



IOM International Organization for Migration



THE INTRA-EU MOBILITY OF THIRD-COUNTRY NATIONALS

Legislation and Statistics in Austria



Saskia Koppenberg
Adel-Naim Reyhani



BM.I



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.

THE INTRA-EU MOBILITY OF THIRD-COUNTRY NATIONALS – LEGISLATION AND STATISTICS IN AUSTRIA

Saskia Koppenberg, Adel-Naim Reyhani

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

Cover design: Mandelbaum Verlag

Print: Primerate

Editor: International Organization for Migration, Country Office Vienna
National Contact Point Austria in the European Migration Network

Nibelungengasse 13/4, 1010 Vienna

ncpaustria@iom.int

<http://www.emn.at/>

© December 2012, International Organization for Migration, Country Office Vienna

All rights reserved. No part of this publication may be reproduced, stored in a retrieval system, or transmitted in any form or by any means, electronic, mechanical, photocopying, recording, or otherwise, without prior written permission of the editor.

CONTENT

EUROPEAN MIGRATION NETWORK	6
EXECUTIVE SUMMARY	8
1. CONTEXT	10
2. LEGISLATIVE FRAMEWORK	13
2.1 Long-term residents	14
2.2 EU Blue Card holders	17
2.3 Posted workers	18
2.4 Researchers	19
2.5 Students	21
3. STATISTICS ON INTRA-EU MOBILITY TO AND FROM AUSTRIA	23
3.1 Statistics on residence titles	23
3.1.1 Long-term residents	23
3.1.2 EU Blue Card holders	24
3.1.3 Other groups	24
3.2 Statistics from the population register	24
3.2.1 Third-country nationals	25
3.2.2 EU/EFTA nationals	29
3.4 Comparing the intra-EU mobility of third-country nationals and EU/EFTA nationals	32
4. CONCLUSIONS	35
ANNEX	38
Methodology	38
Bibliography	39

LIST OF TABLES

Table 1: Number and kind (including purpose) of residence titles issued to third-country nationals who have acquired a long-term resident status in another Member State between 2007 and 2011	23
Table 2: Number of third-country nationals who moved to Austria between 2007 and 2011 by country of previous residence	25
Table 3: Number of third-country nationals who moved from Austria to other Member States and to all countries between 2007 and 2011	26
Table 4: Top ten Member States from which third-country nationals moved to Austria between 2007 and 2011	27
Table 5: Top ten Member States to which third-country nationals moved from Austria between 2007 and 2011	27
Table 6: Top ten nationalities of third-country nationals who moved from other Member States to Austria between 2007 and 2011	28
Table 7: Top ten nationalities of third-country nationals who moved from Austria to another Member State between 2007 and 2011	28
Table 8: Number of EU/EFTA nationals who moved to Austria between 2007 and 2011 by country of previous residence	29
Table 9: Number of EU/EFTA nationals who moved from Austria to other Member States and to all countries between 2007 and 2011	29
Table 10: Top ten Member States from which EU/EFTA nationals moved to Austria between 2007 and 2011	30
Table 11: Top ten Member States to which EU/EFTA nationals moved from Austria between 2007 and 2011	30
Table 12: Top ten nationalities of EU/EFTA nationals that moved from Member States to Austria between 2007 and 2011	31

Table 13: Top ten nationalities of EU/EFTA nationals that moved from Austria to Member States between 2007 and 2011	32
Table 14: Number of German and Turkish nationals who moved from Germany to Austria in 2011	33
Table 15: Population ² of German and Turkish nationals in Germany in 2011	33
Table 16: Number of German and Turkish nationals who moved from Austria to another Member State in 2011	34
Table 17: Population of German and Turkish nationals in Austria at the beginning of 2011	34

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 on a European level. Since 2008, Council Decision 2008/381/EC constitutes the legal basis of the EMN and National Contact Points (NCPs) were 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 Austria is located at 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 organisation. 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 theme-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 organisations, 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 or-

der 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 summarises 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 as well as the Glossary are available on the website of the EMN at www.emn.europa.eu.

EXECUTIVE SUMMARY

The immigration of third-country nationals from other Member States to Austria as such has not yet attracted the attention of migration research. It is, thus, the aim of this study to shed light on selected aspects of the subject by analysing EU and national provisions as well as available data.

In Austria, third-country nationals legally residing in other Member States¹ are not specifically addressed as a definite group by migration policy; rather, the Austrian legislative approach in this regard aims at transposing relevant and mandatory provisions of EU law.

A series of EU Directives and CJEU case law provide mobility rights to certain groups of third-country nationals. However, Member States retain discretion over important issues, such as access to the labour market, family reunification or quota regulations. The following groups of third-country nationals who currently enjoy mobility rights under EU Directives and respective CJEU case law are covered by this study: long-term residents, EU Blue Card holders, researchers, students, and posted workers. Special provisions in Austrian legislation on intra-EU mobility are, however, only foreseen for long-term residents – who, despite significant restrictions *inter alia* hampering their access to the labour market, enjoy the furthest-reaching mobility rights – and EU Blue Card holders.

In general, mobile third-country nationals who are holders of valid residence titles in other Member States may enter Austria without being subject to visa requirements and apply for a residence title within three months. They may, usually, also apply for a residence title at the respective Austrian representation authority in the ‘first Member State’. In the latter case, if their application is accepted, third-country nationals receive a national visa and may collect their residence title from the settlement and residence authority in Austria.

1 This term, when used in the context of third-country nationals covered by EU Directives, primarily refers to EU Member States; when used in the context of the Schengen acquis, it primarily applies to states that have fully implemented the acquis.

Relevant data on the mobility of third-country nationals within the EU is available to a limited extent. The statistics of the population register show that, between 2007 and 2011, 7,091 third-country nationals moved to Austria from another Member State². During the same time period, 5,793 third-country nationals left Austria for another Member State.³ Overall, a total of 195,845 third-country nationals moved to Austria, while 137,944 third-country nationals left Austria between 2007 and 2011.

Germany is by far the most important country from and to which third-country nationals moved between 2007 and 2011. 3,324 third-country nationals moved from Germany to Austria and 2,550 from Austria to Germany. This is an average of 45.45 per cent of all third-country nationals who moved to and from Austria within the Member States between 2007 and 2011.

Nationals from Serbia/Montenegro/Kosovo⁴ and Turkey represent the top two third-country nationality groups that moved to Austria from other Member States and vice versa between 2007 and 2011. Specifically, 901 nationals from Serbia/Montenegro/Kosovo and 722 nationals from Turkey moved to Austria from another Member State. Therewith, they constitute 12.71 per cent and 10.18 per cent, respectively, of all third-country nationals who moved to Austria from another Member State between 2007 and 2011. 689 nationals from Serbia/Montenegro/Kosovo and 606 nationals from Turkey moved from Austria to another Member State, which equals 11.89 per cent and 10.46 per cent, respectively, of all third-country nationals who left Austria but remained in the territory of the Member States between 2007 and 2011.

Furthermore, statistics from the Federal Ministry of the Interior on residence titles issued to long-term residents in other Member States are available. Only 59 residence titles were issued to this group in 2011, but the number has increased in recent years.

2 This term, when used in the context of statistical data from the population register, refers to EU Member States plus Norway, Liechtenstein, Iceland and Switzerland.

3 Please note that the data on immigration to and emigration from Austria used in this study does not include stateless persons or persons with unknown nationality.

4 In this study, nationals from Serbia, Montenegro and Kosovo are referred to as one group when it comes to statistics on intra-EU mobility. This is because the Central Register of Residents, on which the statistics are based, does not differentiate between these nationalities.

1. CONTEXT

The distinction between the mobility of European Union (EU) nationals and the immigration of third-country nationals is often perceived as reflecting two distinct perspectives on understanding migration in the EU context, namely ‘beneficial’ vs. ‘threatening’. While the securitisation of the immigration of third-country nationals to the EU remains in the focus of the debate, the right to free movement of EU nationals is usually considered as being beneficial for Member States – although this notion was contested in the context of EU enlargements⁵ (Boswell/Geddes 2012: 180). Strengthening the discourse on the intra-EU mobility of third-country nationals who have obtained a residence title in one of the Member States can contribute to reconciling this dichotomy.

The immigration of third-country nationals from other Member States to Austria as such has not yet attracted the attention of migration research. It is, thus, the aim of this study to shed light on the subject by outlining national provisions and available data. As, however, third-country nationals legally residing in other Member States are not specifically addressed as a definite group in Austria, this study will refer to EU Directives and relevant case law as the basis of Austrian legislation. According to the Federal Ministry of the Interior, the Austrian legislative approach aims at transposing relevant EU law and does not reflect a specific national strategy.⁶

The right to free movement for third-country nationals legally residing in the Member States is already enshrined in Art. 45 of the Charter of Fundamental Rights. The unrestricted right to free movement (and related

5 Austria has imposed restrictions on Bulgarian and Romanian citizens in the framework of the EU’s 2007 enlargement regarding their access to the Austrian labour market. These restrictions will be removed as of 1 January 2014 (Art. 32a of the Act Governing the Employment of Foreign Nationals, see also Schuhmacher/Peyrl/Neugschwendtner 2012: 292 et seq.)

6 Tamara Völker, Federal Ministry of the Interior, 19 November 2012.

rights⁷⁾ within the EU legal framework remain reserved for EU/EFTA nationals⁸ (Wiesbrock 2010: 465). The groups of third-country nationals covered by this study, who currently enjoy specific mobility rights under EU Directives and respective Court of Justice of the European Union (CJEU) case law, are: long-term residents, EU Blue Card holders, researchers, students, and posted worker; whereby, among these, the Directive on long-term residents foresees the farthest-reaching approximation to the rights provided to EU/EFTA nationals (Tewocht 2012).⁹

In Austria, only limited data on movements of third-country nationals between the Member States is available. Thus, the intra-EU mobility of third-country nationals to and from Austria cannot be explored in all its facets. This is also true regarding the mobility of EU/EFTA nationals.

Administrative registrations and de-registrations of residence recorded in the population register¹⁰ provide the most complete picture of intra-EU movements to and from Austria. The population register, which receives its data from the Central Register of Residents¹¹, follows the UN definitions for short-term (stay of 91 to 365 days) and long-term (stay longer than 365 days) migration and therefore captures those foreign nationals who stayed in Austria for at least 3 months.¹² The data includes influx and outflow, indicating nationality, age, sex, country of previous residence or country of destination and hence allows for a comparison of the mobility of third-country nationals and EU/EFTA nationals. The data from the population

7 It must be mentioned that 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 offers equal treatment for specific groups of third-country nationals on social security, pensions, working conditions, and access to social to public services.

8 This term, when used in the context of the right to freedom of movement, settlement and employment, primarily refers to EU/EFTA Member States with the exception of Bulgaria and Romania.

9 Other groups relevant for Austrian policy, such as (highly) qualified workers who may fall under the ‘Red-White-Red Card’ regime, are not covered by this study. Furthermore, mobility rights provided by Directive 2004/38/EC or CJEU case law on family members of Union citizens are not covered in this study.

10 Bevölkerungsstatistische Datenbank (POPREG).

11 Zentrales Melderegister (ZMR).

12 Registration and de-registration of residence is compulsory within 3 days after taking or leaving residence in Austria (Art. 2 Registration Act).

register, however, lacks information on the kind of residence title obtained and the purpose of stay.

Other statistics collected by the Federal Ministry of the Interior are only available as requested under Art. 25 of Council Directive 2003/109/EC concerning long-term residents. These provide the number and kind of residence titles issued to third-country nationals who have acquired long-term resident status in other Member States, irrespective of the length of stay. Similar provisions on the collection of data exist regarding EU Blue Card holders. According to Art. 22 of Council Directive 2009/50/EC, information shall be collected by national contact points in the context of decisions made by a Member State on EU Blue Card applications filed by EU Blue Card holders in another Member State. However, due to the fact that the Directive was only recently transposed, data is not yet available.

2. LEGISLATIVE FRAMEWORK

Before analysing EU and Austrian legislation in the following sections, general provisions relevant to the intra-EU mobility of third-country nationals, for a period not exceeding three months and based on a residence title issued by one of the Member States, are analysed.

Art. 21(1) of the Convention implementing the Schengen Agreement¹³ stipulates that third-country nationals who hold valid residence permits issued by one of the Member States may, on the basis of that permit and a valid travel document, move freely for up to three months in any six-month period within the territories of the other Member States, provided that the entry conditions referred to in Art. 5(1)(a), (c) and (e) of the Schengen Borders Code¹⁴ are met and the person concerned is not on the national list of alerts of the respective Member State. This provision of the Convention, although directly applicable in the Member States,¹⁵ has been transposed into national legislation: The Austrian Aliens Police Act states that the residence of third-country nationals is to be considered legal if they are holding a valid residence title of another Member State and if they are

13 See also Art. 19, 20 and 21(2a) of the Convention concerning uniform visas, visa-free entry, and long-term visas.

14 These are: that the third-country nationals possess a valid document or documents, as defined by the Executive Committee, authorising them to cross the border; that the third-country nationals produce, if necessary, documents justifying the purpose and conditions of the intended stay and that they have sufficient means of subsistence, both for the period of the intended stay and for the return to their country of origin or transit to a third State into which they are certain to be admitted, or are in a position to acquire such means lawfully; that the third-country nationals shall not be considered to be a threat to public policy, national security or the international relations of any of the Contracting Parties.

15 This was achieved by BGBl. III 90/1997, even before the transfer of the *acquis* into EU Law in the framework of the Treaty of Amsterdam amending the Treaty of the European Union; Moreover, Art. 21 of the Convention was amended by Regulation (EU) No 265/2010 and the text of Art. 21(1) was replaced (Art. 1(2) of this Regulation).

not engaged in irregular work^{16, 17} In general, initial applications for residence titles must be filed at the respective Austrian representation authority at the country of the third-country national's place of domicile.¹⁸ In such a case, and if their application is accepted, third-country nationals receive a visa and may collect their residence title from the settlement and residence authority in Austria. However, third-country nationals who are entitled to visa-free entry can also apply for a residence title¹⁹ from within Austrian territory. Thus, on the basis of the above-cited regulations, mobile third-country nationals legally residing in other Member States – irrespective of the specifics of their status, and as opposed to others who move to Austria from outside the territories of the Member States – may enter Austria without a visa and apply for a residence title within three months.

2.1 Long-term residents

As mentioned above, long-term residents enjoy the furthest-reaching mobility rights. October 1999 European Council already stated that “a person who has resided legally in a Member State for a period of time to be determined and who holds a long-term residence permit should be granted in

- 16 In such cases, the Aliens Police authority may also issue an exclusion order against the third-country national.
- 17 Art. 31 para. 1 subpara. 3 Aliens Police Act, see also Art. 15 para. 4 Aliens Police Act on the legality of entry. According to the Austrian Administrative High Court (2008/18/0554), Art. 31 para. 1 subpara. 3 Aliens Police Act must be interpreted as stipulating a right to stay on the basis of national provisions for over three months. For the following reasons, however, it must be contested whether such an interpretation complies with Art. 21(1) of the Convention, stipulating an upper limit of three months, and whether Austrian legislation may contain more favourable provisions for individuals. The Convention was incorporated to the main body of EU law in the framework of the Treaty of Amsterdam amending the Treaty of the European Union. It was determined by Council Decision 1999/436/EC that Art. 62(3) TEC constitutes the legal basis of Art. 21 of the Convention. Most importantly, however, Art. 21 was amended by Regulation (EU) No. 265/2010 (Art. 1(2) of this Regulation) and is thus directly applicable in the Member States. It must be noted that the current draft of amendments to Art. 31 Aliens Police Act contains a reference to Art. 21 and stipulates a three-months limit (see http://www.bmi.gv.at/cms/BMI_Begutachtungen/II20122012/Entwurf_FNG_Anpassungsgesetz_BEGUTACHTUNG.PDF, accessed on 28 January 2013).
- 18 Art. 21 Settlement and Residence Act; see also Art. 5 para. 1.
- 19 Although specific titles for various groups of third-country nationals are provided by the Austrian migration regime, third-country nationals may of course apply for and obtain other titles if requirements are met.

that Member State a set of uniform rights which are as near as possible to those enjoyed by citizens of the European Union.” Furthermore, the Commission’s proposal in March 2001 on Council Directive 2003/109/EC of 25 November 2003 concerning the status of third-country nationals who are long-term residents was based on this principle of equality (Peers et. al. 2012: 290). These ambitious goals are not fully reflected in the final provisions on mobility rights provided by chapter III of the Directive; rather they leave relevant areas, such as family reunification or labour market access, to the discretion of Member States. In theory, the mobility provisions of the Directive aim at “contributing to the effective attainment of an internal market as an area in which the free movement of persons is ensured. [They] could also constitute a major factor of mobility, notably on the Union’s employment market.”²⁰

Based on the provisions in chapter III of the Directive, third-country nationals who have obtained the status of a long-term resident in another Member State according to the Directive must be entitled to settle in a ‘second Member State’ for a period exceeding three months and receive access to the labour market (see also Art. 14(3) on examining the situation of the labour market). Art. 4(1) of the Directive obliges Member States to grant such status to persons who have resided legally and continuously within their territories for five years immediately prior to the submission of the application. No later than three months after entering the territory of the ‘second Member State’, the long-term resident shall apply for a residence permit and the competent authority shall process applications within four months from that date²¹ (Art. 15(1) and 19(1) of the Directive).

In Austria, the immigration of long-term residents from other Member States, as provided by Art. 49 Settlement and Residence Act, is governed by a quota (see also Art. 14(4) of the Directive²²). This quota, in 2012, amounted to 113 residence titles (see also Kreuzhuber/Hudsky 2011:

20 Recital 18 of the Directive.

21 According to Art. 49 Settlement and Residence Act, the application does not imply a right to stay beyond three months.

22 According to Art. 14(4) of the Directive, “Member States may limit the total number of persons entitled to be granted right of residence, provided that such limitations are already set out for the admission of third-country nationals in the existing legislation at the time of the adoption of this Directive.” Besides limitations for key workers, Austria has not introduced a general quota for labour migrants since 2003.

155).²³ Depending on the purpose of their stay in Austria (e.g. employed or self-employed), third-country nationals may receive different types of residence titles.²⁴

In the case of immigration for the purpose of employed work, the title ‘Settlement Permit’ is foreseen. To obtain this title, third-country nationals must meet general conditions – such as adequate means of subsistence, health insurance, and accommodation according to local standards – and be holders of an employment permit. For this (last-mentioned) purpose, a confirmation guaranteeing that work will be available must be requested by the employer.²⁵ To receive such confirmation, the Public Employment Service may examine the situation of the labour market (‘labour market test’), which is considered as a significant obstacle to the mobility of this group (Schuhmacher/Peyrl/Neugschwendtner 2012: 96). After an employment of 12 months, third-country nationals may obtain a ‘Red-White-Red Card plus’, which provides unlimited access to the labour market (Kreuzhuber/Hudsky 2011: 155).

Third-country nationals who wish to be self-employed (‘Settlement Permit – except employment’) are not required to hold an employment permit. However, this group must still prove that they fulfil general requirements, such as adequate means of subsistence (Kutscher/Völker/Witt 2010: 127).

Spouses and registered partners as well as minor children of third-country nationals falling under the scope of the Directive can obtain a residence title as described above if general requirements are met and, regarding spouses or registered partners, if the relationship was established prior to settlement in Austria (see also Art. 16(1) of the Directive).²⁶ The immi-

23 Art. 3 Settlement Regulation; as outlined in chapter 3, 59 residence titles were issued in 2011.

24 Art. 49 Settlement and Residence Act; furthermore, a ‘Residence Permit – students’, or a ‘Residence Permit – pupils’ may be obtained, according to Art. 65 Settlement and Residence Act.

25 See Art. 11 of the Act Governing the Employment of Foreign Nationals; Schuhmacher/Peyrl/Neugschwendtner (2012: 96) have stated that the strict requirements for receiving a confirmation guaranteeing that work will be available may contradict EU law.

26 Art. 50 Settlement and Residence Act.

gration of such family members is not governed by a quota (see also Kutsher/Völker/Witt 2010: 127).²⁷

2.2 EU Blue Card holders

The intra-EU mobility rights of EU Blue Card holders (and their family members) are enshrined in chapter IV (Art. 18 and 19) of 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. This Directive provides for secondary mobility rights even before the third-country national has acquired the status long-term resident. However, the rights granted to mobile EU Blue Card holders, in general, do not go beyond those of third-country nationals migrating to the EU. It has been argued that “the added value of this provision is [...] that Member States may grant more favourable conditions”, for example regarding the salary threshold, or the possibility to cumulate periods of residence in different Member States in order to fulfil the requirement concerning the duration of residence to acquire long-term resident status (Hailbronner/Schmidt 2010: 788).

Although Austrian legislation has introduced a specific provision for this group, third-country nationals who are holders of the residence title ‘EU Blue Card’ in other Member States for at least 18 months can obtain an ‘EU Blue Card’ under the same conditions that apply to third-country nationals moving to Austria from outside the EU.²⁸ In general, an ‘EU Blue Card’ can be issued to third-country nationals who have acquired higher education qualifications on the condition that the studies needed to acquire the qualifications lasted at least three years and the gross annual salary amounts to at least 1.5 times the average in Austria (52,517 euros/year, in 2012).²⁹ Furthermore, the situation of the labour market must be examined. Third-country nationals who fall under the Directive are exempt from the general requirement of acquiring German language skills prior to immigration and during stay. Holders of the ‘EU Blue Card’ may receive a ‘Red-White-Red Card plus’ if they were employed for at least 21 months within a 24-month period (Kreuzhuber/Hudsky 2011: 156). Applications for the

27 Ibid.

28 Art. 50a Settlement and Residence Act.

29 Art. 42 Settlement and Residence Act.

‘EU Blue Card’ in these cases may be filed within one month after entering Austria, while applicants’ residence is considered legal until a decision on the application is taken. The authority is obliged to decide on the application within four months.³⁰ Family members (spouses, registered partners and minor children) of ‘EU Blue Card’ holders may receive a ‘Red-White-Red Card plus’ if general requirements are met and if they were living as family members of the sponsor in the ‘first Member State’.³¹

The ‘EU Blue Card’ is not considered to be an attractive alternative to the national immigration regime for (highly) qualified third-country nationals, as the requirements for obtaining it are rather difficult to fulfil, as compared to the ‘Red-White-Red Card’ (Schuhmacher/Peyrl/Neugschwendtner 2012: 92 et seq.).

2.3 Posted workers

Specifying the principle of the freedom to provide services, Directive 96/71/EC of the European Parliament and of the Council of 16 December 1996 concerning the posting of workers³² in the framework of the provision of services provides for a ‘hard core’ of clearly defined protective rules to be observed by the provider of the services notwithstanding the duration of the worker’s posting. The Directive does not contain any specific provisions on posted third-country nationals. The CJEU’s case law on the freedom to provide services, however, makes it clear that a “host Member State may not impose administrative formalities or additional conditions on posted workers who are third-country nationals” (European Commission: 2007). The CJEU has ruled, in the course of infringement proceedings against Luxembourg, Germany and Austria, that the following requirements constitute infringements on the freedom to provide services: a contract of employment of indefinite duration, duration of employment

30 Art. 50a para. 2 Settlement and Residence Act; see also Kreuzhuber/Hudsky 2011: 156.

31 Art. 50a Settlement and Residence Act.

32 According to the Directive, ‘posted worker’ means a worker who, for a limited period, carries out his work in the territory of a Member State other than the State in which he normally works (Art. 2(1) of the Directive).

of at least six months, and the compliance with national employment and wage conditions.³³

The Act Governing the Employment of Foreign Nationals (Art. 18 para. 12) was amended following the CJEU's ruling in C-168/04 of 21 September 2006.³⁴ Hence, for third-country nationals who are lawfully employed by a service provider established in another Member State³⁵, employment may commence prior to the issuance of an 'EU Posting Confirmation', serving as a documentation of employment. The provision further states that an employment permit or 'posting permit' is not required for the performance of a temporary service if, amongst others, the Austrian wage and working conditions³⁶ as well as social insurance provisions are met (Lindmayer 2012: 95f). It was argued by Muzak that this provision may still contradict CJEU jurisdiction (C-168/04) by referring to Austrian wage and working conditions without considering social security provisions in the country of origin (Muzak 2010: 75).³⁷ It is to be noted that, especially in the framework the EU's enlargement and respective transitional provisions, cases of 'hiring out' / temporary agency work must be treated differently.³⁸

2.4 Researchers

Intra-EU mobility rights are considered to be one of the primary factors attracting third-country national researchers (Hailbronner 2010: 419). Council Directive 2005/71/EC of 12 October 2005 on a specific procedure for admitting third-country nationals for the purposes of scientific research (Art. 13) contains relevant provisions regarding the intra-EU mobility of third-country nationals who have been admitted as researchers under this

33 See CJEU judgments of 9 August 1994, *Vander Elst*, C-43/93; of 21 October 2004, *Commission v Luxembourg*, C-445/03; of 19 January 2006, *Commission v Germany*, C-224/04; and judgment of 21 September 2006, *Commission v Austria*, C-168/04; Regarding cases of 'hiring out' workers (in the framework of EU enlargement and respective transitional provisions), see CJEU judgment of 10 February 2011, C-307/09 to C-309/09.

34 Other relevant provisions in the Austrian migration regime are stipulated in Art. 59 Settlement and Residence Act, and Art. 24 Aliens Police Act.

35 Exceptions apply to Bulgaria and Romania.

36 Art. 7b para. 1 and 2 of the Employment Contract Law Adaptation Act.

37 Art. 18 Act Governing the Employment of Foreign Nationals.

38 CJEU judgment of 10 February 2011, C-307/09 to C-309/09; see also Administrative High Court, 2006/09/0157, 15 May 2009; and 2011/09/0082, 30 May 2011.

Directive. The rights provided by the Directive are depicted as a means of developing and consolidating contacts and networks between partners and establishing the role of the European research area at the international level.³⁹ Art. 67, 68 and 71 of the Austrian Settlement and Residence Act, although similarly applying to third-country nationals not legally residing in other Member States, correspond to the respective provisions of the Directive.

Contrary to the approach concerning long-term residents and EU Blue Card holders in other Member States, the Austrian regime on researchers does not contain specific provisions on intra-EU mobility.⁴⁰ Third-country nationals “may” be issued a ‘Residence Permit – researcher’ if they conduct research with a respective research institution and fulfil general conditions, but they are not required to prove German language skills prior to immigration or during stay. If researchers have concluded a hosting agreement with a certified institution, they “must” be issued the title and are further exempt from the requirement to prove accommodation according to local standards and health insurance.⁴¹ According to the Decree implementing the Settlement and Residence Act (Art. 8 para. 9), third-country nationals must, in any case, provide a hosting agreement. Schuhmacher/Peyrl/Neugschwendtner (2012: 112) state that this provision does not comply with the above-mentioned provisions of the Settlement and Residence Act.⁴² The title ‘Residence Permit – researcher’ can be issued for two years, after which the third-country national may obtain a ‘Red-White-Red Card plus’, providing unlimited access to the labour market. If requirements for the ‘Residence Permit – researcher’ are not fulfilled, the obtainment of a ‘Residence Permit – special cases of employed work’ or a ‘Red-White-Red Card’ may be possible (Kreuzhuber/Hudsky 2011: 126).

Family reunification of researchers is provided for with spouses, registered partners and minor children. These family members are exempt from

39 Recital 17 of the Directive.

40 It is to be noted that researchers and students do not necessarily migrate to Austria after having resided legally in other Member States.

41 Art. 67 Settlement and Residence Act.

42 It must be mentioned that the requirement of hosting agreements is also foreseen by the Directive.

the Act Governing the Employment of Foreign Nationals and may, thus, also conduct employed work.⁴³

2.5 Students

Mobility rights of third-country students are enshrined in Art. 8 of Council Directive 2004/114/EC of 13 December 2004 on the conditions of admission of third-country nationals for the purposes of studies, pupil exchange, unremunerated training or voluntary service. Contrary to Art. 5, the provision on initial admission,⁴⁴ Art. 8 stipulates a clear obligation (“shall”) to admit students who have already been admitted as a student if the original conditions are met (Peers et. al. 2012: 207).⁴⁵

Austrian legislation does not contain specific regulations on mobile third-country nationals legally residing in other Member States who wish to study in Austria.⁴⁶ Third-country nationals “may” receive a ‘Residence Permit – students’⁴⁷ if they fulfil the general requirements and if they are accepted for a course of study.⁴⁸ In general, admission to Austrian universities⁴⁹ is provided if the general university entrance qualification (school-leaving certificate⁵⁰ for bachelor and diploma programmes) and special

43 Art. 69 and 46 para. 1 Settlement and Residence Act.

44 It is a contentious issue whether the Directive states an obligation of Member States to admit students and issue a residence title or if it leaves admission to the discretion of Member States (European Commission 2011; Hailbronner/Schieder 2010: 320; Peers et.al. 2012: 203)

45 Furthermore, Art. 8 requires students to “send, with his/her application for admission, full documentary evidence of his/her academic record and evidence that the course he/she wishes to follow genuinely complements the one he/she has completed; and participate in a Community or bilateral exchange programme or has been admitted as a student in a Member State for no less than two years.”

46 It is to be noted that researchers and students do not necessarily migrate to Austria after having resided legally in other Member States.

47 Participants of Erasmus Mundus may also apply for the ‘Residence Permit – special cases of employed work’. Students in Doctorate Degree programmes may receive a ‘Residence Permit – researcher’.

48 First time applicants must provide the admission confirmation of the respective university.

49 This term applies to public universities, universities of applied sciences, private universities, university colleges of teacher education, and other accredited private studies or programmes.

50 Whether a certificate is equivalent is determined by bilateral agreements or recognition of academic certificates. In case the foreign certificate is not equivalent to an Austrian school leaving examination, the Austrian university or university of applied sci-

university entrance qualification (for third-country nationals: the right to admission to a course of study in the country of issuance of the school-leaving certificate⁵¹) is obtained and knowledge of German language skills has been proven. If German language skills cannot be proven, the person may be admitted as non-degree student and also obtain a residence title (Schuhmacher/Peyrl/Neugschwendtner 2012: 158f).

Family reunification for students is not limited by a quota but restricted to the core family. These family members of students may receive a residence permit if general requirements are met. It does not follow from the wording of relevant Austrian legislation whether family members are allowed to take up employed work (Kreuzhuber/Hudsky 2011: 127). However, the Federal Ministry of Labour, Social Affairs and Consumer Protection holds that such a title does not entitle to access to the labour market (Schuhmacher/Peyrl/Neugschwendtner 2012: 149).

ences prescribes supplementary examinations that have to be passed before admission to degree programme studies.

- 51 The special university entrance qualification is defined by the requirements in the country where the school-leaving certificate was acquired to enter specific studies.

3. STATISTICS ON INTRA-EU MOBILITY TO AND FROM AUSTRIA

3.1 Statistics on residence titles

The Directives on long-term residents and EU Blue Card holders request the collection of national data. These are essential to understand the scale of the intra-EU mobility of third-country nationals within the Member States.

3.1.1 Long-term residents

In Austria, statistics are available on the kind of residence title granted to long-term residents coming from other Member States and the purpose of their stay, aggregated by sex.

Table 1: Number and kind (including purpose) of residence titles issued to third-country nationals who have acquired a long-term resident status in another Member State between 2007 and 2011

Year		2007	2008	2009	2010	2011
Residence title	Purpose	Number				
Settlement Permit – restricted	Family	-	8	10	10	5
	Employed	12	13	10	23	13
	Self-employed	4	2	1	5	3
Settlement Permit – except employment	Family	-	-	1	1	5
	Other	-	4	5	6	2
Settlement Permit ⁵²	Family	-	-	-	-	4
	Employed	-	-	-	-	14
	Self-employed	-	-	-	-	13
All titles		16	27	27	45	59

Source: Federal Ministry of the Interior, Residence Statistics.

52 The residence title ‘Settlement Permit’ was introduced in July 2011, replacing the title ‘Settlement Permit – restricted’.

The table shows a considerable overall increase between 2007 and 2011 in residence titles issued to long-term residents in other Member States. As for the ‘Settlement Permit – restricted’, the number of issued titles decreased between 2010 and 2011. This is due to the introduction of the residence title ‘Settlement Permit’ as of July 2011, which replaced the title ‘Settlement Permit – restricted’.

3.1.2 EU Blue Card holders

In Austria, Council Directive 2009/50/EC was transposed on 1 July 2011⁵³. Statistics on the mobility of EU Blue Card holders will, therefore, be available starting with 2013, as third-country nationals need to hold the EU Blue Card from another Member State for at least 18 months before being granted a respective status in Austria.⁵⁴

3.1.3 Other groups

Annual statistics in Austria indicate the number of residence titles issued to researchers and students, aggregated by sex.⁵⁵ However, this data does not provide information on country of previous residence. Therefore, these statistics are not relevant for the purpose of this study. Furthermore, statistics on posted workers that serve the purpose of this study are not available.

3.2 Statistics from the population register

In Austria, the most comprehensive statistics on the flow of third-country nationals and EU/EFTA nationals to and from Austria derive from the population register, which is based on the Central Register of Residents.⁵⁶ The register captures all persons who moved to Austria for a period exceeding three months and registered their residence, as well as those who left Austria and deregistered their residence after a stay exceeding three

53 The deadline for transposition was 19 June 2011.

54 Carina Royer, Federal Ministry of the Interior, 20 December 2012.

55 Federal Ministry of the Interior, *Fremdenstatistik 2007 – 2011*, available at www.bmi.gv.at/cms/BMI_Niederlassung/statistiken (accessed on 19 March 2012).

56 Please note that the data on immigration to and emigration from Austria used in this study does not include stateless persons or persons with an unknown nationality.

months.⁵⁷ The statistics are aggregated by nationality, country of previous residence or country of destination, age and sex. They do not include, however, information regarding the kind of residence title obtained or the purpose of stay in Austria.

Some selected data from the population register is displayed below to provide a sense of the scale of the mobility of third-country nationals and EU/EFTA nationals moving to and from Austria.

3.2.1 Third-country nationals

Table 2: Number of third-country nationals who moved to Austria between 2007 and 2011 by country of previous residence

Country of previous residence	2007	2008	2009	2010	2011	Total
All countries	38,319	38,152	37,807	38,797	42,770	195,845
EU/EFTA	1,233	1,360	1,354	1,496	1,648	7,091

Source: Statistics Austria, population register, special evaluation.

The table above (Table 2) shows a steady increase in the number of third-country nationals moving from Member States to Austria between 2007 and 2011. The number slightly dropped from 2008 to 2009, but then increased again, exceeding in 2010 the number of 2008. The total number of third-country nationals who moved to Austria decreased from 2007 to 2009 and then increased till 2011, exceeding the number of 2007.

Third-country nationals moving to Austria between 2007 and 2011 from another Member State constituted between 3.22 per cent (in 2007) and 3.86 per cent (in 2010) of the total immigration of third-country nationals to Austria.

When comparing Table 1 with Table 2, it becomes clear that the group of third-country nationals who have acquired a long-term resident status in another Member State is, in terms of numbers, of low relevance regarding the overall influx of third-country nationals immigrating to Austria from other Member States.

57 Registration and deregistration of residence is compulsory within 3 days after taking or leaving residence (Art. 2 Registration Act).

Table 3: Number of third-country nationals who moved from Austria to other Member States and to all countries between 2007 and 2011

Countries of destination	2007	2008	2009	2010	2011	Total
All countries	25,226	24,688	28,473	29,392	30,165	137,944
EU/EFTA	980	1,192	1,159	1,189	1,273	5,793

Source: Statistics Austria, population register, special evaluation.

The table above (Table 3) shows an increase in third-country nationals who moved from Austria to other Member States from 2007 to 2008, and again from 2009 to 2011. The total number of third-country nationals who moved from Austria decreased from 2007 to 2008 and then increased from 2008 on, exceeding in 2009 the number of 2007.

The number of third-country nationals who moved to other Member States between 2007 and 2011 account for a range between 3.88 per cent (in 2007) and 4.83 per cent (in 2008) of all third-country nationals leaving Austria during that period. The data displayed in Table 2 and in Table 3 shows that, overall, around 4 per cent of all third-country nationals who moved to and from Austria between 2007 and 2011 did so within the territory of the Member States.

When compared, Table 2 and Table 3 indicate that the number of third-country nationals who moved from other Member States to Austria is higher than those who left Austria for other Member States. However, it must be mentioned that the numbers shown in Table 3 should be treated with caution, as it cannot be assumed with certainty that deregistration is performed in every case.

Table 4: Top ten Member States from which third-country nationals moved to Austria between 2007 and 2011

Country of previous residence	2007	2008	2009	2010	2011	Total
Germany	683	764	602	664	611	3,324
Italy	128	117	184	216	210	855
Spain	52	77	93	88	141	451
Switzerland	74	57	55	75	75	336
United Kingdom	56	47	63	41	59	266
France	31	39	46	46	55	217
Hungary	21	30	30	43	84	208
Czech Republic	25	27	30	51	57	190
Slovenia	5	29	32	27	64	157
Romania	23	20	26	38	40	147

Source: Statistics Austria, population register, special evaluation.

Table 5: Top ten Member States to which third-country nationals moved from Austria between 2007 and 2011

Country of destination	2007	2008	2009	2010	2011	Total
Germany	456	547	533	486	528	2,550
Italy	93	81	96	122	157	549
Switzerland	67	109	91	79	101	447
Latvia	47	46	73	100	132	398
Poland	24	67	62	94	51	298
United Kingdom	66	75	47	42	62	292
Spain	31	52	46	56	80	265
France	35	40	40	31	41	187
Hungary	17	24	35	43	34	153
The Netherlands	32	24	27	14	33	130

Source: Statistics Austria, population register, special evaluation.

When comparing Table 4 and Table 5, it becomes clear that Germany is by far the most important country from and to which third-country nationals moved. In fact, 46.88 per cent of all third-country nationals who moved to Austria between 2007 and 2011 from within the territory of other Member States came from Germany and 44.02 per cent of all third-country nationals who left Austria towards other Member States moved to Germany. Italy is ranked second as country of previous residence and country of destination. Italy is followed by Spain as country of previous residence and by Switzerland as country of destination.

Table 6: Top ten nationalities of third-country nationals who moved from other Member States to Austria between 2007 and 2011

Nationality	2007	2008	2009	2010	2011	Total
Serbia/Montenegro/Kosovo	168	173	184	183	193	901
Turkey	157	164	133	128	140	722
China	74	78	101	121	107	481
United States of America	98	102	65	83	87	435
Russian Federation	60	79	70	96	122	427
Bosnia and Herzegovina	52	64	79	87	107	389
Nigeria	28	32	53	69	88	270
Ukraine	43	56	34	60	56	249
Brazil	42	37	50	34	37	200
India	39	33	21	46	60	199

Source: Statistics Austria, population register, special evaluation.

Table 7: Top ten nationalities of third-country nationals who moved from Austria to another Member State between 2007 and 2011

Nationality	2007	2008	2009	2010	2011	Total
Serbia/Montenegro/Kosovo	131	141	164	130	123	689
Turkey	126	134	134	98	114	606
Russian Federation	55	93	92	151	92	483
United States of America	111	120	84	69	92	476
China	40	52	54	79	79	304
Bosnia and Herzegovina	43	53	42	47	84	269
Croatia	50	50	51	38	52	241
Nigeria	13	33	37	48	62	193
Ukraine	37	43	30	44	35	189
India	17	42	35	39	43	176

Source: Statistics Austria, population register, special evaluation.

The table above (Table 6) shows that nationals of Serbia/Montenegro/Kosovo and Turkey constitute the biggest groups of third-country nationals that moved to Austria from other Member States between 2007 and 2011. They represent 12.71 per cent and 10.18 per cent, respectively, of all third-country nationals who moved to Austria from another Member State between 2007 and 2011. As Table 7 indicates, they also represent the main groups that moved from Austria to other Member States during that time period, which equals 11.89 per cent and 10.46 per cent, respectively, of all

third-country nationals who left Austria but remained within the territory of the Member States between 2007 and 2011.

3.2.2 EU/EFTA nationals

Table 8: Number of EU/EFTA nationals who moved to Austria between 2007 and 2011 by country of previous residence

Country of previous residence	2007	2008	2009	2010	2011	Total
All countries	66,627	70,072	68,388	74,086	85,416	364,589
EU/EFTA	56,405	59,455	57,215	62,655	74,936	310,666

Source: Statistics Austria, population register, special evaluation.

The table above (Table 8) shows a steady increase in EU/EFTA nationals moving from Member States to Austria between 2007 and 2011. The number slightly dropped from 2008 to 2009, but then increased again, exceeding in 2010 the number of 2008. The same is true for the total number of EU/EFTA nationals who moved to Austria during that period.

EU/EFTA nationals moving to Austria between 2007 and 2011 from a Member State constituted between 84.57 per cent (in 2010) and 84.85 per cent (in 2008) of the total immigration of EU/EFTA nationals to Austria.

Table 9: Number of EU/EFTA nationals who moved from Austria to other Member States and to all countries between 2007 and 2011

Country of destination	2007	2008	2009	2010	2011	Total
All countries	46,459	50,691	58,441	57,027	64,146	276,782
EU/EFTA	32,908	37,093	43,467	42,785	49,347	205,600

Source: Statistics Austria, population register, special evaluation.

The table above (Table 9) shows an increase in the number of EU/EFTA nationals who moved from Austria to EU Member States from 2007 to 2009, and again from 2010 to 2011. This is also true for the total number of EU/EFTA nationals who moved from Austria during that time period.

The number of EU/EFTA nationals who moved to Member States between 2007 and 2011 accounts for a range between 70.83 per cent (in 2007) and 76.93 per cent (in 2011) of all EU/EFTA nationals leaving Aus-

tria during that period. The data displayed in Table 8 and in Table 9 shows that, overall, around 71 per cent of all EU/EFTA nationals who moved to and from Austria between 2007 and 2011 came from or moved to another Member State.

Table 8 and Table 9 indicate that the number of EU/EFTA nationals who moved from other Member States to Austria is higher than those who left Austria for other Member States. Again, it must be emphasised that the numbers showed in Table 9 should be treated with caution, as it cannot be assumed with certainty that deregistration is performed in every case.

Table 10: Top ten Member States from which EU/EFTA nationals moved to Austria between 2007 and 2011

Country of previous residence	2007	2008	2009	2010	2011	Total
Germany	19,735	21,098	19,309	19,440	19,506	99,088
Romania	9,201	9,170	9,228	11,480	13,579	52,658
Hungary	4,605	5,281	5,928	6,635	9,694	32,143
Poland	5,367	4,446	3,923	4,321	6,974	25,031
Slovakia	3,646	4,988	4,067	4,114	5,628	22,443
Bulgaria	2,145	2,431	2,629	3,189	3,543	13,937
Italy	1,791	1,903	2,012	2,297	2,486	10,489
United Kingdom	1,331	1,390	1,368	1,409	1,604	7,102
Czech Republic	1,329	1,387	1,333	1,273	1,724	7,046
Switzerland	1,223	1,216	1,197	1,325	1,246	6,207

Source: Statistics Austria, population register, special evaluation.

Table 11: Top ten Member States to which EU/EFTA nationals moved from Austria between 2007 and 2011

Country of destination	2007	2008	2009	2010	2011	Total
Germany	9,782	11,402	13,100	12,702	14,393	61,379
Romania	3,558	4,685	5,993	6,369	7,583	28,188
Hungary	2,799	3,218	4,047	4,332	5,462	19,858
Poland	3,337	3,358	3,744	3,243	3,689	17,371
Slovakia	2,405	2,829	3,102	3,161	3,480	14,977
Switzerland	1,780	1,973	1,887	1,844	1,964	9,448
Bulgaria	966	1,117	1,764	1,870	2,158	7,875
Italy	1,229	1,221	1,514	1,467	1,683	7,114
United Kingdom	1,141	1,262	1,316	1,271	1,532	6,522
Czech Republic	1,114	1,160	1,286	1,113	1,300	5,973

Source: Statistics Austria, population register, special evaluation.

A comparison of Table 10 and Table 11 shows that Germany is by far the most important country from and to which EU/EFTA nationals moved. In fact, 31.9 per cent of all EU/EFTA nationals who moved to Austria between 2007 and 2011 from another Member State came from Germany and 29.85 per cent of all EU/EFTA nationals who left Austria for other Member States moved to Germany.

The top ten Member States of previous residence and destination include also Romania, Hungary, Poland, Slovakia, Bulgaria and the Czech Republic. It is striking that with these, six of the top ten Member States from and to which EU/EFTA nationals moved to and from Austria between 2007 and 2011 were among the group of new Member States that joined the EU in 2004 and 2007.

Table 12: Top ten nationalities of EU/EFTA nationals that moved from Member States to Austria between 2007 and 2011

Nationality	2007	2008	2009	2010	2011	Total
Germany	17,691	18,909	17,360	17,587	17,731	89,278
Romania	9,228	9,194	9,270	11,498	13,655	52,845
Hungary	4,481	5,177	5,766	6,496	9,609	31,529
Poland	5,263	4,371	3,830	4,196	6,888	24,548
Slovakia	3,627	4,933	4,016	4,089	5,640	22,305
Austria	4,019	4,080	4,133	4,151	3,872	20,255
Bulgaria	2,156	2,446	2,617	3,201	3,544	13,964
Italy	1,647	1,773	1,897	2,130	2,332	9,779
Czech Republic	1,246	1,313	1,248	1,166	1,632	6,605
United Kingdom	1,087	1,174	1,080	1,153	1,304	5,798

Source: Statistics Austria, population register, special evaluation.

Table 13: Top ten nationalities of EU/EFTA nationals that moved from Austria to Member States between 2007 and 2011

Nationality	2007	2008	2009	2010	2011	Total
Germany	7,371	8,398	10,178	9,841	11,296	47,084
Austria	6,260	7,268	6,661	6,563	6,803	33,555
Romania	3,467	4,602	5,948	6,333	7,529	27,879
Hungary	2,635	3,044	3,861	4,152	5,258	18,950
Poland	3,231	3,257	3,620	3,127	3,532	16,767
Slovakia	2,341	2,796	3,059	3,119	3,438	14,753
Bulgaria	927	1,099	1,732	1,842	2,150	7,750
Italy	999	951	1,276	1,243	1,463	5,932
Czech Republic	974	1,043	1,135	984	1,193	5,329
United Kingdom	686	633	899	820	1,041	4,079

Source: Statistics Austria, population register, special evaluation.

German nationals are the most dominant group of EU/EFTA nationals who moved to and from Austria between 2007 and 2011, which equals 28.74 per cent and 22.09 per cent respectively of all EU/EFTA nationals who moved to and from Austria within the territory of the Member States during that time period (see Table 12 and Table 13).

Nationals from the new Member States are the most dominant groups of EU/EFTA nationalities that moved to and from Austria within the territory of the Member States between 2007 and 2011. In fact, with Romania, Hungary, Poland, Slovakia, Bulgaria and the Czech Republic, six of the top ten EU/EFTA nationalities came from new Member States that joined the EU in 2004 and 2007.

3.4 Comparing the intra-EU mobility of third-country nationals and EU/EFTA nationals

When comparing the statistics on the mobility of third-country nationals (section 3.2.1) with EU/EFTA nationals (see section 3.2.2), the impact of mobility rights granted to third-country nationals within the EU legal framework becomes clearer.

The overall scale of the mobility of third-country nationals among Member States is negligible compared to the mobility of EU/EFTA nationals. Table 2 and Table 8 show that between 2007 and 2011, 7,091 third-country nationals and 310,666 EU/EFTA nationals moved to Austria from another Member State. Hence, third-country nationals made up only 2.23

per cent of the total mobility towards Austria from other Member States. During the same time period, 5,793 third-country nationals and 205,600 EU/EFTA nationals left Austria for another Member State (see Table 3 and Table 9). Again, third-country nationals made up only a small percentage of the total outflow mobility from Austria, namely 2.74 per cent.

In the following example, the inflows of German and Turkish nationals from Germany⁵⁸ to Austria in 2011 and outflows of German and Turkish nationals to other Member States in 2011 are compared in relation to the population stock of these groups in Germany and Austria.

Table 14: Number of German and Turkish nationals who moved from Germany to Austria in 2011

Nationality	Total
Germany	17,103
Turkey	96

Source: Statistics Austria, population register, special evaluation.

Table 15: Population⁵⁹ of German and Turkish nationals in Germany in 2011

Nationality	Total
Germany	74,552,656
Turkey	1,731,688

Source: Eurostat.

The data displayed in Table 14 and Table 15 shows that only 0.006 per cent of Turkish nationals residing in Germany in 2011 moved to Aus-

- 58 Germany has been selected as a sample country of previous residence, because the statistics show (Table 4 and Table 10) that Germany is the most important country (in terms of numbers) from which third-country nationals and EEA/EFTA nationals moved to Austria. As a comparison group, representing third-country nationals, Turkish nationals were selected, as, according to data from Statistics Austria, they are the most important group of third-country nationals (in terms of numbers) that moved from Germany to Austria.
- 59 Based on Eurostat specifications, “population” includes all usually resident population on 1 January of the reporting year. “Usual residence” means the place at which a person normally spends the daily period of rest or, in default, the place of legal or registered residence.

tria that year, compared to 0.023 per cent of German nationals. Hence, in 2011, German nationals residing in Germany moved to Austria around 3.8 times more often than Turkish nationals residing in Germany.

Table 16: Number of German and Turkish nationals who moved from Austria to another Member State in 2011

Nationality	Total
Germany	11,296
Turkey	114

Source: Statistics Austria, population register, special evaluation.

Table 17: Population⁶⁰ of German and Turkish nationals in Austria at the beginning of 2011

Nationality	Total
Germany	146,392
Turkey	113,457

Source: Statistics Austria, population register.

Table 16 and Table 17 show that 0.100 per cent of Turkish nationals residing in Austria and 7.716 per cent of German nationals moved to another Member State in 2011. Hence, German nationals residing in Austria move to other Member States 77.16 times more often than Turkish nationals residing in Austria. When excluding Germany as country of destination, it can be seen that the mobility rate of German nationals remains 11.97 times higher (or 107.66 times when limited to Germany as country of destination) than the rate of Turkish nationals.

60 According to definitions by Statistics Austria, “population” includes all resident population at the beginning of the year with a registered main residence that has been effective for at least 90 days.

4. CONCLUSIONS

Besides the general rights to free movement within the Schengen area for a period not exceeding three months, the conditions in Austria for mobile third-country nationals do not significantly differ from those applying to third-country nationals who move to Austria from outside the EU. This is particularly true in the case of groups whose status does not necessarily presuppose a previous stay within the EU.

Furthermore, although EU law foresees secondary mobility rights to certain groups of third-country nationals, Member States retain discretion over important issues, such as access to the labour market, family reunification or quota regulations; and Austria has mostly refrained from introducing legislation that goes beyond the mandatory provisions of EU law.

Among third-country nationals covered by this study, long-term residents enjoy the furthest-reaching mobility rights. Austrian immigration legislation has introduced specific provisions for this group, thus providing a separate immigration path. However, a quota, obligatory integration measures, and limited access to the labour market for employed workers restrict the mobility of this group. Numbers show that the immigration of mobile third-country national under the framework of the Directive on long-term residents plays a minor role in the Austrian context. In 2011, only 59 residence titles were issued to long-term residents coming from another Member State; in the same year, a total of 1,648 third-country nationals immigrated to Austria from another Member State.

Regarding the EU Blue Card, although their holders' mobility within the Member States is addressed in the Austrian Settlement and Residence Act, conditions that apply are similar to those on non-mobile third-country nationals. The intra-EU mobility of researchers and students is not specifically addressed in Austrian legislation. Thus, besides general rights to free movement within the Schengen area, these groups do not enjoy more favourable conditions. The situation of intra-EU posted workers in Austria, as compared to workers from companies established outside the EU, was improved in the course of infringement proceedings and the CJEU's case

law resulting thereof. For these groups, statistics do not provide information on their mobility within the EU.

In general, relevant data on the intra-EU mobility of third-country nationals is available to a limited extent. The most comprehensive dataset is the population register, based on the Central Register of Residents. However, it does not include information regarding the residence title obtained or the purpose of stay in Austria, and therefore it cannot provide a fully adequate understanding of the phenomenon. Statistics on residence titles, again, do not include information on the country of previous stay.

The statistics of the population register show an increase in the intra-EU mobility of third-country nationals as well as the mobility of EU/EFTA nationals over the period 2007 to 2011. Thereby, third-country nationals only constituted an average of 2.49 per cent of the total mobility towards and from Austria. The example of German and Turkish nationals moving from Germany to Austria and from Austria to other Member States in 2011 confirms that, taking into account population stocks, the extent of the intra-EU mobility of third-country nationals is still limited compared to the mobility of EU/EFTA nationals.

Overall, Germany is by far the most important country from and to which third-country nationals and EU/EFTA nationals moved between 2007 and 2011. Also, German nationals constitute the biggest group of EU/EFTA nationals that moved to and from Austria between 2007 and 2011. Serbia/Montenegro/Kosovo and Turkey constitute the main groups of third-country nationals that moved to and from Austria from within the territory of the Member States between 2007 and 2011.

Regarding the mobility of EU/EFTA nationals, the Member States that joined the EU in 2004 and 2007 are, besides Germany, the most relevant. Firstly, they are the dominant countries of origin and destination of mobile EU/EFTA nationals (representing six countries within the top ten), and, secondly, they are the dominant group of EU/EFTA nationalities that moved to and from Austria within the territory of the Member States (representing six nationalities within the top ten) between 2007 and 2011.

It can be concluded that, in Austria, the effective approximation of mobility rights of third-country nationals to those of EU/EFTA nationals is still mostly limited to stays not exceeding three months. The effects of this fact are reflected in statistics as shown above. It should be mentioned,

however, that other restrictions to the mobility of third-country nationals, which may not lie within the EU or Austrian migration regime, can also have an effect on these numbers. It is probable that this topic will be increasingly addressed by future research, when third-country nationals' mobility rights are extended by EU legislation.

ANNEX

Methodology

This publication of the Austrian EMN NCP entails the Austrian national report on “Intra-EU Mobility of Third-Country Nationals” in English and German. The study was conducted in the framework of the EMN’s Annual Work Programme 2012. A Synthesis Report compiled by the Service Provider of the EMN (ICF-GHK-COWI), summarising the main findings of national contributions to this Focussed Study, as well as the national contributions, are available at www.emn.europa.eu.

The study is based on the latest information available at the Austrian level, including legislation, case law, publications, statistics, press and other media documents, as well as internet resources. An overview of the sources of information used is available in the bibliography. In the course of research it became apparent that only limited literature is available focussing on the intra-EU mobility of third-country nationals in Austria. Thus, in order to complement the information gained through desk research, qualitative semi-structured face-to-face interviews were carried out with two experts from the Federal Ministry of the Interior (Tamara Völker and Carina Royer, Department III/4, Residence and Citizenship Affairs).

This study was drafted by Saskia Koppenberg and Adel-Naim Reyhani, and was supervised by Mária Temesvári. Special thanks go to Katie Klaffenböck for proofreading the English text and to Constanze Millwitsch and Petra Knall for their support in drafting the study.

Bibliography

Literature

- Boswell, Christina and Geddes, Andrew
2011 *Migration and Mobility in the European Union*, Palgrave Macmillan, Basingstoke/New York.
- Hailbronner, Kay (ed.)
2010 *EU Immigration and Asylum Law: Commentary on EU Regulations and Directives*, C.H. Beck, Munich.
- Kreuzhuber, Margit and Hudsky, Dietmar
2011 *Arbeitsmigration*, MANZ, Vienna.
- Kutscher, Norbert; Völker, Tamara and Witt, Wilhelm
2010 *Niederlassungs- und Aufenthaltsrecht*, 2nd edition, MANZ, Wien.
- Peers et al. (ed.)
2012 *EU Immigration and Asylum Law (Text and Commentary)*, 2nd (revised) edition, Martinus Nijhoff Publishers, Leiden/Boston.
- Schumacher, Sebastian; Peyrl, Johannes and Neugschwendtner, Thomas
2010 *Fremdenrecht: Asyl - Ausländerbeschäftigung - Einbürgerung - Einwanderung – Verwaltungsverfahren*, ÖGB Verlag, Vienna.
- Wiesbrock, Anja
2010 *Legal Migration to the European Union: Immigration and Asylum Law and Policy in Europe*, Brill, Leiden.

Articles

- Tewocht, Hannah
2012 *Auf dem Weg zur Gleichstellung von Drittstaatsangehörigen und Unionsbürgern? – Zu Inhalt und Reichweite der sogenannten „Rahmenrichtlinie“*, Zeitschrift für Ausländerrecht und Ausländerpolitik (ZAR), 7-2012, S. 217-224, available at http://www.zar.nomos.de/fileadmin/zar/doc/Aufsatz_ZAR_12_07.pdf (accessed on 23 January 2013).

EU Legislation and Documents

- Charter of Fundamental Rights of the European Union, OJ C 326, 26.10.2012, p. 391–407, available at <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:12012P/TXT:en:NOT> (accessed on 19 March 2013).

- Consolidated Treaty of the Functioning of the European Union, 2010/C 83/01, available at <http://eur-lex.europa.eu/JOHtml.do?uri=OJ:C:2010:083:SOM:EN:HTML> (accessed on 23 January 2013).
- Convention implementing the Schengen Agreement of 14 June 1985 between the Governments of the States of the Benelux Economic Union, the Federal Republic of Germany and the French Republic on the gradual abolition of checks at their common borders, available at <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:42000A0922%2802%29:EN:HTML> (accessed on 19 March 2013).
- Council Directive of 25 November 2003 concerning the status of third-country nationals who are long-term residents, 2003/109/EC, available at: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:32003L0109:EN:NOT> (accessed on 23 January 2013).
- Council Directive of 13 December 2004 on the conditions of admission of third-country nationals for the purposes of studies, pupil exchange, unremunerated training or voluntary service, 2004/114/EC, available at <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2004:375:0012:0018:En:PDF> (accessed on 23 January 2013).
- Council Directive of 12 October 2005 on a specific procedure for admitting third-country nationals for the purposes of scientific research, 2005/71/EC, available at <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2005:289:0015:0022:EN:PDF> (accessed on 23 January 2013).
- Council Directive of 25 May 2009 on the conditions of entry and residence of third-country nationals for the purposes of highly qualified employment, 2009/50/EC, available at <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2009:155:0017:0029:en:PDF> (accessed on 23 January 2013).
- Directive of the European Parliament and of the Council of 16 December 1996 concerning the posting of workers in the framework of the provision of services, 96/71/EC, available at <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:31996L0071:en:HTML> (accessed on 23 January 2013).
- Regulation (EC) 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), 562/2006, available at http://europa.eu/legislation_summaries/justice_freedom_security/free_movement_of_persons_asylum_immigration/l14514_en.htm (accessed on 23 January 2013).
- Treaty of Amsterdam amending the treaty on European Union, the Treaties establishing the European Communities and related Acts, 97/C 340/01, available at <http://eur-lex.europa.eu/en/treaties/dat/11997D/htm/11997D.html#0001010001> (accessed on 23 January 2013).
- Communication from the Commission to the Council, the European Parliament, the European Economic and Social Committee and the Committee of the Regions – Posting of workers in the framework of the provision of services: maximising its benefits and potential while guaranteeing the protection of workers, COM/2007/0304, final, available at <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2007:0304:FIN:EN:PDF> (accessed on 23 January 2013).

Austrian Legislation

Act Governing the Employment of Foreign Nationals, BGBl. No. 218/1975, in the version of BGBl. I No. 98/2012.

Aliens Police Act, BGBl. I No. 100/2005, in the version of BGBl. I No. 50/2012.

Employment Contract Law Adaptation Act, BGBl. No. 459/1993, in the version of BGBl. I No. 98/2012.

Registration Act, BGBl. No. 9/1992, in the version of BGBl. I No. 16/2013.

Settlement and Residence Act, BGBl. I No. 100/2005, in the version of BGBl. I No. 87/2012.

Statistics

Federal Ministry of the Interior, *Fremdenstatistik 2007 – 2011*, available at www.bmi.gv.at/cms/BMI_Niederlassung/statistiken (accessed on 19 March 2013).

Statistics Austria

Population register, special evaluation.

Population register, *population at the beginning of the year*, available at <http://statcube.at/statistik.at/ext/superweb/loadDatabase.do?db=debevstandjb> (accessed on 19 March 2013).