

AUSTRIA

ANNUAL POLICY REPORT 2009

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

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EXECUTIVE SUMMARY

The following national report “Annual Policy Report 2009” has been produced within the framework of the annual reporting of the National Contact Points of the European Migration Network to the European Commission. The report gives an overview of the most significant political and legislative developments in Austria in the year 2009 and provides the reader with related information on public debates in the areas of asylum and migration.

In addition, this report aims to contribute to the *Commission’s Staff Working Paper* accompanying the *1st Annual Report on Immigration and Asylum*, which reviews the European Pact on Immigration and Asylum and proposes recommendations by the European Union and its Member States on the implementations of the Pact and of the recently initiated Stockholm Programme. So as to provide a valuable contribution to the Working Paper, this national report differs from those of former years in that it primarily concentrates on developments relevant to the Pact.

In the report, the general structure of the political, institutional and legal system in Austria is described. As detailed information on this subject has been provided in previous reports, this national report concentrates on the two amendments of the Aliens’ Law which entered into force in Austria in 2009.

The first amendment deals primarily with the revision of different humanitarian residence permits, whilst the second amendment introduced significant changes into the immigration and asylum system in Austria, encompassing serial asylum applications, the treatment of delinquent asylum seekers, refugees and people with subsidiary protection status, as well as the extension of the residence requirements for asylum applicants and age assessment. Detailed information on these two amendments as well as on general political developments, such as elections, debates about integration and immigration policy, is given in chapter two on political, policy, legislative and institutional developments.

The third chapter sums up the specific developments in asylum and migration in Austria in the year 2009. Control of immigration, refugee protection, economic migration and family reunification are described as well as integration, naturalization, irregular immigration and return migration. The information is provided in two parts, first summarising specific developments relevant to the European Pact on Immigration and Asylum, and secondly describing additional developments. The information provided in the sections referring to the Pact is prevalently based on official sources and information provided by the Austria Federal Ministry of the Interior.

Implementation of European Union legislation was foreseen for the fourth chapter, but as there were no developments in Austria in 2009 with regard to the transposition of European Union legislation, other changes are focussed on, namely the residence of EEA nationals and their family members in the light of two decisions of the European Court of Justice made in 2008. A bibliography and annex are attached to the national report.

Another 23 National Contact Points of the European Migration Network have produced Annual Policy Reports for 2009 detailing developments in their respective Member States. The national reports will form the basis for a synthesis report provided by the European Commission by mid-2010, which will give a detailed analysis and comparison of the policies concerning migration and asylum in 2009 in the different EU Member States, with a strong focus on the implementation of the European Pact on Immigration and Asylum.

INTRODUCTION

The Annual Policy Report 2009 has been produced within the framework of the yearly Annual Policy Reports of the European Migration Network (EMN)¹, which was established through EU Council Decision 2008/381/EC². The EMN provides up-to-date, objective, reliable and comparable information on migration and asylum matters, with the aim to support policy makers in the EU and provide this information to the general public.

The purpose of the EMN Annual Policy Report is to provide an overview of the most significant political and legislative developments in Austria, as well as on public debates in the area of asylum and migration, with a focus on third-country nationals rather than the mobility of EU nationals in the Member States (MS). This is the sixth Annual Policy Report³ compiled by the National Contact Point (NCP) Austria to the EMN. It gives a concise overview on the legal situation, policy developments and policy debates in the field of asylum and migration in Austria and covers the period from 1 January 2009 to 31 December 2009.

Another 23 EMN NCPs have produced Annual Policy Reports for 2009 detailing developments in their respective MS and these national reports will form the basis for a synthesis report⁴, which is supplied by GHK-COWI, service providers of the European Migration Network. The aim of the synthesis report is to summarize and compare the findings in the national reports in order to give a useful overview of policies in the EU MS for policymakers and the general public.

It is important to mention that this Annual Policy Report also aims to contribute to the *Commission's Staff Working Paper* accompanying the *1st Annual Report on Immigration and Asylum*⁵, which reviews the European Pact on Immigration and Asylum⁶ and proposes recommendations by the EU and its MS on the implementations of the Pact and of the recently initiated Stockholm Programme. The Commission's report, which will be presented to the European Council in May 2010, refers to the situation in the EU MS and is based on the contributions from the EMN NCPs. This objective and purpose lend a special structure and format to this national report, which differs from those of former years: the main section of the report refers to implementations at the national level related to the five *Commitments* included in the European Pact on Immigration and Asylum; complementary information is given on further significant policy and/or legislative debates on migration and asylum in Austria that go beyond the Pact.

Various sources of information, such as press releases, documents and articles of the most significant newspapers, were utilized and analysed in order to produce this national report. The information provided in the sections referring to the European Pact on Immigration and Asylum are prevalently based on official sources and information provided by the Federal Ministry of the Interior (MoI).

The present report was drafted by Mária Temesvári (legal adviser), Elisabeth Petzl (researcher), both working for the NCP Austria and supervised by Katerina Kratzmann (Head of Research of IOM Vienna and Coordinator of the NCP Austria) and Heike Wagner (former Head of Research of IOM Vienna). The sections referring to the European Pact on Immigration and Asylum have been developed in close cooperation with the Federal Ministry of the Interior (MoI). Special thanks go to Michaela Handke and Katie Rogers, interns at IOM Vienna, who further contributed to the compiling of information for the study.

¹ For more information on the EMN visit <http://emn.sarenet.es> (consulted on 28 February 2010).

² Available at <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:32008D0381:EN:NOT> (consulted on 28 February 2010).

³ Previous versions ranging from 2004 onwards are available at <http://emn.sarenet.es/> in the reports section.

⁴ The synthesis report will be available in mid 2010 at <http://emn.sarenet.es/> in the reports section.

⁵ To be published in May 2010.

⁶ Available at <http://register.consilium.europa.eu/pdf/en/08/st13/st13440.en08.pdf> (consulted on 28 February 2010).

1. GENERAL STRUCTURE OF POLITICAL AND LEGAL SYSTEM IN AUSTRIA

1.1 General structure of the political system and institutional context

As previous policy reports already provide a detailed overview on the structure of the political system of Austria in the area of migration and asylum, the report at hand will not further elaborate on this topic. For further information, please consult the extensive description on the report on general structure and institutional setting of migration and asylum policies in Austria in the national report of Austria of the EMN Study “Organisation of Asylum and Migration Policies in the European Union Member States”.⁷

1.2 General structure of the legal system

The EMN Annual Policy Report 2005⁸ and the EMN Study “Organisation of Asylum and Migration Policies in the European Union Member States” extensively describe the legal system in the area of asylum and migration, which is regulated by the Aliens’ Law Package that entered into force on 1 January 2006. Thus the focus of this report is on the developments in 2009, when two major amendments to the Aliens’ Law were adopted, thereby introducing significant changes to both the asylum and to the immigration system in Austria.

As already reported in the Policy Report 2008, the first amendment⁹ was adopted in March 2009 and entered into force on 1 April 2009. It deals primarily with the revision of the different *humanitarian residence permits*¹⁰ and was fuelled by a decision of the Constitutional Court from 2008.¹¹ The second amendment is seen as one of the major legislative projects of the MoI¹² and it encompasses a wide range of materials, such as subsequent/serial asylum applications, treatment of delinquent recognised refugees and persons with subsidiary protection status, introduction of a reporting obligation and extension of the residence requirement for asylum applicants. Furthermore it introduced an age assessment for asylum applicants, an extended detention pending deportation, a residence permit for researchers, and it reformulated the terms under which EU nationals can residence in Austria. The amendment was adopted on 23 November 2009 and entered into force on 1 January 2010.

2. POLITICAL; POLICY AND LEGISLATIVE; AND INSTITUTIONAL DEVELOPMENTS

2.1 General political developments

In 2009, provincial elections were held in the federal provinces of Carinthia, Salzburg, Vorarlberg and Upper Austria. They were held jointly with municipal elections in Carinthia, Salzburg and Upper Austria.¹³ Elections to the European Parliament in Austria were held in

⁷ EMN NCP AT, *Organisation of Asylum and Migration Policies in the European Member States - National Report of Austria*, Vienna 2009. available at www.emn.at in the reports section (consulted on 27 April 2010).

⁸ EMN NCP AT, *Annual Policy Report 2005 - National Report of Austria*, Vienna 2006, available at www.emn.at in the reports section (consulted on 27 April 2010).

⁹ Asylgesetz 2005, Fremdenpolizeigesetz 2005 u.a., Änderung, available at http://www.parlament.gv.at/PG/DE/XXIV/II/I_00088/pmh.shtml. (consulted on 30 December 2009).

¹⁰ Please note that the Aliens’ Law does not contain the term humanitarian residence permit any longer. It is used here, because it summarises a variety of different residence titles that are granted in accordance with Art. 8 ECHR or to victims of human trafficking and unaccompanied minors.

¹¹ The new provisions are discussed in Chapter 3 in more details, for a general overview visit Section 3.9.1, for unaccompanied minors see Section 3.3.2 and for victims of human trafficking see Section 3.20.2.

¹² Hudsky, Dietmar, *Fremdenrechtsänderungsgesetz*, in: *Öffentliche Sicherheit* 1-2/10. Vienna 2008, pp. 82-83.

¹³ For results of the municipal elections in Carinthia see Federal Province Carinthia, *Gemeinderatswahl Kärnten* available at http://www.verwaltung.ktn.gv.at/147546_DE.html (consulted on 21 February 2010). For results of municipal elections in Salzburg see Federal Province Salzburg, *Gemeindevertretungswahlen vom*

the course of the EU-wide elections on 7 June 2009. The main results of the provincial elections and elections to the European Parliament are described in the following sections.

2.1.1 Provincial Elections

Provincial elections in Carinthia, 1 March 2009¹⁴

The Alliance for the Future of Austria (BZÖ), which ran for office in Carinthia – after the separation from the Freedom Party of Austria (FPÖ) and the death of its founder Jörg Haider – at the provincial level for the first time, gained 44.9% of the votes and won the election. The BZÖ was followed by the Social Democratic Party of Austria (SPÖ) with 28.7% and a loss of -9.69% compared to the last elections. The Austrian People's Party (ÖVP) attained 16.8% (+5.19%) and the Green Party (Die Grünen) with 5.2% lost -1.56%, but were able to keep their mandates, whilst the FPÖ with 3.8% did not achieve the minimum electoral support to enter the *Landtag*. In their election campaign, the BZÖ put special emphasis on security aspects¹⁵ and made a connection between criminal activities and asylum issues. In this context, the party called for additional police officers for its fight against criminality, asylum and drug abuse and argued against the establishment of an Initial Reception Centre for asylum applicants in Carinthia (planned by the federal government).

Provincial elections in Salzburg, 1 March 2009¹⁶

Compared to the last provincial elections in 2004, the SPÖ remained largest party with 39.5% of all votes, but even so they faced a loss in votes of -6%. They were followed by the ÖVP with 36.5% with a loss of -1.4%. With 13% of the vote, the FPÖ increased its results (+4.3%). The Green Party lost slightly with 7.4% (-0.6%) and the BZÖ, which participated in the provincial elections in Salzburg for the first time, was able to attain 3.7% of the vote, but failed to enter the *Landtag*.

Provincial elections in Vorarlberg, 1 March 2009¹⁷

The ÖVP could hold its position as strongest party with 50.8% of the votes, despite their loss of the absolute majority of votes (-4.1%), which they had held (with one exception) since 1945. The SPÖ in turn faced the worst election results in Vorarlberg in its history with 10% (-6.9%). The biggest gain in votes was posted by the FPÖ with 25.1% of all votes (+12.8%). In the forefront of the election, the party gained attention from the media due to anti-Semitic statements by the party leader Dieter Egger.¹⁸ The party laid a special focus on migration and

01.03.2009 available at <http://www.salzburg.gv.at/20003stat/wahlen/gvw/index.htm> (consulted on 21 February 2010). And for those in Upper Austria see Federal Province Upper Austria, *Detailergebnisse der Gemeinderatswahl 2009, Oberösterreich gesamt* available at http://www2.land-oberoesterreich.gv.at/statwahlen/StartWahlen_OOE.jsp?SessionID=SID-F56F9D58-A22A43FF&xmliid=was_statwahlen_DEU_HTML.htm (consulted on 21 February 2010).

¹⁴ Elections results as of Federal Province Carinthia, *Landtagswahl 2009* available at <http://info.ktn.gv.at/ltwahl2009/> (consulted on 23 April 2010).

¹⁵ Wiener Zeitung, *Kärntens Landeshauptmann Gerhard Dörfler im Interview über Schulden, Asylwerber und Jörg Haider - "Ich will keine tschetschenischen Killer"* (Governor of Carinthia Gerhard Dörfler in the interview on debts, applicant asylum applicants and Jörg Haider, I don't want Chechen killers), 14 February 2009, available at <http://www.wienerzeitung.at/DesktopDefault.aspx?TabID=4990&Alias=wahlen&cob=397046&Page16704=3> (consulted on 27 February 2009).

¹⁶ Election results as of Federal Province Salzburg, *Landtagswahl vom 01.03.2009* available at <http://www.salzburg.gv.at/20003stat/wahlen/ltw/index.htm> (consulted on 22 April 2010).

¹⁷ Elections results as of Federal Province Vorarlberg, *Landtagswahl 2009* (Provincial elections 2009), available at <http://www.vorarlberg.at/wahlen/lt.asp?wahlid=51> (consulted 22 April 2010).

¹⁸ Die Presse, *FPÖ-Chef: Exiljude ist kein Schimpfwort* (FPÖ-Leader: Exile jew is not a curse word), 26 August 2009, p.3.
Der Standard, *Und ewig grüßt die FPÖ vom rechten Rand* (And forever the FPÖ greets from the right edge), 26 August 2009, p.7.

asylum issues¹⁹ and led its campaign with slogans such as “deport criminal foreigners”²⁰, “no minarets”²¹ and “stop asylum abuse”²². The Green Party also experienced a slight growth (+0.41%) attaining 10.56% of votes and made it as fourth party into the *Landtag*.

Provincial elections in Upper Austria, 29 September 2009²³

At the 2009 provincial elections in Upper Austria, the ÖVP was able to increase the percentage of received votes to 46.76% (+3.34%), thus enlarge their majority in the *Landtag*. The SPÖ, which attained 24.94% of the vote, sustained heavy losses (-13.39%), resulting in the loss of half of their seats and representing the worst results of the party in Upper Austria in the history of the Second Republic. The FPÖ was able to almost double its percentage of votes with 15.29% (+6.89%) and came off as big winner of the election with these gains. The fourth party that made it into the *Landtag* was the Green Party, which raised percentages of received vote to 9.18% (+0.12%), and thus fell behind the FPÖ. In its election campaign, the SPÖ candidate, Erich Haider, proposed a Treaty for Austria, which would have to be signed by migrants, committing them to learn German, to respect the basic rules of living together, to pursue a regular employment and to enable the access of all family members to education. An additional 300 *housing quality managers* should assist the implementation of the treaty, especially in districts with a high percentage of foreigners.²⁴

2.1.2 Elections to the European Parliament, 7 June 2009

Elections to the European Parliament in Austria were held in the course of the EU-wide elections on 7 June 2009. In addition to the five parties already represented in the European Parliament – SPÖ, ÖVP, FPÖ the Green Party and Liste Dr. Martin (MARTIN) – the BZÖ, the Communist Party Austria (KPÖ) and the Young Liberals (JuLis) also ran for election. The ÖVP received 30% of all votes, signifying a loss of 2.7% compared to the last elections in 2004. The SPÖ, which received 23.7%, recorded a loss of -9.6% of the vote, MARTIN with 17.7% (+3.7%), the FPÖ received 12.7% (+6.4%) and the Green Party attained 9.9% (-3.0%).²⁵ One of the major discussed topics during the campaign was the access of asylum applicants to the labour market after six months as proposed in the revision process of the Directive 2003/9/EC laying down minimum standards for the reception of asylum applicants and refugees.²⁶ This topic led to debates between the parties, as did the issue of the accession of Turkey to the EU. In this context, the election campaign of the FPÖ was characterized by slogans such as “Occident in Christian Hand”,²⁷ which raised major media attention. Amnesty International described the campaign of the FPÖ as “xenophobic, Islam phobic, anti-Semitic and with that violating human rights”.²⁸

¹⁹ Kleine Zeitung, *Schwarz-Blau im Ländle ist noch nicht vom Tisch (Black-blue in the province not off the stove yet)*, 15 September 2009, p.4.

²⁰ Die Presse, *Wir waren doch schon immer so (We were always like this)*, 2 September 2009, p.4.

²¹ Ibid.

²² Ibid.

²³ Election results as of Federal Province Upper Austria, *Wahlen in Oberösterreich seit 1945* available at http://www.land-oberoesterreich.gv.at/cps/rde/xchg/ooe/hs.xsl/12754_DEU_HTML.htm (consulted on 27 February 2009).

²⁴ Kurier, *SPÖ will Integrationswillen vertraglich festlegen lassen (SPÖ wants to fix integration will by contract)*, 15 September 2009, p.20.

²⁵ Election results as of MoI, *Europawahl 2009*, available at <http://wahl09.bmi.gv.at/> (consulted on 25 February 2010).

²⁶ European Parliament, *European Parliament resolution of 5 February 2009 on the implementation in the European Union of Directive 2003/9/EC laying down minimum standards for the reception of asylum applicants and refugees: visits by the Committee on Civil Liberties 2005-2008*, available at <http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//TEXT+TA+P6-TA-2009-0047+0+DOC+XML+V0//EN&language=DE> (consulted on 2 February 2010).

²⁷ Profil, *Albtraum und Wirklichkeit (Nightmare and Reality)*, Issue 22/09, 25 May 2009, p.65.

²⁸ Wiener Zeitung, *Amnesty ortet Rassismusproblem (Amnesty Assess Racism Problem)*, 29 Mai 2009, p.5.

2.2 General overview of the main policy and/or legislative debates

Generally, asylum and migration have figured amongst the most debated topics in the Austrian media landscape with special focus lying on debates on the Austrian asylum system in 2009: According to the weekly MediaWatch Report of the MediaWatch Institut für Medienanalyse,²⁹ debates on the asylum system in Austria ranged amongst the top themes. The main policy and legislative debates on migration and asylum relevant for policy makers are discussed below.

2.2.1 Amendments to the Aliens' Law

The year 2009 was dominated by the debates concerning the two amendments to the Aliens' Law. With regard to the first amendment, representatives of civil society³⁰ and UNHCR³¹ generally welcomed the revision of the system of *humanitarian residence permits*, particularly that non-nationals can apply for a *humanitarian residence permit* according to the new law and it does not necessarily have to be granted *ex officio*. Concerns were raised about specific provisions of the amendment, such as the sponsorship for old cases or the renewal of residence permits.

Critique was also raised by the opposition; on the one hand the BZÖ and the FPÖ generally criticised that the amendment “facilitates the abuse of asylum rights”³² and that asylum is mixed up with immigration,³³ on the other hand the Green Party raised concerns that the MoI is the last instance in several cases, and that the new law is not extensive enough.³⁴

As mentioned above, the second amendment has no specific focus and tackles several fields of asylum and migration law. In general, the MoI stated that the changes made were necessary to combat abuse of the asylum system and to guarantee effective execution of the law.³⁵ In this regard, it has been underlined that the distinction between refugees and economic migrants is essential. Accordingly, the aim of the two amendments is to provide efficient protection for refugees on the one side and to combat criminality and human smuggling on the other side.

In particular, the MoI stressed the point that the amendments concerning *de-facto protection*³⁶ were motivated by the rise of subsequent asylum applications and ease the distinction between abusive and justified asylum claims.³⁷ It was further stated that the residence requirements

²⁹ MediaWatch Institut für Medienanalyse, *Wöchentlicher MediaWatch-Report*, available at: <http://www.ots.at/suche/w%C3%B6chentlicher+mediawatch-report+politik/to/01.01.2009/from/01.01.2010/inhalte/alle/seite/1> (consulted on 28 April 2010)).

³⁰ See for example the legal statements on the legislative proposal of Caritas, Diakonie, Amnesty International, LEFÖ or of the Ludwig Boltzmann Institute for Human Rights, available at http://www.parlament.gv.at/PG/DE/XXIV/ME/ME_00012/pmh.shtml (consulted on 1 April 2010).

³¹ UNHCR, *Stellungnahme* available at http://www.unhcr.at/filemin/unhcr_data/pdfs/rechtsinformation/5_Oesterreich/2_A-Stellungnahmen/UNHCR_Novelle09.pdf (consulted on 30 March 2010).

³² Die Presse, *Humanitärer Aufenthalt jetzt fix (Humanitarian Residence now fix)*, 13 March 2009, p.3.

³³ Idem.

³⁴ Wiener Zeitung, *Bleiberecht erhitzt Gemüter (Right to Residence Caused a Stir)*, 13 March 2009, p.4.

³⁵ MoI, *Innenministerin: Ein geordnetes Fremdenrecht – human und gerecht*, available at http://www.bmi.gv.at/cms/BMI/_news/BMI.aspx?id=49534F336252445878666F3D&page=56&view=1, see also ÖVP-PK, press release, *Österreich - das sicherste Land der Welt - dazu brauchen wir ein geordnetes Fremdenrecht (Austria – the safest country of the world – thereto we need regulated Aliens' Law)*, 21 October 2009, available at http://www.ots.at/presseaussendung/OTS_20091021_OTS0300 (consulted on 21 April 2010).

³⁶ De facto protection means that an applicant/asylum applicant cannot be removed from Austria until a final decision is taken on his/her asylum decision. This has been limited by the amendment in case of subsequent asylum application.

³⁷ *Materialien, Fremdenrechtänderungsgesetz* available at http://www.parlament.gv.at/PG/DE/XXIV/II/II_00330/fname_167909.pdf (consulted on 28 February 2009).

and the reporting obligation for asylum applicants during the admission procedure improve the availability of the applicant during the asylum procedure.³⁸

The introduction of x-ray examinations in the framework of *multifactoral methodology*³⁹ for age assessment should serve the interests of minors, because the number of adults claiming to be minors so as to receive special protection increased rapidly in the last year. The MoI also highlighted that the MRT examination, which was used previously, is difficult and constitutes an immense administrative burden for the authorities. Thus with the help of this methodology it is possible to expedite the asylum procedure.

The debates centred mainly on changes in the asylum law and in the Aliens' Police Act. The opposition parties criticised the amendment as too extensive for several reasons. The Green Party criticised the new provisions concerning the withdrawal of asylum and subsidiary protection status for being disproportional.⁴⁰ The Green Party raised further concern regarding the new *tolerated status*: a person whose asylum or subsidiary protection status is withdrawn will have limited rights and possibilities to earn a living in the future, thus they might be forced into criminality.⁴¹ Plus, age assessment by x-ray examination was seen critically, as it is scientifically disputed and causes unnecessary radiation exposure to minors.⁴²

On the other side of the political spectrum, the FPÖ and the BZÖ criticised the amendment as being not extensive enough. The BZÖ generally welcomed the direction of the new law, but it pointed out that the restrictions concerning subsequent asylum application will probably not lead to the desired results, namely the acceleration of procedures: even if asylum procedures will be closed earlier, the deportation of irregularly residing third country nationals would still constitute a difficulty. The provisions concerning the delinquent asylum applicants were seen as "too weak,"⁴³ in particular because legal consequences are only foreseen in cases of repeated criminal conviction.⁴⁴ The FPÖ also argued that repeated amendments make the asylum and immigration law more complicated; the complexity would create loopholes and facilitate the abuse of the asylum system in Austria. The party raised further concerns that administrative penalties have to be imposed for certain offences instead of judicial penalties in

According to the statistics of MoI, there have been 343 in 2006, in 2007 465, in 2008 789 and in 2009 until 31 August there have been 1.043 inadmissible subsequent asylum applications.

³⁸ Idem.

³⁹ Developed by Working Group for Forensic age Diagnosis of the German society for Medico legal. For more information visit <http://www.formed-ffm.de/> (consulted on 28 April 2010).

⁴⁰ Green Party, news release, *Fremdenrecht – Weiter scharfe Kritik an Novelle (Aliens' Law – Ongoing harsh critic on the qdmandment)*, available at <http://www.gruene.at/menschenrechte/artikel/lesen/49692/?mobil=ja>, see also Green Party, press release, *Korun zu Fremdenrecht: Verschärfungsspirale sinnfrei und rechtswidrig (Korun on Aliens' Law: strenghtening-spiral is useless and illegal)*, 13 October 2009, available at http://www.ots.at/presseaussendung/OTS_20091013_OTS0111/korun-zu-fremdenrecht-verschaerfungsspirale-sinnfrei-und-rechtswidrig (consulted on 13 March 2010).

⁴¹ Parlamentsdirektion, press release, *Innenausschuss billigt Fremdenrechtspaket Abänderungsantrag trifft Klarstellung zum "Bleiberecht" (Committee on Internal Affairs approves Aliens Package; Proposition for Amendment clarifies "Right to Residency")*, 15 October 2009, available at http://www.ots.at/presseaussendung/OTS_20091015_OTS0299/innenausschuss-billigt-fremdenrechtspaket-abaenderungsantrag-trifft-klarstellung-zum-bleiberecht (consulted on 3 March 2010).

⁴² Green Party, news release, *Grünwald kritisiert radiologische Untersuchung an Jugendlichen zur Altersfeststellung (Grünwald criticizes radiologic examination on adolescents for age assessment)*, available at <http://www.gruene.at/menschenrechte/artikel/lesen/47001/> (consulted on 3 March 2010).

⁴³ Parlamentsdirektion, press release, *Innenausschuss billigt Fremdenrechtspaket Abänderungsantrag trifft Klarstellung zum "Bleiberecht" (Committee on Internal Affairs Approves Aliens Package; proposition for amendment clarifies "Right to Residency")*, 15 October 2009, available at http://www.ots.at/presseaussendung/OTS_20091015_OTS0299/innenausschuss-billigt-fremdenrechtspaket-abaenderungsantrag-trifft-klarstellung-zum-bleiberecht (consulted on 3 March 2010).

⁴⁴ Idem.

the future. Moreover, the FPÖ criticised that age assessment by x-ray examination should not be forced on a person.⁴⁵

The reactions of the representatives of civil society can be characterised as critical: The amendment as a whole was criticised by NGOs, such as Amnesty International,⁴⁶ Caritas,⁴⁷ and Diakonie⁴⁸ as being likely to generate xenophobia, criminalization of non-nationals and contains “blank suspicions”⁴⁹ against non-nationals. These outcomes were seen as a result of mixing security and asylum issues, represented as well in numerous interconnections between the Aliens’ Law and Criminal Law. Other stakeholders claimed as well that the debates centred increasingly on crimes attributed to migrants, particularly related to asylum applicants and organised criminality from Eastern Europe, in 2009.⁵⁰ In particular, NGOs were concerned that the provisions regarding detention pending deportation of asylum applicants were too extensive and had a punitive character.⁵¹ Furthermore, concerns were raised about residence requirements, because they limit the asylum applicant’s access to legal counselling. With regard to age assessment, the point has been raised that the newly introduced *multifactoral methodological approach* does not fulfil the scientific requirements and that the x-ray examination constitutes a disproportional interference with the physical integrity of the asylum applicant. Further critique focused on the reduced appeal period against negative asylum decisions and on the limitations of the *de-facto* protection in cases of subsequent asylum applications. Positive reactions came from the NGOs and UNHCR regarding the introduction of new ID cards and to the new residence permits and the provisions facilitating the application procedure of unaccompanied minors.⁵²

2.2.2 Creation of a new Initial Reception Centre for asylum applicants

The creation of a new Initial Reception Centre for asylum applicants in one of the southern provinces of Austria made headlines several times in 2009, particularly after June 2009 when the MoI opened a call for tender.⁵³ A new Initial Reception Centre was considered necessary due to the rising number of asylum applications, in order to relieve the capacities of the other Initial Reception Centres and to guarantee a balanced distribution of asylum applicants among the Austrian provinces.⁵⁴ Two municipalities in Carinthia made their intentions to tender public, however they had to withdraw their applications due to resistance from the municipal councils, the local populations and the governor of the province.⁵⁵

⁴⁵ Idem.

⁴⁶ Amnesty International, *Stellungnahme*, available at http://www.parlament.gv.at/PG/DE/XXI/V/ME/ME_00065_28/imfname_165191.pdf (consulted on 2 April 2010).

⁴⁷ Caritas Österreich, *Stellungnahmen*, available at http://www.parlament.gv.at/PG/DE/XXIV/ME/ME_00065_35/imfname_165262.pdf (consulted on 2 April 2010).

⁴⁸ Diakonie Österreich, *Stellungnahme*, available at http://www.parlament.gv.at/PG/DE/XXIV/ME/ME_00065_26/imfname_165188.pdf (consulted on 2 April 2010).

⁴⁹ Amnesty International, *Stellungnahme*, available at http://www.parlament.gv.at/PG/DE/XXIV/ME/ME_00065_28/imfname_165191.pdf (consulted on 2 April 2010).

⁵⁰ Die Presse, *Gift und Galle (Poison and choler)*, 17 June 2009, p. 30; Kurier, *Die Angst vor den fremden Tätern (The fear of foreign perpetrators)*, 22 June 2009, p.16.

⁵¹ Detention pending deportation is a security measure in connection with an expulsion procedure, and it should be distinguished from prisons.

⁵² UNHCR, *Stellungnahme*, available at http://www.unhcr.at/fileadmin/unhcr_data/pdfs/rechtsinformationen/5_Oesterreich/2_A-Stellungnahmen/UNHCR-Analyse_final1.pdf (consulted on 2 April 2010).

⁵³ MoI, *Fekter: Erstaufnahmestelle Süd - eine Chance für Ihre Gemeinde* 24 June 2009, available at http://www.bmi.gv.at/cms/BMI/_news/BMI.aspx?id=6D3777764D4233596637673D&page=114&view=1 (consulted on 23 March 2010).

⁵⁴ Idem.

⁵⁵ Kleine Zeitung, *Asylantenheim, Neuhaus macht Rückzieher (Reception Centre for Applicant asylum applicants: Neuhaus backs down)*, 3 July 2009, p.20; Kleine Zeitung, *Eisenkappel aus dem Rennen (Eisenkappel is not Running Anymore)*, 9 July 2009, p.18.

In total ten municipalities tendered and finally a municipality of Burgenland – Eberau – was selected. After the publication of the results on 19 December 2009, strong opposition emerged against the Initial Reception Centre in Eberau. Besides the concerns raised by the local population, all the local political parties (with the exception of the Green Party) and the governor of the province, opposed the project.⁵⁶ The latter withdrew also the building licence, which was previously issued by the mayor of Eberau and was said to invoke violation of the regional planning and abuse of authority.⁵⁷ In reaction to the withdrawal of the building licence, the MoI announced that it would appeal against the decision of the governor at the Constitutional Court. No solution had been found by the end of 2009.

2.2.3 Establishment of a detention centre for detention pending deportation

Also in 2009, ongoing discussions took place concerning the establishment of a detention centre for persons awaiting their removal from Austria. According to the original plans of the MoI, the detention centre was to be established in Leoben, Styria. However, this could not be realised due to the resistance of the local population and the local authorities.⁵⁸ At the same time, positive reactions came from Vordernberg, another municipality in Styria. Here, the mayor and the municipal council were in favour of the project and argued that the detention centre would create new jobs in the municipality and prevent rural depopulation.⁵⁹ A public opinion poll showed that 69.9% of the local population supported the project.⁶⁰ Ultimately, in early 2010, the MoI and the municipality signed a contract according to which the detention centre shall be established by 2012.⁶¹

2.2.4 Red-White-Red Card

On 21 January 2009, the MoI set up a working group of representatives of the social partners and the Federation of the Austrian Industries in order to develop parameters for a new immigration system for skilled migrants. As already reported in the Policy Report 2008, this reform under the headline Red-White-Red Card was included in the Governmental Programme from 2008.⁶² According to the MoI, the Red-White-Red Card represents a flexible immigration system that is based on objective criteria, such as knowledge of the German language, educational and professional qualifications, criminal record and labour market demand. The model was to replace the current quota system and was foreseen to enter into force as of 1 January 2010, but this has not been realised as of yet.⁶³

⁵⁶ Kurier am Sonntag, *Proteste gegen Asylantenheim (Protests against the Reception Centre for Applicantssylum applicants)*, 20 December 2009, p.11.

⁵⁷ Kleine Zeitung, *Niessl stoppt das Asylzentrum (Niessl stops the Reception Centre for Applicantasylum applicants)*, 22 December 2009, p.3. See also Der Standard, *Das Burgenland stoppt die Innenministerin (Burgenland Stops Ministry of the Interior)*, 22 December 2009, p.2.

⁵⁸ Die Presse, *Widerstand gegen Schubhaftzentrum (Resistance against detention centre)*, 9 September 2009, p.3.

⁵⁹ Kurier, *Schubhaftzentrum gegen Abwanderung, (Detention centre against rural depopulation)*, 7 September 2009, p.19.

⁶⁰ Kleine Zeitung, *„Ja“ zum Schubhaftzentrum („Yes“ to the detention centre)*, 21 December 2009, p.11.

⁶¹ Kronen Zeitung, *Schubhaftzentrum Vordernberg geht 2012 an den Start (Detention centre Vordernberg starts in 2012)*, 10 February 2010, available at http://www.krone.at/krone/S153/object_id__184705/hxcm/ (consulted on 23 April 2010).

⁶² SPÖ and ÖVP, *Regierungsprogramm 2008 – 2013* available at <http://www.oevp.at/Common/Downloads/Regierungsprogramm2008-2013.pdf> (consulted on 1 April 2010).

⁶³ MoI, *Fekter – Start der Entwicklung der Rot-Weiß-Rot Card für Österreich* available at http://www.bmi.gv.at/cms/BMI/_news/BMI.spx?id=56626E62623268627362453D&page=142&view=1 (consulted on 1 April 2010).

Reforming the conditions for economic migration was welcomed by the Austrian Federal Economic Chamber and representatives have underlined that a more flexible immigration system is necessary for the Austrian economy to remain internationally competitive.⁶⁴

The reaction of the Green Party towards the Red-White-Red Card was generally positive as well: the party welcomed the fact that a point-based immigration system would create fairness and would provide for the best use of immigrants' qualifications. Nevertheless, the Green Party warned that the integration of third country nationals should not be neglected, regardless of their qualifications.⁶⁵

Most critical reactions came from the two other opposition parties, the BZÖ and the FPÖ: both parties pointed out that (contrary to the USA) Austria is not a country of immigration. According to these parties, the Red-White-Red Card will lead to wage dumping and serves only industrial interests.⁶⁶

2.2.5 Integration

One major topic discussed in the Austrian media landscape in 2009 was integration. Special focus was given to the elaboration process of the National Action Plan on Integration and the institutional anchorage of integration. Particularly also discussions focused on the integration of immigrants in Austria.

German language skills

The development process of the National Action Plan on Integration, starting in April 2009, has been accompanied by debates amongst the parties and civil society with regards to its elaboration process as well as its content. In particular, the proposed aim that future immigrants have to attain an A1 level⁶⁷ in German language skills before entering Austria⁶⁸, raised concerns. While the SPÖ saw this measure as a "step into the right direction"⁶⁹, the FPÖ and the BZÖ estimated that the effect of this measure would be weak and demanded an immediate stop of immigration in general.⁷⁰ For the Green Party, this measure signified a further restriction of immigration regulations.⁷¹ NGOs pointed out problems with regards to the implementation of the measure, e.g. the Caritas described the measure as "escapist",⁷² while the Red Cross called it "impracticable and expensive".⁷³

⁶⁴ Die Presse, "Rot-Weiß-Rot-Karte" soll Zuwanderung neu regeln („Red-White-Red Card“ shall revise immigration), 26 January 2009, available at (<http://diepresse.com/home/politik/innenpolitik/447017/index.do>) (consulted on 31 March 2010).

⁶⁵ Green Party, *Rot-Weiß-Rot Karte muss zur grundlegenden Neuausrichtung der Einwanderungspolitik führen* 26 January 2009, available at <http://www.gruene.at/menschenrechte/artikel/lesen/40042/> (consulted on 22 April 2010).

⁶⁶ Orf, *FPÖ und BZÖ gegen mehr Zuzug (FPÖ and BZÖ against more immigration)*, not dated, available at http://orf.at/090126-34322/?href=http%3A%2F%2Forf.at%2F090126-34322%2F34324txt_story.html (consulted on 22 April 2010).

⁶⁷ According to the Common European Framework of Reference for Languages, available at http://www.coe.int/t/dg4/linguistic/CADRE_EN.asp (consulted on 24 February 2010).

⁶⁸ MoI, *Einführungspapier zur Erstellung eines Nationalen Aktionsplans für Integration* available at http://www.integrationsfonds.at/fileadmin/Integrationsfond/NAP/Einfuehrungspapier_NAP.pdf (consulted on 14 May 2009).

⁶⁹ Wiener Zeitung, *Nächster Akt im Integrations-Poker (Next act in the integration poker)*, 26 March 2009, p.5.

⁷⁰ Der Standard, *Neuer Streit um Deutschlernpflicht für Migranten (New quarrel on the obligation for migrants to learn German)*, 26 March 2009, p.9.

⁷¹ Ibid.

⁷² Die Presse, *Fekter: Deutsch vor der Einreise lernen (Fekter: Learning German before the entry)*, 16 December 2009, p.10.

⁷³ Kleine Zeitung, *Wer nicht Deutsch kann, darf nicht rein (Who doesn't speak German cannot enter)*, 26 March 2009, p.13.

In addition, discussions arose around the percentage of pupils with foreign nationality or another mother language than German in Austrian public schools. While the average of children with foreign background (non-national pupils and Austrian pupils with non-German mother language) in Austria lies at 17.8%, in Vienna this percentage is 40.4% and reaches even higher percentages in some districts (e.g. the district Leopoldstadt, 60.9%) and in certain school types (e.g. Hauptschulen in the district Hernals with 93.2%).⁷⁴ A publication of the Bundesinstitut für Bildungsforschung⁷⁵ showed further that 59% of children with migration background have German language deficits before school enrolment.⁷⁶

In this context, the FPÖ and BZÖ demanded that a maximum percentage of 30% non-national pupils for public schools classes is fixed.⁷⁷ The FPÖ proposed further that obligatory language tests be established for migrant children before school enrolment and preparatory language training classes for children who do not meet the requested German language skills.⁷⁸ Language promotion classes based on the example of Finland were proposed by the ÖVP.⁷⁹ The SPÖ proposed an intensification of language promotion activities.⁸⁰

State Secretariat for Integration

New discussions also arose around a possible State Secretariat for Integration in 2009, when the establishment of such an institution was requested by the SPÖ.⁸¹ While the proposal was well received by the Green Party,⁸² it led to internal discussions within the SPÖ and was finally rejected by Chancellor Werner Faymann due to financial constraints. Furthermore, the coalition partner ÖVP was against an enlargement of the governmental body.⁸³

Islam in Austria

The Swiss referendum on the ban on building minarets influenced Austrian discussions on Islam in general and the building of minarets in particular. While representatives of the FPÖ and BZÖ reacted positively to the Swiss referendum and requested a similar countrywide

⁷⁴ Federal Ministry for Education, Arts and Culture, Parlamentarische Anfragebeantwortung Nr. 796/J-NR/2009, available at: http://www.parlament.gv.at/PG/DE/XXIV/AB/AB_00724/fname_153659.pdf#search=%22Nr.%20796%2FJ-NR%2F2009%22 (consulted on 23 February 2010).

⁷⁵ Breit, Simone (Ed.), *Frühkindliche Sprachstandsfeststellung. Konzept und Ergebnisse der systematischen Beobachtung im Kindergarten*, Graz 2009. available at: <http://www.bifie.at/buch/455> (consulted on 25 February 2010).

⁷⁶ Salzburger Nachrichten, *Schulen als Migrantenghetto (Schools as migrant ghettos)*, 31 March 2009, p.2.

In addition, results of the PISA Study 2006 found that especially the reading skills of 2nd generation migrant children were less elaborated than those of the 1st generation. For further information see: Schreiner, Claudia (ed.). *PISA 2006. Internationaler Vergleich von Schülerleistungen. Erste Ergebnisse*, Graz 2007.)

⁷⁷ Die Presse, *Wien: Vier von zehn Schülern sind Migranten (Vienna: Four of ten pupils are migrants)*, 31 March 2009, p.7.

⁷⁸ FPÖ Vienna, press release, *FP-Gudenus: Verpflichtende Überprüfung der Deutschkenntnisse von Migrantenkindern und Vorsorgeklassen gefordert (FP-Gudenus: Obligatory examination of German language skills of migrant children and preparatory classes demanded)*, 1 April 2009.

⁷⁹ Der Standard, *ÖVP fordert Aufnahmeverfahren an AHS (ÖVP requests entry exams for high schools)*, 16 May 2009, p.8.

⁸⁰ Salzburger Nachrichten, *Schulen als Migrantenghetto (Schools as migrant ghettos)*, 31 March 2009, p.2.

⁸¹ Österreich, press release, *Häupl will Integrationsressort (Häupl wants an Integration Department)*, 2 October 2009, available at http://www.ots.at/presseaussendung/OTS_20091002_OTS0279/oesterreich-haeupl-will-integrationsressort (consulted on 29 December 2009); Kurier, *Integration I: Häupl für eigenes Ressort (Integration I: Häupl for a separate resort)*, 3 October 2009, p.2; Die Presse, *Zu einfach gedacht (Thought too easily)*, 4 October 2009, p.2.

⁸² Kleine Zeitung, *Küberl winkt ab (Küberl refuses)*, 3 October 2009, p.5.

Kurier, *Integration II: Grüne für Staatssekretär Küberl (Integration II: The Green Party for State Secretary Küberl)*, 3 October 2009, p.2; Der Standard, *Grüne für Caritas-Chef als Integrationsstaatssekretär (Green Party for Caritas-Leader as Integration State Secretary)*, 3 October 2009, p.6.

⁸³ Kleine Zeitung, *Faymann legt Veto ein (Faymann vetos)*, 4 October 2009, p.8.

prohibition of minarets based on the spatial planning regulations of the federal provinces Carinthia and Vorarlberg, the Green Party argued that the regulations were two centuries old, from the time when the Edict of Tolerance under Josef II allowed the protestant community to build churches, but without steeples.⁸⁴ The coalition parties SPÖ and ÖVP argued that a ban on minarets would signify a constitutional breach, because the protection of freedom of religion has constitutional status.⁸⁵ Earlier in the year, a citizens' initiative, supported by the FPÖ, mobilized against an enlargement of an Islamic cultural centre.⁸⁶

Political and public debates on the attitudes of Muslim religion education teachers in public schools towards democracy were stirred on the occasion of the publication of a Doctoral thesis⁸⁷ of the University of Vienna, which found that every fifth Muslim religion education teacher (22%) in Austrian public schools rejects democracy and 15% of them reject the Austrian constitution.⁸⁸ In the framework of ongoing discussions in France, the wearing of burkas and burkinis was debated in Austria as well.⁸⁹

3. SPECIFIC DEVELOPMENTS IN ASYLUM AND MIGRATION

3.1 Control and Monitoring of Immigration

3.1.1 European Pact on Immigration and Asylum

II (c) ensure that risks of irregular migration are prevented

The MoI states that controlled immigration legislation and the prevention of irregular migration has always been a priority of the Austrian migration policy.

Already before the adoption of the European Pact on Immigration and Asylum, a legislative framework was set out in order to prevent irregular migration: third country nationals need a valid travel document, a visa and/or a valid residence permit before entering Austrian territory.⁹⁰ Furthermore, third country nationals can (and under certain conditions⁹¹ have to) be expelled from Austria if they do not have a valid residence title⁹² or did not succeed with their application for international protection.⁹³ Additionally, the Aliens' Police Act contains different sanctions concerning irregular migration such as human smuggling,⁹⁴ aiding and

⁸⁴ Die Presse, *Wer fürchtet sich vor dem Minarett? (Who is afraid of the minaret?)*, 1 December 2009, p.1.

⁸⁵ Wiener Zeitung, *UNO kritisiert Minarettverbot (UN Criticizes ban of minarets)*, 2 December 2009, p.6; Wiener Zeitung, *Fischer klar gegen Minarettverbot (Fischer clearly against minaret ban)*, 3 December 2009, p.6.

⁸⁶ News, *Das Schweizer Minarettverbot: Wie man Gefahren herbeiwählt (The Swiss minaret man: How to vote dangers)*, 3 December 2009, p.34; Der Standard, *Christliches Europa in der Brigittenau (Christian Europe in the Brigittenau)*, 15 Mai 2009, p.34.

⁸⁷ Khorchide, Mouhanad, *Der islamische Religionsunterricht zwischen Integration und Parallelgesellschaft*, University of Vienna 2009.

⁸⁸ Die Presse, *Khorchide-Studie: Islam-Lehrer als Problemfall (Khorchide-Study: Islamic teachers as problem case)*, 28 January 2009. available at <http://diepresse.com/home/panorama/oesterreich/447494/index.do?from=suche.intern.portal> (consulted on 23 February 2010).

⁸⁹ Der Standard, *Bischöfe fordern Burkaverbot (Bishops demand ban of burka)*, 24 December 2009, p.1; Österreich, *FPÖ will Burka-Verbot und Asyl-Stopp sofort, 24 December 2009*, p.8.

⁹⁰ Art. 15 Aliens' Police Act

⁹¹ Third country nationals have to be expelled from Austria, if 1) in case of criminal conviction for certain crimes; 2) within three months of entry they are discovered in the act of committing a crime of intent or credible charges of any such crime are put forward directly following the perpetration thereof, if, moreover the criminal offence carries severe punishment and the competent public prosecutor has declared his intention to report the case to the Federal Minister of Justice; 3) in case of violation of the laws concerning prostitution within three months of entry, 4) if they cannot prove sufficient financial means within three months of entry or 5) in case of irregular employment within three months of entry.

⁹² Art. 53 Aliens Police Act

⁹³ Art. 10 Asylum Act

⁹⁴ Art. 114 Aliens' Police Act

abetting irregular migration,⁹⁵ acquisition of a migration or residence permit by false,⁹⁶ irregular residence,⁹⁷ entry into and arrangement of marriages/ adoptions of convenience.⁹⁸

In this context, the Aliens' Law was amended in 2009.⁹⁹ The amendments cover a wide range of issues in order to implement the Governmental Programme for the XXIV legislative period and to adapt the legislation to the latest jurisdiction of the highest courts in Austria and of the European Court of Justice. One of the aims set out in the amendments is to solve the difficulties arising with regard to subsequent/serial asylum applications. Beyond that, the administrative (applied/enforced by aliens police authorities) and criminal sanctions (applied/enforced by courts) have been revised:

- The criminal sanctions for the entry into and arrangement of marriages and adoptions of convenience¹⁰⁰ have been adapted - as of 1 January 2010 sanctions can also be imposed on a third country national who benefits from the marriage or adoption
- Certain criminal sanctions have been transformed into administrative penalties¹⁰¹
- A new criminal sanction has been introduced for cases in which a third country national falsely acquires an immigration or residence permit and receives social benefits or benefits from a health and accident or retirement pension insurance

Further changes introduce higher penalties and minimum administrative sanctions; in cases of occurrence, a prison sentence can be imposed immediately and not just as alternative penalty in case of non-compliance with the obligation to pay an imposed fine.

Austria advocates a holistic analysis and a global approach with regard to combating and preventing irregular migration; the development of police co-operations as well as integrated border management is supported. With regard to the activities undertaken by Frontex, Austria participates in the joint Frontex operations and in the Frontex Joint Support Teams and delegates officers to the Frontex Focal Point Offices.

Austria furthermore deploys liaison officers and documentation advisors. Particularly important for Austria is the cooperation in the framework of the "Forum Salzburg,"¹⁰² which has been initiated by Austria. Eight EU countries are part of this Central European security cooperation, which cooperates in Central Europe, in the Western Balkans and the European Union.¹⁰³

II (h) an Expulsion Decision taken by one Member State (MS) should be applicable throughout the EU and entered into the SIS/ implementation of Directive 2001/40/EC

The Directive 2001/40/EC had already been incorporated in the Aliens' Police Act before the adoption of the Pact. Accordingly, the execution of expulsion decisions taken by another MS is possible pursuant to Art.71 Aliens' Police Act.

Final decisions concerning residence and re-entry bans are entered into the SIS as agreed in the Schengen Agreement.

⁹⁵ Art. 115 Aliens' Police Act

⁹⁶ Art. 119 Aliens' Police Act

⁹⁷ Art. 120 Aliens' Police Act

⁹⁸ Art. 117 and 118 Aliens' Police Act

⁹⁹ Fremdenrechtsänderungsgesetz 2009, available at http://www.parlament.gv.at/PG/DE/XXIV/II/I_00330/pmh.shtml (consulted on 29 December 2009).

¹⁰⁰ Art. 117 and 118 Aliens' Police Act

¹⁰¹ Art. 114 para 1 (Human Smuggling), Art. 115 para 1 (Aiding and Abetting Irregular Migration and 119 (Unlawful Claiming of Social Benefits) Aliens' Police Act

¹⁰² For further information visit: <http://www.salzburgforum.org>.

¹⁰³ MoI, *Aus dem Inneren: Internationale Schwerpunkte*, Vienna 2009, available at <http://www.bmi.gv.at/cms/cs03documentsbmi/648.pdf> (consulted on 29 December 2009).

III (a) more effective control of the external land, sea and air borders

Since the adoption of the Pact, the existing police cooperation with neighbouring countries has been further strengthened in order to achieve more effective control of the external land and air borders. Joint police cooperation agreements and centres are established, mixed patrols and joint campaigns and continuous strategy meetings with responsible authorities of the neighbouring countries on the regional as well as on national level have been organised.

III (b) generalise the issue of biometric visas, improve cooperation between MS' consulates and set up joint consular services for visas

Austria favours harmonised actions with regard to the biometric visas, passports and residence permits. The preparatory measures for the introduction of biometric visas have been set and Austria is participating in the respective roll out phases. Furthermore, Austria is supporting the preparation of a Handbook with practical instructions for the issuance of a temporary residence visa.

With regard to the improvement of the cooperation between MS, the Austrian focus lays on strengthening the collocation of consulates (e.g. the collocation in Chisinau); the progressive implementation of joint consular services is the aim long term.

III (d) solidarity with MS subjected to disproportionate influxes of immigrants

Please see measures under commitment IV(c) in section 3.2.1.

III (e) deploy modern technological means for border control

The Austrian authorities carry out external border controls at the six international airports,¹⁰⁴ whilst land border controls are carried out at the border to Liechtenstein. However, land border controls are of less importance due to the accession of Liechtenstein to the Schengen Agreement and Convention. Being a country of destination and transit for irregular migration, Austria is engaged in all areas of the integrated border management.

At the remaining borders, the latest technological devices are deployed and the arrangements for the deployment of new document reader devices and fingerprint scanners in the framework of the VIS Regulation have been made.

Austria is furthermore prepared to participate in the introduction of an electronic entry-exit system with simplified procedures for EU nationals and other travellers, taking into account the experiences of VIS I and VIS II.

III (f) intensify cooperation with the countries of origin and of transit in order to strengthen border control

It is a priority of the Austrian government to intensify the cooperation with countries of origin and transit. A core area in 2009 was the cooperation with and support of training programmes; an example for such cooperation is the support of the Moroccan police in building a police dog unit, in the form of training and acquiring new dogs¹⁰⁵ or the project "Implementation of the Serbian Integrated Border Management Strategy". Furthermore, the introduction of cooperation clauses into the readmission agreements, which are currently under negotiation, has been planned.

¹⁰⁴ Airports in Austria are in Graz, Innsbruck, Klagenfurt, Linz, Vienna and Salzburg.

¹⁰⁵ MoI, *Marokkanische Hundeführerinnen in Wien ausgebildet* available at http://www.bmi.gv.at/cms/BMI/_news/BMI.aspx?id=796E3253565177725955303D&page=74&view=1 (consulted on 13 October 2009).

However, the provision of equipment to countries of origin and transit is not possible due to lack of financial means. Austria favours the establishment and development of an equipment pool managed by Frontex.

3.1.2 Additional/Complementary developments

Development of international migration statistics

According to preliminary data of Statistics Austria¹⁰⁶, 78,596 persons have immigrated to Austria and 58,464 emigrated from Austria from 1 January to 30 September 2009, bringing the net migration during this period to 20,132. This represents a decrease in net migration of 24.6%, compared to the first nine months in 2008 when a net migration of 26,709 persons – based on registrations in the national population register – was recorded. This decrease is characterised by a slight decrease (-6.2%) in inflows of non-nationals (2009: 66,833/ 2008: 71,286) and a slight increase (+5.5%) in the numbers of outflows of non-nationals (2009: 43,517/ 2008: 41,265). The inflows of nationals (2009: 11,763; 2008: 11,787; -0.2%) and the outflows of nationals (2009: 14,947/ 2008: 15,099) remained almost on the same level as in 2008 with -1%.

Residence permits¹⁰⁷

In 2009, 446,556 third-country nationals did have a residence permit in Austria of which 225,637 were male and 220,919 female. The main country of citizenship of third-country nationals possessing a residence permit were citizens from Serbia (111,490; 24,97 %), Turkey (97,949; 21,93 %), Bosnia- Herzegovina (84,661; 18,96 %), Croatia (53,709; 12,03 %) and Macedonia (16,152; 3,62 %). A 319,609 residence titles were unlimited.

A number of 5,532 residence permits and a number of 14,347 settlement permits of have been issued for the first time.

3.2 Refugee Protection and Asylum

3.2.1 European Pact on Immigration and Asylum

IV (c) solidarity with MS which are faced with specific and disproportionate pressures on their national asylum systems

Compared to the population of the country, Austria is among the EU MS with the highest rates of asylum applications.¹⁰⁸ When evaluating the numbers of asylum applications, the situation of the MS as a whole has to be taken into account (also the numbers per capita and the number of the asylum applications pending).¹⁰⁹ Due to the high annual number of asylum applications and the high number per capita in comparison with other EU MS, Austria is not participating in the joint EU resettlement programme.¹¹⁰ Austria would also like to highlight that participation in this programme should be voluntarily.

¹⁰⁶ Statistik Austria, *Internationale Zu- und Wegzüge 2008-2009 nach Ereignismonat, Bundesland und Staatsangehörigkeit* available at http://www.statistik.at/web_de/static/internationale_zu-_und_wegzuege_2008-2009_nach_ereignismonat_bundesland_un_035361.xls (consulted on 18 February 2010).

¹⁰⁷ MoI, *Fremdenstatistik 2009*. available at:

http://www.bmi.gv.at/cms/BMI_Niederlassung/statistiken/files/Fremde_Jahresstatistik_2009.pdf (consulted on 23 March 2010).

¹⁰⁸ Only in Malta, Cyprus, Sweden and Greece the applicants registered were higher per million inhabitants according to the Eurostat Newsrelease 66/2009, available at http://epp.eurostat.ec.europa.eu/portal/page/portal/populations/migration_asylum (consulted on 7 April 2010).

¹⁰⁹ 15,821 asylum applications have been filed in 2009 and in December 2009 28600 asylum applications were pending, <http://nui.epp.eurostat.ec.europa.eu/nui/setupModifyTableLayout.do> (consulted on 7 April 2010).

¹¹⁰ European Commission, press release, *Stepping up efforts on resettlement of refugees*, 2 September 2009, available at: <http://europa.eu/rapid/pressReleasesAction.do?reference=IP/09/1267&format=HTML&aged=0&language=EN&guiLanguage=en> (consulted on 2 May 2010).

Austria's policy is more orientated on the Dublin II Regulation. The government fosters an intensive dialogue with other asylum authorities and provides its expertise to other EU MS, e.g. in the form of working visits or through the exchange of information. The dialogue started already before the adoption of the Pact and has been continuously strengthened since then; this applies both to bilateral cooperation as well as to institutionalised networks such as EURASIL and GDISC.

IV (e) MS are invited to provide the personnel responsible for external border controls with training in the rights and obligations pertaining to international protection

All executive officers in Austria receive regular trainings in the main areas of international protection and specialized officers responsible for border control receive additional specific trainings.

3.2.2 Additional/Complementary developments

Legislative developments in the field of asylum

The most important policy developments in the field of migration and asylum in Austria concerned the amendments to the Asylum Act in 2009. Both legislative packages adopted in 2009 modified the Asylum Act.

As mentioned above, the first amendment deals primarily with the reform of the *humanitarian residence permits* and influenced the asylum law only in this regard. The explicit reference to Art. 8 of the European Convention on Human Rights (ECHR) in the asylum decisions is new: when international protection is refused, the decision makers have to evaluate whether the expulsion of the asylum applicant would be in accordance with Art. 8 ECHR or whether the expulsion of the asylum applicants is forbidden in the long run.¹¹¹ The Asylum Act mentions several criteria that should be taken into account: length of stay, existence of family life, integration, etc. If the expulsion is forbidden in the long run, the asylum authorities have to forward the decision to the responsible immigration office that issues a settlement permit.¹¹²

The second amendment adopted in 2009 touches on several fields of asylum legislation; the key elements of the reform can be summarized as follows:¹¹³

- Acceleration of the asylum procedure in case of subsequent/serial asylum application: If the asylum applicant files a new application after a negative asylum procedure, the asylum applicant does not automatically enjoy *de facto protection* against deportation. On the contrary, *de facto protection* can be waived, which has to be reviewed by the Asylum Court. This review, however, does not have suspensive effect and the asylum applicant can be deported after three days.¹¹⁴
- Delinquency: If a recognised refugee or person with subsidiary protection status has been convicted of a certain criminal offence, the authorities must initiate an asylum withdrawal procedure if the withdrawal of the refugee/subsidiary protection status is very likely. Similarly, if an asylum applicant has been convicted and an expulsion procedure is initiated, the asylum procedure is accelerated. Restrictions are also foreseen for delinquent family members of asylum applicants, recognized refugees or persons with subsidiary protection status.¹¹⁵
- Residence requirement/reporting obligation: The new law establishes a reporting obligation for asylum applicants during the admission procedure if a negative

¹¹¹ Art. 10 para 2 Asylum Act

¹¹² Art. 22 para 9 Asylum Act and Art. 44a. Settlement and Residence Act

¹¹³ Fremdenrechtsänderungsgesetz 2009, available at

http://www.parlament.gv.at/PG/DE/XXIV/II/I_00330/pmh.shtml (consulted on 22 April 2010).

¹¹⁴ Art. 12a Asylum Act

¹¹⁵ Art. 7 and 9 Asylum Act

decision is likely and if asylum applicants are homeless.¹¹⁶ Additionally, the existing provisions concerning a residence requirement have been extended: as of 1 January 2010 asylum applicants are required to stay in the district of the Initial Reception Centre until the end of the admission procedure.¹¹⁷ Both violation of the reporting obligation and unauthorized absence from the district constitute an administrative offence¹¹⁸ and a ground for imposing detention pending deportation on the asylum applicant.¹¹⁹

- Detention pending deportation for asylum applicant: According to the new law, detention pending deportation can be imposed on asylum applicants if the asylum applicant has received a negative decision due to the responsibility of another EU MS for the procedure (Dublin cases), as well as if the residence requirement, the reporting obligation or the obligation to cooperate are violated or there are specific cases of subsequent asylum applications. In all of these cases, detention pending deportation must be administered, if it is necessary to secure the expulsion procedure or the removal of the asylum applicant.¹²⁰

Development of the number of asylum applications and decisions on international protection¹²¹

A total number of 15,821 asylum applications have been filed in 2009. This represents a growth of 23.2% compared to 2008 (12,841) and represents the highest number in asylum applications since 2005 (22,461). When compared with the population of each MS, Austria is behind Malta (6,350 applicants per million inhabitants), Cyprus (4,370), Sweden (2,710) and Greece (1,775).¹²² Accordingly, with 1,530 asylum applicants per million inhabitants, Austria is in the fifth place in the EU MS with regard to the highest rates of applicants registered per inhabitants.¹²³ The main countries of origin of asylum applicants have been the Russian Federation (3,559), Afghanistan (2,237), Kosovo (1,332), Georgia (975) and Nigeria (837).

3.3 Unaccompanied Minors (and other vulnerable groups)

3.3.1 European Pact on Immigration and Asylum

No explicit mention is made in the objectives of the Pact on this aspect and, therefore, no information is provided here.

3.3.2 Additional/Complementary developments

Legislative developments concerning the situation of unaccompanied minors

Both amendments to the Aliens' Law 2009 dealt with the issue of unaccompanied minors and set out a number of new provisions for this group:

¹¹⁶ Art. 15, 15 a Asylum Act

¹¹⁷ Art. 12 Asylum Act

¹¹⁸ Art. 121 Aliens' Police Act

¹¹⁹ Art. 76 (2) a Aliens' Police Act

¹²⁰ Art. 76 para 2a Aliens' Police Act

¹²¹ MoI, *Asylstatistik 2009 (Asylum Statistics 2009)*.

http://www.bmi.gv.at/cms/BMI_AsyIwesen/statistik/files/Asyl_Jahresstatistik_2009.pdf (consulted on 24 April 2010) and as provided by the MoI on 22 April 2010. Statistics are presented according to Art. 4. of Regulation (EC) No 862/2007 of 11 July 2007 on Community statistics on migration and international protection.

¹²² Eurostat, Press Release 66/2009, *Asylum in the EU in 2008. Around 20 000 asylum applicants registered each month in EU27*, available at http://epp.eurostat.ec.europa.eu/portal/page/portal/population/publications/migration_asylum (consulted on 7 April 2010)

¹²³ Ibid.

- A definition of unaccompanied minors was included in the Settlement and Residence Act: an unaccompanied minor is “a foreign national minor who is not accompanied by his or her legally responsible adult”.¹²⁴
- Facilitation of the application procedure for unaccompanied minors: in contrast to adults, unaccompanied minors can file their application in Austria or the MoI can refrain from legal representation of the minor when applying and issuing the residence or settlement permit.¹²⁵
- A specific residence permit called *residence permit- special protection* for irregularly resident children was introduced in order to serve the best interest of the child: in cases where the guardianship for an unaccompanied minor has been transferred to the youth welfare authorities or to foster parents and in particular cases where a child has been a victim of domestic violence, where the responsibility was neglected, the minor can receive a residence permit.¹²⁶
- Age assessment: age assessment follows a *multifactoral methodological approach* that is based on three different examinations: a physical, a dental check and x-ray examination.¹²⁷ Such an assessment can be carried out in the framework of an asylum or residence procedure as well as during an application for citizenship, when doubt arises concerning the age of a person who claims to be a minor and if the person is not able to prove his/her age with objective documents or in another suitable way. The principle of proportionality and the principle of *in dubio pro reo* have to be taken into account: This means firstly that an x-ray examination is prohibited if it constitutes a health risk to the person (e.g. in case of pregnancy) and secondly that the authorities shall act on the assumption that the person is a minor if the age of the person cannot be determined exactly.¹²⁸

Development of numbers of asylum applications of unaccompanied minors¹²⁹

In 2009, 1,041 asylum applications of unaccompanied minors were filed, which represents an increase from 2008 of 49.4% (697). About 94.7% of all asylum applicants were between 14 and 18 years, 5.2% were below the age of 14 years. About 90% of all asylum applicants were male. The main countries of citizenship of the unaccompanied minors were Afghanistan (431 applications), Nigeria (114), the Russian Federation (63), the Republic of Moldova (56), Somalia (38) and Algeria (36).

3.4 Economic Migration

3.4.1 European Pact on Immigration and Asylum

I (a) Implement policies for labour migration

With regard to the labour market and integration policy, Austria’s priority for 2009 was to improve the general conditions of access to the labour market for regularly residing third country nationals and to integrate this large labour force potential. The current legislation concerning key employees (highly qualified third country nationals), researchers as well as

¹²⁴ Art. 2 para 1 (17) Settlement and Residence Act

¹²⁵ Art. 19 and 21 Settlement and Residence Act

¹²⁶ Art. 69a para 1 (6) Settlement and Residence Act

¹²⁷ Art. 15 Asylum Act, Art. 29 Settlement and Residence Act or Art. 12 para 4 Asylum Act

¹²⁸ *Materialien, Fremdenrechtänderungsgesetz* available at http://www.parlament.gv.at/PG/DE/XXIV/II/00330/fname_167909.pdf. (consulted on 22 April 2010), p. 17.

¹²⁹ Applicants for international protection who are considered by the responsible national authority to be unaccompanied minors during the reference period.

skilled workers in 67 professions, is seen to be sufficient to meet the national work force demand.

The Austrian admission system is based on a combination of an individual labour market test¹³⁰ and quotas for residence titles, which are set in accordance with the labour market demand. In principle, a labour market test is given for every single case according to the principle of community preference. This system should guarantee quick and flexible adaption to the labour market situation, in particular in times of crisis. However, in terms of labour market access and as far as immigration to Austria for other purposes than work is concerned (i.e. family reunification), the principle of primacy to integrated third country nationals applies.

A quota system regulates the number of settlement permits. These quotas are set out annually in a quota regulation, the so-called Settlement Regulation, according to the national labour demand. For 2009 the quota amounted to 8145 settlement permits.

Further developments on the labour market in connection with the economic crisis of 2009 and the expiry of the transitional provision concerning the free movement of workers for the EU 8 citizens in May 2011 are to be awaited.

Residence titles,¹³¹ which allow non-nationals to work in Austria, are as follows:¹³²

- “Settlement permit – key worker”¹³³ for highly qualified third country nationals. The title is valid for 18 months and serves both as settlement and work permit. The permit is issued in an accelerated so-called “One-Stop-Shop” admission procedure (6 weeks).
- “Settlement permit – unrestricted” authorizes to temporary settlement and pursue of a gainful occupation in a self-employed capacity or a gainful occupation in a non-self employed capacity.¹³⁴ The permit can be issued *inter alia* to key workers after 18 months of residence, if a certificate is provided, that proves that he/she has been working as a key worker for 12 months in the last 18 months¹³⁵ or in case of a downgrading. As a first settlement permit, it can be issued in humanitarian cases, if the person can prove knowledge of the German language.¹³⁶
- “Settlement permit – restricted” gives entitlement to temporary settlement and pursue of an activity as a self-employed person or employee, for which an appropriate authorization pursuant to the Aliens Employment Act applies. This permit can be issued quota free also to key workers in case of renewal, if the certificated mentioned above cannot be obtained providing the person has a work permit according to the Aliens’ Employment Act.¹³⁷
- “Residence permit – rotational worker”¹³⁸ is valid for one year and can be issued to person who are temporarily transferred to Austria by their internationally active employer and have a leading position within the company or are representatives of a non-national

¹³⁰ A work permit can only be issued to a third country national, if the job vacancy which is to be occupied may not be filled by an Austrian citizen. (Art. 4c Aliens’ Employment Act).

¹³¹ The Settlement and Residence Act differentiates between “residence” and “settlement”. Settlement is characterised by the perspective for a permanent settlement permit, which can be obtained after five years of settlement, whilst a residence permit allows only a temporarily limited stay in Austria.

¹³² Excluding researchers and students, which are described in the next section.

¹³³ Art. 41 Settlement and Residence Act

¹³⁴ Art. 17 Aliens Employment Act

¹³⁵ Art. 12 para 9 Aliens’ Employment Act

¹³⁶ Art. 43 (2) in connection with Art. 44a or 44b Settlement and Residence Act

¹³⁷ Art. 44 para 1 Settlement and Residence Act

¹³⁸ There are three further residence permits, which are valid for one year and are for specific employment or self-employment categories: “Residence permit - persons on business assignments”, “Residence permit - self-employed persons”, “Residence permit - special cases of paid employment activity”.

special interest group providing a work permit or a confirmation of engagement is obtained.¹³⁹

Seasonal workers can apply for a “resident visa - D”¹⁴⁰, which allows temporary employment.

Moreover, family members of EEA nationals or Austrian nationals who do not make use of their right of free movement¹⁴¹ are not granted access to the labour market directly through the residence title. Nevertheless, they are exempted from the Aliens’ Employment Act and thus have indirect free access to the labour market.¹⁴² In most cases family members of third country nationals¹⁴³ also have access to the labour market, provided that they have obtained a work permit or that they can carry out independent economic activities.

I (b) increase the attractiveness of the EU for highly qualified workers and further facilitate the reception of students and researchers

The amendment to the Aliens’ Law in 2009¹⁴⁴ introduced some easements for key workers and for researchers as of 1 January 2010. The new law aims to increase Austria’s attractiveness for researchers and follows the Governmental Programme for the XXIV legislative period that aims to strengthen Austria as a research location.

The possibility to issue a “settlement permit – restricted” was widened for self-employed key workers who have been working for the last 18 months as self employed key workers and continue to work in this function.¹⁴⁵ Family members of key workers with a “settlement permit – unrestricted”¹⁴⁶ can obtain a “settlement permit – unrestricted”, which is not subject to quota regulations after 18 months of stay.

- “Residence permit – researcher” is issued for 2 years as of 1 January 2010, compared to other residence permit that are only valid for one year. After two years of residence it is possible to change for the “settlement permit – unrestricted”, such a change is not possible with the other residence permit described above. An additional work permit is not necessary.¹⁴⁷

Similar to family members of key workers, family members of researchers¹⁴⁸ with a “settlement permit – unrestricted” can also be issued a “settlement permit – unrestricted”, which is not subject to quota regulations if he/she has already been in Austria for more than 12 month with a residence permit.¹⁴⁹

Family members of researchers with a “settlement permit – unrestricted”¹⁵⁰, who do not fulfil the duration of 12 month stay can be issued a “settlement permit - restricted” providing they fulfil the general requirements of a settlement permit.

Generally, researchers are exempted from the Aliens’ Employment Act and do not need an additional work permit, which transposes the Directive 2005/71/EC. Furthermore, researchers

¹³⁹ Art. 58 Settlement and Residence Act

¹⁴⁰ Art. 24 Aliens’ Police Act

¹⁴¹ Art. 47 Settlement and Residence Act

¹⁴² Art. 1 para 2 (m) Aliens’ Employment Act

¹⁴³ Art. 46 Settlement and Residence Act

¹⁴⁴ Fremdenrechtsänderungsgesetz 2009, available at

http://www.parlament.gv.at/PG/DE/XXIV/II/I_00330/pmh.shtml, (consulted on 22 April 2010).

¹⁴⁵ Art. 44 para 1 Settlement and Residence Act

¹⁴⁶ Art. 43 para 1 (1) Settlement and Residence Act

¹⁴⁷ Fremdenrechtsänderungsgesetz 2009, available at

http://www.parlament.gv.at/PG/DE/XXIV/II/I_00330/pmh.shtml, (consulted on 22 April 2010).

See also (Art. 43 para 4 Settlement and Residence Act).

¹⁴⁸ Art. 67 Settlement and Residence Act

¹⁴⁹ Art. 46 para 5 (3) Settlement and Residence Act

¹⁵⁰ Art. 43 para 4 Settlement and Residence Act

and their family members have the privilege to apply for their residence permit in Austria (instead of from abroad).

Additionally, the Integration Agreement¹⁵¹ is considered to be fulfilled by law for researchers and key workers.

- Third country nationals who come to Austria for the purpose of studies can obtain a “residence permit – students”.¹⁵² For the renewal of the residence permit, the student has to submit a transcript (a written proof of the successful course of his/her studies by the university). These provisions transpose the Directive 2004/114/EC.

Access to the labour market and change to a “settlement permit – key worker” is facilitated for third country nationals who have completed their university degree in Austria in order to prevent the emigration of highly qualified third country nationals from Austria and to strengthen the business location Austria.

I (c) to ensure, in encouraging temporary or circular migration, pursuant to the conclusions of the European Council of 14 December 2007, that those policies do not aggravate the brain drain

There are no programmes with regard to circular migration in Austria; no measures were adopted in 2009.

For measures against brain drain see measures under commitment V(b) in section 3.12.1.

3.5 Family Reunification

3.5.1 European Pact on Immigration and Asylum

I (d) to regulate family migration more effectively

In 2009, the legislative developments in this field focused on the incorporation of the criteria developed by the Constitutional Court with regard to Art. 8 ECHR.¹⁵³ The new provisions codified previous practice and took into account the jurisdiction of the European Court of Human Rights and of the Constitutional Court concerning Art. 8 ECHR.

The provisions concerning family reunification of the Aliens’ Act have been revised in the Family Reunification Directive 2003/58/EC of the Aliens’ Act Package 2005. The quota regulations guarantee the reception capacity of Austria being taken into account, and the Integration Agreement¹⁵⁴ assures that integration into Austrian society and learning of the German language is facilitated; in case of family reunification, the quota requirement ends three years after the application in accordance with the provisions of the Family Reunification Directive. (For family reunification of family members from Austrian citizens or EU-citizen exits a no quota requirement).

The general requirements for family reunification for third country nationals in Austria take into account the financial situation,¹⁵⁵ the accommodation as well as the level of German

¹⁵¹ Art. 14-16 Settlement and Residence Act and Integration Agreement Regulation

¹⁵² Art. 64 Settlement and Residence Act

¹⁵³ Art. 11 para 3 Settlement and Residence Act

¹⁵⁴ Art. 14-16 Settlement and Residence Act and Integration Agreement Regulation

¹⁵⁵ The third country national has to prove fixed and regular income sufficient to support his/her livelihood without claiming social assistance from the authorities and if the income conforms to the standard rates laid down in Art. 293 General Social Insurance Act. In 2009 this amounts to € 772,40 per single person, € 1158,08 per married or registered couple and € 80,95 per child per month. Rents, loans, mortgages and alimony payments to persons in the own household have to be reduced from the regular income as far as they are higher than the allowance according to Art. 292 para 3 General Social Insurance Act, which amounted in 2009 € 246,80. For

speech. Further requirements for family reunification depend on the status of the sponsor. In accordance with community law requirements, three different scenarios can be distinguished: The sponsor can be 1) a third country national with settlement permit or permanent residence;¹⁵⁶ 2) an Austrian or EEA national not making use of his/her right of free movement;¹⁵⁷ 3) an Austrian or EEA national making use of his/her right of free movement.¹⁵⁸

Requirements in case of group

1. Fulfilment of the general requirements,¹⁵⁹ signing and fulfilling the Integration Agreement, accommodation according to Austrian standards, health insurance, an income, and the non-existence of exclusion grounds (especially residence or return ban, expulsion order, overstaying, marriage or adoption of convenience) and a quota place.
2. The same conditions have to be fulfilled; the residence title is quota-free.
3. Proof of family relations to an EEA national who enjoys his/her right of free movement according to the Free Movement Directive (2004/38/EC).

With regard to the compliance with the ECHR, it is important to highlight the fact that the ECHR has a constitutional rank in Austria and is directly applicable. Therefore, a residence title can be issued even if an exclusion criterion applies, or if not all general requirements are met, provided that this remains in the interest of private and family life according to Art. 8 ECHR.

In cases where the sponsor only possesses a residence permit, third country nationals can also apply for family reunification, with the exception of family members of sponsors holding a residence permit for persons on business assignment,¹⁶⁰ self-employment,¹⁶¹ pupils¹⁶² or social service worker.¹⁶³

By the end of one year at the latest, family members have free access to the labour market.

The new Art. 11 para 3 Settlement and Residence Act shall be as follows:

“A residence title may be issued to an alien, notwithstanding the absence of the requirement pursuant to [Art.11] paragraph 2 Z 1-6 or the existence of an impediment to granting of a residence permit to paragraph 1 Z 3, 5 or 6, if it is necessary for the maintaining his privacy or family life within the meaning of Art.8 European Convention of Human Rights (ECHR), BGBl. NR. 210/1958;. For the evaluation of the existence of a private and family life pursuant to Art.8 ECHR in particular, the following criteria has to be taken into account:

1. *Nature and period of the previous residence and whether the previous residence has been irregular;*
2. *Actual existence of a family life;*
3. *The worthiness of the private life for protection;*
4. *Degree of integration*

more information visit MoI, *Informationsbroschüre über die Unterhaltsberechnung im Niederlassungs- und Aufenthaltsgesetz* available at http://www.bmi.gv.at/cms/BMI_Niederlassung/Beilage_Unterhaltsbroschre_2010.pdf (consulted on 22 April 2010).

¹⁵⁶ Art. 46 Settlement and Residence Act

¹⁵⁷ Art. 47 Settlement and Residence Act

¹⁵⁸ Art. 54 Settlement and Residence Act

¹⁵⁹ Art. 11 Settlement and Residence Act

¹⁶⁰ Art. 59 Settlement and Residence Act

¹⁶¹ Art. 60 Settlement and Residence Act

¹⁶² Art. 63 Settlement and Residence Act

¹⁶³ Art. 66 Settlement and Residence Act

5. *Links to the country of origin of the third country national;*
6. *Criminal record;*
7. *Violation of the public order, in particular in the field of asylum and aliens police and immigration law;*
8. *Whether the third country national was aware of the insecure nature of the residence when the private and family life was formed;”*

Additionally, the cure for procedural violations as well as the submission of application within Austria may be rendered admissible upon reasoned application, if it is necessary for maintaining privacy or family life within the meaning of Art. 8 of ECHR (see Art. 19 par. 8 and 21 par. 3).

According to Art. 28 Settlement and Residence Act, a residence title cannot be withdrawn if this would infringe private or family life pursuant to Art. 8 ECHR. In such cases, withdrawal is only possible in the interest of one of the aims set out in Art. 8 para 2 ECHR;

Also, the new provisions concerning humanitarian residence take Art. 8 ECHR into account (for further details see measures under IIa).

Further changes have occurred with regard to the residence of EEA nationals and their family members in the light of two decisions of the European Court of Justice (ECJ) – *Metock* (C-127/08) and *Sahin* (C-551/07).¹⁶⁴

3.6 Other legal migration

3.6.1 European Pact on Immigration and Asylum

I (f) Improve information on the possibilities and conditions of legal migration

Information about the possibilities and conditions of legal immigration to Austria is available on various official websites.¹⁶⁵ Information brochures in different languages are available as hard copies and/or can be downloaded from the official websites.¹⁶⁶ Also on the local/provincial level, information is provided in different languages.¹⁶⁷ These sources of information were continuously updated and extended during 2009. Amongst other initiatives, the Austrian Development Cooperation (ADC) provides information folders and advises on the chances and risks posed by migration at the visa application office in Chisinau, which was opened by Austria in April 2007 as a pilot project in this sector and makes information available to Diaspora communities in Austria.¹⁶⁸

¹⁶⁴ See Chapter 4.1. Implementation of EU Legislation

¹⁶⁵ E.g. the website of the MoI, *Niederlassung und Aufenthalt* available at http://www.bmi.gv.at/cms/bmi_niederlassung/ (consulted on 22 April 2010); the internet platform of the Federal Chancellery, HELP-Service for foreign citizens, available at <http://www.help.gv.at/Content.Node/HELP-FC.html> (consulted on 22 April 2010); on the access to the labour market for non-national citizens e.g. website of the Austrian Labour Market Service, Migration Affairs, available at <http://www.ams.at/english/14599.html>. (consulted on 27 April 2010).

¹⁶⁶ Information brochures on different residence titles, preconditions for family reunification, application procedures, responsible institutions and transitional restrictions are available in 10 languages (DE, EN, FR, ES, SR, BS, HR, RU, ZH, TR). Guidelines for the entry conditions of researchers and students can be downloaded from the website of the Federal Ministry of the Interior http://www.bmi.gv.at/cms/bmi_niederlassung.

¹⁶⁷ See for example the website of the city of Vienna <http://www.wien.gv.at/amtshelfer/gesellschaft-soziales/integration/index.html> (consulted on 21 January 2010). Persons who have been granted a residence title in the city of Vienna receive a “Welcome package”, which refers to numerous legal questions, see at <http://www.wien.gv.at/verwaltung/personenwesen/wiw.html> (consulted on 21 January 2010).

¹⁶⁸ FMEIA, *Three Years Programme on Austrian Development Policy 2007-2009- Revised version 2007*, available at http://www.entwicklung.at/uploads/media/dreijahresprogramm_2007_2009.pdf. (consulted on 22 April 2010).

The information policies have not been changed as a result of the economic crisis.

3.7 Integration

3.7.1 European Pact on Immigration and Asylum

I(g) Promote harmonious integration in line with the common basic principles

Austria pursues the goal of a successful integration of immigrants as well as their participation in the political, cultural and economic life. In 2009, the federal government, in cooperation with the federal provinces, cities, municipalities and social partners as well as with close involvement of civil society organisations, elaborated a “National Action Plan on Integration”¹⁶⁹, which defines basic principles for integration policies that are in line with the Common Basic Principles adopted by the Council of the European Union in 2004 on reception and integration. The National Action Plan on Integration structures country-wide cooperation for successful integration measures and optimises their implementation in the fields of language and education, labour and occupation, rule of law and values, health and social affairs, intercultural dialog, and sports and recreation. Integration indicators¹⁷⁰ have been developed parallel to the elaboration of the National Action Plan on Integration, which will help to further assess and monitor the structural integration processes of immigrants.

The Integration Agreement¹⁷¹ allows for the linguistic integration of immigrants who want to settle in Austria permanently or for the longer term. Being granted a residence title obliges immigrants to fulfil the provisions of the Integration Agreement and to gain sufficient knowledge of the German language within 5 years. In its current form, the agreement concerns immigrants who were coming to Austria after 1 January 2006.

Directive 2003/86/EC and Directive 2004/38/EC have been fully implemented in Austria. Family members who migrated to Austria with family reunification have unlimited access to the labour market and integration measures of the Austrian Labour Market Service at the latest after one year.

In addition to the already existing incentive measures¹⁷² of an active labour market policy addressed to immigrants, further integration initiatives for persons with migration background are built up. As such, the Austrian Labour Market Service offers e.g. specialised qualification measures for skilled migrant workers or persons with migration background (e.g. REG-Programm). These initiatives aim at the promotion of additional trainings and higher qualifications as well as vocational training. Particularly also subventions for certified German classes have been elevated. The integration of young immigrants who came to Austria in the framework of family reunification remains a priority.

In the fight against discrimination of immigrants, the legislature and execution of the laws are in accordance with the constitutional provisions implementing the International Convention on the Elimination of All Forms of Racial Discrimination.¹⁷³ According to the established practice of the Constitutional Court, the law includes the prohibition of any discrimination against non-nationals, which cannot be justified based on objective reasons.

¹⁶⁹ Austrian Integration Fund, *Nationaler Aktionsplan für Integration 2009*, available at http://www.integrationsfonds.at/nap/nationaler_aktionsplan_fuer_integration/ (consulted on 31 December 2009).

¹⁷⁰ Fassmann, Heinz, *Integrationsindikatoren des Nationalen Aktionsplans für Integration*, Vienna 2009.

¹⁷¹ Art. 14-16 Settlement and Residence Act and Integration Agreement Regulation

¹⁷² For example the programme “Mentoring for Migrants” of the Federal Economic Chamber (WKO) in cooperation with its project partners, the Austrian Integration Fund (ÖIF) and the Labour Market Service (AMS). For further information visit http://portal.wko.at/wk/startseite_dst.wk?dstid=8769.

¹⁷³ Constitutional Act from 3 July 1973 for the Implementation of the International Convention on the Elimination of All Forms of Racial Discrimination

Furthermore, the Law on Equal Treatment envisages amongst others the fight against discrimination of immigrants and non-nationals. In case of discrimination on grounds of ethnic origin, the prohibition of discrimination covers all areas of daily life, e.g. education, social security, health care as well as the access to goods, services and housing. The Law for Equal Treatment largely implements the effective European law against discrimination and for diversity. The Commission for Equal Treatment serves as body to ensure the implementation of the basic principle of equal treatment.

The integration policies have not been changed as a result of the economic crisis.

I(h) Promote information exchange on best practices in terms of reception and integration

Already before the promulgation of the Pact, Austria has been undertaking various efforts and initiatives focusing on the exchange and promotion of good practices with regard to the integration of immigrants as well as of EU measures to support national integration policies. In 2008, amongst other initiatives¹⁷⁴ the Integration Platform,¹⁷⁵ a national website enabling the exchange on integration matters and providing a forum for discussion, was established. In addition, an awareness-raising bus tour called “Integration on Tour”¹⁷⁶ informed the general public about integration in Austria. Plus, quarterly journals and events of the Austrian Integration Fund provide information about current integration matters. In 2009, the information exchange on good practices, which are in line with the Common Basic Principles on reception and integration continued.¹⁷⁷ Furthermore, extensive exchange has been sought with experts in the framework of the National Action Plan for Integration.

3.7.2 Additional/Complementary developments

Integration initiatives on the provincial and local level

In addition to the development of the National Action Plan on Integration on the national level, integration initiatives have been fostered on the provincial and municipal level such as the development of integration concepts or the establishment of integration councils, integration resorts or delegates. As such, for example, a so called Integration Council at the provincial government of Vorarlberg¹⁷⁸ has been set up; an Integration, Asylum and Basic Welfare Department was established at the federal province of Salzburg; and the Platform Migration Villach¹⁷⁹ was launched in the city of Villach (Carinthia) in 2009. The platform will help to develop integration concepts on the provincial/municipal level. Furthermore, the cities of Wörgl (Tirol) and Feldkirch (Vorarlberg) have developed integration concepts.¹⁸⁰ In

¹⁷⁴ For example: Austrian Integration Fund, *International Integrations Symposium*, available at http://www.integrationsfonds.at/nap/integrationsplattform/integrations_symposium/ (consulted on 18 October 2009), or MoI, *Expertenberichte 2008: Gemeinsam kommen wir zusammen* available at <http://www.integrationsfonds.at/nap/integrationsplattform/> (consulted on 18 October 2009).

¹⁷⁵ For further information Austrian Integration Fund available at <http://www.integrationsfonds.at/nap/integrationsplattform/> (consulted on 13 October 2009).

¹⁷⁶ For further information Austrian Integration Fund, available at http://www.integrationsfonds.at/nap/integrationsplattform/integration_on_tour/ (consulted on 13 October 2009).

¹⁷⁷ For example the enhancement and improvement of the Website of the Austrian Integration Fund, available at <http://www.integrationsfonds.at> (consulted on 13 October 2009), amongst others, detailed information on calls for proposals and projects supported by the European Refugee Fund and European Integration Fund can be found.

¹⁷⁸ Der Standard, *Integration im Landesparlament (Integration in the provincial government)*, 15 October 2009, p.8.

¹⁷⁹ Kleine Zeitung, *Ein Leitbild für die Integration (A concept for integration)*, 7 Mai 2009, p.32.

Kleine Zeitung, *Breite Basis für ein positives Miteinander (Broad basis for a positive together)*, 25 March 2009, p.26.

¹⁸⁰ Stadtgemeinde Wörgl, *Integrationskonzept Wörgl*. June 2009. Available at http://imz-tirol.at/images/stories/leitbilder_interviews_mehr/integrationskonzept_wrgl_juni-09.pdf (consulted on 24 February 2010).

Feldkircher Anzeiger, *Integrationsleitbild vorgestellt (Integration concept presented)*, 28 January 2010, p.8.

Vienna, an expert commission – the Viennese Immigration Commission – was established so as to rationalise discussions on immigration and integration and formulate recommendations on future actions.¹⁸¹

3.8 Citizenship and Naturalization

3.8.1 *European Pact on Immigration and Asylum*

No explicit mention is made in the objectives of the Pact on this aspect and, therefore, no information is provided here.

3.8.2 *Additional/Complementary developments*

Legislative developments concerning citizenship

The amendments of the Aliens' Law brought minor changes to the citizenship legislation in Austria: Access to citizenship has been changed for specific groups, in particularly spouses of Austrian nationals who are employed by an administrative authority or public body in another country. They can receive Austrian citizenship even if they are not settled in Austria and minor adoptive children of Austrian nationals who are not living in Austria can be granted Austrian citizenship under specific conditions in future.¹⁸²

Another new development is the retention of citizenship for individuals whose citizenship was previously called into question by the discovery that they were not actually of Austrian parentage. Such situations most commonly arise when the presumed Austrian father – upon which the individual's Austrian citizenship rests – is determined not to be the natural father. New legal provisions now foresee that affected individuals may keep their Austrian citizenship, although the original justification for it is no longer present.¹⁸³

Procedural changes concerning the modification of the pledge/oath which has to be given at the granting of the citizenship has been made: a commitment to the fundamental values of democracy has to be given¹⁸⁴ and a citizenship test is considered in future to be passed if the person has fulfilled the subject "History and Social Studies" on 4th class secondary school level.¹⁸⁵

The lowest figure for naturalizations in 20 years

In 2009, 7,790 persons obtained Austrian citizenship, which signifies a decrease of more than a fifth compared to 2008 (10,268; -22%). It is the lowest figure since 1989. Nearly two-fifths of the naturalized persons (3,065 or 38%) were born in Austria.¹⁸⁶ For Statistics Austria, two aspects are essentially responsible for the sixth consecutive decline in naturalization rates since the "record year"¹⁸⁷ of 2003 (45,112 naturalizations): firstly, the amendment to the Citizenship Act which came into force on 23 March 2006 introduced stricter requirements for the acquisition of Austrian citizenship. Secondly, there was a significant decrease in the number of naturalizations after at least ten years of uninterrupted permanent settlement in Austria¹⁸⁸ over the past five years, in parallel with the decline in immigration since 1993.

¹⁸¹ Stadt Wien, *Bericht der Wiener Zuwanderungskommission*, 29 January 2010; Die Presse, *Wien: Welche Ausländer dürfen rein? (Vienna: How many Immigrants are allowed to enter?)*, 26 May 2009, p.8.

¹⁸² Art. 11a Citizenship Act

¹⁸³ Art. 59 Citizenship Act

¹⁸⁴ Art. 21 Citizenship Act

¹⁸⁵ Art. 10a Citizenship Act

¹⁸⁶ The naturalisation system in Austria is based on the principle of *ius sanguinis*.

¹⁸⁷ Statistik Austria, *Einbürgerungen*, available at http://www.statistik.at/web_de/statistiken/bevoelkerung/bevoelkerung/einbuengerungen/index.html (consulted on 24 February 2010).

¹⁸⁸ Art. 10 para 1 Citizenship Act.

While 15,835 people became Austrian citizens on these legal grounds in 2003 (35% of all naturalizations), the figure decreased to 1,453 people in 2009 (18% of all naturalizations).¹⁸⁹

The naturalized people came from over 100 different countries of origin. Most naturalized persons in 2009 came from former Serbia and Montenegro with a total of 2,003 naturalized persons, which represents 25% of all persons naturalized, followed by citizens of Bosnia and Herzegovina (1,457; 18%), Turkey (1,242; 16%) and Croatia (440; 6%).

3.9 Illegal Immigration

3.9.1 European Pact on Immigration and Asylum

II (a) only case-by-case regularisation

In Austria, mass regularisations are/were not carried out; residence titles for humanitarian reasons constitute a form of case by case regularisation. Following a decision of the Constitutional Court, these residence titles were revised and integrated in the Settlement and Residence Act, the Asylum Act and Aliens' Police Act in 2009.

According to the previous system, the authorities could issue a residence permit in special cases *ex officio* for humanitarian reasons to third country nationals who were already in Austria, even if one of the exclusion criteria applies (esp. for victims of human trafficking or in case of non-refoulement). However the person concerned could not file an application and the procedures had to be initiated by the authorities. In exceptional cases, a settlement permit for humanitarian purposes could be granted,¹⁹⁰ and the person concerned could file an application.

The Constitutional Court declared in its decision from 27 June 2008 the provision exclusively applicable *ex officio* unconstitutional and explained that Art. 8 ECHR does not grant a right to private and family life in the country of choice. However, under certain circumstances the State has the obligation to issue a residence permit, if a refusal means a violation of Art. 8 ECHR.

As a reaction to this decision, the following changes were adopted in 2009 (in force April 1):¹⁹¹

- The authorities have to issue a residence title *ex officio* if the expulsion of the person is not possible due to Art. 8 ECHR and if this has been decided in an asylum or aliens' police procedure.
- An application for a residence title based on Art. 8 ECHR has to be processed as inadmissible if an expulsion has already been considered as admissible, unless the circumstances have significantly changed.
- If an application for a residence title is based on Art. 8 ECHR and there has been no expulsion decision yet, the involvement of the Alien' Police is obligatory; if a residence title is necessary in order to maintain private and family life according to Art. 8 ECHR, a "settlement permit – restricted" or "unrestricted" can be issued.
- Upon application, victims and witnesses of human trafficking, victims of domestic violence, unaccompanied minors and in case of non-refoulement a "residence permit – special protection" can be granted.¹⁹²

¹⁸⁹ Statistik Austria, *Einbürgerungen (Naturalisations)*, available at http://www.statistik.at/web_de/statistiken/bevoelkerung/einbuengerungen/index.html (consulted on 24 February 2010).

¹⁹⁰ For example in case of family reunification according to Art. 72 para 4 in connection with 46 para 4 Settlement and Residence Act)

¹⁹¹ Asylgesetz 2005, Fremdenpolizeigesetz 2005 u.a., Änderung, available at <http://www.parlament.gv.at/PG/DE/XXIV/II/00088/pmh.shtml> (consulted on 30 December 2009).

- A “settlement permit – restricted” can be granted for cases needing special consideration. This applies to persons who have been continuously residing in Austria since 1 May 2004 whose residence has been regular for at least half of the period (“Old Cases”). A “Board for Cases Needing Special Consideration” was explicitly established for this purpose, which is involved in the decision making process.¹⁹³
- The criteria developed by the Constitutional Court on the basis of Art. 8 ECHR have been explicitly introduced in the Asylum Act, the Aliens’ Police Act and in the Settlement and Residence Act.

The legalisation policy has not been changed due to the economic crisis.

II (g) take rigorous actions and penalties against those who exploit illegal immigrants

Exploitation of irregularly staying migrants is a criminal offence and is punishable with a criminal sentence up to three years, or under specific circumstances up to ten years.¹⁹⁴ In cases of irregular employment, the Aliens’ Employment Act only punishes the employer.¹⁹⁵

Trafficking in human beings¹⁹⁶, transnational trafficking of human beings for the purpose of prostitution,¹⁹⁷ and human smuggling (qualified cases)¹⁹⁸ constitute a criminal act.

Notably, as of 1 January 2010, human smuggling as far as it constitutes the simple – non-qualified – elements of the offence constitutes an administrative and no longer a criminal offence.¹⁹⁹

3.10 Actions against human trafficking

3.10.1 European Pact on Immigration and Asylum

II (e) cooperation with the countries of origin and of transit, in particular to combat human trafficking and to provide better information to communities under threat

The First National Action Plan against Human Trafficking was adopted by the national Council of Ministers in March 2007.²⁰⁰ It was developed for the period 2007-2009 and focused amongst other things on international cooperation. Building on the experiences of the First National Action Plan and on the results of the First Austrian Report on Combating Human Trafficking,²⁰¹ the second National Action Plan against Human Trafficking for the period 2009-2011 was adopted on 26 May 2009 by the Austrian Council of Ministers.

Chapter VIII of the Action Plan titled “International Cooperation” deals with areas in which activities and projects aimed at combating human trafficking are launched abroad. The priorities set in this context of commitment at the international level include networking among players, building the relevant capabilities among governmental and non-governmental

¹⁹² Art. 69a Settlement and Residence Act

¹⁹³ Art. 44 para 4 Settlement and Residence Act

¹⁹⁴ Art. 116 Aliens’ Police Act

¹⁹⁵ Art. 28 Aliens’ Employment Act

¹⁹⁶ Art. 104 Criminal Code

¹⁹⁷ Art. 217 Criminal Code

¹⁹⁸ Art. 114 Aliens’ Police Act

¹⁹⁹ Idem.

²⁰⁰ FMEIA, *Fight against Trafficking in Human Beings*, available at <http://www.bmeia.gv.at/en/foreign-ministry/foreign-policy/human-rights/main-human-rights-issues/combating-human-trafficking.html> (consulted on 28 December 2009).

²⁰¹ FMEIA, *First Austrian Report on Combating Human Trafficking*, available at http://www.bmeia.gv.at/fileadmin/user_upload/bmeia/media/2-Aussenpolitik_Zentrale/Menschenrechte/Menschenhandel_aktualisierter_Bericht_04_03_09_-_Englisch.pdf (consulted on 28 December 2009).

institutions, and focusing on specific groups of society such as women and children. The Austrian Development Agency/Austrian Development Cooperation and Cooperation with Eastern Europe (ADA/ADC) is responsible for the implementation of these measures.

Also in 2009, the First Austrian Report on Combating Human Trafficking²⁰² was prepared in accordance with item 7.1 of the First National Action Plan Against Human Trafficking under the aegis of the Federal Ministry for European and International Affairs (FMEIA) in cooperation with the competent Austrian ministries and other members of the Task Force on Human Trafficking. The report offers a current overview (March 2007 to February 2009) of the activities and measures Austria has launched in respect of human trafficking. Complementing this report, the working groups on child trafficking and prostitution have prepared separate reports.²⁰³

Moreover, in the field of police cooperation, bilateral agreements have been concluded with the following countries: Albania (entry into force 1 January 2008); Azerbaijan (entry into force 1 January 2006); Bosnia and Herzegovina (entry into force 1 September 2007); Bulgaria (entry into force 1 August 2002), Italy (entry into force 1 March 2000); Jordan (signed on 4 October 2001); Croatia (entry into force 1 October 2008); Latvia (entry into force 1 April 2004); Lebanon (signed on 10 July 2003), Former Yugoslav Republic of Macedonia (signed on 25 January 2008); Montenegro (entry into force 1 March 2005); Slovak Republic (entry into force 1 July 2005); Slovenia (entry into force 1 May 2005); South Africa (entry into force 1 December 2004); Czech Republic (entry into force 1 July 2006).²⁰⁴

For further information see also measures under commitment V(c) in section 3.12.1.

3.10.2 Additional/Complementary developments

Legislative developments in the field of combating human trafficking

In the framework of review of the *humanitarian right to residence*, the residence permits for victims of human beings were revised. One of the key elements of the reform was that victims of human trafficking have a right to apply for a residence permit and that the granting of the permit does not solely depend on the discretionary power of the authorities.²⁰⁵

The conditions in detail are the following:

- A residence permit “special protection” can be granted to victims of human trafficking – upon application or *ex officio* for the period of the criminal prosecution and for the assertion/enforcement of claims under private law (e.g. damages) connected to the criminal proceedings.²⁰⁶
- Initiation of criminal or civil procedures are a precondition for the issuance of the residence permit.²⁰⁷

²⁰² Idem.

²⁰³ FMEIA, *Report of the Working Group on Prostitution*, 2008, available at http://www.bmeia.gv.at/fileadmin/user_upload/bmeia/Arbeitsbericht__Prostitution_in_OEsterreich_-_Rechtslage__Auswirkungen__Empfehlungen_-_Juni_2008.pdf, For the report of the Working Group Child Trafficking, *Prävention von Kinderhandel und Schutz der Opfer von Kinderhandel* 2008, available at http://www.kinderrechte.gv.at/home/upload/50%20thema/bericht_der_arbeitsgruppe_kinderhandel_0808.pdf. (consulted on 23 April 2010).

²⁰⁴ FMEIA, *Bilaterale Staatsverträge (Bilateral Treaties)*, available at <http://www.bmeia.gv.at/aussenministerium/aussenpolitik/voelkerrecht/staatsvertraege/bilaterale-staatsvertraege.html> (consulted on 27 April 2010).

²⁰⁵ Asylgesetz 2005, Fremdenpolizeigesetz 2005 u.a., Änderung, available at http://www.parlament.gv.at/PG/DE/XXIV/II/I_00088/pmh.shtml (consulted on 22 October 2009).

²⁰⁶ Art. 69a Settlement and Residence Act

²⁰⁷ Art. 69a para 1 (2) Settlement and Residence Act

- The residence permit has to be granted even if the applicant does not meet all general requirements for a residence or settlement permit, such as health, insurance, accommodation, financial means, etc.²⁰⁸
- The permit is valid for 6 months and is renewable.²⁰⁹ After 12 month residence in Austria the third country national can apply for a “settlement permit – unrestricted”²¹⁰ which allows long term stay in Austria and grants free access to the labour market if the conditions according to Art. 69a still prevail, in particular if the criminal or civil procedures are still ongoing.

3.11 Return Migration

3.11.1 European Pact on Immigration and Asylum

II (b) to conclude readmission agreements at EU or bilateral level

Austria has Readmission Agreements with the following EU Member States: Belgium (entry into force 1 April 1965), Luxemburg (entry into force 1 April 1965), The Netherlands (entry into force 1 April 1965), Germany (entry into force 15 January 1998), France (entry into force 1 November 2007), Italy (entry into force 1 April 1998), Estonia (entry into force 1 September 2009), Latvia (entry into force 1 September 2000), Lithuania (entry into force 1 January 2000), Poland (entry into force 30 May 2005), Slovakia (entry into force 1 October 2002), Slovenia (entry into force 1 September 1993), Czech Republic (entry into force 9 October 2005). Hungary (entry into force 20 April 1995), Bulgaria (entry into force 30 November 1998) and Romania (entry into force 6 February 2002); and with the following third countries: Croatia (entry into force 1 November 1998), Switzerland, Liechtenstein (entry into force 1 January 2001), Serbia & Montenegro (entry into force 29 April 2007) Tunisia (entry into force 1 August 1965), Bosnia & Herzegovina (entry into force 1 September 2007) and Macedonia (entry into force 1 February 2007).

Readmission agreements are under negotiation with Armenia, Azerbaijan, Kosovo, Mongolia and Nigeria.

II (f) to devise incentive systems to assist voluntary return and to keep each other informed

Assisted voluntary return has been established in Austria as an important and preferred alternative to forced return and target-group orientated programs for assisted voluntary return have been set up. In 2000, the MoI and the International Organization for Migration (IOM) in Vienna²¹¹ signed a Memorandum of Understanding for the promotion, development and establishment of programmes involving assisted voluntary return. Within this framework, a general humanitarian programme for Assisted Voluntary Return (AVR) is operated by the International Organization for Migration (IOM) and non-governmental organisations (with the mandate of the MoI), targeting (rejected) asylum applicants and irregular migrants in Austria. Asylum applicants can be granted counselling for AVR at any stage of their asylum application.

With co-funding from the European Refugee Fund and in cooperation with the Austrian Development Agency, country programmes have offered specific reintegration measures for voluntary returnees to Afghanistan and Moldova. Hereto, comprehensive counselling for assisted voluntary return has been made available and tailor-made reintegration measures aim at supporting and promoting the sustainability of the long-term return and reintegration.

²⁰⁸ Art. 11 Settlement and Residence Act

²⁰⁹ Art. 69a para 3 Settlement and Residence Act

²¹⁰ Art. 43 para 3 Settlement and Residence Act

²¹¹ For more information visit IOM Vienna, available at <http://www.iomvienna.at>, (consulted on 20 December 2009).

In addition, with co-funding by the European Return Fund, existing programmes for assisted voluntary return have been expanded and further developed in 2009: the assisted voluntary return programme to Moldova, return counselling at facilities for detention pending deportation and a return counselling at facilities for arrest after conviction for crime have been continued in the framework of the European Return Fund. Further country-specific return programmes are implemented for Kosovo (in cooperation with the three Federal provinces Lower Austria, Tyrol and Carinthia), Nigeria (in cooperation with the private sector as innovative approach to previous measures) and the Russian Federation. A continued cooperation with the Austrian Development Agency for the promotion of reintegration measures in country-specific programmes for assisted voluntary return is intended.

To support the exchange of experiences and good practices between EU MS, amongst other initiatives, an International Conference on "Building Structures for Assisted Voluntary Return - The Specific Case of Chechen Returnees"²¹² has been held by the MoI in cooperation with the IOM and the National Contact Point (NCP) Austria to the European Migration Network (EMN) in November 2009.

3.11.2 Additional/Complementary developments

Development of numbers of return²¹³

A total of 831 persons were prevented from entry and rejected²¹⁴ at the Austrian borders in 2009, predominantly for reasons of lack of valid visa (322) or invalid travel documents (317). 2,481 persons were removed within seven days after unlawful entry. 2,637 expulsions²¹⁵ were ordered, in particular for reasons of irregular residence²¹⁶ or grounds for refusal.²¹⁷ Residence bans²¹⁸ were imposed in 4,051 cases and re-entry bans²¹⁹ in 426 cases, mostly in the context of criminal sentences²²⁰ and reasons of public safety²²¹. Detention pending deportation²²² was imposed in 5,996 cases, in 1,877 cases it was referred to more lenient measures.²²³ 1,670 obligations of returns were issued and 2,481 persons were removed. 3,428 persons returned by means of assisted voluntary return.

3.12 External relations/ Global Approach

3.12.1 European Pact on Immigration and Asylum

V (a) conclude EU-level or bilateral agreements with the countries of origin and of transit containing clause on legal and illegal migration as well as development

For readmission agreements see measures under commitment II (b) in section 3.11.1.

Currently there are eight agreements and two further negotiation mandates of the European Union with third countries in the context of visa facilitation.

²¹² EMN NCP AT, Conference "Building Structures for Assisted Voluntary Return – The Specific Case of Chechen Returnees", available at <http://www.emn.at/News-article-folder-334-newlang-eng.phtml>, (consulted on 20 December 2009).

²¹³ MoI, *Fremdenstatistik 2009*, available at http://www.bmi.gv.at/cms/BMI_Niederlassung/statistiken/files/Fremde_Jahresstatistik_2009.pdf. (consulted on 23 March 2010).

²¹⁴ Art. 41 Aliens' Police Act.

²¹⁵ Art. 53 and 54 Aliens' Police Act.

²¹⁶ Art. 53 para 1 Aliens' Police Act

²¹⁷ Art. 54 para 1 Aliens' Police Act

²¹⁸ Art. 60 Aliens' Police Act

²¹⁹ Art. 62 Aliens' Police Act

²²⁰ Art. 60 para 2 (1) Aliens' Police Act

²²¹ Art. 60 para 1 Aliens' Police Act

²²² Art. 76 Aliens' Police Act

²²³ Art. 77 Aliens' Police Act

Austria has signed police cooperation agreements (which amongst others include the fight against irregular migration) with numerous third countries.²²⁴

It is planned to introduce cooperation clauses into the readmission agreements, which are currently under negotiation.

V (b) offer the nationals of partner countries to the East and South of Europe opportunities for the legal immigration

Studies and school education in Austria is accessible for all third country national students and pupils with a “residence permit - pupils” or “resident permit - students”. Special agreements exist with some third countries, e.g. the agreement in the areas of culture and education with Croatia, which encourages students to study in other countries and promote scholarship programmes for students, graduates, academics and researchers.²²⁵

For the facilitation of the international pupil exchange, an amendment adopted in 2009 to the Settlement and Residence Act will allow extraordinary pupils from third countries to have access to the “residence permit - pupil” as of 1 January 2010.²²⁶

To help stem brain drain of well-trained young people under 30, the Austrian Development Cooperation (ADC) holds a yearly competition for students from the Western Balkan countries followed by a job fair. In cooperation with the Federal Ministry of Economics and Labour and the Austrian Federal Economic Chamber, students are introduced to the management of Austrian companies that invest in the South East European region so that they can contribute to the development of the private sector in their home country. At the same time, ADC continues with its efforts in the institutional development of universities, university reform and the improvement of the educational system to meet European standards.²²⁷

Programmes on circular and temporary migration are currently not carried out. The (active) participation of Austria on models such as circular migration or mobility partnerships is currently not foreseen.

National legislation on immigration on the grounds of school education and studies does not aim at the permanent emigration from countries of origin, as the “residence permits - pupils” and “students” only allow for a temporary stay but not for settlement in Austria. (See also under commitments I (a) and I (b) in section 3.4.1.)

V (c) cooperation with the countries of origin and of transit in order to deter or prevent illegal immigration

Already before the promulgation of the Pact, target-oriented cooperation existed with countries that represented areas of origin and transit of concerns of security, so-called “hot spots”, as well as with strategic partners (i.e. United States of America, Russia) and with countries of the European neighbourhood policy in the East of the European Union. Regarding the cooperation in the context of “hot spots”, the countries of the Western Balkans and the countries of the European neighbourhood policy in the East and the South (Mediterranean area) of the European Union remained highest priority in 2009.

²²⁴ For the list of countries where police cooperation agreements have been concluded see Chapter 3.10.1,

²²⁵ Agreement between the Government of the Republic of Austria and the Government of the Republic of Croatia in the field of culture and education, available at http://www.parlament.gv.at/PG/DE/XXII/BNR/BNR_00419/imfname_044127.pdf (consulted on 14 October 2009).

²²⁶ Fremdenrechtsänderungsgesetz 2009, available at

http://www.parlament.gv.at/PG/DE/XXIV/II/I_00330/pmh.shtml (consulted on 29 December 2009).

²²⁷ FMEIA, *Three Years Programme on Austrian Development Policy 2007-2009- Revised version 2007*, available at http://www.entwicklung.at/uploads/media/ThreeYearProgramme08-10_05.pdf (consulted on 30 December 2009).

For agreements with specific countries in the context of police-cooperation, see measures under commitment II (e) in section 3.10.1.

Because of the geographical vicinity and the high proportion of immigrants from this region, a main focus has been put on countries of the Western Balkans. Amongst others, aims for 2009 have been as follows:

- Continuation of the implementation of measures adopted at the “Western Balkan Security Conference 2009” (e.g. cooperation in the field of DNA).
- Continuation of the implementation of the “Police Cooperation Convention for Southeast Europe” and accession to the convention.
- Further development of the “Brdo Process” as platform for an extended Western Balkan Strategy and the implementation of the project “Intercultural Dialogue”.
- Continuation of specific projects to support the countries of the region in the field of criminal police (e.g. COSPOL (Comprehensive Operational Strategic Planning for the Police) Project to combat trafficking in human beings as well as smuggling, training, border management, etc.).
- Fight against terrorism, training, traffic- and border management (e.g. in the framework of the Twinning Project “Integrated Border Management with Serbia“; „Projekt Pameca III“; Kosovo: „Strengthening the Rule of Law, Asylum and Readmission Policies“).
- Efforts to enhance data protection standards in the countries of the Western Balkans, to facilitate police cooperation and to establish prerequisites for the conclusion of operational cooperation agreements with Europol.

Second priority focuses on the countries of the European Neighborhood Policy in the East as countries of origin and transit for organized crime, drug trafficking, irregular migration and trafficking in human beings:

- Implementation of the Memorandum of Understanding with Moldova and reinforcement of cooperation.
- Reinforcement of the cooperation with Ukraine, amongst others through the establishment of an appropriate legal framework for police cooperation.
- Reinforcement of the cooperation in the field of training.

V (d) more effective integration of migration and development policies

The main interface between migration to Austria and the priority countries of the ADC lies in South Eastern Europe. In the national competency framework, ADC supports developmentally beneficial forms of migration resulting from the EU mobility partnerships. ADC also aims to explore ways of using remittances from immigrants to support small and medium-sized enterprises in the home countries. To help stem brain drain, ADC holds a competition every year for students from the Western Balkan countries followed by a job fair.²²⁸ In South Eastern Europe, ADC is also actively engaged in measures against human trafficking and trafficking in women and children in the SADC region as part of multi-year project initiatives as well as reintegration assistance for voluntary returnees to Moldova.²²⁹

²²⁸ For further information see measures under commitment V (b) in section 3.12.1.

²²⁹ For further information see measures under commitment II (f) in section 3.11.1. FMEIA, *Three Years Programme on Austrian Development Policy 2008-2010 – Revised version 2008*, available at http://www.entwicklung.at/uploads/media/ThreeYearProgramme08-10_05.pdf (consulted on 30 December 2009).

The ADC gives special importance to the fact that immigration and emigration of highly skilled persons into better paid occupations cause brain drain in their quality criteria.²³⁰ Consideration and counteraction through corresponding strategies and concepts are taken into account.

V (e) promote co-development actions and support instrument for transferring immigrants' remittances

Research projects on the remittances from Austria, are supported by the Austrian Development Bank (e.g. „Remittances from Austria“).

The ADC aims at determining possibilities of remittance investment in the countries of origin for the support of small and medium-sized enterprises.

See further measures under commitment V (b) in section 3.12.1.

4. IMPLEMENTATION OF EU LEGISLATION

4.1 Transposition of EU legislation 2009

There were no developments in 2009 in respect to transposition of EU legislation. Changes rather occurred with regard to the residence of EEA nationals and their family members in the light of two decisions of the ECJ – Metock (C-127/08) and Sahin (C-551/07): the right to residence of EEA nationals and their family members has been revised. The abolition of the requirement that the family relations have to be established before the EEA national made use of his/her freedom of movement and the adjustment of the requirement of *sufficient resources* according to guidelines of the European Commission and the decision of the Administrative Court constitute the most important change in this regard.²³¹

Due to this development it was considered necessary to apply further control and restriction mechanisms on the Free Movement Directive in order to balance the impact of the new provisions.²³² These mechanisms include for example the distinction between residence for more than three month and long-term residence as well as the introduction of new documentations and ID cards. The possibility to withdraw the right of permanent residence of EEA nationals and their family members after five years of residence, if the person is absent from Austria for a period exceeding two consecutive years is also new.²³³

In this context, the definition of family member has been revised: the minimum age of 18 years for spouses has been raised to 21 years. According to the commentary, the aim of this amendment is to combat forced marriages more effectively.²³⁴

These changes were commented in the legal statements of the NGOs, research institutions, etc., but there was little political debate or media attention on these developments in 2009.

²³⁰ Austrian Development Agency, *OEZA Qualitätskriterien Kapazitätsentwicklung*, available at http://www.entwicklung.at/uploads/media/06i_Kapazitaetsentwicklung.pdf (consulted on 13 October 2009).

²³¹ *Materialien Fremdenrechtänderungsgesetz* available at http://www.parlament.gv.at/PG/DE/XXIV/II/I_00330/fname_167909.pdf. (consulted on 21 January 2009).

²³² *Idem.*

²³³ Art. 10 para 3 (5) Settlement and Residence Act

²³⁴ *Idem.*

ANNEX – METHODOLOGY, TERMS AND STATISTICS

Annex 1.1: Methodology

This National Report was produced following common study specifications, which have been developed by the EMN in order to facilitate comparability between the findings from MS. In contrast to the earlier versions of the Annual Reports produced by the EMN, the Study Specifications for the 2009 version introduced some significant changes to the structure, as the EMN NCPs were requested to report on the five *Commitments* included in the European Pact on Immigration and Asylum.

Various sources of information were used and analysed in order to produce this National Report: for the illustration of the most significant political debates and legal developments as well as developments in the field of migration and asylum beyond the European Pact on Immigration and Asylum, press releases of political parties, NGOs and other stakeholders, documents of the Austrian Parliament and articles of the most significant newspapers in Austria were consulted. All sources used are explicitly mentioned in footnotes and in the bibliography. Information provided in the sections referring to the European Pact on Immigration and Asylum is prevalingly based on official sources and information provided by the MoI.

The statistics presented on asylum and internal protection were provided by the MoI data on international migration have been taken from published statistics of Statistics Austria. Some statistics, especially on international migration, were not available by the time that the report was submitted. With regard to main policy and/or legislative debates and other developments in the field of migration and asylum beyond the European Pact on Immigration and Asylum, reference was only made to the most significant developments which are seen as relevant for policymakers at the national or European level. For this purpose, policy and legislative debates discussed in the Austrian parliament and widely reported in the national media (national newspapers, public and private television) were mentioned.

Annex 1.2: Terms and Definitions

Terminology

The terminology used in the context of this report is predominantly based on the terms and definitions elaborated by the EMN in the framework of the EMN Glossary²³⁵ and the terms used in the European Pact on Immigration and Asylum. In cases where national terms and definitions are used, explanatory information is provided in footnotes.

Translation of German terms and abbreviations

German term	German Abbreviation	English term	Engl. Abbreviation
Arbeitsmarkt Service	AMS	Labour Market Service	LMS
Asylgesetz	AsylG	Asylum Act	-
Asylgesetz 2005, Fremdenpolizeigesetz 2005 u.a., Änderung	-	Asylum Act 2005, Aliens Police Act 2005 i.a., Amendment	-
Ausländerbeschäftigungsgesetz	-	Aliens' Employment Act	-
Bundesministerium für Arbeit, Soziales und Konsumentenschutz	BM.ASK	Federal Ministry of Labour, Social Affairs and Consumer Protection	-
Bundesministerium für Wirtschaft und Arbeit	BM.WA	Federal Ministry of Economics and Labour	-
Bundesministerium für Europäische und Internationale Angelegenheiten	BM.EIA	Federal Ministry of European and International Affairs	FMEIA
Bündnis Zukunft Österreich	BZÖ	Alliance for Austria's Future	BZÖ
Bundesverfassungsgesetz	BVG	Constitutional Act	-
Die Grünen	-	Green Party	-
Erstaufnahmezentrum	EAST	Initial Reception Centre	-
Europäisches Migrationsnetzwerk	EMN	European Migration Network	EMN
Europäische Menschenrechtskonvention	EMRK	European Convention for Human Rights	ECHR
Europäischer Wirtschaftsraum	EWR	European Economic Area	EEA
Europäisches Gerichtshof	EuGH	European Court of Justice	ECJ
Europäische Union	EU	European Union	EU
Mitgliedsstaaten der Europäischen Union	EU MS	European Union Member States	EU MS
Bundesministerium für Inneres	BM.I	Federal Ministry of the Interior	MoI
Freiheitliche Partei Österreichs	FPÖ	Austrian Freedom Party	FPÖ
Fremdenpolizeigesetz	FPG	Aliens' Police Act	-
Fremdenrechtsänderungsgesetz 2009	-	Aliens' Law Amendment 2009	-
Gleichbehandlungsgesetz	-	Law on Equal Treatment	-
Integrationsvereinbarung-Verordnung	IV	Integration Agreement Regulation	-
Österreichischer Integrationsfonds	ÖIF	Austrian Integration Fund	-
Internationale Organisation für Migration	IOM	International Organization for Migration	IOM
Nationaler EMN Kontaktpunkt	EMN NKP	National EMN Contact Point	EMN NCP
Niederlassungs- und Aufenthaltsgesetz	NAG	Settlement and Residence Act	-
Organisation für wirtschaftliche Zusammenarbeit und Entwicklung	OEZD	Organisation for Economic Co-operation and Development	OECD
Österreichische Volkspartei	ÖVP	Austrian People's Party	ÖVP
Österreichische	ÖEZ	Austrian Development Cooperation	ADC
Entwicklungszusammenarbeit	-	-	-
Austrian Development Agency	ADA	Austrian Development Agency	ADA
Rotes Kreuz Österreich	ÖRK	Austrian Red Cross	RC
Sozialdemokratische Partei Österreichs	SPÖ	Social Democratic Party of Austria	SPÖ
Staatsbürgerschaftsgesetz	StbG	Citizenship Act	-
Hoher Flüchtlingskommissar der Vereinten Nationen	UNHCR	United Nations High Commissioner for Refugees	UNHCR
Büro der Vereinten Nationen für Drogen- und Verbrechensbekämpfung	UNODC	United Nations Office on drugs and Crimes	UNODC
Verfassungsgerichtshof	VfGH	Constitutional Court	-
Verwaltungsgerichtshof	VwGH	Administrative Court	-
Zivilcourage und Anti-Rassismus Arbeit	ZARA	Civil Courage and Anti-Racism Work	ZARA

²³⁵ European Commission, *EMN Glossary*, Brussels 2010. Also available online at: <http://emn.sarenet.es/Downloads/download.do?jsessionid=7362D2C1DEF838C8C52D1E62780F36E4?fileID=743> (consulted on 23 March 2010).

Annex 1.3: Statistics

Population Stock and International Migration Flows²³⁶

Table 1. Population by country of citizenship, 2004-2009

Country of Citizenship	2004	2005	2006	2007	2008	2009
Total	8.142.573	8.201.359	8.254.298	8.282.984	8.318.592	8.355.260
Austrians	7.388.357	7.426.958	7.457.632	7.478.205	7.483.410	7.484.556
Non-nationals	754.216	774.401	796.666	804.779	835.182	870.704
Percentage of non-nationals	9,3	9,4	9,7	9,7	10,0	10,4
EU, EEA, CH	215.818	234.795	254.905	271.131	297.887	325.385
Accession candidates by 1995 (EU-14)	122.394	131.839	143.473	154.033	167.401	181.383
Germany	83.592	91.194	100.439	109.193	119.807	130.684
Accession candidates 2004 (EU-10)	59.730	67.791	75.273	80.840	87.059	94.256
Accession candidates 2007 (EU-2)	26.339	27.598	28.422	28.301	35.282	41.356
CH, EEA (incl. associated microstates)	7.355	7.567	7.737	7.957	8.145	8.390
Third country nationals	538.398	539.606	541.761	533.648	537.295	545.319
<i>Europe</i>	<i>443.088</i>	<i>440.616</i>	<i>439.216</i>	<i>430.594</i>	<i>428.652</i>	<i>434.634</i>
Former Yugoslavia (excl. Slovenia)	305.549	302.332	300.525	295.005	290.506	292.730
Turkey	123.043	116.544	113.068	108.189	109.179	110.678
<i>Africa</i>	<i>17.574</i>	<i>19.577</i>	<i>20.366</i>	<i>20.007</i>	<i>20.656</i>	<i>21.460</i>
<i>America</i>	<i>14.019</i>	<i>14.631</i>	<i>15.390</i>	<i>15.710</i>	<i>16.601</i>	<i>17.471</i>
<i>Asia</i>	<i>45.392</i>	<i>48.726</i>	<i>50.987</i>	<i>52.606</i>	<i>56.252</i>	<i>59.538</i>
<i>Oceania</i>	<i>1.148</i>	<i>1.139</i>	<i>1.178</i>	<i>1.219</i>	<i>1.278</i>	<i>1.377</i>
<i>Unknown/stateless</i>	<i>17.177</i>	<i>14.917</i>	<i>14.624</i>	<i>13.512</i>	<i>13.856</i>	<i>10.839</i>

Source: Statistik Austria, *Bevölkerung zu Jahresbeginn seit 2002 nach zusammengefasster Staatsangehörigkeit - Österreich*, revised results for 2002 to 2008, available at: <http://www.statistik.at>. (consulted on 28 March 2010).

Table 2: Population stock by nationality and country of birth, 2008

	Population in private households	Population with foreign background		
		Total	1st generation migrants	2nd generation migrants
Total	8.241,5	1.441,5	1.078,1	363,4
Citizenship				
Austria	7.403,5	657,1	397,8	259,3
EU (except Austria)	300,7	271,5	250,9	20,6
Non-EU Countries	537,3	512,9	429,4	83,5
Former Yugoslavia	292,3	280,8	224,9	55,9
Turkey	108,7	105,1	86,4	18,6
Country of birth				
Austria	7.055,8	363,4	-	363,4
EU (except Austria)	464,4	386,8	386,8	(83,7)*
Non-EU Countries	721,3	691,3	691,3	(279,7)*
Former Yugoslavia	352,8	346,2	346,2	(141,2)*
Turkey	161,1	160,1	160,1	(95,6)*

Source: Statistik Austria, *Population in private Households with foreign background*, Labour Force Survey 2008 (average of all weeks of a year). Compiled on 26 March 2009. Available at: <http://www.statistik.at>.

²³⁶ Statistics on international migration are provided by Statistik Austria and do take into account a minimum permanent residence period in Austria of 90 days.

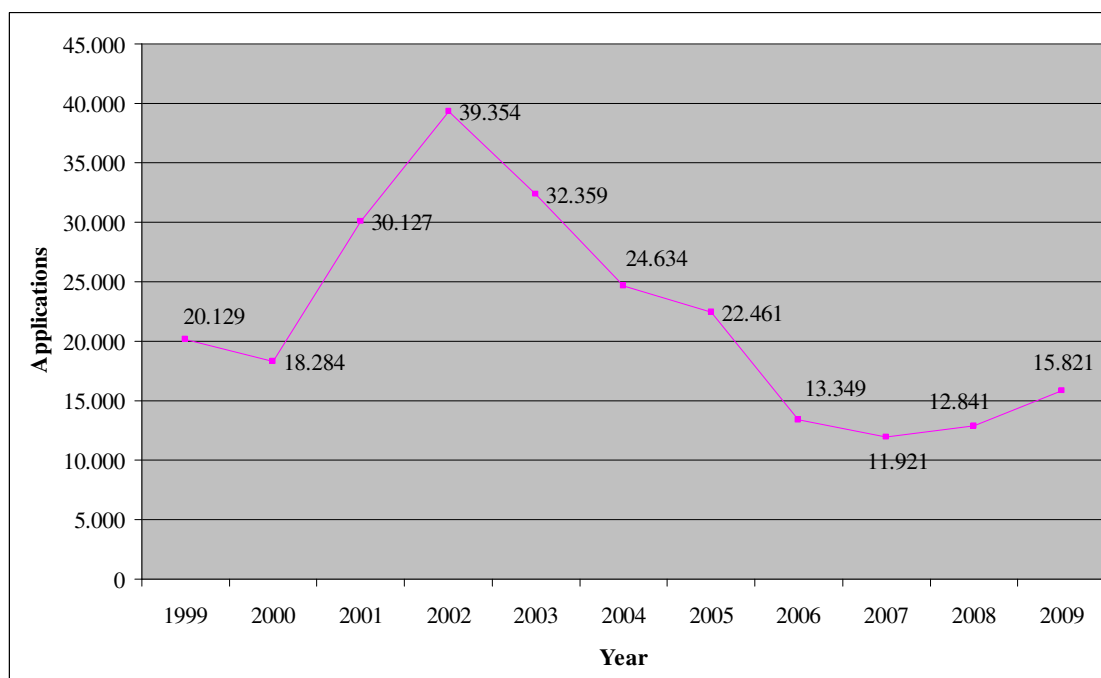
Table 3: International Inflows and Outflow 2008-2009 by month, Federal province, citizenship

Reference period		Austria	Citizenship		Reference period		Austria	Citizenship	
Year	Month		Austrian	Non-National	Year	Month		Austrian	Non-National
Inflows									
2008		110.074	15.313	94.761	2009		78.596	11.763	66.833
	I.	9.502	1.440	8.062		I.	7.996	1.229	6.767
	II.	8.819	1.150	7.669		II.	8.160	1.033	7.127
	III.	8.754	1.154	7.600		III.	9.155	1.285	7.870
	IV.	8.754	1.248	7.506		IV.	8.313	1.247	7.066
	V.	8.086	1.157	6.929		V.	7.568	1.096	6.472
	VI.	8.713	1.254	7.459		VI.	8.171	1.394	6.777
	VII.	9.150	1.488	7.662		VII.	8.991	1.560	7.431
	VIII.	9.234	1.359	7.875		VIII.	8.840	1.460	7.380
	IX.	12.061	1.537	10.524		IX.	11.402	1.459	9.943
	X.	11.595	1.398	10.197		X.	N/A	N/A	N/A
	XI.	7.412	1.039	6.373		XI.	N/A	N/A	N/A
	XII.	7.994	1.089	6.905		XII.	N/A	N/A	N/A
Outflows									
2008		75.638	20.289	55.349	2009		58.464	14.947	43.517
	I.	5.944	1.651	4.293		I.	5.740	1.477	4.263
	II.	5.717	1.544	4.173		II.	5.713	1.418	4.295
	III.	6.011	1.710	4.301		III.	6.421	1.679	4.742
	IV.	6.801	1.563	5.238		IV.	7.056	1.767	5.289
	V.	5.693	1.487	4.206		V.	6.221	1.488	4.733
	VI.	6.913	1.638	5.275		VI.	6.738	1.617	5.121
	VII.	6.899	1.771	5.128		VII.	7.442	1.853	5.589
	VIII.	5.632	1.821	3.811		VIII.	6.265	1.793	4.472
	IX.	6.754	1.914	4.840		IX.	6.868	1.855	5.013
	X.	7.164	1.870	5.294		X.	N/A	N/A	N/A
	XI.	5.779	1.643	4.136		XI.	N/A	N/A	N/A
	XII.	6.331	1.677	4.654		XII.	N/A	N/A	N/A
Net migration									
2008		34.436	-4.976	39.412	2009		20.132	-3.184	23.316
	I.	3.558	-211	3.769		I.	2.256	-248	2.504
	II.	3.102	-394	3.496		II.	2.447	-385	2.832
	III.	2.743	-556	3.299		III.	2.734	-394	3.128
	IV.	1.953	-315	2.268		IV.	1.257	-520	1.777
	V.	2.393	-330	2.723		V.	1.347	-392	1.739
	VI.	1.800	-384	2.184		VI.	1.433	-223	1.656
	VII.	2.251	-283	2.534		VII.	1.549	-293	1.842
	VIII.	3.602	-462	4.064		VIII.	2.575	-333	2.908
	IX.	5.307	-377	5.684		IX.	4.534	-396	4.930
	X.	4.431	-472	4.903		X.	N/A	N/A	N/A
	XI.	1.633	-604	2.237		XI.	N/A	N/A	N/A
	XII.	1.663	-588	2.251		XII.	N/A	N/A	N/A

Source: Statistik Austria, Wanderungsstatistik. Preliminary results for 2009 as of 17 February 2010.
<http://www.statistik.at> (consulted on 28 February 2010).

International Protection and Asylum²³⁷

Table 4: Development of numbers of applications for international protection 1999-2009



Source: MoI, *Asylanträge seit 1999*. <http://www.bmi.gv.at>.
(consulted on 24 April 2010)

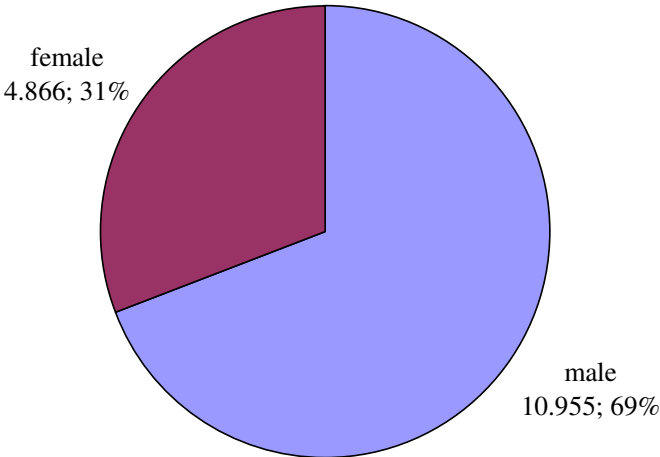
Table 5: Applications for international protection in 2008 and 2009 by month

Month	Applications 2009	Applications 2008	Difference
January	1.213	1.113	8,98 %
February	1.243	887	40,14%
March	1.313	812	61,70%
April	1.190	888	34,01%
May	1.223	832	47,00%
June	1.299	815	59,39%
July	1.367	1.089	25,53%
August	1.283	1.163	10,32%
September	1.446	1.295	11,66%
October	1.468	1.406	4,41%
November	1.319	1.242	6,20%
December	1.457	1.299	12,16%
Total:	15.821	12.841	23,21%

Source: Federal Ministry of the Interior, *Asylstatistik 2009*, available at: <http://www.bmi.gv.at>
(consulted on 24 April 2010)

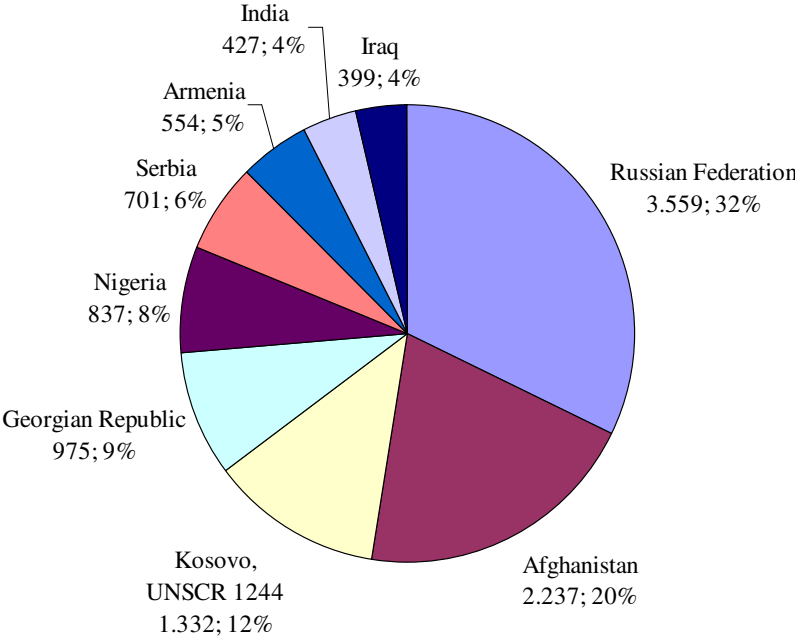
²³⁷ Statistics on asylum and international protection are taken from the publication “Asylstatistik 2009” of the MoI. Additional data has been provided by the MoI. The statistics are based on Regulation (EC) No 862/2007.

Graph 1: Applications for international protection by sex, 2009



Source: MoI, *Asylstatistik 2009*, available at: <http://www.bmi.gv.at> (consulted on 24 April 2010). Own illustration.

Graph 2: Applications for international protection by main countries of citizenship, 2009



Source: MoI, *Asylstatistik 2009*, available at: <http://www.bmi.gv.at> (consulted on 24 April 2010). Own illustration.

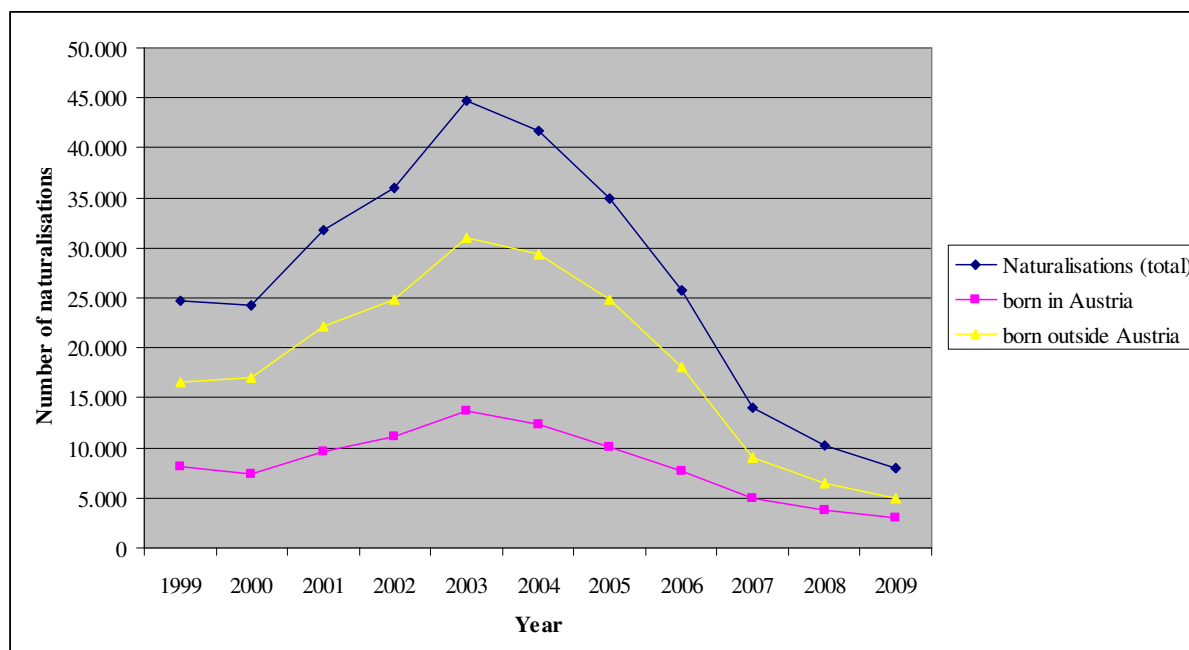
Table 6: Applications for international protection of unaccompanied minors²³⁸ by age, sex and citizenship, 2009

2009			
Country of Citizenship	Total	Males	Females
Afghanistan	431	421	10
Nigeria	114	104	10
Russian Federation	63	41	22
Moldova, Republic of	56	53	3
Somalia	38	35	3
Algeria	36	36	0
Kosovo / UNSCR 1244	30	25	5
Gambia	25	24	1
Georgia	22	20	2
India	19	19	0
Total (incl. others)	1.041	936	105

Source: MoI, statistics provided on 22 April 2010.

Naturalizations²³⁹

Graph 3: Development of numbers of naturalizations 1999-2009 by country of birth

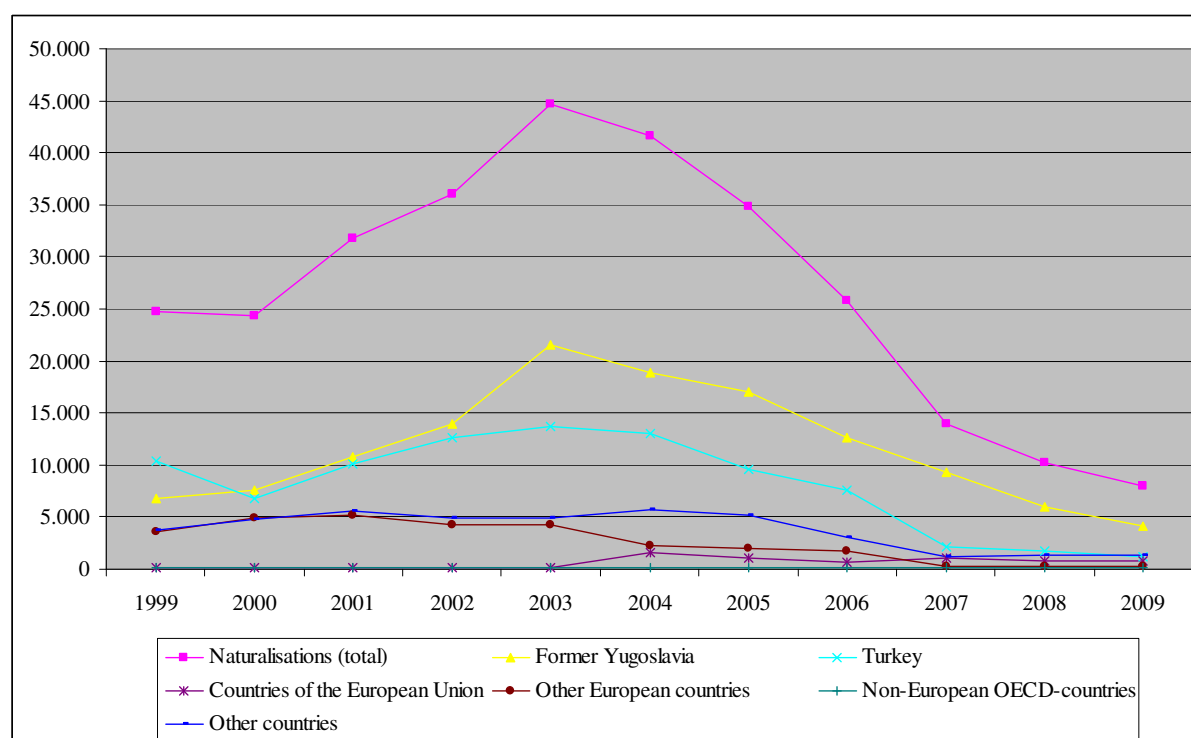


Source: Statistik Austria, *Naturalization statistics*, available at: <http://www.statistik.at/> (consulted on 27 April 2010). Own illustration.

²³⁸ Asylum applicants who are considered to be unaccompanied minors during the reference period by the responsible national authorities.

²³⁹ Statistics on naturalizations are based on the indications of final decisions on the granting of Austrian citizenship by the provincial governments of Austria. They include naturalisation of persons residing in Austria as well as persons residing abroad.

Graph 5: Development of numbers of naturalizations 1999-2009 by country of birth



Source: Statistics Austria, *Naturalization statistics*, available at: <http://www.statistik.at/> (consulted on 27 April 2010). Ad Former Yugoslavia: since 2004 without Slovenia. Ad Countries of the European Union: before 2003: EU-14 (before 1 May 2004); since 2004: EU-24 (member States from 1 May 2004 onwards).
Own illustration.

Table 7: Naturalized persons 1999-2009 by selected characteristics

Characteristics	1999	2000	2001	2002	2003	2004	2005	2006	2007	2008	2009
Naturalisations (total)¹⁾	24.678	24.320	31.731	36.011	44.694	41.645	34.876	25.746	14.010	10.258	7.978
Naturalisation rate ²⁾	3,6	3,5	4,4	4,9	6,0	5,5	4,4	3,2	1,7	1,2	0,9
Citizenship											
Former Yugoslavia ³⁾	6.728	7.557	10.737	13.990	21.574	18.917	16.974	12.631	9.346	6.003	4.181
Turkey	10.324	6.720	10.046	12.623	13.665	13.004	9.545	7.542	2.076	1.664	1.242
Countries of the European Union ⁴⁾	133	138	157	131	147	1.537	1.075	711	1.051	854	856
Other European countries	3.605	4.924	5.152	4.200	4.236	2.274	1.958	1.765	284	288	291
Non-European OECD-countries	109	142	120	107	110	167	151	86	97	144	103
Other countries	3.779	4.839	5.519	4.960	4.962	5.746	5.173	3.011	1.156	1.305	1.305
Country of Birth											
Austria	8.178	7.312	9.647	11.121	13.680	12.278	10.024	7.710	4.988	3.821	3.053
outside Austria	16.500	17.008	22.084	24.890	31.014	29.367	24.852	18.036	9.022	6.437	4.925
Age groups											
0 to 18 years	9.210	8.953	12.323	14.404	18.112	17.090	13.941	9.808	5.720	4.377	3.398
18 to 59 years	15.279	15.198	19.239	21.424	26.231	24.138	20.406	15.549	8.002	5.657	4.442
60 years and over	189	169	169	183	351	417	529	389	288	224	138
Sex											
Men	12.187	12.070	16.035	18.290	22.337	20.913	17.560	12.577	6.410	4.803	3.756
Women	12.491	12.250	15.696	17.721	22.357	20.732	17.316	13.169	7.600	5.455	4.222

Source: Statistik Austria, *Naturalization statistics*, available at: <http://www.statistik.at/> (consulted on 27 April 2010) 1) Naturalisations of Austrian residents. 2) per 100 non-Austrian (annual average). 3) Since 2004 without Slovenia. 4) Before 2003: EU-14 (before 1 May 2004); since 2004: EU-24 (member States from 1 May 2004 onwards). 5) Naturalisations of non-residents.

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Articles from newspapers²⁴⁰

- Die Presse, *"Rot-Weiß-Rot-Karte" soll Zuwanderung neu regeln („Red-White-Red Card“ shall revise immigration)*, 26 January 2009.
- Die Presse, *Khorchide-Studie: Islam-Lehrer als Problemfall (Khorchide-Study: Islamic teachers as problem case)*, 28 January 2009.
- Die Presse, *Humanitärer Aufenthalt jetzt fix (Humanitarian residence now fix)*, 13 March 2009, p.3.

²⁴⁰ Please note that the newspaper articles are not available in English, translation is only provided for content-related understanding.

Die Presse, *Wien: Vier von zehn Schülern sind Migranten (Vienna: Four of ten pupils are migrants)*, 31 March 2009, p.7.

Die Presse, *Wien: Welche Ausländer dürfen rein? (Vienna: How many immigrants are allowed to enter?)*, 26 May 2009, p.8.

Die Presse, *Gift und Galle (Poison and cholera)*, 17 June 2009, p.30.

Die Presse, *FPÖ-Chef: Exiljude ist kein Schimpfwort (FPÖ-Leader: Exile jew is not a curse word)*, 26 August 2009, p.3.

Die Presse, *Wir waren doch schon immer so (We were always like this)*, 2 September 2009.

Die Presse, *Widerstand gegen Schubhaftzentrum (Resistance against detention centre)*, 9 September 2009, p.3.

Die Presse, *Zu einfach gedacht (Thought too easily)*, 4 October 2009, p.2.

Die Presse, *Wer fürchtet sich vor dem Minarett? (Who is afraid of the minaret?)*, 1 December 2009, p.1.

Die Presse, *Fekter: Deutsch vor der Einreise lernen (Fekter: Learning German before the entry)*, 16 December 2009, p.10.

Der Standard, *Neuer Streit um Deutschlernpflicht für Migranten (New quarrel on the obligation for migrants to learn German)*, 26 March 2009, p.9.

Der Standard, *Integrationsplan ohne Schutz vor Diskriminierungen (Integration Plan without protection on discrimination)*, 30 March 2009, p.8.

Der Standard, *Christliches Europa in der Brigittenau (Christian Europa in the Brigittenau)*, 15 May 2009, p.34.

Der Standard, *ÖVP fordert Aufnahmeverfahren an AHS (ÖVP requests entry exams for high schools)*, 16 May 2009, p.8.

Der Standard, *Und ewig grüßt die FPÖ vom rechten Rand (And forever the FPÖ greets from the right edge)*, 26 August 2009, p.7.

Der Standard, *Grüne für Caritas-Chef als Integrationsstaatssekretär (Green Party for Caritas-Leader as Integration State Secretary)*, 3 October 2009, p.6.

Der Standard, *Integration im Landesparlament (Integration in the provincial government)*, 15 October 2009, p.8.

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