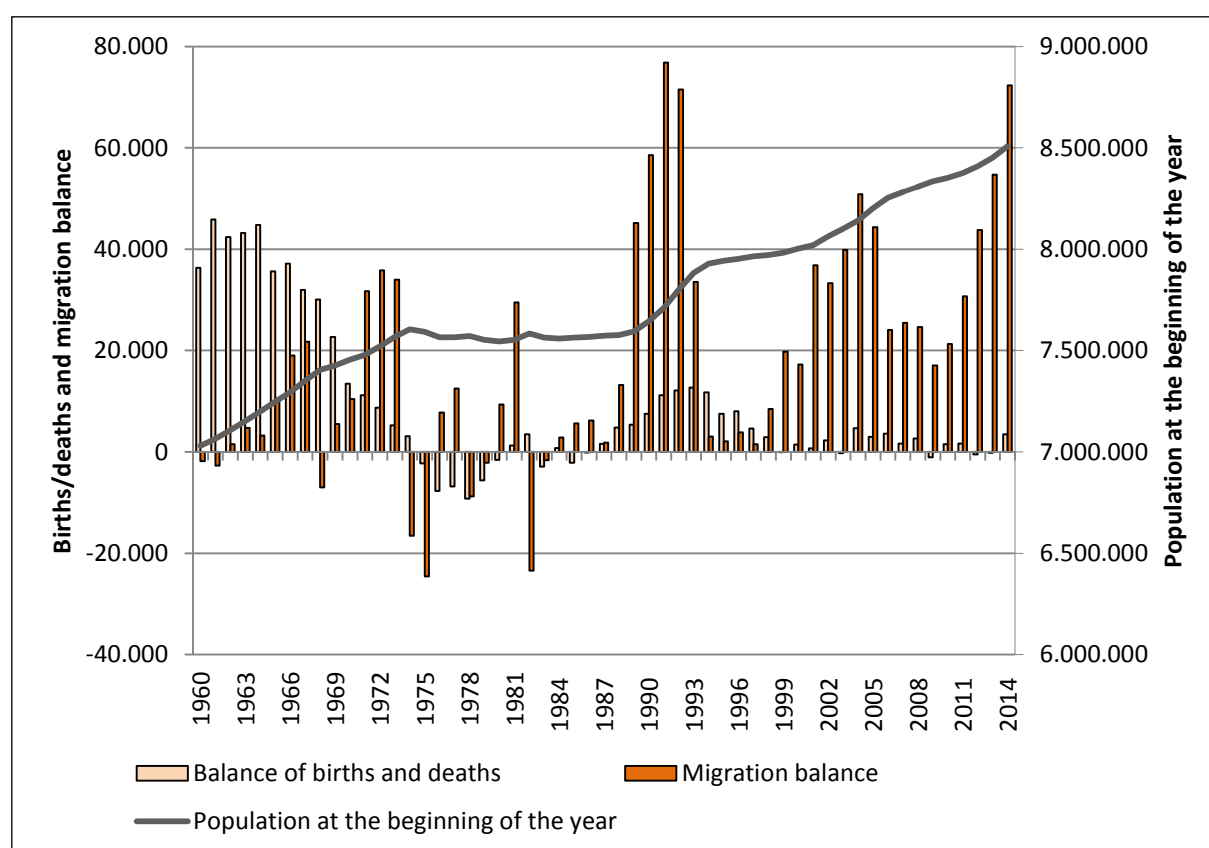
³⁰ For further information see Austrian Integration Fund, 2013.

3. DEVELOPMENT OF ASYLUM AND MIGRATION SYSTEMS

Over the past two centuries Austria took part in several forms of international migration, including immigration, emigration, transit migration, and asylum protection for refugees. According to Fassmann and Münz migration to and from Austria has undergone several reorientations since the middle of the 19th century (Fassmann/Münz, 1995: 13). According to Kraler and Sohler Austria has been characterized by several major events which led to important reconfigurations of the patterns of migration and the emergence of new migratory phenomena (Kraler/Sohler, 2007: 19).

Since 1960, Austria's population has increased by 1.5 million people. A major component of this population growth has been immigration.

Figure 1: Population change in Austria by component (1960–2014)



Source: STATISTICS AUSTRIA, STATcube–Statistical database, Demographic Yearbook 2013, Press releases 11.049-109/15 and 11.051-111/15.

Note: The balance of births and deaths until October 2014 is based on the registrations at the civil registry office and since November 2014 on the central register of births, marriages and deaths. The migration balance until 2000 is calculated from the total change minus the balance of births and deaths and since 2002 based on the central population register. The population between 1952 and 2001 is based on the annual population estimation and since 2002 on the central population register.

Austria's first Asylum Act was enacted in 1968 in response to the refugee flows during the Cold War. The Cold War involved a significant phase of transit migration during an important period for the foundation of Austria's asylum protection policies. Between 1945 and 1989 Austria was, due to its geopolitical position, one of the main countries of destination and transit for refugees fleeing communist regimes in Eastern and Central Europe. Although the majority of the circa two million refugees that arrived in Austria traveled on to other Western states, many stayed and were granted asylum (Jandl/Kraler, 2003).

Overall, Austria's immigration policy and legislation has been affected by several politico-historical and economic events. In essence the following phases of immigration have particularly determined Austria's current immigration policy and legislation (Fassmann/Reeger, 2008: 21).

3.1 Labour Migration in the 1960s

A major shift in Austria's immigration regulations took place at the beginning of the 1960s. During the 1960s Austria was confronted with significant emigration. Many Austrian workers emigrated to Germany, Switzerland, Liechtenstein and Sweden where they found better working conditions and higher wages. At the same time the proportion of women workers decreased as they returned to taking care of children and of the household (Pöschl, 2015: 32).

Further, Austria's post-World War II economic boom caused a significant increase in labour demand. The Austrian government intended to fill the existing labour shortage with so-called "guest worker" immigration (cf. Gächter/Manahl/Koppenberg, 2015: 16, 19; Gächter, 2008: 3–4). The "Raab-Olah Agreement"³¹ of 1961 between entrepreneurs and trade unions fixed annual contingents of temporary workers mainly coming from Turkey and former Yugoslavia. Austrian enterprises could recruit foreign workers without needing to prove that there were no Austrian workers available as they had to before. For this purpose recruitment agencies were established in these countries and, between 1961 and 1973, Austria experienced a net migration of 265,000 (Fassmann/Reeger, 2008: 22–23; Münz/Zuser/Kytir, 2003: 22). After several years those agencies were replaced by private recruitment. The migrants recruited their own family members and friends for their employers. A typical migration effect took place: migrants followed migrants with a lasting effect on the composition of the Austrian population. To the current day workers from the two recruitment regions (Turkey and former Yugoslavia) are still immigrating to Austria (Pöschl, 2015: 33).

These "guest workers" should replace missing domestic labour supply. It was foreseen that they rotate after a year; long-term residence and integration was not intended. In this phase Austrian migration policy was seen as an economic component that was dictated by the labour market and the interests of the entrepreneurs. However, what was meant to be only an exceptional phenomenon with a temporary limitation according to economic necessities was gradually replaced by a perspective of long-term employment with definitive settlement and family reunification, resulting in a substantial growth of immigration (Fassmann/Reeger, 2008: 22–23).

³¹ In 1961 Julius Raab was Federal Chancellor and Franz Olah was the head of the Austrian Federation of Trade Unions.

3.2 From Labour Migration to Family Migration in the 1970s

In 1973 economic recession followed the oil crisis, which resulted in growing unemployment and, between 1974 and 1976, a considerable decrease of efforts in recruiting migrant workers together with the wish to reduce their number deliberately.

In the meantime the established Passport Act 1969 left enough room for maneuver for the reduction of foreign workforces by authorizing the refusal of entry-visas for reasons as “public interests, economic and cultural concerns, situation of the labour market or public health” or when foreigners burdened the public budget (Pöschl, 2015: 34–35).

At the same time previously emigrated Austrian workers came back home and caused more competition in the labour market. Therefore, the new **Act Governing the Employment of Foreigners 1975**³² introduced new restrictions for foreign workers with the aim to once again link labour immigration with needs of the labour market in order to curtail permanent settlements. The Act Governing the Employment of Foreigners 1975 introduced different types of permits with different time periods which gave stepwise access to the labour market. These efforts resulted in a decrease of 40 per cent of the foreign employment share between 1974 and 1984, but due to family reunification the number of immigrants living in Austria remained the same (Fassmann/Reeger, 2008: 25).

3.3 Increased Migration in the late 1980s

In 1987 an important switch in the Austrian’s institutional framework for immigration and asylum policies took place. The Federal Ministry of the Interior took over the Federal Ministry of Social Affairs’ responsibilities in regard of aliens policy.

The 1990s were marked by new immigration policies and laws. Due to the political changes in Europe like the fall of the Iron Curtain, the civil war in former Yugoslavia the number of immigrants doubled from 344,000 in 1988 to 690,000 in 1993. Refugees from former Yugoslavia were granted a temporary protected status and were therefore exempt from most administrative rules other refugees had to fulfill.

These inflows of refugees went with a rapidly rising number of asylum-seekers. As a consequence, and also because of the growth of the Austrian Freedom Party (FPÖ), which demanded “zero immigration”, a series of legislative reforms were initiated. In 1990 for the first time a quota system for work permits was established with the intention of limiting the share of the foreign workforce.

In 1991, the government passed the **Asylum Act 1991**,³³ a stricter asylum law that introduced the principles of “safe third-countries” and “safe countries of origin” and brought restrictions to residence permits and to the suspensive effect of legal remedies. Additionally, a new Federal Asylum Office, which was rendered responsible for asylum applications, was created (Fassmann/Reeger, 2008: 25; Jandl/Kraler, 2003).

³² FLG No. 218/1975.

³³ FLG No. 8/1992.

3.4 Evolution of the Austrian migration system from 1993 until 2015

3.4.1 *Legal Developments*

Another round of immigration legislation reforms led to the adoption of the **Aliens Act 1993**³⁴ and the **Residence Act 1993**³⁵ with the aim to regulate and restrict new immigration. The Aliens Act tightened up regulations regarding the entry and residence of aliens. The Residence Act introduced the division of new immigrants according to their country of origin (EU nationals or third-country nationals) and an annual quota for new immigration (cf. Bauböck/Perchinig, 2003: 14).

Other innovations were:

- Establishment of a system of residence permits;
- Submission of applications for residence permits abroad before entry;
- Proof of sufficient financial means and of accommodation before entry.

In 1997 both acts were merged to become the **Aliens Act 1997**.³⁶ This act governed entry, residence and settlement of aliens. An innovation was the distinction between temporary residence (Temporary Residence Permits) and permanent settlement (settlement permit). This distinction is a characteristic feature of the Austrian aliens law to the present day. The new political credo was “integration before immigration”. Therefore, the new Aliens Act was known as the “Integration Package”. At the same time new restrictions regarding migrant’s employment rights were introduced.

With the accession of Austria to the EU in 1995, the **Asylum Act** was revised in 1997³⁷ in order to include the Schengen Agreement and to harmonize with the 1990 EU Dublin Convention. The criticized “safe country of origin” principle was abolished. Further harmonization was demanded with the entry into force of the Amsterdam Treaty in 1999, which inter alia introduced minimum standards for the reception of asylum-seekers, for persons granted temporary protection and regarding asylum procedures. The EU Summit of Tampere in 1999 required further harmonization with reference to reception conditions and asylum procedures.

The principle “integration before citizenship” was also introduced into the 1998 amendment of the **Citizenship Act** by stipulating a test in German language skills and basic knowledge of Austrian history and culture as prerequisite for the Austrian citizenship. The principle of *ius sanguinis* and the obligation of ten years of continuous residence before naturalization were maintained. Furthermore, the burden of proof has been shifted to the applicant who has to prove that he/she is economically independent and sufficiently proficient in German (Fassmann/Reeger, 2008: 25–26; Jandl/Kraler, 2003).

³⁴ FLG No. 838/1992.

³⁵ FLG No. 466/1992.

³⁶ FLG I No. 75/1997.

³⁷ FLG I No. 76/1997.

In general it can be said that the reforms of 1997/1998 represented adjustments to EU standards and decisions of the supreme courts (Bauböck/Perchinig, 2003: 20).

At the beginning of the new decade Austria's migration policy continued to prefer integration over immigration and to intensify the fight against irregular immigration. The amendment of the **Aliens Act and the Asylum Act**, which came into force on the 1 January 2003, adopted several new regulations:

- Restriction of labour migration to key-labour forces (academic professions, skilled workers);
- Facilitation of employment of seasonal workers;
- Compulsory "integration courses" for third-country nationals and those who have been living in Austria since 1998;³⁸
- Acceleration of the asylum procedure;
- Introduction of the asylum-seeker's duty of cooperation (Jandl/Kraler, 2003).

With the evolution of the EU acquis on asylum and migration, further amendments of the Austrian aliens law regime were necessary. The anticipation of the deadlines for the transposition of a number of EU directives was part of the reason behind profoundly restructuring Austrian migration law, resulting in the **Aliens Law Package 2005**,³⁹ which entered into force on 1 January 2006. The revision of the aliens law regime at the beginning of 2006 resulted in the splitting of the former Aliens Act 1997 into the **Aliens Police Act 2005** (hereinafter Aliens Police Act)⁴⁰ and the **Settlement and Residence Act**.⁴¹ The Settlement and Residence Act mainly distinguishes between rather short-term residence and long-term settlement (cf. Kutscher/Völker/Witt, 2010: 7–8). Additionally, the Asylum Act was revised and became the **Asylum Act 2005** (hereinafter Asylum Act).⁴² In addition to these laws, a number of regulations containing provisions on details implementing the new immigration laws were set into force on 1 January 2006 (→ for details see 2.2).

The Integration Agreement has been maintained and tightened. It intends to enable integration of third-country nationals lawfully settled in Austria. Its purpose is to provide in-depth German language skills with an aim to enable third-country nationals to participate in the social, economic and cultural life of Austria. It consists of two sequential modules. The compulsory language courses were increased from 100 to 300 hours. If these courses are not passed within five years, sanctions and even expulsion from Austria are foreseen (Fassmann/Reeger, 2008: 26).

The **aliens law reform of 2009**⁴³ took force on 1 January 2010 and transposed Directive 2004/38/EC of the European Parliament and of the Council of 29 April 2004 on the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States as well as Council Directive 2003/109/EC of 25 November 2003 concerning the status of third-country nationals who are long-term residents. Inter alia following rules were adopted:

³⁸ Non-participation shall entail financial and legal sanctions according to the so-called "Integration Agreement" (→ for details see 4.1.3).

³⁹ FLG I No. 100/2005.

⁴⁰ FLG I No. 100/2005.

⁴¹ FLG I No. 100/2005.

⁴² FLG I No. 100/2005.

⁴³ FLG I No. 122/2009.

- Suspension of the protection from deportation in case of subsequent applications in asylum procedures;
- Registration requirement for asylum-seekers during the admission procedure, if a negative decision regarding their application for international protection is probable;
- Acceleration of removal procedures with regard to asylum-seekers who have committed a criminal offence;
- Requirement for asylum-seekers to stay within the boundaries of a designated district;
- Tightened and extended detention pending removal;
- Issuance of so called “Aliens’ and Convention Passports” for stateless persons and beneficiaries of subsidiary protection;
- Introduction of an identity card for third-country nationals;
- Documentation of residence rights of EU citizens;
- Measures against so called “convenience marriages”;
- Specific age assessment techniques in cases of doubted minority age.⁴⁴

Another considerable aliens law reform was carried out in 2011 by the so-called **Aliens Law Package 2011**,⁴⁵ which entered into force on 1 July 2011. The Aliens Law Package 2011 amended the three respective Acts and included the:

- Introduction of a quota system for third-country nationals by a catalogue of criteria and the so called Red-White-Red Card for highly qualified immigrants or key workers;⁴⁶
- Introduction of language requirements for third-country nationals prior to entry to Austria (“German prior to immigration”);⁴⁷ tightening of the Integration Agreement; new performance deadline of two years;
- Establishment of free legal advice in asylum and return proceedings;
- Tightening of detention pending removal;⁴⁸
- Obligation to cooperate, which demands from asylum-seekers to stay one week at the respective initial reception centre.⁴⁹

⁴⁴ Act Amending the Aliens Law 2009, Preamble, Government Proposal, available at www.parlament.gv.at/PAKT/VHG/XXIV/I/I_00330/fname_167909.pdf (accessed on 30 June 2015), p. 3–7.

⁴⁵ FLG I No. 38/2011.

⁴⁶ The Red-White-Red Card grants the right of residence and labour market access.

⁴⁷ The language diploma or course certificate must not be older than one year when being submitted.

⁴⁸ An imposition during ten months within one year and a half instead of previously two years became possible.

⁴⁹ Act Amending the Aliens Law 2011, Preamble, Government Proposal, available at www.parlament.gv.at/PAKT/VHG/XXIV/I/I_01078/fname_206974.pdf (accessed on 30 June 2015).

The Aliens Law Package 2011 transposed the following European Union directives:

- Council Directive 2009/50/EC of 25 May 2009 on the conditions of entry and residence of third-country nationals for the purposes of highly qualified employment;
- Directive 2008/115/EC of the European Parliament and of the Council of 16 December 2008 on common standards and procedures in Member States for returning illegally staying third-country nationals;
- Directive 2009/52/EC of the European Parliament and of the Council of 18 June 2009 providing for minimum standards on sanctions and measures against employers of illegally staying third-country nationals.⁵⁰

The **Act Amending the Aliens Authorities Restructuring Act 2013**⁵¹ took effect on 1 January 2014 and comprised inter alia following amendments of the Austrian aliens law:

- Expansion of the term ‘family member’ in the Asylum Act by including legal representatives of minor non-married refugees;
- Extension of the period of validity of the residence permit of beneficiaries of subsidiary protection from one to two years in case of renewal;
- Unrestricted access to the labour market for family members of third-country nationals;
- Possibility for particularly highly qualified third-country nationals to apply for a Red-White-Red Card from abroad;
- Details on the appeal procedure against written decisions of the Federal Office for Immigration and Asylum;
- Reorganization of the obligation to cooperate for unaccompanied minors in cases of family tracing.

The Act Amending the Aliens Authorities Restructuring Act 2013 also encompasses the transposition of the Qualification Directive (Directive 2011/95/EU),⁵² the Single Permit Directive (Directive 2011/98/EU)⁵³ and the Long-Term Residence Directive (Directive 2011/51/EU)⁵⁴ as well as the adaption to the Visa Code⁵⁵ and the Schengen Borders Code.⁵⁶

On 20 July 2015 the **Act Amending the Aliens Law 2015**⁵⁷ came into force. With this latest amendment of the Austrian aliens law the relevant legislation has inter alia been adapted to the

⁵⁰ Act Amending the Aliens Law 2011, Preamble, Government Proposal, available at www.parlament.gv.at/PAKT/VHG/XXIV/I/I_01078/fname_206974.pdf (accessed on 30 June 2015).

⁵¹ FLG I No. 68/2013.

⁵² Directive 2011/95/EU of the European Parliament and of the Council of 13 December 2011 on standards for the qualification of third-country nationals or stateless persons as beneficiaries of international protection, for a uniform status for refugees or for persons eligible for subsidiary protection, and for the content of the protection granted (recast).

⁵³ Directive 2011/98/EU of the European Parliament and of the Council of 13 December 2011 on a single application procedure for a single permit for third-country nationals to reside and work in the territory of a Member State and on a common set of rights for third-country workers legally residing in a Member State.

⁵⁴ Directive 2011/51/EU of the European Parliament and of the Council of 11 May 2011 amending Council Directive 2003/109/EC to extend its scope to beneficiaries of international protection.

⁵⁵ Regulation (EC) No 810/2009 of the European Parliament and of the Council of 13 July 2009 establishing a Community Code on Visas (Visa Code).

⁵⁶ Regulation (EC) No 562/2006 of the European Parliament and of the Council of 15 March 2006 establishing a Community Code on the rules governing the movement of persons across borders (Schengen Borders Code).

⁵⁷ FLG I No. 70/2015.

recast of the Reception Directive (Directive 2013/33/EU)⁵⁸ and the Procedures Directive (Directive 2013/32/EU).⁵⁹ The legislative adaptations concerning the implementation of the common concept of the Federal State and the provinces with respect to the reception and care of asylum-seekers have also been realized.

The Act Amending the Aliens Law 2015 comprises following changes:

- Amendment of the asylum admission procedures and the presentation procedure before the Federal Office for Immigration and Asylum;
- Recast of the regulations regarding the detention pending removal;
- Legal anchoring of an accelerated asylum procedure for third-country nationals from safe countries of origin;
- Changes of the conditions regarding the suspensive effect of appeals;
- Legal obligation to make use of return counselling in certain cases (→for details see 4.3.1);
- Extension of legal advice before the Federal Administrative Court;
- Reduction of the maximum period for issuing decisions in deprivation procedures of the Federal Administrative Court;
- Possibility of initial assessment of asylum-seekers in a regional directorate of the Federal Office for Immigration and Asylum.⁶⁰

3.4.2 Other Measures

Besides all these amendments of the aliens law, plenty of measures and initiatives relating to asylum and migration have been launched.

In 2007, an **Integration Platform** was established aiming to coordinate efforts in the area of integration policy among different government levels. The results of this initiative formed the basis of the **National Action Plan for Integration**, which was adopted in 2010. Furthermore, the role of **State Secretariat for Integration** was established as a new unit of the Federal Ministry of the Interior in 2011, in order to institutionalize information and knowledge exchange. The new State Secretariat was supported by the **Advisory Board on Integration** and the **Expert Council for Integration**.⁶¹

In 2007 an **Asylum Court** was established in order to accelerate the asylum procedure and replace the Independent Federal Asylum Review Senate as of 1 July 2008.⁶²

⁵⁸ Directive 2013/33/EU of the European Parliament and of the Council of 26 June 2013 laying down standards for the reception of applicants for international protection (recast).

⁵⁹ Directive 2013/32/EU of the European Parliament and of the Council of 26 June 2013 on common procedures for granting and withdrawing international protection (recast).

⁶⁰ Zeitschrift für Verwaltung, *Fremdenrechtsänderungsgesetz 2015 – BGBl*, article-no. 19703, 19 June 2015, available at http://lesen.lexisnexis.at/news/fremdenrechtsaenderungsgesetz-2015-bgbl/zfv/aktuelles/2015/25/Inat_news_019703.html (accessed on 30 June 2015); Federal Chancellery, *Fremdenrechtsänderungsgesetz 2015 – beschlossene Änderungen*, available at www.help.gv.at/Portal.Node/hlpd/public/content/171/Seite.1710799.html (accessed on 30 June 2015).

⁶¹ Federal Ministry for Europe, Integration and Foreign Affairs, *Integration in Austria*, available at www.bmeia.gv.at/en/integration/ (accessed on 30 June 2015).

⁶² Refworld, *Austria: Asylum Court (Asylgerichtsof)*, available at www.refworld.org/publisher/AUS_AC.html (accessed on 30 June 2015).

A major **administrative reform** was initiated in 2011 and officially adopted in 2012. The reform established the Federal Office for Immigration and Asylum, which replaced the Federal Asylum Office. As of 1 January 2014 a reform of administrative procedures rendered the new Federal Office for Immigration and Asylum responsible for deciding as first instance authority in asylum procedures. In addition, the Federal Office for Immigration and Asylum is responsible for residence permits on exceptional humanitarian grounds and certain aliens police proceedings. The Federal Office for Immigration and Asylum has to apply the rules of the Federal Office for Immigration and Asylum Procedures Act.⁶³ Furthermore, the Asylum Court was dissolved and its competencies were transferred to the Federal Administrative Court, also effective as of 1 January 2014. The Administrative High Court was reinstated as the highest court responsible for matters of asylum and aliens law besides the Constitutional Court; a role it had previously lost to the Asylum Court.

Also in 2014, within the context of a broad reform of Austrian federal ministries, the State Secretariat for Integration was dissolved and its integration agendas were transferred from the Federal Ministry of the Interior to the Federal Ministry for European and International Affairs. In order to better reflect these new competencies, the ministry was renamed the **Federal Ministry for Europe, Integration and Foreign Affairs**.⁶⁴

A further development in 2014 was the establishment of a **Migration Council for Austria**, which includes 16 prominent individuals from academia, business and media. It will support the Austrian government by devising a comprehensive immigration strategy for Austria.⁶⁵

Table 2: Development of the Austrian Asylum and Migration System 1960–2015

Phase	General legal trends	Specific measures	
Labour Migration (1960–1968)	Migration policy as economic component dictated by the labour market	1961	Raab-Olah-Agreement on the recruitment of temporary “guest workers”
		1964	Recruitment Agreement with Turkey
		1966	Recruitment Agreement with Yugoslavia
		1968	First Austrian Asylum Act
From Labour Migration to Family Migration (1969–1984)	Tightening of political measures	1969	Passport Act
		1975	Act Governing the Employment of Foreigners introducing a system of step access to different types of permits
Increased migration (1985–1992)	New stricter immigration policies and laws	1987	The Ministry of the Interior takes over the responsibilities of the Ministry of Social Affairs regarding aliens’ policy
		1990	Introduction of quota system for work permits

⁶³ FLG I No. 87/2012, in the version of FLG I No. 84/2015.

⁶⁴ Federal Ministry for Europe, Integration and Foreign Affairs, *Integration in Austria*, available at www.bmeia.gv.at/en/integration/ (accessed on 30 June 2015).

⁶⁵ Federal Ministry of the Interior, “*Migrationsrat für Österreich*” vorgestellt. Press Release, Vienna, 3 April 2014, available at www.bmi.gv.at/cms/bmi/_news/bmi.aspx?id=5458593070466150436C303D&view=1 (accessed on 30 June 2015).

		1991	Asylum Act introduces the principles of “safe third-countries” and “safe country of origin”
		1991	Creation of a new Federal Asylum Office responsible for asylum applications
Evolution of the Austrian Aliens Law (1993–2015)	Attempts to manage migration more efficiently through creating several “channels of immigration”, new advisory bodies, targeted legislation and major administrative restructuring	1993	Aliens Act which tightened up regulations regarding the entry and residence of aliens
		1993	Residence Act signals the start of a controlled immigration system
		1997	New Aliens Act, known as “Integration Package” due to focus on promotion of integration instead of new immigration
		1998	Principle “integration before citizenship” was also introduced into the amendment of the Citizenship Act
		2002	Amendments to the Aliens Act: compulsory “integration courses”
		2003	Amendments to the Asylum Act: acceleration of the asylum proceedings
		2005	Aliens Law Package 2005: comprehensive legislative reform to implement EU directives and strengthen measures against irregular immigration
		2007	Integration Platform established
		2007	Asylum Court established; replaces the Independent Federal Asylum Review Senate
		2009	Amendments to Asylum Act introduce residence location restrictions for asylum-seekers and tightened custody pending deportations
		2010	National Action Plan for Integration adopted on the basis of the Integration Platform
		2011	Aliens Law Package 2011: Points-based Red-White-Red Card introduced to facilitate immigration of highly qualified migrants; replaces previous quota system
		2011	State Secretariat for Integration supported by an Advisory Board on Integration and an Expert Council for Integration established
		2014	Federal Office for Immigration and Asylum established; replaces Federal Asylum Office
		2014	Asylum Court dissolved; competences transferred to Federal Administrative Court

		2014	Integration agendas transferred from Interior Ministry to Foreign Ministry; name change to Federal Ministry for Europe, Integration and Foreign Affairs reflects new competences
		2014	Migration Council for Austria established to devise a comprehensive immigration strategy for Austria
		2015	Amendment to the Rights of Aliens Act 2015: harmonization with the recast of the Reception and Procedures Directive

Source: Fassmann/Reeger, 2008: 24 (modified and extended).

3.4.3 Current Data

In 2014, Austria's population increased by about 0.91 per cent (+77,140 persons), largely due to a positive migration balance (+72,300 persons).⁶⁶

In 2014, immigration to Austria amounted to around 170,115 persons. Citizens of the EU and the European Free Trade Association (EFTA)⁶⁷ constituted with around 96,100 persons (56% of total immigration) the largest group of immigrants in Austria (Statistics Austria, 2015: 34).

At the same time, Austria is also characterized by emigration (2014: 97,791 emigrants), including emigration of Austrian nationals. With 21,274 Austrian nationals leaving the country in 2014, they represented around 22 per cent of all emigrants of the same year (Statistics Austria, 2015: 35).

In 2014 on average 1.715 million inhabitants had a migration background,⁶⁸ representing around 20.4 per cent of the total population in Austria. These are around 90,000 more than in 2013. Of the 1.715 million inhabitants with migration background, 498,200 (29%) were EU-nationals and 508,600 (30%) were third-country nationals.⁶⁹

On 1 January 2015 1.146 million foreign citizens resident in Austria were identified. This is 13.3 per cent of the total population. In comparison to the beginning of 2014 an increase of 80,000 foreign citizens has been registered (Statistics Austria, 2015: 23).

⁶⁶ Statistics Austria, *Bevölkerungsveränderung nach Komponenten*, available at www.statistik.at/web_de/statistiken/menschen_und_gesellschaft/bevoelkerung/bevoelkerungsstand_und_veraenderung/bevoelkerungsveränderung_nach_komponenten/index.html (accessed on 4 August 2015).

⁶⁷ The EFTA Member States are Iceland, Liechtenstein, Norway and Switzerland.

⁶⁸ The population with a migration background comprises all persons whose parents were both foreign-born, irrespective of their nationality.

⁶⁹ Statistics Austria, *Bevölkerung in Privathaushalten nach Migrationshintergrund*, available at www.statistik.at/web_de/statistiken/menschen_und_gesellschaft/bevoelkerung/bevoelkerungsstruktur/bevoelkerung_nach_migrationshintergrund/index.html (accessed on 30 June 2015).

4. ORGANIZATION OF POLICY

4.1 Migration Policy and Procedures⁷⁰

4.1.1 Entry Procedure

Aliens⁷¹ require for the legitimate entry into the federal territory of Austria a valid travel document (passport requirement) and a valid visa (visa requirement) unless otherwise stipulated by federal act, international agreements or directly applicable legal instruments of the EU (Art. 15 para 1 and 2 Aliens Police Act).⁷²

Art. 28 to 30 Aliens Police Act govern which groups are exempted from the visa obligation. The entry into Austria is generally visa free for the following groups:

- Transit passengers;
- Beneficiaries of privileges and immunities;
- Citizens of the European Economic Area;
- Third-country nationals enjoying entitlement to asylum or subsidiary protection;
- Third-country nationals settled in a Schengen Area Member State and enjoying residence entitlement;
- Third-country students living in another EU Member State and taking part in an academic trip;
- Citizens of third-countries with which Austria concluded bilateral agreements on dispensation from visa requirement.

There are three different types of visa:

Table 3: Types of visa

Visa	Name	Entitlements
Visa A	Airport transit visa	Entitles the holder to wait for a connecting flight in the transit area of an Austrian airport.
Visa C	Short stay visa	Entitles the holder to a short stay for up to three months in Austria and the entire Schengen Area. It is also called “Schengen visa” or “Tourist visa”.
Visa D	Long stay visa	Entitles the holder to a longer stay in Austria for up to six months but is only valid in Austria. It can also be used to move and reside freely within the territory of other Schengen States for a period of 90 days per period of 180 days.

⁷⁰ Besides the legal provisions of the respective laws following sources have been used for this chapter: Schuhmacher/Peyrl/Neugschwendtner, 2012: 19–77, 121–153, 181–206; the respective information on the Federal Government Help-Service for Foreign Citizens, www.help.gv.at (accessed on 30 June 2015).

⁷¹ For the purposes of the Austrian legislation ‘alien’ means a person not possessing Austrian nationality and ‘third-country national’ represents an alien who is not a national of the European Economic Area or Swiss national (Art. 2 para 1 subpara 1 and 6 Residence and Settlement Act).

⁷² The list of visa requirements for the individual states as well as the listing of those that are exempt of this requirement can be seen under Federal Ministry of the Interior, *Fremdenpolizei und Grenzkontrollwesen*, available at www.bmi.gv.at/cms/BMI_Fremdenpolizei/visumspflichten/start.aspx (accessed on 30 June 2015).

Visas A and C are the so-called Schengen Visas based on the Schengen Agreement, while Visa D is a national visa valid only in Austria.

The detailed provisions for the conditions and procedures for issuing short stay visas (not more than 90 days in any 180-day period) for a stay in or the transit of the Schengen area and airport transit visas are laid down in the Visa Code, the Schengen Borders Code and the Visa Regulation.⁷³ The Common Consular Instructions⁷⁴ contain the rules of procedure for the handling of visa applications for a visit not exceeding three months, including transit visas. The issuance of national long stay visas (Visa D) is governed in the Austrian Aliens Police Act.

The application has to be submitted personally in the competent Austrian representation authority (embassy or consulate) abroad.

According to Art. 20 para 1 Aliens Police Act a Visa D can be issued as:

- Long-stay visa;
- Humanitarian visa;
- Visa for gainful purposes;
- Visa for job-seeking;
- Visa for the granting of a residence permit;
- Visa for the inclusion into the family procedure pursuant to the Asylum Act;
- Re-entry visa.

A Visa D can be issued upon application if following general requirements regulated in Art. 21 Aliens Police Act are fulfilled:

- A valid travel document;
- A health insurance with a minimum coverage of EUR 30.000 which is valid in the whole Schengen area;
- Proof of sufficient financial resources for the stay in Austria and the re-departure;⁷⁵
- Proof of residence and employment abroad in order to guarantee a safe and voluntary return to the country of origin;
- A health certificate is demanded only in exceptional cases of dangerous epidemics in the country of origin.

Visas cannot be issued if there is a ground for refusal. Pursuant to Art. 21 para 2 Aliens Police Act the reasons for refusal are:

- One of the general requirements is not fulfilled;
- The third-country national gives no reason on the purpose and conditions of his/her stay;
- There are grounded doubts with regard to his/her true identity, nationality or the authenticity of his/her documents or their content;
- A residence or entry ban or an entry prohibition resulting from listing in the Schengen Information System has been imposed upon the applicant in Austria;
- The third-country national's stay would represent a danger to public peace or order;
- The third-country national's stay would endanger the relations of Austria with another state;

⁷³ Council Regulation (EC) No 539/2001 of 15 March 2001 listing the third countries whose nationals must be in possession of visas when crossing the external borders and those whose nationals are exempt from that requirement.

⁷⁴ Common Consular Instructions on visas for the diplomatic missions and consular posts.

⁷⁵ A declaration of liability by a person who is residing in Austria is also accepted.

- There is reason to assume that the person intends to engage in illegal employment;
- There are indications of organized criminal activities;
- The third-country national publicly approves or promotes a crime against peace, a war crime, a crime against humanity or terrorist acts of comparable significance.

It follows from Art. 22 para 1 Aliens Police Act that notwithstanding the existence of an entry prohibition resulting from listing in the Schengen Information System the representation authority may, in cases deserving particular consideration on humanitarian grounds or for reasons of national interest, issue a Visa D (humanitarian visa).

Since 1 January 2014 applicants whose application for visa has been rejected by the representation authority, can appeal against the decision at the new Federal Administrative Court. Before, no legal remedy has existed in such cases.

Since all neighbouring countries of Austria belong to the Schengen Area,⁷⁶ Austria has no external territorial Schengen borders and thus only has border posts at international airports. Passport controls are therefore only carried out at airports for flights from Non-Schengen countries. However, pursuant to Art. 2 para 2 of the Schengen Agreement a party to the agreement may for a limited period carry out national border checks at internal borders if this is required for the purposes of public policy or national security.

Provisions concerning border control are laid down in the Border Control Act, while regulations concerning rejections at the border and forcible returns are regulated by the Aliens Police Act (Art. 41, 41a, 45).

4.1.2 Admission Conditions

Third-country nationals who intend to reside or settle in Austria for a period of more than six months require a residence permit corresponding to their residence purpose. Every residence permit can be issued only for a specific purpose (e.g. family reunification).

Types of Residence Permits

According to Austrian legislation nine main types of residence titles exist.

Conforming to Art. 8 para 1 Settlement and Residence Act the following residence titles can be issued:

⁷⁶ Since Liechtenstein's accession to the Schengen Area on 19 December 2011.

Table 4: Overview of residence titles

Residence permit type	Entitlements
“Red-White-Red Card”	Limited settlement with restricted access to the labour market; issued for one year
“Red-White-Red Card Plus”	Limited settlement with unrestricted access to the labour market; issued for three years
“EU Blue Card”	Limited settlement with restricted access to the labour market, issued for two years
“Settlement Permit”	Limited settlement with restricted access to the labour market; issued for a maximum of three years
“Settlement Permit–Gainful Employment Excepted”	Limited settlement without pursuing an occupation; issued for a maximum of three years
“Settlement Permit–Dependant”	Limited settlement without access to the labour market; issued for a maximum of three years
“Permanent Residence–EU”	Unlimited settlement with unrestricted access to the labour market; issued for five years
“Family Member”	For family members of Austrian nationals. Limited settlement, issued for a maximum of three years, with the possibility of subsequently obtaining a residence title Permanent Residence–EU
“Temporary Residence Permit”	Limited residence for a specific purpose; several subcategories, issued for one year

→ For further details see Vogl, 2014: 790–791.

As regards the Temporary Residence Permit there are several subcategories depending on the respective purpose of stay (Art. 58 to 69 Settlement and Residence Act):

- Rotational workers in an international company as a company representative, manager or executive;
- Posted workers;
- Self-employed persons;
- Artists;
- Special cases of gainful employment;
- Pupils;
- Students;
- Social service workers with no purpose of pecuniary gain;
- Researchers at certified Austrian research institutions;
- Family community.

An important distinction is if the applicant intends a permanent settlement for the purpose of establishing a permanent place of residence and therefore the establishment of a centre of main interests or a temporary residence. In the first case third-country nationals can – if all requirements are fulfilled – be granted a:

- Red-White-Red Card;
- EU Blue Card;
- Red-White-Red Card Plus;
- Settlement Permit;
- Settlement Permit–Gainful Employment Excepted;
- Settlement Permit–Dependant;
- Family Member.

In contrast, a Temporary Residence Permit will be issued for third-country nationals who want to stay only temporarily and for a specific purpose.

Admission Procedure

According to Art. 19 para 1 Settlement and Residence Act applications for the granting of a residence title have to be submitted personally to the authority concerned. Art. 21 Settlement and Residence Act governs that initial applications shall in general be submitted before entering Austria to the competent Austrian representation authority (embassy or consulate). The local competence of the representation authority depends on the applicant's domicile.

Applicants must wait abroad for the outcome of the decision. Deviations from this rule are governed in Art. 21 para 2 to 6 Settlement and Residence Act which provide a list of persons who are entitled to lodge their application in Austria.

Furthermore, the requirement to lodge the application abroad applies only to initial applications. The application for further residence titles (renewal) can be lodged in Austria.

Once the third-country national has submitted his application in person with the representation authority abroad this authority is obliged to check the application for correctness and completeness and forwards the application to the competent settlement and residence authority in Austria. The settlement and residence authority examines if all prerequisites for the issue of a residence title are fulfilled. If this is the case and if the settlement and residence authority reaches a positive decision, it informs the representation authority abroad and orders, if necessary, the issue of a visa. The representation authority has to inform the applicant about the result and that he/she has to apply for a visa which will be issued in a separate procedure to the third-country national.

However, the fact that the settlement and residence authority orders the representation authority to issue a visa does not mean that the visa is issued automatically. The representation authority has to advise the applicant on the requirements to obtain a visa. If the applicant does not apply for a visa within three months, the proceedings are discontinued.

The representation authority cannot reject the issue of the visa because of failure to prove the income threshold or the existence of health insurance coverage as the settlement and residence authority has already examined these requirements. However, it can very well examine on its own if a threat to public policy or public safety exists. Such rejection can take place even if the settlement and residence authority has already decided to grant a residence title.

Once the applicant has been issued a valid visa, if a visa is required, he/she can thereupon enter Austria and collect the residence title personally at the competent settlement and residence authority.

If the residence title is not picked up from the applicant concerned within six months from the settlement and residence authority's notification to the representation authority, it becomes invalid and the proceedings are discontinued (Art. 23 para 3 Settlement and Residence Act).

General requirements

In addition to requirements specific to each type of residence title, a number of general requirements must be fulfilled for the issuance of a residence title. Art. 11 para 2 Settlement and Residence Act provides for general requirements that have to be fulfilled by any third-country national who applies for a residence title irrespective if it is an initial application or an application for renewal.

According to this regulation the general prerequisites are the following:

- The applicant's residence in Austria should not conflict public interests;
- Proof of accommodation regarded as adequate according to local standards;
- Proof of health insurance coverage, providing benefits in Austria and covering all risks;
- Proof of sufficient financial means so that the person concerned will not result in a financial burden for a territorial authority in Austria (Federal State, province or municipality);⁷⁷
- The third-country national's stay should not harm the relations between Austria and another state or international subject.

Pursuant to Art. 21a Settlement and Residence Act third-country nationals have to provide evidence of German language skills at A1 level (basic German language skills at beginner level) according to the Common European Framework of Reference for Languages when first applying for one of the following residence titles:

- Red-White-Red Card Plus;
- Settlement Permit;
- Settlement Permit–Gainful Employment Excepted;
- Settlement Permit–Dependant;
- Family Member.

Such evidence can be provided by a variety of certificates outlined in Art. 21a Settlement and Residence Act. Exceptions from the fulfilment of the German language requirement apply for certain third-country nationals such as minors, third-country nationals with mental and/or health issues and family members of holders of a Red-White-Red Card for highly qualified specialists, holders of a EU Blue Card or a Permanent Residence–EU if the holder initially had a EU Blue Card.

⁷⁷ That means that the third-country national must have a fixed and regular income enabling him/her to meet his/her livelihood without taking social assistance from local authorities. The income needs to be equal to or exceed the standard income rate. Since 1 January 2015 this standard income rate has amounted to EUR 872.31 for singles, EUR 1,307.89 for married couples and an additional EUR 134.59 for each child (Art. 150 Trade Social Insurance Act).

Furthermore Art. 11 para 1 Settlement and Residence Act regulates that a residence title can only be granted to third-country nationals if no grounds for refusal exist.

Grounds for refusal are:

- An effective entry ban and an exclusion order;
- A return decision issued by a Member State of the European Economic Area or Switzerland;
- An existing marriage, registered partnership or adoption of convenience;
- An exceedance of the permitted visa-free duration of stay or of the stay which requires a visa;
- A final conviction for evasion of border control or illegal entry.

Pursuant to Art. 19 para 2 fourth sentence Settlement and Residence Act the third-country national has to submit for the purpose of doubtless identification and determination of facts the necessary documents and evidence to the authority.

Quota system

The Austrian quota system was established in 1993 and has been amended several times since.

Some first-time residence titles can only be granted if, in addition to the general requirements, there is an available quota place.⁷⁸ This also applies to applications for change of purpose of a residence title insofar as it would also be subject to quota in the frame of an initial application (Art. 12 para 1 Settlement and Residence Act). It follows from Art. 13 para 1 Settlement and Residence Act that the Austrian Federal Government fixes upon proposal of the Minister of the Interior in agreement with the Executive Committee of the National Council an annual immigration quota for each province and each type of residence title in a Settlement Regulation. Not all types of residence titles are subject to the immigration quota.

The quota regulation limits the maximum annual number of third-country nationals who can receive a residence title by establishing sub-quotas for each of the following categories:

- Certain family members of third-country nationals coming to Austria in the frame of family reunification;
- Third-country nationals with a Settlement Permit–Dependant who want to obtain a Red-White-Red Card Plus;
- Third-country nationals and their family members who wish to settle in Austria without an intention to work;
- Holders of the residence title Permanent Residence–EU of another EU Member State who wish to come to Austria for the purpose of exercising an employed or self-employed economic activity.

If, in the frame of family reunification, this maximum of available quota places has already been reached at the time of the application or in the moment of the decision, the authority must not dismiss the application but has to suspend the proceedings until the quota for one of the subsequent years allows a positive decision. That means the third-country national concerned has to await a

⁷⁸ There is only a limited number of residence titles granted every year.

decision until the residence title may be granted due to a new contingent in one of the following years. These applications are then prioritized for the following year's decisions. If it is not an application with regard to family reunification the application is rejected if there is no quota place available. Art. 12 para 8 Settlement and Residence Act provides exceptions from the requirement of a quota place. This concerns children until the age of six months whose mother or father are residing legally in the federal territory, and third-country nationals who have been legally deprived of their asylum status pursuant to Art. 7 para 1 subpara 2 Asylum Act and who are still settled in the federal territory. The same applies to children born between the period of the mother's application and the granting of the residence title.

In general only initial applications and changes of status as mentioned above are subject to the quota system. Renewals of residence titles are quota free.

Family Reunification

Family members of third-country nationals who are according to Art. 2 para 1 subpara 9 Settlement and Residence Act defined as part of the **nuclear family** are authorized to reunification with the sponsor.

Pursuant to this regulation the following persons are considered to be part of the nuclear family:

- Spouses;
- Registered partners;
- Unmarried minor children, including adopted and step-children.

Spouses and registered partners must have reached the minimum age of 21 at the time the application for family reunification is submitted. This requirement applies both to the spouse and to the sponsor.

In Austria only registered partners of the same sex, but not unmarried partners are granted family reunification rights.

The Settlement and Residence Act regulates the right of family reunification for third-country nationals in Art. 46, 50, 50a and 69. Art. 41 to 46 Settlement and Residence Act also govern the specific conditions for the subsequent immigration of family members. Art. 46 Settlement and Residence Act is the main provision regulating family reunification.

Generally, the legal status of the family member depends on the legal status of the sponsor. Not only the primary legal category of the sponsor, whether he is Austrian, national of the European Economic Area, Swiss or EU national or third-country national, but also the type of residence title a third-country national has, is decisive for the family members' legal status. Therefore, family reunification depends, besides the fulfilment of the general prerequisites, on the type of residence title held by the sponsor.

In the same line the period of validity of the residence title of the family member is linked to the period of validity of the residence title of the sponsor.

According to Art. 2 para 1 subpara 10 and Art. 46 Settlement and Residence Act the sponsor has, in order to be eligible as sponsor for family reunification, to be a third-country national, reside legally in the federal territory and be the holder of one of the residence titles listed in Art. 46 Settlement and Residence Act.

Family members can also have an **autonomous right of residence** (Art. 27 para 1 Settlement and Residence Act). Family members holding a residence title Red-White-Red-Card Plus, a Settlement Permit, a Settlement Permit–Gainful Employment Excepted or a residence title Family Member have an autonomous residence title without any waiting period. If the conditions for family reunification are not given anymore, a residence title for the same purpose of stay shall be granted, if the family member meets the general requirements provided for in Art. 11 Settlement and Residence Act. The family member’s autonomous residence title is issued in the frame of a renewal procedure in line with Art. 24 Settlement and Residence Act.

Pursuant to Article 46 para 1, 2, 4 and 5 Settlement and Residence Act there is a **quota** for family members who reunite with sponsors holding one of the following residence titles:

- Red-White-Red Card Plus (except if this residence title is issued as a prolonged Red-White-Red-Card);
- Prolonged residence title for researchers;
- Settlement Permit;
- Settlement Permit–Gainful Employment Excepted;
- Refugee status and Art. 34 para 2 Asylum Act does not apply.

Art. 12 para 7 last sentence Settlement and Residence Act provides for a maximum waiting period of three years. Consequently three years after the application was filed, a residence title for the purpose of family reunification has to be granted regardless of the quota.

Family members of third-country nationals are entitled to the following **residence titles**:

Family members are in general entitled to the residence title Red-White-Red Card Plus, if the general prerequisites are fulfilled and the sponsor holds a Red-White-Red Card pursuant to Art. 41 Settlement and Residence Act or a Red-White-Red Card Plus pursuant to Art. 41a para 1 or para 4 Settlement and Residence Act.

For family members of third-country nationals who hold a Permanent Residence–EU, a Red-White-Red Card Plus (except one according to Art. 41a para 1 or para 4 of Settlement and Residence Act) or asylum status, provided Art. 34 para 2 Asylum Act does not apply, also a Red-White-Red Card Plus is foreseen. The general requirements provided for in Art. 11 Settlement and Residence Act have to be satisfied and additionally a quota place must be available (Article 46 para 1 subpara 2 Settlement and Residence Act).

Pursuant to Article 46 para 3 Settlement and Residence Act family members of holders of a EU Blue Card or initially of a EU Blue Card and now of another residence title (especially of a Permanent Residence–EU) can be issued a Red-White-Red Card Plus provided the fulfilment of the general requirements. This case of family reunification is quota free.

A Settlement Permit shall be granted to family members of sponsors possessing a Settlement Permit or a Settlement Permit–Dependant provided that the prerequisites of chapter 1 are fulfilled and that a quota place exists (Article 46 para 4 Settlement and Residence Act).

Family members of third-country nationals who are free to settle in Austria based on a legal act of the EU or of retired beneficiaries of privileges and immunities can be issued a Settlement Permit–Gainful Employment Excepted after fulfilment of the prerequisites of chapter 1 of the Settlement and Residence Act. This case is quota free. If the sponsor holds a Settlement Permit–Gainful Employment Excepted according to Art. 44 para 1 Settlement and Residence Act and a quota place is available and the double standard income rate is fulfilled (→for details see FN 77), the family member can also obtain a Settlement Permit–Gainful Employment Excepted (Article 46 para 5 subpara 1 and 2 Settlement and Residence Act).

Pursuant to Art. 50 Settlement and Residence Act family members of third-country nationals possessing a residence title Permanent Residence–EU of another EU Member State can obtain either a Settlement Permit–Gainful Employment Excepted, a Red-White-Red-Card Plus or a Settlement Permit depending on the type of residence title the sponsor gets thanks to his initial residence title Permanent Residence–EU (depending on whether Art. 49 para 1, 2 or 3 Settlement and Residence Act applies).

According to Art. 50a Settlement and Residence Act family members of holders of a residence title EU Blue Card shall be granted a Red-White-Red Card Plus, if the general requirements are fulfilled and it has been shown that the family members of the holder of the EU Blue Card have already resided as such in the other EU Member State.

In accordance with Art. 69 Settlement and Residence Act a derived Temporary Residence Permit–Family Community can be granted to family members of sponsors possessing a Temporary Residence Permit if they fulfil the general requirements. This is not the case for family members of third-country nationals holding a Temporary Residence Permit for posted workers, self-employed persons, pupils or social service workers (Art. 69 para 2 Settlement and Residence Act).

Table 5: Residence titles family members

Residence title–sponsor	Residence title–family member
Red-White-Red Card, Red-White-Red Card Plus, Permanent Residence–EU, EU Blue Card, Family Member	Red-White-Red Card Plus
Settlement Permit or Settlement Permit–Dependant	Settlement Permit
Settlement Permit–Gainful Employment Excepted	Settlement Permit–Gainful Employment Excepted
Temporary Residence Permit	Temporary Residence Permit

Source: Art. 46 Settlement and Residence Act, Art. 69 Settlement and Residence Act.

As already mentioned above, according to Art. 19 para 1 Settlement and Residence Act **applications for the granting of a residence title** have to be submitted personally to the authority concerned. Only the family member that wishes to join the sponsor in Austria is entitled to file the application.

Initial applications shall be submitted before entering Austria to the competent Austrian representation authority (embassy or consulate). Pursuant to Art. 21 para 2 Settlement and Residence Act in particular following family members are entitled to submit their application in the federal territory:

- Family members of Austrian nationals, nationals of the European Economic Area and Swiss nationals who permanently reside in Austria and who are not entitled to free movement after having entered legally the federal territory and during their legal residence;
- Family Members who are third-country nationals who are entitled to visa-exempt entry during their allowed visa-exempt residence;
- Aliens who apply for a Temporary Residence Permit as researcher (Art. 67 Settlement and Residence Act) and their family members after having entered legally the federal territory and during their legal residence.

In addition to the above mentioned requirements the family member has to provide:

- Evidence concerning the family relationship by means of reliable official documents;
- Evidence that the sponsor holds the required residence title;
- Evidence of German language skills.

Austria resorts to DNA analysis to resolve cases in which family members who apply for family reunification cannot show their relatedness by official documents. Pursuant to Art. 29 para 2 Settlement and Residence Act the use of DNA profiling has to be applied in cases in which the third-country national fails to furnish evidence by means of documents for the family relationship he refers to. There is no obligation to consent to the DNA testing. It is an option offered to the applicants to prove their claims if sufficient official documents are missing.

Additionally it needs to be noted that, according to Art. 11 para 3 Settlement and Residence Act, a residence title may also be issued or renewed despite the non-compliance with the general requirements mentioned in Art. 11 para 1 subpara 3, 5 and 6 and Art. 11 para 2 subpara 1 to 6 Settlement and Residence Act if this is necessary for the maintenance of private or family life for the purposes of Art. 8 of the European Convention on Human Rights (ECHR).

Renewal

Art. 24 Settlement and Residence Act stipulates the renewal procedure.

It follows from this regulation that applications for renewal have to be lodged at the locally competent Austrian authority before the expiration date of the last residence title granted, however at the earliest three months before it expires. Applications made after the expiration date are treated as first time applications. Exceptions are possible in cases where the applicant can prove that he/she was not able to submit the application in time due to an unforeseen and unavoidable event for which the applicant has little or no responsibility.

A residence title shall be renewed for the same purpose provided that the general and specific requirements are still met. Once the conditions for the issuance or the renewal of a residence title are not or are no longer met, the application can be rejected. But before doing so the authority has to examine if the termination of the stay would interfere with the private and family life of the applicant according to Art. 8 ECHR.

Applicants are entitled to continue staying in Austria legally until a decision on their application is made.

Remedies

Under aliens' law in general there is a legal remedy against every first instance decision (rejection of issuance, renewal or withdrawal of residence titles).

Therefore third-country nationals applying for a residence title may appeal against a negative decision of first instance within two weeks at the authority who took the decision. The administrative court of the respective province will then deal with the case (Art. 3 para 2 Settlement and Residence Act). The appeal instance can annul or change the contested decision, reject or dismiss the appeal or remand the case to the administrative authority (Art. 28 Proceedings of Administrative Courts Act).

Against a decision of an administrative court it is possible to lodge an appeal before the High Administrative Court or before the Constitutional Court. Appeals against the administrative court's decision to the High Administrative Court are admissible if they depend on the answer to a legal issue of fundamental significance (Art. 133 para 4 Federal Constitutional Act).

The Constitutional Court has the competence to review decisions of the administrative courts if constitutionally guaranteed rights of the applicant are potentially violated. The Constitutional Court is only competent to decide on complaints with regard to violations of constitutional rights, including the European Convention on Human Rights or the application of legislation incompatible with the constitution (Art. 144 para 1 Federal Constitutional Act).

Furthermore, there is the possibility to file a complaint against delay of an administrative authority⁷⁹ at an administrative court (Art. 8 para 1 Proceedings of Administrative Courts Act).⁸⁰ If the administrative court is as well in default (no decision within six months), an application to the High Administrative Court is admissible which subsequently will determine a period of time within which the administrative court has to take a decision.

4.1.3 Legal Residence

Residence titles of third-country nationals are valid for a limited timeframe and have to be renewed prior to the expiry of the validity period, latest on the day of expiration.

⁷⁹ In general, a decision in administrative proceedings has to be issued by the authorities without undue delay but latest within six months after receipt of the application (Art. 73 para 1 General Administrative Procedures Act), unless provided differently in the specific administrative rules and regulations.

⁸⁰ FLG I No. 33/2013, in the version of FLG I No. 82/2015.

Once the third-country national has obtained his/her residence title and has settled in Austria, he/she has to fulfill the Integration Agreement regulated in Art. 14, 14a and 14b of the Settlement and Residence Act.

Austria differentiates between language requirements that the third-country national must fulfil prior to the entry to Austria (see general requirements) in order to facilitate a better integration and integration measures under the Integration Agreement that need to be taken after entry.

The Integration Agreement intends to enable the integration of third-country nationals lawfully settled in Austria. Its purpose is to provide in-depth German language skills, in particular reading and writing skills, with the aim to enable third-country nationals to participate in the social, economic and cultural life in Austria. It consists of two sequential modules.

Module 1 is mandatory for all third-country nationals that were granted a settlement permit, except the EU Blue Card. Module 1 is intended to provide German language skills for in-depth basic language use, that is, language skills at A2 level according to the Common European Framework of Reference for Languages. It comprises 300 hours of German lessons. Completing this course is a precondition for taking part in module 2 (Art. 14b Settlement and Residence Act). Module 1 has to be completed within two years after granting of the first residence title. The time limit can be prolonged by 12 months on application.

Certain groups of third-country nationals are exempted from the completion of module 1 such as minors under the age of 14, third-country nationals with bad health and third-country nationals, who have declared in writing, that they will not stay in Austria for more than 12 months within a 24 months period.

Module 2 is intended to provide German language skills for in-depth autonomous language use, that is, B1 level according to the Common European Framework of Reference for Languages. Module 2 is required for obtaining a Permanent Residence–EU and the Austrian citizenship.

Citizenship

The specific regulations regarding the requirements for the granting of Austrian citizenship are provided for in the Austrian Citizenship Act, in particular Art. 10 to 25 Citizenship Act.

The granting of the Austrian citizenship depends on the fulfillment of general requirements and of particular residence periods (Art. 10, 10a and 11 Citizenship Act).

Pursuant to Art. 10 and 10a para 1 Citizenship Act the general requirements are the following:

- No convictions to a custodial sentence;
- No severe administrative penalties;
- The international relations of the Republic of Austria would not be seriously affected;
- No harm of the Republic's interests;
- No effective exclusion order or pending proceeding regarding the termination of residence;
- Good conduct and no danger for the public peace and order;
- Guaranteed means of subsistence;

- Renunciation of the previous citizenship;
- Sufficient knowledge of the Austrian history and current affairs and the German language.

According to Art. 10 para 1 subpara 1 Citizenship Act the third-country national needs evidence of at least ten years of permanent and legal residence in Austria and of which at least five years of settlement.

By marriage the Austrian citizenship can be granted if the husband or wife of an Austrian national has resided at least six years in Austria and if they have been married and living in a common household for at least five years (Art. 11a para 1 Citizenship Act).

Otherwise the third-country national can pursuant to Art. 12 para 1 subpara 1 Citizenship Act apply for Austrian citizenship if:

- He/she has lived in Austria permanently for at least 30 years;
- He/she has lived in Austria permanently for at least 15 years and may provide evidence of his/her successful integration into Austrian society.

4.1.4 *Access to the Labour Market*

According to Art. 33 para 1 Settlement and Residence Act the entitlement of foreigners to pursue employment is – without prejudice to a corresponding residence and settlement authorization in line with the Settlement and Residence Act – in principle regulated by the provisions of the Act Governing the Employment of Foreigners.

In general, access to employment of foreign nationals⁸¹ under Austrian law depends on the type of residence title granted. While some types of residence titles grant access to employment without requiring any further permit, other residence titles grant limited access dependent on a permit under the Act Governing the Employment of Foreigners. A third category of residence titles excludes access to the labour market; the foreign national concerned has to change to another type of residence title before being able to have access to the labour market. So it depends on the type of residence title if the third-country national needs another work permit in line with the Act Governing the Employment of Foreigners or not.

The following list provides a brief overview of the different forms of access to the labour market.

→ For further information see Schumacher/Peyrl/Neugschwendtner, 2012: 77–119.

Direct access to the labour market

Pursuant to Art. 17 of the Act Governing the Employment of Foreigners holders of the following residence titles are entitled to employment without any further permits foreseen by the Act Governing the Employment of Foreigners:

⁸¹ For the purposes of the Act Governing the Employment of Foreigners ‘foreigner’ means a person not possessing Austrian nationality (Art. 2 para 1 of the Act Governing the Employment of Foreigners).

- Red-White-Red Card Plus;
- Family Member;
- Permanent Residence–EU;
- Residence permit plus.

Access after obtaining a work permit

If the residence title itself does not give access to the labour market, the employer has pursuant to Art. 4 para 1 of the Act Governing the Employment of Foreigners to apply for a work permit at the regional office of the Public Employment Service Austria. The Public Employment Service Austria has to perform a labour market test according to Art. 4b of the Act Governing the Employment of Foreigners which examines if the situation and the development of the labour market permit such employment and if there is neither an Austrian national nor a foreigner already available for the respective employment and if it does not conflict with important public or overall economic interests. Certain groups of foreigners are exempted from the labour market test.

A work permit can be granted for following persons provided the employer meets the general conditions set forth in para 1 and para 2 of Art. 4 of the Act Governing the Employment of Foreigners:

- Pupils and students;
- Foreigners who are to be employed temporarily (seasonal permit);
- Rotational workers or posted workers;
- Holders of a Temporary Residence Permit–Family Community (family members of rotational workers, artists, special cases of gainful employment, students and researchers);
- Artists employed for a period not exceeding six months;
- Croatian citizens and their family members who are subject to the transition rules pursuant to Art. 32a of the Act Governing the Employment of Foreigners and do not yet hold a “confirmation of free movement”;
- Asylum-seekers, three months after admission to the asylum procedure and enjoying de facto protection against deportation;
- Holders of a residence title or a Residence Permit for Individual Protection pursuant to Art. 54 para 1 subpara 2 or 3 Asylum Act or third-country nationals enjoying special protection under Art. 57 Asylum Act;
- Persons granted tolerated stay with a “Card for Tolerated Stay”;
- Turkish nationals under the EEA-Turkey Association Agreement⁸² according to Art. 4c para 1 of the Act Governing the Employment of Foreigners.⁸³

Furthermore, the regional advisory board has unanimously to recommend the issue of a work permit or the foreigner has to be admitted to employment based on generally recognized rules of international law or intergovernmental agreements.

⁸² Agreement creating an association between the European Economic Community and Turkey.

⁸³ Beratungszentrum für Migranten und Migrantinnen, *Employment of foreigners in Austria*, available at www.migrant.at/austria_vindobona/publikationen/infoblaetter/auslbg/auslbg-englisch.pdf (accessed on 30 June 2015).

Access through an exemption card

By virtue of Art. 4c para 2 of the Act Governing the Employment of Foreigners Turkish nationals are issued ex officio an exemption certificate based on the association agreement. An exemption certificate entitles to take up employment and has to be issued for five years at a time.

Self-Employed Activity

Third-country nationals who want to exercise a self-employed activity of longer than six months need therefore the respective residence title according to the Settlement and Residence Act. If the self-employed activity shall last less than six months, it falls within the provisions of the Aliens Police Act and the third-country national needs consequently a visa of residence and entry.

The exercise of a self-employed activity by a foreigner is not generally regulated but the admission prerequisites for the planned activity have to be taken into account. Regarding the right of residence a self-employed activity is not prohibited except with a residence title Settlement Permit–Gainful Employment Excepted and with a residence permit it depends on the purpose. Third-country nationals who are not yet legally residing in Austria (initial applicants) require a residence title allowing the legal pursuit of a trade in Austria (Art. 14 para 1 Trade, Commerce and Industry Regulation Act).

The following residence titles can explicitly be issued for the exercise of a self-employed activity:

- Red-White-Red Card for self-employed key workers;
- Settlement Permit;
- Red-White-Red Card Plus;
- Permanent Residence–EU;
- Temporary Residence Permit for self-employment;
- Temporary Residence Permit for a short-term self-employed activity (not longer than six months).

In general, foreign natural persons may exercise a business (self-employed activity) on equal terms as Austrian nationals if this has been concluded in international treaties (reciprocal treatment). Nationals of third-countries with whom such a treaty has not been concluded may pursue a trade (employed or self-employed activity) in the same way as Austrian citizens if they are allowed to reside in Austria in accordance with the Settlement and Residence Act (Art. 14 para 1 Trade, Commerce and Industry Regulation Act). Under the Settlement and Residence Act, the person registering a business must prove that he/she is entitled to pursue a trade when applying for the residence title. The certificate issued by the trade authority stating that all requirements for the pursuit of a trade are given is considered as such a proof in this context. The trade authorities are obligated to issue such certificates (Art. 18 and 19 Trade, Commerce and Industry Regulation Act).

Family Reunification

With regard to family reunification access to employment also depends on the type of residence titles issued for family members. As the type of residence title granted to family members depends on the residence title of the sponsor, also their access to employment depends on the status of the sponsor. There are no special rules for family members.

4.2 Asylum Policy and Procedures⁸⁴

4.2.1 *Entry Procedure*

If a third-country national wishes to obtain asylum status in Austria he/she has to enter the federal territory. Pursuant to Art. 17 para 1 Asylum Act an application for international protection has to be lodged exclusively in Austria. The application shall be deemed filed if a third-country national makes a request for protection against persecution to an organ of the public security service or to a security authority.

Since most asylum-seekers⁸⁵ arrive from countries for which a visa requirement is in force, they need for the entry both a valid travel document and a valid visa or they enter irregularly. The first step would be to apply for a visa in the country of residence. Concerning visa regulations, the same rules apply for asylum-seekers as for every other third-country national (→for details see 4.1.1). Due to the difficulty of obtaining a visa de facto, most asylum-seekers enter Austria without a visa and therefore irregularly.

4.2.2 *Admission Conditions*

Admission Procedure

A distinction is made between the lodging and the submission of the asylum application.

The **lodging of the application** is not bound to any formalities. From the moment the asylum-seeker has expressed his/her wish to obtain protection against persecution to an organ of the public security service or to a security authority the application is effective (Art. 17 para 1 Asylum Act) and the third-country national enjoys from that moment on 'de facto protection against deportation'.⁸⁶ With the lodging the third-country national requests protection against persecution and the granting of the status of being eligible to asylum. If the status of being eligible to asylum is not granted, it has to be assessed if the removal to the country of origin in terms of the non-refoulement principle (Art. 50 Aliens Police Act) is admissible.

⁸⁴ Besides the legal provisions of the respective laws following sources have been used for this chapter: Schuhmacher/Peyrl/Neugschwendtner, 2012: 233–283; Act Amending the Aliens Law 2015, Government Proposal, Explanatory Notes, available at www.parlament.gv.at/PAKT/VHG/XXV/I/I_00582/fname_401629.pdf (accessed on 30 June 2015).

⁸⁵ The Austrian provisions do not provide an explicit definition of the term 'refugee'. Instead Art. 2 para 1 subpara 14 Asylum Act defines an 'asylum-seeker' as an alien that seeks asylum in Austria from the moment of submission of an application for international protection until the procedure is finally concluded, discontinued or deemed no longer relevant. Pursuant to Article 3 para 1 Asylum Act, such person shall be granted asylum status if it is credible that he/she would be at risk of persecution in the country of origin, as defined in Article 1 (A) subpara 2 of the Geneva Convention on Refugees. It follows from Article 3 para.5 of the Asylum Act that the decision whereby the asylum status is granted ex officio or on the basis of an application for international protection shall be issued in conjunction with a declaration that refugee status is accordingly conferred upon the alien. Therefore it can be concluded that the definition of a 'refugee that has received asylum' corresponds to the definition of the term 'refugee'.

⁸⁶ Aliens who lodge an application for asylum and who, until an enforceable ruling is issued, cannot be deported (Art. 12 Asylum Act) because they enjoy de facto protection against deportation.

The officers of the public security service have upon the lodging of the application for international protection to carry out a first interrogation in order to particularly ascertain the third-country national's identity, identify his/her itinerary if this has not already been carried out and if he/she has reached at least 14 years of age (Art. 42 para 1 Federal Office for Immigration and Asylum Procedures Act in connection with Art. 19 para 1 Asylum Act). This interrogation shall not refer to the specific reasons of the third-country national's flight. These have to be identified later on by officials of the Federal Office for Immigration and Asylum.

(→ For details on the Federal Office for Immigration and Asylum see 2.3.1).

According to Art. 17 para 2 Asylum Act the **application** for international protection shall be deemed **submitted** when the Federal Office for Immigration and Asylum orders the following approach to take. Pursuant to Art. 43 para 1 Federal Office for Immigration and Asylum Procedures Act the Federal Office for Immigration and Asylum orders on the basis of the information provided if the third-country national is at the moment of lodging entitled to stay or not. If the third-country national is entitled to stay he/she has to be invited to present him/herself within 14 days at an Initial Reception Centre⁸⁷ or at a regional directorate of the Federal Office for Immigration and Asylum (Art. 43 para 1 subpara 1 Federal Office for Immigration and Asylum Procedures Act).⁸⁸ If the third-country national is not entitled to stay he/she has to be summoned at an Initial Reception Centre or at a regional directorate in order to secure a measure terminating residence or, if such a transfer is not necessary for the continuance of the proceedings, to enable him/her free travel to a federal reception facility for refugees in order to obtain basic welfare support. The third-country national has, in an appropriate manner, to be informed thereof according to Art. 43 para 1 subpara 2 Federal Office for Immigration and Asylum Procedures Act.

An application for asylum can be rejected as inadmissible before its examination in substance if the Austrian asylum authority comes to the conclusion that it is not responsible for the asylum procedure.

The lodging of an asylum application in Austria is inadmissible if:

- The asylum-seeker can find protection against persecution in another state within the meaning of Art. 4 and 4a Asylum Act;⁸⁹
- Another state is responsible for the examination in substance of the application for asylum, especially if this is the case according to the provisions of the Dublin III Regulation.

⁸⁷ There are three initial reception centres in Austria: in Traiskirchen (Lower Austria), in Thalham (Upper Austria) and at the Vienna Airport.

⁸⁸ The Federal Office for Immigration and Asylum has its headquarters in Vienna and a regional directorate in each of the provinces. Further organizational units are the initial reception centres and a branch office in St. Pölten.

⁸⁹ Pursuant to Art. 4 para 2 Asylum Act protection in a safe third-country shall exist if a procedure for the granting of refugee status in accordance with the Geneva Convention on Refugees is available for an alien in a country where he/she is not exposed to danger as specified in Art. 8 para 1 Asylum Act, or an asylum procedure is guaranteed via other third countries, and the alien is entitled to reside in that country during such a procedure and has protection there against removal to the country of origin, provided that the alien is exposed in the country of origin to danger as specified in Art. 8 para 1 Asylum Act. The foregoing shall, in cases involving the same protection from rejection at the border, forcible return or removal, apply to countries which have already rendered a decision in a procedure for the granting of refugee status in accordance with the Geneva Convention on Refugees.

Following the submission of an application for international protection, the proceedings shall be commenced with the **admission procedure**. It follows from Art. 28 para 1 in connection with Art. 51 para 1 Asylum Act that admission shall be granted with the issue of a Residence Permit Card.

If the Federal Office for Immigration and Asylum does not rule within 20 days from submission of an application for international protection that the application is to be rejected, the application shall be admitted unless consultations are held in accordance with the Dublin III Regulation⁹⁰ or a treaty concerning the determination of responsibility for the examination of applications for asylum or applications for international protection (Art. 28 para 2 Asylum Act).

Asylum Procedure

If Austria is responsible, the Federal Office for Immigration and Asylum examines according to Art. 3 para 2 of the Federal Office for Immigration and Asylum Procedures Act whether the asylum-seeker is to be considered as a refugee under the Geneva Convention on Refugees⁹¹ or entitled to subsidiary protection or if the application has to be rejected. The interrogation of the asylum-seeker plays a central role in the first instance procedure. Additionally, the Country Information Unit within the Federal Office for Immigration and Asylum collects up-to-date information concerning third countries. This information primarily serves the assessment of the applications in order to verify the reliability and credibility of the asylum-seeker's statements or to evaluate if a third country or a country of origin can be considered as safe (Art. 19 of the Federal Office for Immigration and Asylum Procedures Act) or if another third country is responsible for the processing of the application for international protection.

Upon completion of the necessary inquiries the Federal Office for Immigration and Asylum has, depending on the status of the preliminary investigation, to take one of the following decisions (Art. 29 para 3 Asylum Act):

- Issuance of a Residence Permit Card;
- Granting of asylum status;
- Granting of subsidiary protection status and refusal with regard to asylum status;
- Rejection of application for international protection because of existence of protection in a safe third-country, responsibility of another Dublin-state or because of a *res judicata* decision;
- Dismissal of the application for asylum on the merits;
- Annulment of his/her de facto protection against deportation.

Remedies

The applicant applying for international protection may file a complaint against the rejecting or dismissing written decision. The period for lodging a complaint is one week in case of rejection of the application and renewal applications, normally 14 days (Art. 16 para 1 Federal Office for Immigration

⁹⁰ Regulation (EU) No 604/2013 of the European Parliament and of the Council of 26 June 2013 establishing the criteria and mechanisms for determining the Member State responsible for examining an application for international protection lodged in one of the Member States by a third-country national or a stateless person (recast).

⁹¹ Convention relating to the status of refugees, 28 July 1951, United Nations, Treaty Series, vol. 189, p. 137, as amended by the Protocol signed in New York on 31 January 1967, United Nations Treaty Series, vol. 606, p. 267.

and Asylum Procedures Act) and four weeks for unaccompanied minors from the legally effective service of the written decision.

Since 1 January 2014, appeals against decisions of the Federal Office for Immigration and Asylum are assessed by the Federal Administrative Court.

In general the written decision of the first instance cannot be enforced until the Federal Administrative Court has taken a decision. However, there are cases where the appeal has no suspensory effect. This is especially the case when the application has been rejected due to formal reasons.

With regard to the suspensory effect of the appeal in general it makes a difference if an application for asylum is rejected because of formal reasons or dismissed on the merits. If it is rejected a suspensory effect is excluded by law but can be accorded if, where removal to the country of origin represents a danger according to the non-refoulement principle, the applicant applies for it. If the application is dismissed a suspensory effect is accorded by law except if it will be deprived.

As mentioned above, against decisions of the Federal Administrative Court appeals to the High Administrative Court or the Constitutional Court are admissible (→ see 4.1.2).

Accelerated Procedure

The Act Amending the Aliens Law 2015⁹² included a legal anchoring of an accelerated asylum procedure which is regulated in the newly introduced Art. 27a Asylum Act. This provision governs that for certain groups of applicants the procedure can be accelerated and has to be ruled upon within five months. Art. 18 para 1 Federal Office for Immigration and Asylum Procedures Act defines these groups as follows:

- Asylum-seekers from safe third-countries;
- Asylum-seekers who represent a danger to public peace and order;
- Asylum-seekers who have tried to mislead as to their true identity, citizenship or authenticity of their documents;
- Asylum-seekers who have not submitted reasons for persecution;
- Asylum-seekers whose submission regarding their security threat is obviously not accurate;
- Asylum-seekers against whom a legally enforceable return decision, expulsion or exclusion order has been issued before their application for asylum;
- Asylum-seekers who, despite their obligation, refuse to provide fingerprints.

However, this time period can be exceeded if it is necessary for an adequate and complete examination. In these cases the procedure has to be concluded within six months as in general administrative procedures (Art. 73 para 1 General Administrative Procedures Act).

Likewise, the suspensory effect of an appeal can be refused for the above mentioned groups of asylum-seekers.

⁹² FLG I No. 70/2015.

Basic Welfare Support

The Federal Government of Austria has signed a Basic Welfare Support Agreement with the provinces which regulates the responsibilities and provisions of temporarily granted basic welfare support to third-country nationals in need of assistance and protection in Austria.⁹³ According to Art. 2 para 1 third sentence Basic Welfare Support Agreement the following persons are in need of protection:

- Asylum-seekers during the asylum procedure;
- Asylum-seekers whose application has been dismissed or rejected in the admission procedure until their departure;
- Persons entitled to asylum for the first four months after the granting of asylum;
- Displaced persons;
- Beneficiaries of subsidiary protection;
- Third-country nationals having a “Residence Permit for Individual Protection”;
- Third-country nationals who may not be deported due to legal or factual reasons.

According to Art. 2 para 1 Basic Welfare Support Agreement another prerequisite is that the third-country national is in need of assistance.⁹⁴

The division of the costs is based on the Basic Welfare Support Agreement according to a cost allocation of 60/40 between the Federal State and the provinces.

Basic welfare support involves pursuant to Art. 6 para 1 Basic Welfare Support Agreement the following benefits and services:

- Accommodation and provision of food;
- Monthly pocket money for applicants in organized reception facilities and for unaccompanied minors but not in cases of individual accommodation;
- Medical examination and health care;
- Measures for persons in need of nursing care;
- Information, counselling and social support concerning their stay in Austria and voluntary return;
- Costs of transport in the case of transfers and official summonses;
- Travel expenses for school attendance and supply of school requisites for pupils;
- Measures for structuring the daily routine if necessary;
- Clothing in cash or in kind;
- Costs of burial;
- Return travel costs and a single payment by way of interim financial assistance in the event of voluntary return to the country of origin in special cases.

⁹³ The legal basis for the basic welfare support is the Federal Basic Welfare Support Act (FLG No. 405/1991, in the version of FLG I No. 70/2015) and the respective provincial laws for the basic welfare support which is under the provinces' responsibility.

⁹⁴ Pursuant to Art. 2 para 1 Basic Welfare Support Agreement persons who are “unable or insufficiently able by his/her own means and efforts to provide for the necessities of life for himself/herself and his relatives living in the same household and entitled to maintenance and if such necessities are not received or are insufficiently received by him/her from other individuals or institutions” shall be deemed as in need of assistance.

During the admission procedure, the Federal State is responsible for basic care, in later stages of the asylum procedure the provinces are competent to provide housing, pocket money, medical insurance, etc.

In general the basic welfare support ceases upon departure from the federal territory insofar Austria is not obliged to a readmission according to international norms and standards (cf. Art. 2 para 3 Basic Welfare Support Agreement). The limitation or withdrawal of basic welfare support is generally possible if a specific reason applies (Art. 3 para 1 Federal Basic Welfare Support Act).

Support to and housing of asylum-seekers are offered also by several NGOs, such as Diakonie Flüchtlingsdienst,⁹⁵ Integrationshaus,⁹⁶ Verein Flüchtlingsprojekt Ute Bock,⁹⁷ Volkshilfe Österreich⁹⁸ and others. The NGO Asylkoordination Österreich⁹⁹ supports and coordinates the activities of organizations working with asylum-seekers.

Family Procedure

Family members of asylum-seekers, beneficiaries of subsidiary protection and refugees are subject to specific rules and procedures which are regulated by the Asylum Act. The family procedure for refugees, beneficiaries of subsidiary protection and asylum-seekers is regulated by Art. 34 and 35 Asylum Act.

Art. 2 para 1 subpara 22 Asylum Act provides for the definition of ‘family member’ for the purposes of the family procedure based on the Asylum Act.

Pursuant to this provision the following persons are regarded as family members:

- Parents of an under-age child;
- Spouses or registered partners if the marriage/registered partnership has already existed in the country of origin at the time of filing the application;¹⁰⁰
- Minor unmarried children of an asylum-seeker or of a third-country national to whom subsidiary protection status or asylum status has been granted;
- Legal guardians of a person to whom international protection has been granted, if this person is an unmarried minor and if this legal relation has already existed in the country of origin.

⁹⁵ Diakonie Flüchtlingsdienst, *Über uns*, available at <https://fluechtlingsdienst.diakonie.at/ueber-uns/diakonie-fluechtlingsdienst> (accessed on 30 June 2015).

⁹⁶ Integrationshaus, *Über uns*, available at www.integrationshaus.at/de/ih/index.shtml?23 (accessed on 30 June 2015).

⁹⁷ Verein Flüchtlingsprojekt Ute Bock, *Über uns*, available at www.fraubock.at/ueber-uns/ (accessed on 30 June 2015).

⁹⁸ Volkshilfe Österreich, *Hilfe für MigrantInnen und AsylwerberInnen*, available at www.volkshilfe.at/fluechtlingshilfe?referer=%2Fintegration (accessed on 30 June 2015).

⁹⁹ Asylkoordination Österreich, *Über uns*, available at www.asyl.at/about/mission.htm (accessed on 30 June 2015).

¹⁰⁰ If the relation has been established after their entry into the federal territory, the spouse/registered partner has to be considered in the context of the regular family reunification rules of the Settlement and Residence Act. In this case the general prerequisites of the Settlement and Residence Act have to be fulfilled. According to Art. 46 para 1 subpara 2(c) Settlement and Residence Act this is only possible for family members of recognized refugees and if Art. 34 para 2 Asylum Act does not apply, not for family members of beneficiaries of subsidiary protection.

The Asylum Act pursues the basic idea to grant all family members the same scope of protection. Regarding the procedure for family reunification for recognized refugees or beneficiaries of subsidiary protection it has to be differentiated if the family members of the sponsor and the sponsor entered the federal territory together or if the family members are still abroad.

If the applicants are already in Austria, applications are examined separately by the authority according to Art. 34 para 4 Asylum Act; the procedures are conducted jointly and all family members receive the same scope of protection. Different criteria apply depending on the type of protection that shall be granted to the family member of the third-country national to whom asylum status or subsidiary protection status has been granted.

If the family members and the sponsor did not enter together, the family member of a third-country national who has been granted asylum status or subsidiary protection status and who is outside Austria can according to Art. 35 para 1 Asylum Act for the purpose of filing an application for international protection file an application with the Austrian representation authority abroad in order to be granted an entry permit. Such an application abroad cannot be filed by a family member of an asylum-seeker. Those family members, who want to reunite with a person enjoying subsidiary protection, can pursuant to Art. 35 para 2 Asylum Act be granted entry by the representation authority only after a first extension of the temporary limited residence permit of the third-country national who has already been granted subsidiary protection status (waiting period of one year). Family reunification of recognized refugees can be carried out without the condition of a waiting period.

The proceedings at the Austrian representation authority are regulated by Art. 35 Asylum Act and Art. 11 Aliens Police Act. The representation authority has to issue the family member (applicant) a Visa D according to Art. 20 para 1 subpara 6 Aliens Police Act in connection with Art. 26 Aliens Police Act (visa for the inclusion into a family procedure according to the Asylum Act). According to Art. 11 para 1 Aliens Police Act the applicants shall themselves submit the documents and evidence required to establish the relevant facts of the case. According to Art. 12a Aliens Police Act, if an applicant is not able to prove a family relationship with reliable documents, the competent authority has to give him/her the opportunity to prove the relationship by a DNA-test. The authority must inform the applicant about this opportunity, but the applicant has to pay the necessary tests. If the result confirms the claimed relatedness the applicant can apply for reimbursement of the costs once he is in the federal territory. If the applicant refuses to undergo such a testing procedure, the authority must not take this as evidence against the family relationship. Furthermore only the information about the family relationship can be processed.

The family member's application for the granting of asylum is examined by the Federal Office for Immigration and Asylum in Austria. It examines if there is a family life between the refugee/beneficiary of subsidiary status and the family member and if the continuation of this family life would not be possible in another state. If the Federal Office for Immigration and Asylum notifies to the representation authority that the application for international protection is likely to be granted, the representation authority has to issue to the family member a visa for entry (validity of four months) without further formality. The Federal Office for Immigration and Asylum can only carry out this notification if no procedures for the withdrawal of status are pending against the third-country national having been granted asylum status or subsidiary protection and the Federal Ministry

of the Interior has given notification that entry is not contrary to public interests within the meaning of Art. 8 para 2 ECHR. Once the family member has entered the federal territory, he/she has to apply for international protection pursuant to Art. 17 para 1 and 2 Asylum Act.

4.2.3 *Legal Residence*

By virtue of Art. 12 para 1 Asylum Act third-country nationals who have lodged an application for international protection enjoy de facto protection against deportation until an enforceable ruling is issued, or until the procedure is deemed no longer relevant, or following its discontinuation until a resumption of the procedure is no longer admissible.

Pursuant to Art. 12 para 2 Asylum Act the residence of a third-country national who has filed an application for international protection and who is not entitled to residence is for the duration of the admission procedure solely tolerated in the territory of the district administrative authority in which the location of his/her residence is. However, his/her residence is permitted in the entire federal territory if and for as long as it is necessary:

- For the fulfilment of statutory obligations;
- For the purpose of compliance with summonses issued by courts, public prosecution offices or administrative authorities;
- For the benefit of medical care and treatment.

After the termination of the admission procedure the asylum-seeker benefits from the right of residence in the entire federal territory as long as he/she enjoys de facto protection against deportation.

It follows from Art. 28 para 1 Asylum Act that from the moment the asylum procedure has been admitted the third-country national obtains a Residence Permit Card, provided that he/she is entitled to a right of residence according to Art. 13 para 1 Asylum Act. This Residence Permit Card is valid until an enforceable decision is rendered and serves as proof of lawfulness of residence in the federal territory (Art. 51 Asylum Act).

Recognized refugees have a permanent right of entry and stay in the federal territory. No residence titles are issued but the refugee's status can be certified by the issuance of a so-called Convention Passport. Pursuant to Art. 94 Aliens Police Act the Federal Office for Immigration and Asylum has, upon application, to issue such a Convention Passport to recognized refugees. The passport serves as well as a regular passport and is valid for all countries of the world, except the refugee's country of origin.

According to Art. 52 para 1 Asylum Act persons with subsidiary protection status are granted a so-called "card for persons eligible for subsidiary protection". This card serves as proof of identity and lawfulness of residence in the federal territory.

In general asylum-seekers cannot obtain a residence title in compliance with the Settlement and Residence Act during an ongoing asylum procedure as according to Art. 1 Para 2 subpara 1 first

sentence Settlement and Residence Act the Settlement and Residence Act cannot be applied as long as third-country nationals are permitted to reside according to the Asylum Act and previous asylum regulations.

These are especially asylum-seekers whose application for international protection has been declared admissible until an enforceable ruling is issued and third-country nationals who were granted the status of being eligible to asylum or who hold the status of being eligible to subsidiary protection. Further Art. 1 para 2 subpara 1 second sentence Settlement and Residence Act governs that the Settlement and Residence Act is not applicable for third-country nationals who enjoy de facto protection against deportation.

This means inter alia that persons who do not want to obtain a residence title under the Settlement and Residence Act (in particular asylum-seekers, refugees, persons eligible for subsidiary protection) are excluded from the obligation of compliance with the general requirement of knowledge of the German language according to Art. 21a Settlement and Residence Act and the fulfilment of the “Integration Agreement” (→for details see 4.1.3). The asylum-seeker neither has to fulfil the requirements of accommodation, sickness insurance or stable and regular resources when applying for international protection.

If recognition under the Asylum Act is not possible, the asylum-seeker may also file an application for a residence title under the generally applicable provisions of the Settlement and Residence Act. In this case, the applicant has to fulfil all the general requirements provided for in Art. 11 Settlement and Residence Act (→for details see 4.1.2).

Renewal

The status of asylum is granted for an unlimited period. However, it follows from Art. 7 Asylum Act that the asylum status can be withdrawn ex officio by a written decision if:

- A reason for ineligibility for asylum status as referred to in Art. 6 Asylum Act exists (e.g. if the refugee constitutes a danger to national security or if he/she has been convicted of certain crimes);
- One of the grounds set forth in the cessation clauses in Art. 1 section C of the Geneva Convention on Refugees has arisen (e.g. if the reasons for granting asylum are not given anymore);
- The refugee has the centre of his vital interests in another country.

Following Art. 8 para 4 Asylum Act unlike recognized refugees, **persons with subsidiary protection status** have to renew their residence permit which is initially limited to one year. The residence permit can, upon application by the third-country national, be renewed by the Federal Office for Immigration and Asylum for further two years, if the conditions required for subsidiary protection status continue to exist.

Other Residence Permits

Art. 54 to 57 Asylum Act stipulate the provisions for the residence permits which can be issued to third-country nationals for exceptional circumstances and which are establishing a so-called **residence permit for humanitarian reasons**. According to Art. 54 para 1 Asylum Act these can be issued as:

- Residence permit plus;
- Residence permit;
- Residence Permit for Individual Protection.

All the three residence permits authorize to reside in the federal territory. The residence permit plus entitles to pursue an activity as an employed or self-employed person according to Art. 17 of the Act Governing the Employment of Foreigners. A residence permit and a Residence Permit for Individual Protection entitle the holder as well to pursue an activity as an employed or self-employed person provided that the corresponding authorization according to the Act Governing the Employment of Foreigners has been issued. Pursuant to Art. 54 para 2 Asylum Act these residence titles for exceptional circumstances are granted for a period of one year; only the Residence Permit for Individual Protection is renewable.

Pursuant to Art. 55 Asylum Act a residence permit plus has to be granted to third-country nationals whose expulsion is in the long run inadmissible as the termination of the residence would violate the right to private and family life of the third-country national according to Art. 8 ECHR. Additionally module 1 of the Integration Agreement (see chapters 3.4.1 and 4.1.4) has to be fulfilled or the third-country national has to exercise at the moment of the decision a legal gainful activity and his/her income has to reach the marginal earnings threshold. If only the first requirement is fulfilled, then a residence permit has to be issued.

The public interest in a termination of residence and the interests of the third-country national's family and private life as regards the continuation of his/her residence in Austria always have to be weighed against each other.

Art. 11 para 3 Settlement and Residence Act and Art. 9 para 2 of the Federal Office for Immigration and Asylum Procedures Act specify further which circumstances regarding the interpretation of the private or family life for the purposes of Art. 8 ECHR have to be considered particularly. These are:

- The nature and the duration of the hitherto residence and the question if the hitherto existing residence of the third-country national was illegal;
- The actual existence of family life;
- The worthiness for protection of private life;
- The degree of integration;
- The ties with the third-country national's country of origin;
- The lack of criminal offences;
- Breaches against public order, especially with respect to asylum, aliens and immigration law;
- The question if the private and family life of the third-country national developed at a time the parties involved were aware of their unsecure residence status;

- The question if the duration of the previous residence of the third-country national is caused by undue delays of the authorities.

Regarding the question if the private and family life of the third-country national started at a time the parties involved were aware of their unsecure residence status, the Austrian Administrative High Court specified in its decision of 26 February 2013¹⁰¹ that this point has to be considered but it does not mean that a family life founded during the period of unsecure residence status has no significance. In its ruling of 9 September 2013¹⁰² the Administrative High Court held that family life protected by Art. 8 ECHR is not limited to legally formalized relations, but comprises also factual family ties beyond the status of marriage. An unmarried cohabitation falls as well under the scope of Art. 8 ECHR.

If according to the above mentioned criteria a termination of residence proves to be inadmissible, a residence permit has to be granted even if the general requirements are not or only partly fulfilled.

According to Art. 56 Asylum Act a residence permit plus can also be issued upon reasoned application in cases of particular exceptional circumstances, even if a proceeding with regard to termination of residence is pending, if:

- The third-country national has at the time of lodging verifiably and continuously spent five years in the federal territory;
- At least half of the period, in any case three years of this period, has been legal;
- The third-country national has fulfilled module 1 of the Integration Agreement or exercises at the moment of the decision a legal gainful activity and the income reaches the marginal earnings threshold.

If only the first two requirements are fulfilled, then a residence permit has to be issued. Art. 56 para 3 Asylum Act provides that the authority has to consider the degree of integration of the third-country national, especially the self-preservation capacity, school education and vocational training, gainful activity and knowledge of the German language. The proof of accommodation, health insurance coverage and of sufficient financial means which is required according to Art. 60 para 2 subpara 1 to 3 Asylum Act can also be submitted by a declaration of sponsorship.

Especially vulnerable people can ex officio or upon application be granted a Residence Permit for Individual Protection pursuant to Art. 57 Asylum Act. Following groups of persons can obtain such a residence permit:

- Third-country nationals whose residence has been tolerated¹⁰³ for one year, who do not constitute a danger to the community or to the security of the Republic of Austria and have a clean criminal record;
- Victims or witnesses of human trafficking or cross-border prostitution for the purpose of guaranteeing the prosecution or the enforcement of civil-law claims;

¹⁰¹ Administrative High Court, 26 February 2013, 2010/22/0073.

¹⁰² Administrative High Court, 9 September 2013, 2013/22/0220.

¹⁰³ The residence of an alien is according to Art. 46a Aliens Police Act tolerated if the authorities reach the conclusion that a removal is inadmissible or if this is the case due to practical reasons not attributable to the alien.

- Victims of violence if an interlocutory injunction has been or could have been issued against the perpetrator of violence and if the granting of the residence permit is necessary for the protection from further violence.

According to Art. 59 Asylum Act the Residence Permit for Individual Protection is renewable. A Red-White-Red Card Plus has to be issued ex officio¹⁰⁴ if:

- The prerequisites of Art. 57 Asylum Act continue to exist;
- The applicant has fulfilled module 1 of the Integration Agreement;
- The prerequisites outlined in Art. 60 para 2 subpara 1 to 4 Asylum Act are fulfilled.¹⁰⁵

If the applicant has not fulfilled module 1 of the Integration Agreement and the prerequisites of Art. 60 para 2 subpara 1 to 4 Asylum Act are not fulfilled, then the Federal Office for Immigration and Asylum has to grant a Residence Permit for Individual Protection.

Furthermore, pursuant to Art. 45 para 12 Settlement and Residence Act recognized refugees and beneficiaries of subsidiary protection have the possibility to obtain a Permanent Residence–EU (→for details on the different types of residence permits see 4.1.2.) if they have held this status without interruption for at least five years and if:

- The general requirements of Art. 11 para 2 Settlement and Residence Act are fulfilled;
- Module 2 of the Integration Agreement has been fulfilled.

The period between the lodging of the application for international protection and the granting of asylum status should be taken into account for the requested five-year period. If this period exceeds the time-frame of 18 months, it has to be taken into account entirely (Art. 45 para 12 Settlement and Residence Act).

Citizenship

The attainment of the Austrian citizenship for **asylum-seekers** who wait for the result of their asylum procedure, even after several years of legal residence, is in general not possible. At least ten years of legal residence of which at least five years of legal settlement pursuant to the Settlement and Residence Act have to be given (Art. 10 para 1 Citizenship Act, see 4.1.3).

According to Art. 11a para 4 subpara 1 Citizenship Act **recognized refugees** can apply for the Austrian citizenship after six years of legal and continuous residence, if they fulfill the general requirements and if the Federal Office for Immigration and Asylum notifies that no withdrawal-procedure pursuant to Art. 7 Asylum Act has been initiated against the refugee or that the conditions required for the initiation for such a procedure do not exist. Residence periods before the attainment of the asylum status can be considered provided that they have been legal.

¹⁰⁴ According to Art. 59 para 4 Asylum Act in connection with Art. 41a para 3 Settlement and Residence Act.

¹⁰⁵ Proof of accommodation, health insurance coverage and sufficient financial means. In addition, the aliens' stay should not harm the relations between Austria and another state or international subject.

4.2.4 Access to the Labour Market

Employment

Asylum-seekers have access to the labour market after three months from the admittance to the asylum procedure. Then the employer can apply for a work permit according to the general conditions of the Act Governing the Employment of Foreigners. The issuance of a work permit is in general subject to a labour market test by the regional office of the Public Employment Service Austria. According to Art. 4b of the Act Governing the Employment of Foreigners this test examines if neither an Austrian national nor a foreigner, who is already available for the domestic labour market, is ready and able to do the job and if the situation and the development of the labour market allow such employment.

Furthermore, since April 2004 the Decree Implementing the EU Enlargement Adjustment Act¹⁰⁶ of the then Federal Minister of Economics and Labour governs the access to the labour market for asylum-seekers. This decree established additional conditions for the labour market access for asylum-seekers. It states that even after the waiting period of three months, work permits for asylum-seekers can only be issued within quotas according to Art. 5 of the Act Governing the Employment of Foreigners and only for seasonal work such as touristic or gastronomic activities or activities within the agriculture and forestry sector. Pursuant to Art. 5 of the Act Governing the Employment of Foreigners asylum-seekers can be employed for seasonal activities for a maximum duration of six months with a possible extension to a maximum of 12 months within 14 months and as regards harvesting for a maximum of six weeks.

Regular work permits can be issued to asylum-seekers if they start an apprenticeship in shortage occupations or if they are entitled to benefits under the Unemployment Insurance Act¹⁰⁷ or have received emergency unemployment assistance. This is the case when persons have undertaken an employment for at least 52 weeks within the last 24 months and for which insurance contributions had to be paid.

Recognized refugees and beneficiaries of subsidiary protection are exempted from the Act Governing the Employment of Foreigners and have legally free access to the labour market (Art. 1 para 2 subpara a of the Act Governing the Employment of Foreigners).

Self-Employed Activity

After three months from the submission of the asylum application asylum-seekers are also allowed to exercise a self-employed activity under Art. 7 para 2 Federal Basic Welfare Act if the licensing requirements for the planned activity have been fulfilled (compliance with the provisions of the Austrian trade regulations).

In general, third-country nationals may exercise a business (self-employed activity) on equal terms with Austrian nationals if this has been agreed to in international treaties (reciprocal treatment). Nationals of third-countries with which such a treaty has not been concluded, persons,

¹⁰⁶ Federal Ministry of Economy and Labour, *Durchführungserlass vom April 2004 zum EU-Erweiterungs-Anpassungsgesetz* (BGBl I 28/2004), GZ: 435.006/6-II/7/2004.

¹⁰⁷ FLG No. 609/1977, in the version of FLG I No. 118/2015.

who have been granted asylum and stateless persons may pursue a trade (employed or self-employed activity) in the same way as Austrian citizens if they are holding a residence title which allows the exercise of a self-employed activity. Third-country nationals who are not yet legally residing in Austria (initial applicants) require a residence title allowing the legal pursuit of a trade in Austria (Art. 14 para 1 Trade, Commerce and Industry Regulation Act).¹⁰⁸ The person registering a business must prove that he/she is entitled to pursue a trade when applying for the residence title. The certificate issued by the trade authority stating that all requirements for the pursuit of a trade are given is considered as such a proof in this context. The trade authorities are obligated to issue such certificates (Art. 18 and 19 Trade, Commerce and Industry Regulation Act).

Alternative employment opportunities

In certain provinces asylum-seekers have the possibility to undertake auxiliary activities connected with their accommodation or for the public benefit for the Federal State or the provinces or municipalities without the need of a work permit for which a financial acknowledgement according to Art. 7 para 5 Federal Basic Welfare Support Act is being paid (currently up to EUR 110 per month).

4.3 Return

As regards Austrian's return policy a distinction has to be made between forced and voluntary return. Forced return refers to cases where a person is forcibly removed from Austria for a certain reason, while voluntary return to the country of origin, transit or another third country based on the free will of the returnee is either independent or assisted (IOM, 2011: 105). In the case of assisted voluntary return the return process is supported by various actors.

While the Aliens Police Act contains detailed provisions about forced return and the compulsion measures carried out by the organs of the public security service on behalf of the Federal Office for Immigration and Asylum, no comprehensive legal basis currently exists for voluntary return. However, a few isolated provisions refer to it (→for details see 4.3.1).

Return is also taking place if another state is responsible for the examination of the application for international protection in substance, especially if this is the case according to the provisions of the Dublin III Regulation. In this case, the application for asylum will be rejected and the applicant will be transferred to the responsible EU Member State.

4.3.1 Assisted Voluntary Return

There is no comprehensive legal basis for voluntary return in Austria. However, Art. 12 of the Federal Basic Welfare Support Act and Art. 52a of the Federal Office for Immigration and Asylum Procedures Act refer to return assistance.

¹⁰⁸ FLG No. 194/1994, in the version of FLG I No. 81/2015.

Art. 12 para 1 of the Federal Basic Welfare Support Act governs that third-country nationals whose application for international protection has been rejected as well as asylum-seekers who are in need and willing to return, return assistance can be offered. This involves according to paragraph 2 at least the necessary expenses for the return trip.

Art. 52a of the Federal Office for Immigration and Asylum Procedures Act stipulates that a third-country national may be granted return counselling at every stage of the procedure. Return counselling comprises the clarification of prospects during and after the completion of the procedure. The Act Amending the Aliens Law 2015 introduced Art. 52a of the Federal Office for Immigration and Asylum Procedures Act which foresees for the first time a legal obligation to make use of return counselling. This legal obligation applies to third-country nationals against whom a return decision has been issued and asylum-seekers whose application has been rejected or dismissed or whose de facto protection against deportation has been annulled.

The Federal Office for Asylum and Immigration and the Federal Administrative Court now have by virtue of Art. 52a para 3 of the Federal Office for Immigration and Asylum Procedures Act explicitly the possibility to obtain information from the return counselling services whether return counselling has taken place or not.

Pursuant to Art. 52a para 4 of the Federal Office for Immigration and Asylum Procedures Act financial assistance has to be offered to the third-country national before departure if he/she decides to accept the offered return assistance and to leave the country.

The explanatory remarks to the government bill of the Act Amending the Aliens Law 2015 emphasize that “voluntary return must in any case be given priority over forced removal”.¹⁰⁹

The **main actors involved** in assisted voluntary return programmes are the Federal Ministry of the Interior, the Federal Office for Immigration and Asylum, the Carinthian provincial government, the International Organization for Migration (IOM) Country Office for Austria, Caritas as well as the associations Verein Menschenrechte Österreich and Verein menschen.leben, and LEFÖ-IBF.

The Federal Ministry of the Interior finances counselling services and the costs of return and reintegration, including travel costs and a lump sum of up to EUR 370 to facilitate the return and reintegration, which is awarded by the Federal Office for Immigration and Asylum. It also co-finances country-specific and target group specific projects providing reintegration assistance for voluntary returnees in their country of return.

Return counselling is offered by organizations (such as Caritas, Verein Menschenrechte Österreich and Verein menschen.leben) that are commissioned by the Federal Ministry of the Interior (Art. 12 para 3 of the Federal Basic Welfare Support Act). In Carinthia, the office of the Carinthian government offers return counselling.

IOM is primarily responsible for logistics and general assistance. Based on a Memorandum of Understanding between the Federal Ministry of the Interior and IOM from 2000, IOM implements a General Humanitarian Voluntary Return Programme, offering logistical and general assistance in

¹⁰⁹ Act Amending the Aliens Law 2015, Government Proposal, Explanatory Notes, available at www.parlament.gv.at/PAKT/VHG/XXV/I/I_00582/fname_401629.pdf (accessed on 30 June 2015), p. 10.

organizing the homeward journey before, during and after return. Furthermore, the IOM Country Office for Austria has implemented various reintegration projects together with local IOM missions and implementing partners in Afghanistan, Bosnia and Herzegovina, Georgia, UNSC resolution 1244-administered Kosovo,¹¹⁰ the Republic of Moldova, Nigeria, Pakistan and the Chechen Republic.¹¹¹ Reintegration assistance in the form of target group specific projects for victims of trafficking is mainly implemented by LEFÖ-IBF.

4.3.2 *Forced Return*

The Aliens Police Act knows following measures concerning forced return:

Decisions the Federal Office for Immigration and Asylum can issue with regard to third-country nationals:

- Return decision;
- Entry ban;
- Order to bring out of the country.

Decisions the Federal Office for Immigration and Asylum can issue with regard to citizens of the European Economic Area, Swiss nationals and privileged third-country nationals:

- Expulsion;
- Exclusion order.

Measures the organs of the public security service can take:

- Rejection at the border;
- Forcible return;
- Removal.

Return Decision

A return decision represents an order in form of a written decision to leave the Austrian federal territory without delay and can be issued only against third-country nationals. As stated in Art. 52 para 1 Aliens Police Act the Federal Office for Immigration and Asylum can issue such a return decision to a **third-country national staying unlawfully** on the federal territory or to a third-country national who has stayed unlawfully on the federal territory and the return procedure has been initiated within six weeks since departure.

Art. 52 para 2 Aliens Police Act in connection with Art. 10 Asylum Act governs that a return decision also has to be issued to third-country nationals under the following conditions:

- The application for international protection has been rejected because of the existence of a safe third-country;

¹¹⁰ Hereinafter referred to as Kosovo/UNSC 1244.

¹¹¹ International Organization for Migration (IOM), County Office for Austria, *Assisted Voluntary Return and Reintegration*, available at www.iomvienna.at/en/assisted-voluntary-return-and-reintegration (accessed on 21 September 2015).

- The application has been rejected both regarding the status of asylum and the subsidiary protection status;
- The status of asylum has been withdrawn without the third-country national being entitled to subsidiary protection;
- The subsidiary protection status has been withdrawn.

In these cases the issue of a return decision is only admissible if the non-refoulement principle is not violated and the third-country national is not entitled to another residence permit according to other federal laws. This does not apply to privileged third-country nationals¹¹² (Art. 52 para 2, last sentence Aliens Police Act).

Art. 52 para 3 Aliens Police Act specifies that return decisions may also be issued to third-country nationals whose application for a residence permit for humanitarian reasons (Art. 55, 56 or 57 Asylum Act → for details see 4.2.3) was rejected.

Art. 52 para 6 Aliens Police Act stipulates that an illegally residing third-country national in possession of a residence permit of another Member State has to leave for this Member State without delay. If this is not the case and if his departure is necessary for the purposes of public peace or order, a return decision has to be issued.

By virtue of Art. 52 para 4 Aliens Police Act return decisions can also be issued against **third-country nationals who stay legally** in the federal territory if:

- Subsequently grounds for refusal pursuant to Art. 60 Asylum Act or Art. 11 para 1 and 2 Residence and Settlement Act (general requirements) occur which would have hindered the issue of the granted residence permit;
- Subsequently grounds for refusal occur which would have hindered the issue of the granted entry visa or a requirement according to Art. 31 para 1 Aliens Police Act that is necessary for the visa-free entry or legal stay is no longer fulfilled;
- A Red-White-Red Card or a Red-White-Red Card Plus has been issued and the third-country national in the first year of residence has not carried out a legal gainful employment for more than four months or he/she has stayed between one and five years and has not carried out a legal gainful employment during one year;
- Grounds for refusal are opposed to the issue of a further residence permit;
- Module 1 of the Integration Agreement (→ for details see 4.1.3) has not been fulfilled for reasons for which the third-country national is exclusively responsible.

Art. 52 para 5 Aliens Police Act governs that if the third-country national before realization of the decisive circumstances was permanently legally settled and holder of a Permanent Residence–EU, a return decision has to be issued if due to the facts of Art. 53 para 3 Aliens Police Act the

¹¹² Art. 2 para 4 subpara 11 Aliens Police Act defines privileged third-country national as “the spouse, registered partner, direct relatives and relatives of the spouse or registered partner of an EEA citizen, Swiss citizen or Austrian, who have made use of their right of residence according to Union law or the Agreement on Free Movement of Persons between the EU and Switzerland, in the direct descending line until the completion of age 21, as long as they are dependents, as well as direct relatives and relatives of the spouse or registered partner in the direct ascending line, as long as they are dependents, provided that this third-country national accompanies or joins the EEA citizen or Swiss citizen from whom their privileges according to Union law derive.”

assumption is justified that the prolongation of the third-country national's stay would represent a present and sufficiently serious threat to public peace or order.

To issue a return decision a further requirement needs to be fulfilled:

In cases where a return decision interferes with the private or family life of the third-country national, such a decision is only admissible if it is necessary in order to fulfil the aims specified in Art. 8 para 2 ECHR. This occurs in cases in which a return decision is in the interests of national security, public safety or the prevention of crimes (Art. 9 para 1 Federal Office for Immigration and Asylum Procedures Act). In order to identify if such a return decision does interfere with the private or family life of the third-country national, Art. 9 para 2 Federal Office for Immigration and Asylum Procedures Act specifies the categories that require particular consideration (→ see 4.2.3).

In the light of the weighing of interests within Art. 8 ECHR, health issues must also be considered, according to the jurisdiction of the Constitutional Court.¹¹³ Therefore, a serious disease is to be considered as a private interest for the purposes of Art. 8 ECHR. (Rutz, 2014: 23–25).

In consonance with Art. 52 para 7 Aliens Police Act no return decision has to be issued for the specific case of a forcible return, where a readmission agreement with the country of return exists and this readmission agreement entered into force before 13 January 2009 (Art. 9a Regulation on the Implementation of the Aliens Police Act).

If facts which justify a return decision come to the settlement and residence authority's knowledge, it is obliged to inform the Federal Office for Immigration and Asylum.

The Federal Office for Immigration and Asylum has to state at the same time with a return decision that a removal pursuant to Art. 46 Aliens Police Act in one or several states is admissible, except if this is not possible due to reasons for which the third-country national is responsible for.

¹¹³ Constitutional Court, 20 September 2011, B760/11.

Entry Ban

Art. 53 para 1 second sentence Aliens Police Act defines an entry ban as an order to the third-country national prohibiting entry into and stay on the territory of the Member States¹¹⁴ for a certain time frame. The duration of the entry ban depends on the gravity of the breach concerned. Art. 53 para 1 Aliens Police Act governs that a return decision may be combined with the issuance of an entry ban.¹¹⁵ This linkage of the two measures means that if there is no return decision, there may be no entry ban.

Art. 53 para 2 Aliens Police Act regulates **entry bans up to five years** and describes the considerations to take regarding the duration of the entry ban. These are the following:

- Past behaviour of the third-country national;
- Possible endangering of public peace or order;
- Possible contradiction to public interests mentioned in Art. 8 ECHR.

For the evaluation of the existence of possible endangering of public peace or order Art. 53 para 2 Aliens Police Act lists the following groups of cases which indicate such a disturbance:

- Several forms of administrative offences;¹¹⁶
- Legally enforceable penalty of at least EUR 1,000 or a primary prison sentence resulting from an administrative offence;
- Legally enforceable penalty due to an infringement of the Aliens Police Act or of the Settlement and Residence Act;
- Intentional financial offences;
- Legally enforceable penalty resulting from a violation of prostitution regulations;
- Destitution;
- Undeclared employment;
- Marriage for the purpose of residence;
- Adoption for the purpose of residence.

Art. 53 para 3 Aliens Police Act stipulates the requirements under which **entry bans** can be imposed **for up to ten years** or with indefinite duration. Entry bans for up to ten years or longer can be imposed in cases when certain facts justify the assumption that the stay of a third-country national constitutes a serious danger of public peace or order.

For those relevant facts the law lists, in Art. 53 para 3 subpara 1 to 4, the following grounds for imposing an entry ban of up to ten years:

¹¹⁴ For details on the territorial scope of entry bans see Rutz, 2014: 30–33.

¹¹⁵ Since 1 January 2014 the Aliens Police Act foresees the possibility to link both measures. Before that the legal regulation ruled an automatic combination.

¹¹⁶ For example violations of road traffic regulations, or violations of the Trade, Commerce and Industry Regulation Act (FLG No. 194/1994, in the version of FLG I No. 81/2015), or a final conviction resulting from a violation of the Border Control Act (FLG No. 435/1996, in the version of FLG I No. 104/2014), the Registration Act (FLG No. 9/1992, in the version of FLG I No. 52/2015), the Transportation of Dangerous Goods Act (FLG I No. 145/1998, in the version of FLG I No. 91/2013) or the Act Governing the Employment of Foreigners (FLG No. 218/1975, in the version of FLG I No. 113/2015).

- Final conviction of a crime (subpara 1 and 2);
- Final conviction of pimping;
- Repeated punishment resulting from infringement of the Aliens Police Act or the Settlement and Residence Act.

In Art. 53 para 3 subpara 5 to 8 the law lists the following criteria as grounds for imposing entry bans with unlimited duration:

- Final sentencing to unconditional imprisonment of more than five years;
- Evidence of membership in a criminal organization or of committing terrorist acts, financing terrorism or providing instructions for a terrorist act;
- Endangerment of national security due to the behaviour of the third-country national, in particular through public participation in or incendiary promotion of violence;
- Approval of war crimes or crimes against humanity.

For the specific case of a forcible return, where a readmission agreement with the country of return exists, no return decision and therefore no entry ban can be imposed (Art. 52 para 7 Aliens Police Act).

→ For further information see Rutz, 2014: 15–43.

Order to Bring out of the Country

By virtue of Art. 61 para 1 Aliens Police Act the Federal Office for Asylum and Immigration can order to bring a third-country national out of the country in case of:

- Rejection of application for international protection according to Art. 4a or 5 Asylum Act;
- Rejection of application for international protection because an application has been made in another Dublin-state.

As a consequence of such an order a removal of the third-country national to the destination country becomes admissible (Art. 61 para 2 Aliens Police Act).

If due to reasons which lie in the person of the third-country national an order to bring out of the country violated Art. 3 ECHR and these reasons are not of lasting nature, such an order has to be postponed for the necessary time (Art. 61 para 3 Aliens Police Act).

Pursuant to Art. Art. 61 para 4 Aliens Police Act an order to bring out of the country ceases to be in force when the asylum procedure has been admitted according to Art. 28 Asylum Act (→for details see 4.2.2).

Expulsion

The expulsion is regulated in Art. 66 Aliens Police Act and concerns only citizens of the European Economic Area, Swiss nationals and privileged third-country nationals. The expulsion can be imposed on this group of persons in case of irregular stay for the reasons listed in Art. 55 para 3 Settlement and Residence Act. Those reasons are:

- Endangering of public order or security;
- Lack of documents required for the registration certificate;
- Conditions for granting residence rights exist no longer.

Pursuant to Art. 66 para 2 the Federal Office for Immigration and Asylum has to consider the following circumstances when issuing an expulsion decision:

- Length of stay in the territory;
- Age;
- State of health;
- Family and economic circumstances;
- Social and cultural integration;
- Level of liaisons to the home country.

According to Art. 66 para 3 Aliens Police Act expulsions of citizens of the European Economic Area, Swiss nationals and privileged third-country nationals who have resided ten years in the federal territory are admissible if due to their personal conduct it can be assumed that their stay would strongly and decisively endanger the security of the Republic of Austria. The same applies to under-age children except the expulsion would be in the best interests of the child.

Exclusion Order

The exclusion order is regulated in Art. 67 Aliens Police Act and can be imposed on citizens of the European Economic Area, Swiss nationals and privileged third-country nationals (→for details see FN 112).

The exclusion order can be imposed in cases where the conduct of a person seriously endangers public peace or order (Rutz, 2014: 29).

The personal conduct has to represent a genuine, present and sufficiently serious threat to one of the fundamental interests of society. On those who have resided ten years in the federal territory an exclusion order can be imposed if due to their personal conduct it can be assumed that their stay would strongly and decisively endanger the security of the Republic of Austria. The same applies to under-age children except the expulsion would be in the best interests of the child.

According to Art. 67 para 2 Aliens Police Act exclusion orders can be imposed for a period of not more than ten years.

Art. 67 para 3 Aliens Police Act lists as grounds for imposing exclusion orders with unlimited duration the same grounds as for entry bans.

Pursuant to Art. 67 para 4 Aliens Police Act all relevant circumstances have to be considered when deciding on the duration of the exclusion order.

Rejection at the Border

By virtue of Art. 41 Aliens Police Act organs of the public security service are entitled on the occasion of border checks to prevent entry or onward journey of third-country nationals attempting to enter or having entered unlawfully the federal territory (rejection at the border).

Forcible Return

Another case of return which exists specifically in Austria is forcible return. The Austrian Aliens Police Act regulates this measure in its Art. 45.

In line with this provision third-country nationals can after entry into the federal territory be forced to return under the following conditions:

- Unlawful entry and capture within seven days;
- Return obligation due to return agreement within seven days after entry;
- Capture within seven days after the stay became irregular;
- Capture upon leaving the country if the stay was irregular.

The authorities competent for the forcible return are the organs of public security service upon request of the regional directorate. Within those seven days no return decision can be issued. A forcible return is only permissible as long as no other procedure of the Aliens Police Act or an asylum procedure has already taken place.

By virtue of Art. 45a Aliens Police Act forcible return is not permissible in terms of the non-refoulement principle in case of:

- Violation of Art. 2 or 3 ECHR;
- Violation of Protocol number 6 or 13 to the Convention for the Protection of Human Rights and Fundamental Freedoms concerning the abolition of the death penalty;
- Serious and individual threat to a civilian's life or integrity by reason of indiscriminate violence in situations of international or internal armed conflict;
- Substantial grounds for believing that in the other state his/her life or freedom would be in danger for reasons of race, religion, nationality, membership of a particular social group, or political opinion;
- Conflict with the recommendation of an interim measure by the European Court of Human Rights.

Removal

Finally, a removal is the enforcement of a return decision, an order to bring out of the country, an expulsion or an exclusion order and is regulated in Art. 46 Aliens Police Act. According to Art. 46 para 1 Aliens Police Act a removal has to be carried out by the organs of the public security service on behalf of the Federal Office for Immigration and Asylum in case of:

- Necessity of supervision of the departure for reasons of the maintenance of public peace or order;
- Failure to comply in due time with an obligation to depart;
- Concerns, on the basis of certain facts, that the foreigner will not comply with its obligation to depart;
- Return to the federal territory in violation of an entry ban or an exclusion order.

Pursuant to Art. 50 para 1 Aliens Police Act a removal is not permissible if it violated the principle of non-refoulement.

4.4 Links with other Policy Areas

Different policy areas are linked to the field of migration. The following section provides a non-exhaustive overview.

4.4.1 *Migration and Health*

Health Insurance

In Austria, a health insurance is compulsory for all gainful workers from the moment the income from gainful employment exceeds the marginal wages threshold (in 2015: 405.98 Euro per month). The health insurance system is regulated in the General Social Insurance Act and in several special laws.

As soon as a person takes up employment, he/she is normally registered for and covered by social insurance. Insurance protection also covers pupils and students, as well as pensioners. Social insurance is composed of health, pension and accident insurance.

Third-country nationals who apply for a visa and/or a residence permit have to provide proof of health insurance coverage, providing benefits in Austria and covering all risks (Art. 21 para 2 subpara 3 Aliens Police Act, Art. 11 para 2 subpara 3 Settlement and Residence Act). If the third-country national has an employment in prospect, then a compulsory insurance is linked with it and the requirement is fulfilled. For joining family members mostly a co-insurance (with the sponsor) will be possible. In this case it has to be verified whether this co-insurance is immediately liable. Foreign insurances are accepted if they are liable in Austria.

Pursuant to Art. 6 para 1 subpara 5 to 7 Basic Welfare Support Agreement asylum-seekers and other beneficiaries of basic welfare support (→for details see 4.2.2) normally receive a health insurance in accordance with the General Social Insurance Act. In specific cases additional services not covered by the health insurance are granted. Basic welfare support involves inter alia medical examination, health care, and the possibility to make use of measures of nursing care.

Health Services

In Austria, there is a variety of services dedicated to providing health services specifically to migrants, such as the women's health centre 'FEM Süd Gesundheitszentrum' at Kaiser Franz Josef Hospital in Vienna, which offers consultations in several languages.¹¹⁷ The NGO Diakonie offers among other services psychotherapeutic treatment to refugees having experienced violence, war, torture and rape.¹¹⁸

In general, irregular migrants in Austria have little access to social benefits, no health insurance or access to health care except in cases of emergency. Amber-Med in Vienna for example offers free medical care and counselling to persons without health insurance in several languages.¹¹⁹

¹¹⁷ FEM Süd Gesundheitszentrum, available at www.fem.at/FEM_Sued/femsued.htm (accessed on 21 September 2015).

¹¹⁸ Diakonie Flüchtlingsdienst, *Psychotherapie und Gesundheit*, available at <http://fluechtlingsdienst.diakonie.at/unsere-arbeit/psychotherapie-und-gesundheit> (accessed on 21 September 2015).

¹¹⁹ Amber-Med, www.amber-med.at/ (accessed on 21 September 2015).

Further, several actors are involved in the field of Female Genital Mutilation/Cutting (FGM) and in the care of victims of FGM. The Federal Ministry of Education and Women's Affairs plays a key role in fighting this kind of practice in Austria.¹²⁰ NGOs working in the field are for example stopFGM,¹²¹ FEM Süd or the women's advice centres Bright Future¹²² as well as Orient Express.¹²³ They offer counselling for women and girls and are committed to raising awareness.

In the single provinces there are also several centres for migrant counselling providing advice in the respective mother-tongue, as for example the association ZEBRA¹²⁴ in Graz.

4.4.2 *Migration and Gender*

At the beginning of 2014 about 737,800 foreign-born women, representing around 17 per cent of the total female population, lived in Austria. "Foreign women" means all women who do not hold the Austrian citizenship. On 1 January 2014 this was the case for around 529,300 women, representing 12 per cent of the total female population. In 2013 on average 854,800 women in Austria had a migration background (→for details on who has migration background see FN 68) (Austrian Integration Fund, 2015b: 6), representing around 20 per cent of the total female population in Austria (Austrian Integration Fund, 2015a: 8 and 10).

Migrant women are more burdened due to their origin. Their situation on the labour market is significantly worse than the situation of women without a migration background. Migrant women benefit less from preventive health care. Specific problems encountered are domestic violence and trafficking in women.¹²⁵

The Federal Ministry of Education and Women's Affairs provides assistance to migrant women primarily through its Intercultural Women's Service, which is a platform for cooperation with governmental and non-governmental organizations.¹²⁶ An important topic for the ministry is violence against women, including FGM and forced marriage. The ministry aims to provide information and counselling for migrant women concerned and fosters research and awareness-raising.

The Network of Austrian Counselling Centres for Women and Girls¹²⁷ is an umbrella organization of 58 counselling services for women and girls in all Austrian provinces. In addition to providing counselling services, it also engages in political activism and cooperates with funding providers.

4.4.3 *Migration and Education*

¹²⁰ Federal Ministry of Education and Women's Affairs, *Genitalverstümmelung (FGM)*, available at www.bmbf.gv.at/frauen/migrantinnen/genitalverstuemmung.html (accessed on 21 September 2015).

¹²¹ stopFGM.net, www.stopfgm.net/ (accessed on 21 September 2015).

¹²² Bright Future, www.african-women.org/ (accessed on 21 September 2015).

¹²³ Orient Express, www.orientexpress-wien.com/ (accessed on 21 September 2015).

¹²⁴ ZEBRA, www.zebra.or.at/cms/cms.php (accessed on 21 September).

¹²⁵ Media Service Point New Austrians, *Frauen aufgrund ihrer Herkunft mehrfach belastet*, 11 May 2012, available at http://medienservicestelle.at/migration_bewegt/2012/05/11/migrantinnen-mehrfachbelastungen-und-herausforderungen/ (accessed on 21 September 2015).

¹²⁶ Federal Ministry of Education and Women's Affairs, *Interkulturelles Frauenservice*, available at www.bmbf.gv.at/frauen/migrantinnen/interkulturelles_frauenservi.html (accessed on 21 September 2015).

¹²⁷ Netzwerk österreichischer Frauen- und Mädchenberatungsstellen, www.netzwerk-frauenberatung.at (accessed on 21 September 2015).

In principle, third-country nationals residing legally in Austria are not only entitled, but also obliged to attend school in accordance with the Law on Schooling Obligation.¹²⁸ Accordingly school attendance is compulsory for all children who have their permanent residence in Austria, regardless of their nationality (Art. 1 para 1 Law on Schooling Obligation). Permanent residence is fulfilled when the pupils express the intention to stay for at least one semester (six months); this also includes children of asylum-seekers, since the asylum procedure usually takes longer than six months, children whose residence status is unclear and of course also migrant children who came to Austria in the framework of family reunification. Compulsory education in Austria means that children must attend school for nine years from the age of six until the age of 15 (compulsory school). Children that do not speak German are accepted as 'extraordinary pupils'. All migrant children benefit from compulsory education and general measures for disadvantaged pupils. Targeted programmes focus on pupils with limited German language skills by means of extra funding and German courses.

The Austrian constitution stipulates that state schools shall be accessible to all pupils, regardless of their origin, sex, race, class, language or religious belief (Art. 14 para 6 last sentence of the Federal Constitutional Act). This prohibition of discrimination is also enshrined in the respective laws on the organization of compulsory schooling of the provinces.

Attendance of public schools is free of charge. After compulsory education, further educational options are available.

The universities are also accessible for non-Austrian citizens as long as they fulfil the admission requirements. German language competency is significant here as well (Art. 63 para 1 subpara 1 to 3 and para 3 subpara 3 and Art. 64 para 1 subpara 3 University Act).¹²⁹

Vocational training – apprenticeship or middle and high schools – follows the (nine-year-long) compulsory schooling. The person who comes from a foreign country can have his/her specialized training recognized under certain conditions.

Every employer has the freedom to accredit at their own discretion acquired competences from foreign employees in the course of their recruitment, as well as the grading and determination of their remuneration, even when it is not explicitly regulated (informal recognition). The formal recognition is regulated in the Vocational Training Act. It has to be distinguished between the recognition of qualifications, recognition of training and the admission to the final apprenticeship examination.

Educational projects are also offered by several NGOs, such as the NGO Volkshilfe.¹³⁰

4.4.4 *Migration and Development*

¹²⁸ FLG No. 76/1985, in the version of FLG I No. 104/2015.

¹²⁹ FLG I No. 120/2002, in the version of FLG I No. 21/2015.

¹³⁰ Volkshilfe Österreich, *Hilfe für MigrantInnen und AsylwerberInnen*, available at www.volkshilfe.at/fluechtlingshilfe?referer=%2Fintegration (accessed on 21 September 2015).

In Austria, migration and development are mostly treated as two distinct policy areas with little overlap. One reason for this lies in the fact that the majority of migrants in Austria come from EU countries and countries of the European Economic Area, whereas the Austrian official development assistance¹³¹ focuses on developing countries. In addition, the key regions and priority countries of the Austrian Development Cooperation do not mirror the current immigration situation in Austria.¹³² Moreover, the competences for the two areas migration and development are separated among various ministries and institutions (CoMiDe, n.d.). The Austrian Development Cooperation's goals are:

- Reduction of global poverty;
- Securing of peace and human security;
- Preservation of the environment in an international framework.¹³³

Many actors are involved in the Austrian official development assistance: The Federal Ministry for Europe, Integration and Foreign Affairs coordinates the Austrian development policies and plans the Austrian Development Cooperation. The Austrian Development Agency, the operational unit of the Austrian Development Cooperation, implements these programmes together with public institutions, international and non-governmental organizations as well as the private sector.¹³⁴ The Austrian Development Agency has recently increased its activities in the field of Migration and Development by funding more migration-related projects in the area of development communication and education.¹³⁵

In addition to the funds from the Austrian Development Cooperation, the Austrian Development Bank, various ministries, provinces and municipalities also contribute public funds to the national development assistance budget.¹³⁶

In recent years there have been several projects and initiatives by NGOs and Diaspora organizations seeking to strengthen the connection between migration and development on the political agenda in Austria.

Furthermore, IOM projects on assisted voluntary return and reintegration, which aim to support voluntary returnees to re-enter their local community, also might contribute to the development of the respective country by financing measures that support income-generating activities which enable returnees to live an independent life.

¹³¹ Austrian Official Development Assistance consists of payments of public funds to developing countries which fulfill certain criteria.

¹³² For details see Statistics Austria, 2015: 27.

¹³³ Austrian Development Agency, *Austrian Development Cooperation, Activities*, available at www.entwicklung.at/en/austrian-development-cooperation/activities/ (accessed on 21 September 2015).

¹³⁴ Austrian Development Agency, *Austrian Development Cooperation, Actors*, available at www.entwicklung.at/en/austrian-development-cooperation/actors/ (accessed on 21 September 2015).

¹³⁵ Vienna Institute for International Dialogue and Cooperation, *Michael Fanizadeh: Über Diaspora Engagement in Österreich*, available at www.vidc.org/index.php?id=1749&L=1&id=1749 (accessed on 21 September 2015).

¹³⁶ Austrian Development Agency, *Austrian Development Cooperation, Actors*, available at www.entwicklung.at/en/austrian-development-cooperation/actors/ (accessed on 21 September 2015).

4.4.5 *Fighting against Migrant Smuggling*

In Austria's legislation, various provisions can be identified that are directly or indirectly aimed at reducing irregular migration. These provisions are provided for in the following federal acts:

- Aliens Police Act in conjunction with the Schengen Borders Code and the Visa Code;
- Asylum Act;
- Settlement and Residence Act;
- Act Governing the Employment of Foreigners.

All these measures are limited by the principle of non-refoulement (Kratzmann/Reyhani, 2012: 27) (→for details see 4.3.2).

The *actus reus* of smuggling of migrants is regulated in Art. 114 Aliens Police Act. Smuggling of migrants is committed if anyone assists in the unlawful entry or transit of a third-country national into or through an EU Member State or neighbouring state of Austria with the intent to unjustly enrich him/herself or a third person through payment made to that end. An imprisonment of up to two years is foreseen. In the case of aggravating circumstances (e. g. repetition of the infringement, increased number of smuggled migrants, member of a criminal organization, etc.) the prison sentence can, dependent on the particular case, be extended to up to ten years (Art. 114 para 2 to 4 Aliens Police Act).

The Federal Ministry of the Interior, Aliens Police and Border Control Department (II/3) as well as the Criminal Intelligence Service as part of the Federal Ministry of the Interior are responsible for all measures and actions taken against irregular migration. Austria relies on cooperation with the neighbouring countries as well as with the countries of origin and transit for counter-measures.

The abolition of border controls on 21 December 2007 in the course of the extension of the Schengen area saw the reinforcement of bilateral cooperation with neighbouring countries, particularly the Czech Republic, Hungary and Slovakia, which is still being intensified. Regional cooperation has also occurred multilaterally, such as through the Europol projects EMPACT (European Multidisciplinary Platform against Criminal Threats) and FIMATHU (Facilitated Illegal Migration Affecting Austria and Hungary), which includes Austria, Bosnia and Herzegovina, Bulgaria, Czech Republic, Croatia, Germany, Poland, Romania, Serbia, Slovenia and Switzerland. Furthermore, in January 2013, two special investigation teams 'Schlepperei Nord', part of the Lower Austria Regional Directorate in Traiskirchen, and 'Schlepperei Süd', part of the Burgenland Regional Directorate in Eisenstadt were created to sustainably eliminate human smuggling networks through joint international management of large-scale investigations (Criminal Intelligence Service Austria, 2015: 22–23).

According to the annual report on organized smuggling of migrants by the Criminal Intelligence Service, in 2014, a total of 34,070 persons were intercepted in connection with smuggling or irregular immigration which represents an increase of about 24 per cent compared to 2013. Austrian police found 511 third-country national smugglers, 12,791 irregular entrants/residents and 20,768 smuggled third-country nationals. In comparison to 2013 only the number of persons having illegally entered or stayed has decreased. The leading nationalities among the smuggled persons were from

the Syrian Arab Republic (6,510), Afghanistan (4,069), Kosovo/UNSC 1244 (1,429), Iraq (925), and the Russian Federation (897). People detected entering into/staying in Austria irregularly were to a large extent nationals from the Syrian Arab Republic (2,539), Eritrea (1,732), Nigeria (726), India (720), and Somalia (598) (Criminal Intelligence Service Austria, 2015: 20–21).

4.4.6 Human Trafficking

In Austria's national legislation, Art. 104a Criminal Code¹³⁷ regulates the crime of human trafficking. It was amended in August 2013 to transpose the Trafficking Directive.¹³⁸ Art. 104a defines trafficking as the recruitment, harbouring or other forms of reception, transportation, offering or passing on to others, while employing unfair practices, and with the intention of exploiting the person. The sentence foreseen for the basic offence in Art. 104a is six months to five years. An extended sentence of one to ten years applies in cases such as acts in the framework of a criminal organization, or against minors (Art. 104a para 4 and 5 Criminal Code). In addition to Art. 104a Criminal Code, Art. 217 Criminal Code on cross-border trafficking in prostitution is applied in criminal proceedings related to trafficking. Further provisions that sanction acts related to human trafficking are:

- Slavery (Art. 104 Criminal Code);
- Procurement (Art. 216 Criminal Code);
- Exploitation of a foreigner (Art. 116 Aliens Police Act);
- Employment of irregular foreign nationals (Art. 28c para 2 subpara 2 of the Act Governing the Employment of Foreigners).

→ For further information see Reyhani, 2014: 11–12.

Austria is affected by trafficking in human beings as a transit and destination country due to its central location in Europe. The main forms of trafficking are sexual exploitation and labour exploitation, including forced begging and domestic servitude.¹³⁹ The Austrian approach comprises national coordination, prevention, the protection of trafficked persons, prosecution and international cooperation. In addition to ratifying all relevant international treaties, Austria established the **Task Force on Combating Human Trafficking**¹⁴⁰ in 2004 under the chairmanship of the Federal Ministry for Europe, Integration and Foreign Affairs. The Task Force comprises representatives of all relevant ministries and government agencies, the Austrian provinces and invited NGOs and research institutions. Its tasks encompass the coordination of Austria's counter-trafficking activities, the provision of information on relevant projects, the early recognition of trafficking trends and the strengthening of cooperation between all relevant actors. Furthermore, in April 2015 the Austrian

¹³⁷ FLG No. 60/1974, in the version of FLG I No. 46/2013.

¹³⁸ Directive 2011/36/EU of the European Parliament and of the Council of 5 April 2011 on preventing and combating trafficking in human beings and protecting its victims, and replacing Council Framework Decision 2002/629/JHA.

¹³⁹ European Commission, *Together Against Trafficking in Human Beings: Austria*, available at https://ec.europa.eu/anti-trafficking/content/nip/austria_en (accessed on 24 September 2015).

¹⁴⁰ Federal Ministry of the Interior, *Task Force on Combating Human Trafficking*, available at www.bmeia.gv.at/fileadmin/ZZZ_Medien_alt/bmeia/media/2-Aussenpolitik_Zentrale/Menschenrechte/Folder_Task_Force_Menschenhandel_engl_V20091006_FINAL.pdf (accessed on 24 September 2015).

government adopted the fourth **National Action Plan (2015–2017)** on Combating Human Trafficking which includes chapters on national and international coordination and cooperation, prevention, victim protection, criminal prosecution, monitoring and evaluation.¹⁴¹

On the operational level, the **Criminal Intelligence Service** as part of the Federal Ministry of the Interior cooperates within a comprehensive network involving all relevant national authorities to investigate cases of human trafficking. Since 2010 it has been operating a human trafficking-hotline where information and hints about trafficking in human beings can be given confidentially around the clock. On the international level, the Criminal Intelligence Service uses bilateral and multilateral contacts and networks to fight cross-border crime.¹⁴² Special actions of the Federal Ministry of the Interior include awareness-raising measures for police and border guards as well as media representatives, training and courses for police students, advanced education for police, immigration and asylum officers and multilingual information campaigns. These trainings also include awareness-raising concerning the identification of victims of trafficking in human beings in detention and in Initial Reception Centres as well as the issue of child trafficking. The Criminal Intelligence Service is currently participating in a project headed by IOM Country Office for Austria that provides training sessions to Austrian asylum officials, legal counsellors and counsellors in reception centres on how to identify potential victims of trafficking.

The Federal Ministry of the Interior also implements and participates in international projects focussing on the fight against trafficking in human beings. These projects deal, for instance, with migration and development in the Republic of Moldova, assisted voluntary return, the prevention of child trafficking and forced begging as well as the installation of a pan-European monitoring system on trafficking in human beings. On the international level, Austria has participated in bilateral consultations and exchange of best practices to prevent and fight trafficking in human beings with EU Member States, especially Bulgaria and Romania, as well as with European Neighbourhood Policy states, especially Belarus and the Republic of Moldova (Federal Ministry for Europe, Integration and Foreign Affairs, 2013: 6–7).

Most of the actors involved in the fight against trafficking in human beings are located in Vienna. The NGO **LEFÖ-IBF–Intervention Center for Trafficked Women** is a recognized support centre for migrant women affected by trafficking.¹⁴³

Since December 2013, direct assistance is also available for trafficked men. The **Men's Health Center** is currently implementing a pilot project funded by the Federal Ministry of Labour, Social Affairs and Consumer Protection to counsel trafficked men and provide material assistance. The available support measures include emergency shelter, psychological intervention, social work and psycho-social legal support in cooperation with LEFÖ-IBF.¹⁴⁴

¹⁴¹ Federal Ministry for Europe, Integration and Foreign Affairs, *Combating Trafficking in Human Beings*, available at www.bmeia.gv.at/en/european-foreign-policy/human-rights/priorities-of-austrian-human-rights-policy/combating-trafficking-in-human-beings/ (accessed on 24 September 2015).

¹⁴² Criminal Intelligence Service Austria, *Meldestelle Menschenhandel*, available at www.bmi.gv.at/cms/BK/meldestellen/menschenhandel/start.aspx (accessed on 24 September 2015).

¹⁴³ LEFÖ, www.lefoe.at/index.php/News_en.html (accessed on 24 September 2015).

¹⁴⁴ Men's Health Center, *Unterstützung für Männer, die von Menschenhandel betroffen sind*, available at www.men-center.at/typo2013/typo3/via.html (accessed on 24 September 2015).

In the case of child trafficking, the respective youth welfare agency in the province where the minor resides is responsible for ensuring his/her welfare. However, Vienna is the only province that has a specialized centre for assisting trafficked children. The **‘Drehscheibe’** – a youth welfare institution of the Vienna city administration – is a crisis centre for trafficked children and unaccompanied minors. The aim of the crisis centre is not only to take care of these children but also to find long-term solutions in their countries of origin. The ‘Drehscheibe’ offers training courses for social workers and psychologists from various countries of origin and supports the construction of crisis centres in these countries (Bliem, n.d.).

Other service providers that assist trafficked persons include the NGO **Herzwerk**,¹⁴⁵ which assists women and men working in prostitution; the NGO **EXIT**,¹⁴⁶ which combats human trafficking from Africa; **Caritas**¹⁴⁷ in the province of Carinthia; the NGO **Footprint**,¹⁴⁸ which provides educational opportunities and legal assistance; and the faith-based organization **SOLWODI**,¹⁴⁹ which provides shelter and assistance to women who wish to stop working in prostitution. Reintegration assistance for trafficked persons who wish to return to their countries of origin is provided by the **International Organization for Migration**.¹⁵⁰

¹⁴⁵ Herzwerk, <http://herzwerk-wien.com/en/> (accessed on 24 September 2015).

¹⁴⁶ EXIT, www.ngoexit.org/ (accessed on 24 September 2015).

¹⁴⁷ Caritas, *Talitha - Beratungsstelle für SexarbeiterInnen und Opfer von Menschenhandel*, available at www.caritas-kaernten.at/hilfe-einrichtungen/nothilfe/menschenhandel/ (accessed on 24 September 2015).

¹⁴⁸ Footprint, www.footprint.or.at/ (accessed on 24 September 2015).

¹⁴⁹ SOLWODI Österreich, www.solwodi.at/ (accessed on 24 September 2015).

¹⁵⁰ International Organization for Migration (IOM), Country Office for Austria, *CARE: Coordinated Approach for the Reintegration of Victims of Trafficking*, available at www.iomvienna.at/en/care-coordinated-approach-reintegration-victims-trafficking-0 (accessed on 25 September 2015).

5. SUMMARY

The Austrian migration and asylum policy mainly lies within the responsibility of the Federal State as compared to the provinces, in particular of the Federal Ministry of the Interior, the Federal Ministry for Europe, Integration and Foreign Affairs and the Federal Ministry of Labour, Social Affairs and Consumer Protection. However, the provinces are mainly responsible for social aid also with respect to migrants and refugees. Accordingly, the legal situation with respect to public aid varies between the provinces and is rather complex. However, discrepancies in the field of social aid have been reduced to some extent by agreements between the provinces and the Federal State. In any case, the Austrian migration system involves a large variety of actors, including ministries, other authorities, legislation, courts, NGOs, intergovernmental organizations and migrants themselves.

Immigration has constituted a major component of Austria's population growth in the last decades. Three major events in the modern Austrian migration history were the influx of Hungarians after the uprising in 1956, the influx of Czechoslovakians in 1968 and the war in former Yugoslavia in the 1990s. Austria has also been influenced by the immigration of so called "guest workers" since the 1960s. Nowadays, Austria tries to attract qualified workers through the so called Red-White-Red-Card. An increasing focus is given to the integration of immigrants in Austria. For example, basic German language skills must be acquired in order to obtain certain residence titles. Further, third-country nationals with a Settlement Permit in general have to fulfill the so called Integration Agreement.

The main legal documents in the field of migration are the Asylum Act, the Federal Police Act, the Settlement and Residence Act and the Act Governing the Employment of Foreigners, the interplay of which is often quite complex. The Austrian migration law has been changed very often, which also leads to additional complexity. Many legal documents are determined by legal acts of the European Union, which again renders the legal situation more complicated. The variety of residence permits in the Austrian migration law is particularly difficult to oversee.

So far, asylum applications in general may only be lodged in the territory of Austria. On the contrary, applications for residence titles usually have to be lodged outside of Austria at the respective representation authority. Generally speaking, both a valid travel document (passport) and a valid visa are required for entering the Austrian territory. The Austrian Settlement and Residence Act mainly distinguishes between temporary residence and long-term settlement. For each year, the Federal Government issues a Settlement Regulation determining quotas for certain residence titles and work permits.

A main change in the Austrian legal system was the establishment of administrative courts in 2014. Now any administrative decision may be appealed to an independent administrative court with full jurisdiction. These administrative courts are supposed to be independent tribunals within the meaning of Article 6 ECHR. Appeals to the Constitutional Court and to the Administrative High Court against decisions of the administrative courts are possible.

Main drivers of the Austrian migration policy are legal developments at the European Union level and the jurisprudence of the European Court of Human Rights and the European Court of

Justice. Austria has been confronted with a comparatively high number of asylum-seekers in recent years. Accordingly, migration is a very sensitive and current topic in Austria. A recent major event is the sudden influx of a great number of migrants in the second half of 2015. Said influx has been met with considerable efforts and assistance also from civil society. At the moment, a legislative proposal from the Federal Ministry of the Interior intends to initially grant refugees only a right to stay limited to three years. Further, the legislative proposal intends to tighten provisions on family reunification.

ANNEX

A.1 List of translations and abbreviations

English term	English abbreviation	German term	German abbreviation
(forced) return	–	(zwangsweise) Rückführung	–
(written) decision	–	(schriftlicher) Bescheid	–
Act Amending the Aliens Act Law 2009	–	Fremdenrechtsänderungsgesetz 2009	–
Act Amending the Aliens Act Law 2011	–	Fremdenrechtsänderungsgesetz 2011	–
Act Amending the Aliens Act Law 2015	–	Fremdenrechtsänderungsgesetz 2015	–
Act Amending the Aliens Authorities Restructuring Act	–	FNG-Anpassungsgesetz	–
Act Governing the Employment of Foreigners	–	Ausländerbeschäftigungsgesetz	AuslBG
Administrative High Court	–	Verwaltungsgerichtshof	VwGH
administrative offence	–	Verwaltungsübertretung	–
admission procedure	–	Zulassungsverfahren	–
Advisory Board on Integration	–	Integrationsbeirat	–
airport transit visa	–	Visum für den Flughafentransit	–
alien	–	Fremder	–
Aliens Act 1997	–	Fremdengesetz 1997	FrG
aliens law	–	Fremdenrecht	–
Aliens Law Package 2005	ALP 2005	Fremdenrechtspaket 2005	–
Aliens Law Package 2011	–	Fremdenrechtspaket 2011	–
Aliens Police	–	Fremdenpolizei	–
Aliens Police Act	–	Fremdenpolizeigesetz 2005	FPG
apprenticeship	–	Lehre	–
Asylum Act	–	Asylgesetz 2005	AsylG
Austrian Chamber of Agriculture	–	Landwirtschaftskammer Österreich	LK
Austrian Development Agency	–	Agentur der Österreichischen Entwicklungszusammenarbeit	–
Austrian Development Bank	–	Österreichische Entwicklungsbank	–

English term	English abbreviation	German term	German abbreviation
Austrian Development Cooperation	–	Österreichische Entwicklungszusammenarbeit	–
Austrian Economic Chamber	–	Wirtschaftskammer Österreich	WKÖ
Austrian Freedom Party	–	Freiheitliche Partei Österreich	FPÖ
Austrian Green Party	–	Die Grünen	–
Austrian Integration Fund	–	Österreichischer Integrationsfonds	ÖIF
Austrian Parliament	–	Österreichisches Parlament	–
Austrian People's Party	–	Österreichische Volkspartei	ÖVP
Austrian Social Partnership	–	Österreichische Sozialpartnerschaft	–
Austrian Trade Union Federation	–	Österreichischer Gewerkschaftsbund	ÖGB
Basic Welfare Support Agreement	–	Grundversorgungsvereinbarung	GVV
Border Control Act	–	Grenzkontrollgesetz	–
branch office	–	Außenstelle	–
Card for Tolerated Stay	–	Karte für Geduldete	–
Chamber of Labour	–	Arbeiterkammer	–
Citizenship Act	–	Staatsbürgerschaftsgesetz	StbG
complaint	–	Beschwerde	–
confirmation of free movement	–	Freizügigkeitsbestätigung	–
Constitutional Court	–	Verfassungsgerichtshof	VfGH
Convention Passport	–	Konventionsreisepass	–
Criminal Code	–	Strafgesetzbuch	StGB
Criminal Intelligence Service	–	Bundeskriminalamt	–
de facto protection against deportation	–	Faktischer Abschiebeschutz	–
departure	–	Ausreise	–
detention pending removal	–	Schubhaft	–
district administrative authority	–	Bezirksverwaltungsbehörde	–
district courts	–	Bezirksgerichte	–
EU Blue Card	–	Blaue Karte EU	–
EU Member State	–	EU-Mitgliedstaat	–
European Commission	EC	Europäische Kommission	EK

English term	English abbreviation	German term	German abbreviation
European Convention on Human Rights	ECHR	Europäische Menschenrechtskonvention	EMRK
European Court of Human Rights	ECtHR	Europäischer Gerichtshof für Menschenrechte	EGMR
European Free Trade Association	EFTA	Europäische Freihandelsassoziation	EFTA
European Migration Network	EMN	Europäisches Migrationsnetzwerk	EMN
European Union	EU	Europäische Union	EU
European Union Agency for Fundamental Rights	FRA	Agentur der Europäischen Union für Grundrechte	–
exclusion order	–	Aufenthaltsverbot	–
exemption certificate	–	Befreiungsschein	–
Expert Council for Integration	–	Expertenrat für Integration	–
Expulsion	–	Ausweisung	–
Federal Administrative Court	–	Bundesverwaltungsgericht	BVwG
Federal Asylum Office	–	Bundesasylamt	BAA
Federal Basic Welfare Support Act	–	Grundversorgungsgesetz Bund	GVG-B
Federal Chancellery	–	Bundeskanzleramt	BKA
Federal Chancellor	–	Bundeskanzler	–
Federal Constitutional Act	–	Bundesverfassungsgesetz	B-VG
Federal Council	–	Bundesrat	–
Federal Fiscal Court	–	Bundesfinanzgericht	BFG
Federal Government	–	Bundesregierung	BReg
Federal Law Gazette	FLG	Bundesgesetzblatt	BGBI.
Federal Ministry for Europe, Integration and Foreign Affairs	–	Bundesministerium für Europa, Integration und Äußeres	BMEIA
Federal Ministry Law	–	Bundesministeriengesetz	BMG
Federal Ministry of Education and Women's Affairs	–	Bundesministerium für Bildung und Frauen	
Federal Ministry of Labour, Social Affairs and Consumer Protection	–	Bundesministerium für Arbeit, Soziales und Konsumentenschutz	BMASK
Federal Ministry of the Interior	–	Bundesministerium für Inneres	BM.I

English term	English abbreviation	German term	German abbreviation
Federal Ministry of the Interior, Aliens Police and Border Control Department (II/3)	–	BMI, Abteilung II/3, Fremdenpolizei und Grenzkontrollwesen	–
Federal Office for Immigration and Asylum	–	Bundesamt für Fremdenwesen und Asyl	BFA
Federal Office for Immigration and Asylum Procedures Act	–	BFA-Verfahrensgesetz	BFA-VG
Federal President	–	Bundespräsident	–
federal reception facility	–	Betreuungseinrichtung des Bundes	–
Federal State (as compared to the provinces)	–	Bund	–
forcible return	–	Zurückschiebung	–
foreigner	–	Ausländer/Fremder	–
General Administrative Procedures Act	–	Allgemeines Verwaltungsverfahrensgesetz	AVG
General Social Insurance Act	–	Allgemeines Sozialversicherungsgesetz	ASVG
governor of the province	–	Landeshauptmann	LH
higher regional court	–	Oberlandesgericht	–
Independent Federal Asylum Review Senate	–	Unabhängiger Bundesasylsenat	–
Initial Reception Centre	–	Erstaufnahmestelle	EAST
Integration Agreement	–	Integrationsvereinbarung	–
International Centre for Migration Policy Development	ICMPD	International Centre for Migration Policy Development	ICMPD
International Committee of the Red Cross	ICRC	Internationales Komitee des Roten Kreuzes	IKRK
International Organization for Migration	IOM	Internationale Organisation für Migration	IOM

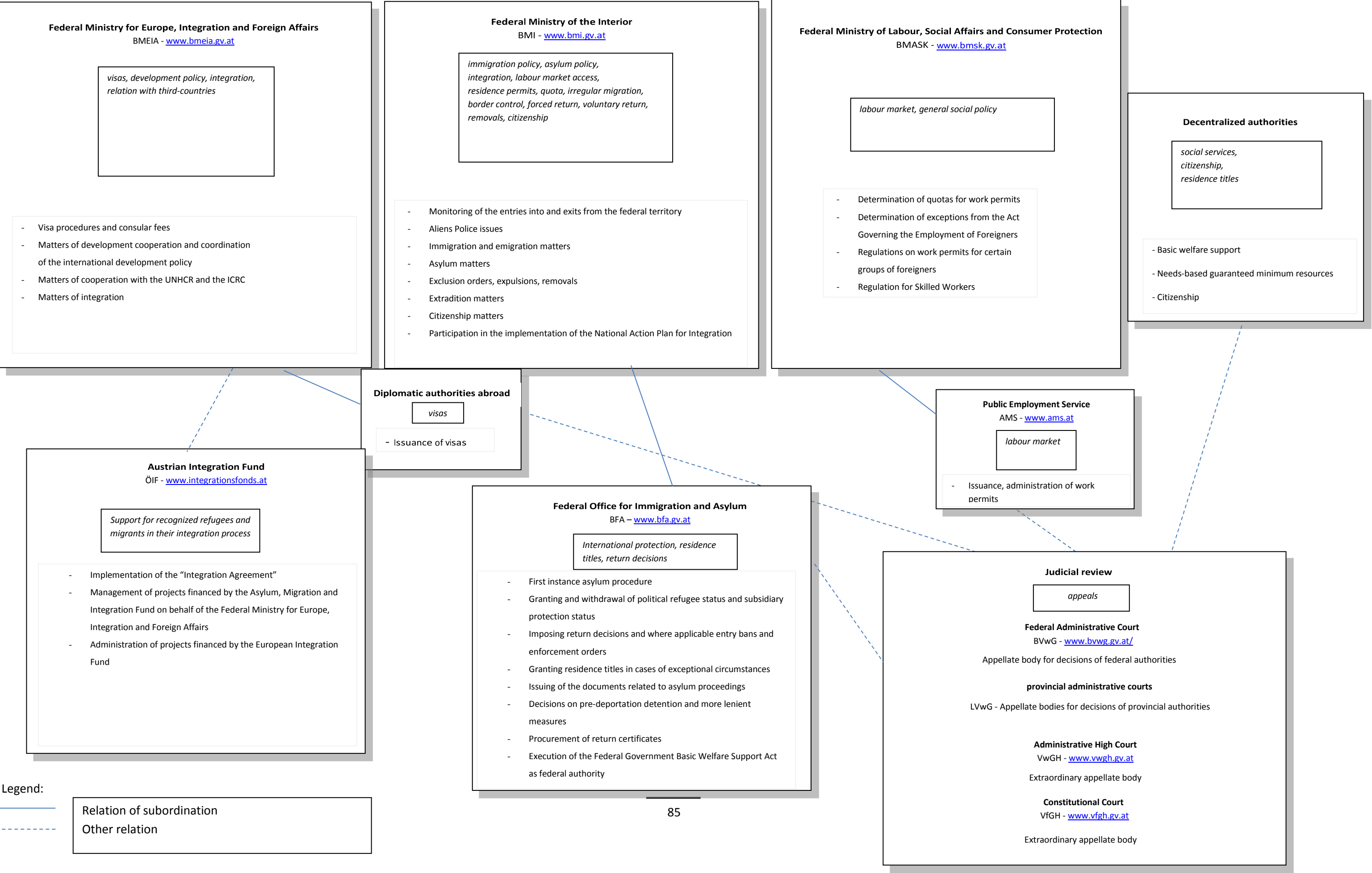
English term	English abbreviation	German term	German abbreviation
key worker	–	Schlüsselkraft	–
Law on Schooling Obligation	–	Schulpflichtgesetz	–
LEFÖ (Information, Education and Support for Migrant Women)	LEFÖ	LEFÖ (Beratung, Bildung und Begleitung für Migrantinnen)	LEFÖ
LEFÖ-IBF (Intervention Center for Trafficked Women)	LEFÖ-IBF	LEFÖ-IBF (Interventionsstelle für Betroffene von Frauenhandel)	LEFÖ-IBF
legal remedy	–	Rechtsmittel	–
lenient measure	–	gelinderes Mittel	–
long stay visa	–	Aufenthaltsvisum	–
Media Service Point New Austrians	–	Medien-Servicestelle Neue Österreicher/innen	MSNÖ
Member State	MS	Mitgliedstaat	–
Migration Council for Austria	–	Migrationsrat für Österreich	–
National Contact Point	NCP	Nationaler Kontaktpunkt	NKP
National Council	–	Nationalrat	–
NEOS–The New Austria	NEOS	NEOS–Das Neue Österreich	NEOS
non-governmental organization	NGO	Nichtregierungsorganisation	NRO
order to bring out of the country	–	Anordnung zur Außerlandesbringung	–
Permanent Residence–EU	–	Daueraufenthalt–EU	–
police administration(s) of the provinces	–	Landespolizeidirektion(en)	LPD
posted worker	–	Betriebsentsandter	–
privileged third-country nationals	–	begünstigte Drittstaatsangehörige	–
Proceedings of Administrative Courts Act	–	Verwaltungsgerichtsverfahrensgesetz	VwGVG
province	–	Bundesland	–
provincial administrative courts	–	Landesverwaltungsgerichte	LVwG
provincial government	–	Landesregierung	–

English term	English abbreviation	German term	German abbreviation
provincial parliament	–	Landtag	–
Public Employment Service Austria	–	Arbeitsmarktservice Österreich	AMS
public peace and/or order	–	Öffentliche Sicherheit und/oder Ordnung	–
Red-White-Red Card (Plus) - <i>self-employed key workers</i>	RWR Card	Rot-Weiß-Rot-Karte (plus) - <i>selbständige Schlüsselkräfte</i>	–
regional courts	–	Landesgerichte	–
Regional Directorate	–	Regionaldirektion	–
Registration Act	–	Meldegesetz	–
Regulation on the Implementation of the Aliens Police Act	–	Fremdenpolizeigesetz-Durchführungsverordnung	–
Regulation on the Implementation of the Settlement and Residence Act	–	Niederlassungs- und Aufenthaltsgesetz-Durchführungsverordnung	–
Regulation on the Integration Agreement	–	Integrationsvereinbarungs-Verordnung	–
rejection at the border	–	Zurückweisung	–
removal	–	Abschiebung	–
representation authority	–	Vertretungsbehörde	–
Residence Act	–	Aufenthaltsgesetz	–
residence permit (plus)	–	Aufenthaltsberechtigung (plus)	–
Residence Permit Card	–	Aufenthaltsberechtigungskarte	–
Residence Permit for Individual Protection	–	Aufenthaltsberechtigung besonderer Schutz	–
residence title	–	Aufenthaltstitel	–
residence title for exceptional circumstances	–	Aufenthaltstitel aus berücksichtigungswürdigen Gründen	–
return decision	–	Rückkehrentscheidung	–
Road Traffic Regulation	–	Straßenverkehrsordnung	–
rotational worker	–	Rotationsarbeitskraft	–
Schengen Borders Code	–	Schengener Grenzkodex	–

English term	English abbreviation	German term	German abbreviation
self-employed person	–	Selbständiger	
settlement	–	Niederlassung	–
Settlement and Residence Act	–	Niederlassungs- und Aufenthaltsgesetz	NAG
Settlement Permit	–	Niederlassungsbewilligung	–
Settlement Permit– Dependant	–	Niederlassungsbewilligung– Angehöriger	–
Settlement Permit– Gainful Employment Excepted	–	Niederlassungsbewilligung– ausgenommen Erwerbstätigkeit	–
Settlement Regulation	–	Niederlassungsverordnung	NLV
shortage occupations	–	Mangelberufe	–
short-stay visa	–	Visum für den kurzfristigen Aufenthalt	–
skilled workers	–	Fachkräfte	–
smuggling of migrants	–	Schlepperei	–
Social Democratic Party of Austria	–	Sozialdemokratische Partei Österreichs	SPÖ
social partners	–	Sozialpartner	–
Supreme Court	–	Oberster Gerichtshof	–
Temporary Residence Permit	–	Aufenthaltsbewilligung	–
termination of residence	–	Aufenthaltsbeendigung	–
third-country national	–	Drittstaatsangehöriger	–
tolerated stay	–	Duldung	–
Trade Social Insurance Act	–	Gewerbliches Sozialversicherungsgesetz	–
Trade, Commerce and Industry Regulation Act	–	Gewerbeordnung	GewO
trafficked person	–	Betroffene/r von Menschenhandel	–
transit	–	Durchbeförderung	–
Transportation of Dangerous Goods Act	–	Gefahrgutbeförderungsgesetz	–
transposition of a directive into national legislation	–	Umsetzung einer Richtlinie in nationales Recht	–
unaccompanied minors	UAM	unbegleitete Minderjährige	–
United Nations High Commissioner for Refugees	UNHCR	Hoher Flüchtlingskommissar der Vereinten Nationen	UNHCR
University Act	–	Universitätsgesetz	–

English term	English abbreviation	German term	German abbreviation
Vice-Chancellor	–	Vizekanzler	–
Vocational Training Act	–	Berufsausbildungsgesetz	–
weighing of interests	–	Interessenabwägung	–
work permit	–	Beschäftigungsbewilligung	–

A.2 Institutional Chart



A.3 List of organizations mentioned in the study

I. GOVERNMENTAL INSTITUTIONS AND ORGANIZATIONS

- **Administrative High Court – Verwaltungsgerichtshof**
Judenplatz 11, 1010 Vienna
Phone: +43 (0)1 531 11-0
Website : www.vwgh.gv.at
- **Austrian Development Agency – Agentur der Österreichischen Entwicklungszusammenarbeit**
Zelinkagasse 2, 1010 Vienna
Phone : + 43 (0)1 903 99-0
E-Mail: office@ada.gv.at
Website: www.entwicklung.at/en
- **Austrian Integration Fund – Österreichischer Integrationsfonds (ÖIF)**
Schlachthausgasse 30, 1030 Vienna
Phone: +43 (0)1 710 12 03
E-Mail: wien@integrationsfonds.at
Website: www.integrationsfonds.at/en/home
- **Austrian Parliament – Österreichisches Parlament**
Dr. Karl Renner-Ring 3, 1017 Vienna
Phone: +43 (0)1 401 10-0
E-Mail: services@parlament.gv.at
Website: www.parlament.gv.at/ENGL/PERK/PARL/
- **Constitutional Court – Verfassungsgerichtshof**
Freyung 8, 1010 Vienna
Phone: +43 (0)1 531 22-0
E-Mail: vfgh@vfgh.gv.at
Website: www.vfgh.gv.at/cms/vfgh-site/english/index.html
- **Criminal Intelligence Service Austria – Bundeskriminalamt Österreich**
Josef-Holaubek Platz 1, 1090 Vienna
Phone: +43 (0)1 248 36
Website: www.bmi.gv.at/cms/bk/_news/start.aspx
- **Federal Administrative Court – Bundesverwaltungsgericht**
Erdbergstraße 192-196, 1030 Vienna
Phone: +43 (0)1 601 49-0
E-Mail: einlaufstelle@bvwg.gv.at
Website: www.bvwg.gv.at
- **Federal Chancellery – Bundeskanzleramt (BKA)**
Ballhausplatz 2, 1010 Vienna
Phone: +43 (0)1 531 15-0
Website: www.bundestkanzleramt.at

- **Federal Fiscal Court – Bundesfinanzgericht**

Johannesgasse 5, 1010 Vienna

Phone: +43 (0)810 001 228

Website: www.bmf.gv.at/ministerium/aufgaben-organisation/bundesfinanzgericht.html

- **Federal Ministry for Europe, Integration and Foreign Affairs – Bundesministerium für Europa, Integration und Äußeres (BMEIA)**

Minoritenplatz 8, 1010 Vienna

Phone: +43 (0) 50 11 50-0

Website: www.bmeia.gv.at

- **Federal Office for Immigration and Asylum – Bundesamt für Fremdenwesen und Asyl (BFA) Direktion**

Landstraßer Hauptstraße 169, 1030 Vienna

Phone: +43 (0)1 531 26-5001

E-Mail: BFA-Einlaufstelle@bmi.gv.at

Website: www.bfa.gv.at

- Initial Reception Centres – Erstaufnahmezentren:**

- **Initial Reception Centre Airport – Erstaufnahmestelle Flughafen**

- Nordstraße, Objekt 800, 2320 Schwechat

- Phone: +43 (0)1 701 50-575

- E-Mail: BFA-EAST-Flughafen@bmi.gv.at

- **Initial Reception Centre East – Erstaufnahmestelle Ost**

- Otto Glöckelstraße 24, Haus 17, 2514 Traiskirchen

- Phone: +43 (0) 2252 5053

- E-Mail: BFA-EAST-Ost-Einlaufstelle@bmi.gv.at

- **Initial Reception Centre West – Erstaufnahmestelle West**

- Thalham 80, 4880 St. Georgen im Attergau

- Phone: +43 (0) 7667 21741

- E-Mail: BFA-EAST-West-Einlaufstelle@bmi.gv.at

- Regional Directorates – Regionaldirektionen:**

- For addresses see www.bfa.gv.at/kontakt/start.aspx

- **Federal Ministry of Education and Women's Affairs – Bundesministerium für Bildung und Frauen (BMBF)**

Minoritenplatz 5, 1014 Vienna

Phone: +43 (0)1 531 20-0

E-Mail: ministerium@bmbf.gv.at

Website: www.bmbf.gv.at/enfr/index.html

- **Federal Ministry of Labour, Social Affairs and Consumer Protection – Bundesministerium für Arbeit, Soziales und Konsumentenschutz (BMAK)**

Stubenring 1, 1010 Vienna

Phone: +43 (0)1 711 00 – 0

E-Mail: post@sozialministerium.at

Website: www.sozialministerium.at/siteEN/

- **Federal Ministry of the Interior – Bundesministerium für Inneres (BM.I)**
Herrengasse 7, 1010 Vienna
Phone: +43 (0)1 531 26-0
E-Mail: post@bmi.gv.at
Website: www.bmi.gv.at
- **Police administrations of the provinces – Landespolizeidirektionen (LPD)**
For addresses see www.polizei.gv.at/alle/kontakt.aspx
For websites see www.polizei.gv.at/
- **Public Employment Service – Arbeitsmarktservice (AMS)**
Treustraße 35–43, 1200 Vienna
Phone: +43 (0)1 33178-0
E-Mail: ams.oesterreich@ams.at
Website: www.ams.at/english.html
- **Supreme Court – Oberster Gerichtshof**
Schmerlingplatz 11, 1011 Vienna
Phone: +43 (0)1 521 52 0
Website: www.ogh.gv.at/en
- **Task Force on Combating Human Trafficking – Task Force Menschenhandel**
Under the direction of the Federal Ministry for Europe, Integration and International Affairs –
Department IV/2
Phone: +43 (0) 501150-3879
E-Mail: abtiv2@bmeia.gv.at

II. INTERNATIONAL INSTITUTIONS

- **European Union Agency for Fundamental Rights (FRA)**
Schwarzenbergplatz 11, 1040 Vienna
Phone: +43 (0)1 580 30 – 0
E-Mail: information@fra.europa.eu
Website: <http://fra.europa.eu/en>
- **International Centre for Migration Policy Development (ICMPD)**
Gonzagagasse 1, 5th floor, 1010 Vienna
Phone: +43 (0)1 504 46 77 0
E-Mail: icmpd@icmpd.org
Website: www.icmpd.org
- **International Committee of the Red Cross (ICRC)**
19 Avenue de la paix, 1202 Geneva (CH)
Phone: +41 22 734 60 01
Website: www.icrc.org/
- **International Organization for Migration (IOM) Country Office for Austria**
Nibelungengasse 13/4, 1010 Vienna
Phone: +43 (0)1 585 33 22
E-Mail: iomvienna@iom.int
Website: <http://www.iomvienna.at/en>

- **International Organization for Migration (IOM) Regional Office for South-Eastern Europe, Eastern Europe and Central Asia**
Dampfschiffstraße 4/6th floor, 1030 Vienna
Phone: +43 (0)1 581 22 22
E-Mail: rovienna@iom.int
Website: www.iom.int/south-eastern-europe-eastern-europe-and-central-asia
- **National Contact Point Austria in the European Migration Network (EMN)**
E-Mail: ncpaustria@iom.int
Website: www.emn.at/en/
- **United Nations High Commissioner for Refugees (UNHCR) in Austria**
Postfach 550, 1400 Vienna
Phone: +43 (0)1 260 60 4048
Website: www.unhcr.at/english.html

III. NON-GOVERNMENTAL ORGANIZATIONS AND OTHER INSTITUTIONS

- **African Women's Organization in Vienna**
Schwarzspanierstraße 15/1/2, 1090 Vienna
Phone: +43 (0)1 925 1576
E-Mail: afrikanisc.frauenorganisation@chello.at
Website: www.african-women.org
- **Amber-Med**
Oberlaaer Straße 300 - 306, 1230 Vienna
Phone: +43 (0)1 589 00-847
E-Mail: amber-med@diakonie.at
Website: www.amber-med.at/
- **Asyl in Not**
Währinger Straße 59/2/1, 1090 Vienna
Phone: +43 (0)1 408 42 10
E-Mail: office@asyl-in-not.org
Website: www.asyl-in-not.org/php/portal.php
- **Asylkoordination Österreich**
Burggasse 81/7, 1070 Vienna
Phone: +43 (0)1 532 12 91
E-Mail: asylkoordination@asyl.at
Website: www.asyl.at/
- **Austrian Association for Human Rights – Verein Menschenrechte Österreich**
Alser Straße 20/21+22, 1090 Vienna
Phone: +43 (0)1 40 90 480
E-Mail: wien@verein-menschenrechte.at
Website: www.verein-menschenrechte.at/

- **Austrian Human Rights Institute – Österreichisches Institut für Menschenrechte**
Mönchsberg 2a, 5020 Salzburg
Phone: + 43 (0) 662 / 8044 – 3970
E-Mail: romana.sistani@sbg.ac.at
Website: www.uni-salzburg.at/oeim
- **Austrian Red Cross – Österreichisches Rotes Kreuz**
Wiedner Hauptstraße 32, 1041 Vienna
Phone: +43 (0)1 589 00-0
E-Mail: service@roteskreuz.at
Website: www.roteskreuz.at/
- **Caritas**
Albrechtskreithgasse 19–21, 1160 Vienna
Phone: +43 (0)1 488 31-0
E-Mail: office@caritas-austria.at
Website: www.caritas.at/
- **Counselling, Education and Support for Migrant Women – Intervention Center for Trafficked Women (LEFÖ-IBF) – Beratung, Bildung und Begleitung für Migrantinnen - Interventionsstelle für Betroffene von Frauenhandel (LEFÖ-IBF)**
Lederergasse 35/12–13, 1080 Vienna
Phone: +43 (0)1 796 92 98
E-Mail: ibf@lefoe.at
Website: www.lefoe.at/index.php/ibf.html
- **Diakonie Flüchtlingsdienst**
Steinergasse 3/12, 1170 Vienna
Phone: +43 (0)1 402 67 54
E-Mail: fluechtlingsdienst@diakonie.at
Website: <https://fluechtlingsdienst.diakonie.at/>
- **Drehscheibe**
Wehrgasse 26, 1050 Vienna
Phone: +43 (0)1 997 13 70
E-Mail: office@kinderdrehscheibe.at
Website: www.kinderdrehscheibe.at/
- **EXIT**
Floridusgasse 50, 1210 Vienna
Phone: +43 (0)1 895 08 75
E-Mail: office@ngoexit.org
Website: www.ngoexit.org/
- **FEM Süd Gesundheitszentrum**
at the Kaiser Franz Josef Spital
Kundratstraße 3, 1100 Vienna
Phone: +43 (0)1 601 91-5201
E-Mail: femsued.post@wienkav.at
Website: www.fem.at/FEM_Sued/femsued.htm

- **Footprint**
Ditscheinergasse 3/1, 1030 Vienna
Phone: +43 (0)1 920 85 86
E-Mail: office@footprint.or.at
Website: www.footprint.or.at/
- **Helping Hands**
Taubstummengasse 7–9, Erdgeschoss, 1040 Vienna
Phone: +43 (0)1 310 88 80 10
E-Mail: info@helpinghands.at
Website: www.helpinghands.at/
- **Herzwerk**
Beheimgasse 1, 1170 Vienna
E-Mail: herzwerk.office@gmail.com
Website: <http://herzwerk-wien.com/>
- **Integrationshaus**
Engerthstraße 163, 1020 Vienna
Phone: +43 (0)1 212 35 20
E-Mail: info@integrationshaus.at
Website: www.integrationshaus.at/
- **Ludwig Boltzmann Institute of Human Rights**
Freyung 6 (Schottenhof), 1. Hof, Stiege II, 1010 Vienna
Phone: +43 (0)1 4277 27420
E-Mail: bim.office@univie.ac.at
Website: <http://bim.lbg.ac.at/en>
- **Men's Health Center**
Kundratstraße 3, 1100 Vienna
Phone: +43 (0)1 601 91 - 5454
E-Mail: kfj.men@wienkav.at
Website: www.men-center.at/uebersicht.html
- **Network of Austrian Counselling Centres for Women and Girls – Netzwerk österreichischer Frauen- und Mädchenberatungsstellen**
Stumpergasse 41–43/II/R3, 1060 Vienna
Phone: +43 (0)1 595 37 60
E-Mail: netzwerk@netzwerk-frauenberatung.at
Website: www.wave-network.org/organizations/network-austrian-counseling-centres-women-and-girls
- **Orient Express – Beratungs-, Bildungs- und Kulturinitiative für Frauen**
Schönngasse 15–17 / Top 2, 1020 Vienna
Phone: +43 (0)1 728 97 25
E-Mail: office@orientexpress-wien.com
Website: www.orientexpress-wien.com/

- **Social Partners Austria – Sozialpartner Österreich**
 - **Austrian Chamber of Agriculture – Landwirtschaftskammer Österreich (LK)**
Schaufnergasse 6, 1010 Vienna
Phone: +43 (0)1 53 441 8520
E-Mail: office@lk-oe.at
Website: www.lko.at/
 - **Austrian Economic Chamber – Wirtschaftskammer Österreich (WKÖ)**
Wiedner Hauptstraße 63, 1045 Vienna
Phone: +43 (0)5 90 900
E-Mail: office@wko.at
Website: www.wko.at/Content.Node/wir/Austrian_Economic_Chambers_Home.html
 - **Austrian Trade Union Federation – Österreichischer Gewerkschaftsbund (ÖGB)**
Johann-Böhm-Platz 1, 1020 Vienna
Phone: +43 (0)1 534 44-39
E-Mail: oegb@oegb.at
Website: www.oegb.at/cms/S06/S06_11/english
 - **Chamber of Labour – Arbeiterkammer (AK)**
Prinz-Eugen-Straße 20-22, 1040 Vienna
Phone: +43 (0)1 501 65 0
E-Mail: akmailbox@akwien.at
Website: www.arbeiterkammer.at/The_Chamber_of_Labour.html
- **SOLWODI Österreich**
Seuttergasse 6, 1130 Vienna
Phone: +43 (0) 664 / 88632590
E-Mail: info@solwodi.at
Website : www.solwodi.at/
- **Statistics Austria – Statistik Österreich**
Guglgasse 13 , 1110 Vienna
Phone: +43 (0)1 711 28-0
E-Mail: info@statistik.gv.at
Website: www.statistik.at/web_en/statistics/index.html
- **stopFGM - Österreichische Plattform gegen weibliche Genitalverstümmelung**
Phone: +43 (0)1 401 10-3685
E-Mail: petra.bayr@parlament.gv.at
Website: www.stopfgm.net/
- **Verein Flüchtlingsprojekt Ute Bock**
Zohmannngasse 28, 1100 Vienna
Phone: +43 (0)1 929 24 24 – 24
E-Mail: info@fraubock.at
Website: www.fraubock.at/aktuelles/

- **Verein menschen.leben**

Theresiengasse 4/3, 2500 Baden

Phone: +43 (0) 2252 / 508 248

E-Mail: office@menschen-leben.at

Website: www.menschen-leben.at/

- **Volkshilfe Österreich**

Auerspergstraße 4, 1010 Vienna

Phone: +43 (0)1 402 62 09

E-Mail: office@volkshilfe.at

Website: www.volkshilfe.at/cms/cms.php

- **ZEBRA**

Granatengasse 4/3. Stock, 8020 Graz

Phone: +43 (0)316 83 56 30 – 0

E-Mail: office@zebra.or.at

Website: www.zebra.or.at/cms/cms.php

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2015e *Migration & Integration, Schwerpunkt: Jugend 2014/15*. ÖIF, Vienna. Available at www.integrationsfonds.at/fileadmin/content/AT/Downloads/Publikationen/migration_integration_Schwerpunkt_Jugend_2014_15.pdf (accessed on 21 September 2015).

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