



International Organization for Migration (IOM)



ADMITTING THIRD-COUNTRY NATIONALS FOR BUSINESS PURPOSES IN AUSTRIA



Gudrun Biffl

Co-funded by the
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BM.I



REPUBLIC OF AUSTRIA
FEDERAL MINISTRY OF THE INTERIOR

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



EMN FOCUSSED STUDY 2014

Admitting third-country nationals for business purposes

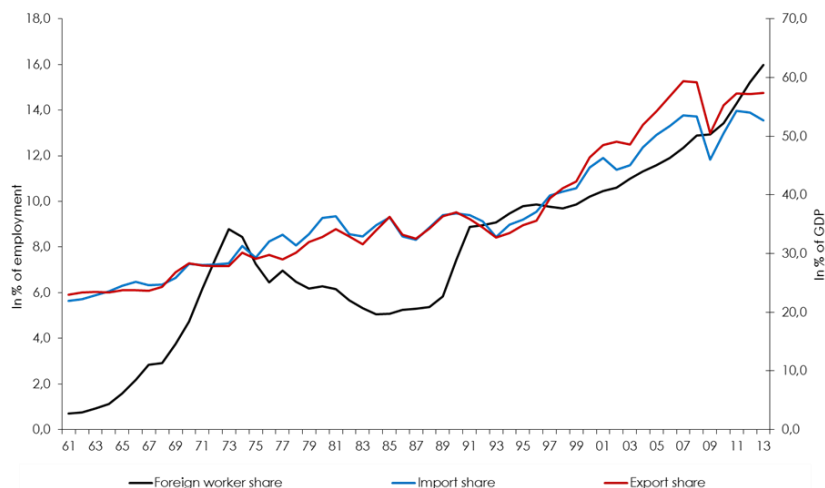
Executive Summary

At the end of the 1980s the international economic and political environment in Austria changed as a result of neighbouring Central and Eastern European Countries to opening up to international trade, there was further change in the mid-1990s in the wake of the integration of Austria into the European Union (EU). Both factors increased competition suddenly and significantly, the former in labour intensive export industries, the latter in quasi-public sector services. Austria's membership of the EU hastened deregulation of former sheltered public and quasi-public sector services (telecom, banking and insurance, postal services), consequently employment growth slowed. However, industrial restructuring was necessary in order to increase productivity and thus regain the former level of international competitive position. The change in the competitive position of Austria's export industries and the opening up of sheltered services to competition did not only give rise to unemployment but also boosted international trade (measured in terms of exports/imports as a percentage of Gross Domestic Product - GDP) and labour migration (measured as a percentage of total employment) (see Figure 1). Increased trade was largely the result of a widening of the economic space, opening up opportunities for regional specialization of industrial production in a value added chain (Pfaffermayr et al., 2001). This process of industrial restructuring was linked with a policy reorientation towards increased Foreign Direct Investment (FDI) - inward and outward foreign direct investment. At the same time migration, as a policy instrument, was moving backstage. This policy stance reflects the traditional priority of trade over labour mobility in Austrian economic growth and development policy (Stankovsky, 1983; Stankovsky/Url, 1999; Wolfmayr et al., 2006). Rather than becoming a driver of economic growth in its own right (Biffl, 2004) migration was always intended to serve the competitiveness of Austrian export industries.

The promotion of international trade at the expense of labour mobility may stem from a general view that commodity trade is in the main a win-win situation, while migration gives rise to increased inequalities and results in winners and losers. This view is reflected in the fact that Austria imposed restrictions on labour mobility while at the same time removing barriers to the free flow of goods and services across borders as early as 1991. The policy preference of trade over migration took some time to reduce migrant inflows as migration had a head start in the late 1980s and early 1990s in the wake of the fall of the Iron Curtain and the civil war in Yugoslavia. After the implementation of new migration legislation in 1992 inflows subsided and international trade gained momentum from the mid-1990s onwards. Imports and exports rose, reaching some 48 per cent of GDP in 2001, compared to 37 per cent in 1990, and 35 per cent in 1980. Today (2013) the share of exports in GDP amounts to 57.4 per cent, of imports 53 per cent. The increase in the volume of trade (exports and imports) from the mid-1990s onwards is the result of increased internationalization, to a large extent from more inter- and intra-industry trade resulting from closer economic integration with the EU and with Central and Eastern European Countries. In contrast, migration only gained momentum as free mobility

of labour with the EU gave a boost to labour mobility. The migration policy reform in 1992, which brought an end to the guest worker model and introduced immigration controls modelled after the US-immigration model, meant that migration from third countries lost some of its former dynamics (Biffl, 2014).

Figure 1: Migration and trade developments 1961–2013 (Foreign workers in per cent of total employment; imports/exports in per cent of GDP)



Source: OECD, World Bank, Eurostat, Austrian Labour Market Service, BaliWeb.

Accordingly, Austria is a latecomer as far as the promotion of the inflow of foreign business people is concerned. While Austria has a long history of migration, going back to the early 1960s, the focus has always been on satisfying immediate labour demand, namely by reducing general and specific labour scarcities of domestic enterprises via migration (Biffl, 2011). It was not until the settlement of 'guest workers' and their families that self-employment of foreigners set in. This was a slow process and gained momentum only in the 1990s. Accordingly, there are no comprehensive statistics on ethnic entrepreneurs in Austria until the census of 2001. Then, out of the 516,800 employed migrants (foreign born) 36,100 (or 7 per cent) were self-employed, largely in the non-agricultural sector, compared to 11 per cent of the host population. As some 3 per cent of the Austrians were self-employed farmers, the share of self-employment of migrants in the non-agricultural sector was about as high as for natives. Research into the reasons for the take-up of self-employment suggests that the deterioration of employment opportunities of migrant workers resident in Austria became a motivating force to start up a business. The newly self-employed tended to find niches for themselves (Biffl, 2007), setting up business in services, in particular cleaning, restaurants, food production and retail trade as well as in manufacturing, above all in clothing, leather ware, shoes and textile production and repairs.

Since then the share of self-employment in total employment remained fairly stable in Austria, amounting to 11 per cent in 2009 (20–64 year olds). The proportion was only slightly lower for foreign born with 10 per cent. Accordingly, migrants were increasingly working on their own account. But it was, above all, EU-27 citizens who came to set up business in Austria (self-employment rate of 14 per cent compared to 7 per cent of third-country foreign born). In EU comparison (Eurostat, 2011), the share of self-employment in total employment in Austria is somewhat below the EU-27 average (15 per cent). There are, however, large differences in the share of self-employment in total employment across the EU, spanning from a low of 7 per cent in Luxembourg to a high of 29 per cent in Greece (Figure 2).

While some EU-Member States exhibit hardly any differences in the degree of self-employment of natives and migrants, for instance Luxembourg and Latvia, others tend to have large discrepancies, in particular Southern European countries and some Central and Eastern European countries, indicating different roles of migrants

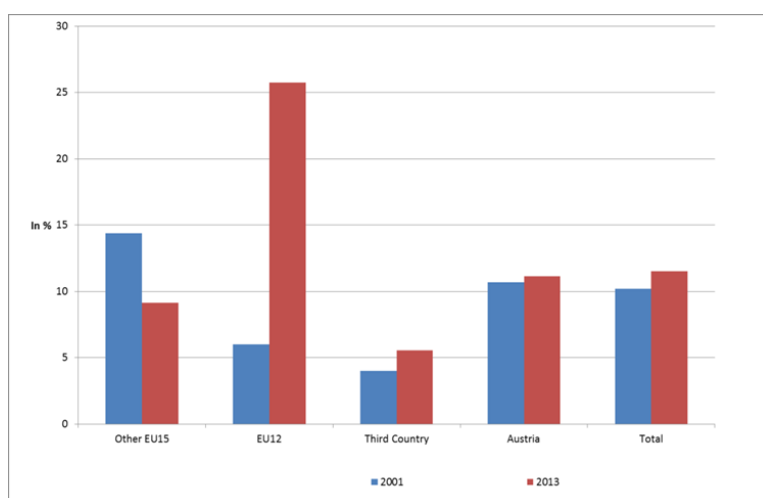
and natives in the local labour market and the economy at large.

In Austria the composition of self-employment by source country has changed significantly between 2001 and today. While the composition of the migrant entrepreneurs by country of origin conformed more or less to the one of migrant wage and salary workers in 2001, this is no longer the case. With EU enlargement and the imposition of transition regulations for migrants from EU-8 countries (until 2011) and from EU-2 countries (until 2013), access to wage and salary employment was difficult. Only highly skilled workers and persons in designated shortage occupations could enter wage and salary employment. The option to set up a business in Austria remained, however, leading to a substantial inflow of self-employed from the new EU-Member States. In addition, posted workers entered to provide services on a temporary basis.

In 2013, 85,500 or 13.3 per cent were self-employed of the foreign workforce of 642,300, clearly more than in total employment (11.5 per cent). The differences between the various nationalities were pronounced. While the self-employment rate of third country citizens, largely persons from Turkey and former Yugoslavia (excluding Slovenia and Croatia), was fairly low with 5.5 per cent (14,900), 42.5 per cent of all workers from the EU-2 were working as self-employed (21,200). Also citizens from the EU-10 member states worked to a large extent as self-employed, namely 36,000 or 21 per cent of total EU-10 employment. The numbers of self-employed migrants from Switzerland and European Free Trade Association countries are much smaller, their share in total employment is, however, quite high (16.2 per cent, or around 500 persons).

It can be taken from Figure 2 that the role of foreign business people has increased significantly over the last decade, stemming from globalization but above all from EU enlargement. Consequently, the diversity of their professional skills and occupations has increased.

Figure 2: Self-employment rate by region of origin, 2001 and 2013



Source: Statistics Austria, *Microcensus 2001*¹; Federal Ministry of Labour, Social Affairs and Consumer Protection, *BALIweb – Beschäftigung : Arbeitsmarkt : Leistungsbezieher : Informationen*.²

Hand in hand with increased economic integration in an enlarged EU came a paradigm change relative to FDI and thus business investment in the 1990s. As a consequence, FDI increased, even more so of active than

¹ Available at www.statistik.at/web_de/services/datenbank_superstar/index.html (accessed on 25 October 2014).

² Available at www.dnet.at/bali/Default.aspx (accessed on 2 November 2014).

passive FDI. Today the number of active Austrian FDI investors abroad amount to 1,361, representing a value of 158.6 billion euros; in exchange, 3,069 foreigners (passive FDI) invested in Austria, holding shares of more than 100,000 euros in 2,768 Austrian companies, representing a value of 124.6 billion euros. (Austrian National Bank, 2014: 5). The number of jobs affected by passive FDI in Austria amounted to some 251,000 while active FDI affected 784,700 employees abroad (Austrian National Bank, 2014). The most important foreign investors in Austria are Germany, Switzerland, the United States and Italy. Those “big four” comprise 63 per cent of foreign participations with 59 per cent of total FDI value and 69 per cent of the related employment. The Netherlands, France, the United Kingdom (and recently also Russian Federation) are also important countries of origin for FDI in Austria, however at lower levels (ibid.: 10).

In recognition of the important role of FDI, including foreign business investors in Austria, the Austrian Government has chosen to create a network of bilateral investment treaties (BITs) to promote FDI. The majority of the BITs were signed in the 1990s or later, only four of those in place were signed in the 1980s (with China 1986, Malaysia 1987, Poland 1989, and Hungary 1989). In contrast, immigration of business migrants from third countries has not been given much attention. Only two legal categories of Austrian settlement permits to third country migrants can be subsumed under the definition of a business migrant: the settlement permit excluding gainful employment and the Red-White-Red card for self-employed key workers. In the first case 1,349 were registered at the end of 2013. The annual inflow amounted to some 250 persons in 2013. In the second case the numbers of valid settlement permits for highly skilled third country self-employed are even smaller with 787 persons in 2013; in the course of the year 2013 25 Red-White-Red cards were issued for self-employed key workers.

Section 1: National frameworks for admitting third-country nationals for business purposes

Section 1.1: Immigrant investors: overview of national policies

Q1. How does the national legislation of your Member State define immigrant investors?

There is no explicit definition for “immigrant investors” in the Austrian legislation. With reference to the EMN definition the following two categories can be subsumed among third-country immigrant investors:

“Settlement permit - gainful employment excepted”.

The applicant has to prove a regular monthly income (for details see below).³

“Red-White-Red (RWR) card for Self-Employed Key Workers”

Third country self-employed workers - whose self-employed occupation in Austria creates macro-economic benefits that go beyond its own operational benefit - can apply for this residence title. One criterion, among others, is a “sustained transfer of investment capital to Austria” according to Art. 41 para 2 subpara 4 Settlement and Residence Act in connection with Art. 24 Act Governing the Employment of Foreign Nationals⁴ in connection with Art 9 para 4 subpara 1 Settlement and Residence Act – Implementation Act.⁵

³ For further information see www.migration.gv.at/en/types-of-immigration/permanent-immigration-red-white-red-card/other-forms-of-settlement.html (accessed on 10 December 2014).

⁴ FLG I No. 126/2002.

⁵ For further information see www.migration.gv.at/fileadmin/downloads/infoblaetter/Self-employed_key_workers.pdf (accessed on 27 October 2014).

Austria has concluded a range of **bilateral investment treaties (BITs)** to support Austrian companies in their investment ventures abroad. The definition of investment is as follows: every kind of asset in the territory of one Contracting Party, owned or controlled, directly or indirectly, by an investor of the other Contracting Party. Investments are understood to have specific characteristics such as the commitment of capital or other resources, or the expectation of gain or profit, or the assumption of risk, and include: enterprises (for example a corporation, partnership, joint venture or any other association, as well as a trust, a sole proprietorship, or a branch located in the territory of a Contracting party and carrying out substantive business there), shares, stocks and other forms of equity participation in an enterprise and rights derived there from, bonds, debentures, loans and other forms of debt instruments and rights derived there from, any right or claim to money or performance whether conferred by law or contract, including turnkey, construction, management or revenue-sharing contracts, and concessions, licences, authorizations or permits to undertake an economic activity; intellectual property rights and intangible assets having an economic value, including industrial property rights, copyright, trademarks, trade dresses; patents, geographical indications, industrial designs and technical processes, trade secrets, trade names, know-how and goodwill; any other tangible or intangible, movable or immovable property, or any related property rights, such as leases, mortgages, liens, pledges or usufructs.

Q2a. Does your Member State have a specific policy, programme or scheme for immigrant investors?

Yes, the Red-White-Red card has one such category, the self-employed key worker. Other than that BIT are promoted without any specifications as to periods of residence in Austria for business visits (no distinction in data on temporary visa categories).

Q2b. If yes, please provide more information about the specific policy, programme or scheme, including
a) the name of the policy / programme / scheme: b) its main policy objectives (Neutral, pro-active); whether it targets c) specific investment types e.g. real estate, transfer of capital, national funds / bonds, business investments, endowment to public projects, mixed investments, joint ventures, etc. or d) economic sectors / geographical areas / strategic partners; and whether e) a quota / limitation system is in place to govern the number of entries or permits that can be issued to migrant investors?

a) Name of policy / programme and legal basis

The RWR card for Self-Employed Key Workers

Legal basis: Art. 24 Act Governing the Employment of Foreign Nationals, in connection with Art. 41 para 2 Z 4 Settlement and Residence Act.

"Settlement Permit - Gainful Employment Excepted"

Legal basis: Art. 44 Settlement and Residence Act.

b) Main policy objectives:

The **"RWR card for self-employed key workers"** partly covers the EMN definitions of immigrant investors and immigrant business owners: Third-country nationals can apply for this category of RWR card if their self-employed occupation in Austria creates macroeconomic benefit going beyond the operational benefit of the intended occupation. This can be the case if

- the intended occupation involves a sustained transfer of investment capital to Austria, or
- the intended occupation creates new jobs or secures existing jobs in Austria, or
- the settlement of the key worker involves the transfer of know-how respectively the introduction of new technologies, or
- the key worker's company is of considerable significance for the entire region.⁶

In 2013, 23 RWR cards were issued for Self-Employed Key Workers. There is no information available based on which criteria the persons were admitted (sustained transfer of investment capital, creation of new jobs or securing jobs, transfer of know-how/introduction of new technologies, or key worker's company has considerable significance for the region).

"Settlement Permit - Gainful Employment Excepted": for financially independent individuals and their family members, proof of regular monthly income is required, e.g. Austrian or foreign pensions, profits from enterprises abroad, income from assets, savings or company shares, equalling twice the amount of the standard rates of the General Social Insurance Act⁷, namely in 2014 1,715.46 euros for singles, 2,572.06 euros for couples, 264.68 euros extra for each child.

c) Type of investment (e.g. real estate, transfer of capital, national funds / bonds, business investments, endowment to public projects, mixed investments, joint ventures, etc.)

RWR card for self-employed key workers: transfer of investment capital.

d) Priority national economic sectors / priority national geographical areas / countries of origin targeted / strategic partners required.

There are no explicit priority sectors, regions, countries.

e) Quotas in place

RWR card for Self-employed key workers: no quota.

"Settlement Permit - Gainful Employment Excepted": quota is annually fixed per Settlement Order⁸ on the basis of Art. 13 Settlement and Residence Act. There are quantitative limitations for each province. Looking at concrete figures, the quota for 2013: 275⁹, 251¹⁰ permits were issued.

⁶ Art. 41 Settlement and Residence Act in conjunction with Arts. 20d para 4, 24 Act Governing the Employment of Foreign Nationals in conjunction with Art 9 Settlement and Residence Act – Implementation Act. For further information see www.migration.gv.at/fileadmin/downloads/infoblaetter/Self-employed_key_workers.pdf (accessed on 27 October 2014).

⁷ Art. 293 General Social Insurance Act, FLG No. 189/1955 as amended by FLG II No. 434/2013. For further information see www.migration.gv.at/en/types-of-immigration/permanent-immigration-red-white-red-card/other-forms-of-settlement.html (accessed on 10 December 2014).

⁸ Settlement Order 2014, FLG II No. 480/2013.

⁹ Settlement Order 2013, available at www.ris.bka.gv.at/Dokumente/BgblAuth/BGBLA_2012_II_448/BGBLA_2012_II_448.pdf (accessed on 15 December 2014).

¹⁰ Federal Ministry of the Interior, *Settlement and Residence Statistics 2013*, available at www.bmi.gv.at/cms/BMI_Niederlassung/statistiken/files/Niederlassungs_und_Aufenthaltsstatistik_Jahresstatistik_2013.pdf (accessed on 17 December 2014).

Q3a. What is/are the main actor(s) and institution(s) involved in the development of policies to attract immigrant investors? If multiple authorities are involved, how are they coordinated? Is there an official mandate – e.g. an Action Plan – governing the involvement of these authorities?

Overall, there is not much policy development in this field. The social partners, as well as the national bank, are involved in drawing up BITs. There is no action plan focussed on attracting immigrant investors, but the ABA (Austrian Business Agency) tends to promote BIT and business investors.

If it is related to business investments the following actors/institutions may be involved:

Federal Ministry of Science, Research and Economy

Federal Ministry of the Interior

Federal Ministry of Labour, Social Affairs and Consumer Protection

Federal Ministry for Europe, Integration and Foreign Affairs

Austrian Economic Chamber and Chamber of Labour

Federation of Austrian Industries

The Austrian Business Agency (ABA)¹¹: national investment promotion company, it is the first point of contact for foreign companies aiming to establish their own business in Austria. The ABA is owned and operated by the Republic of Austria and reports directly to the Austrian Ministry of Science, Research and Economy.

There may also be regional actors, such as the Vienna Business Agency¹².

Q3b. Which actor / institution is responsible for the promotion of the policy with the target group?

With respect to business investments, the responsible actors for promotion are the Austrian Business Agency (ABA) and the Austrian Trade Commissions (run by the Austrian Economic Chamber).

Q4a. Does your Member State have specific measures in place to attract immigrant investors?

Yes

Q4b. If yes, Please complete the table below with regard to the (applicable) policy measures in place to attract immigrant investors in your Member State.

Measures	Brief description of the measure in the Member State
What do these specific measures entail? (active promotion / information dissemination /	Active promotion by the ABA: <ul style="list-style-type: none"> Regular activities in third-country markets, specific events for potential

¹¹ For further information see www.investinaustria.at (accessed on 7 December 2014).

¹² For further information see www.wirtschaftsagentur.at (accessed on 3 December 2014).

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<i>campaigns / events including in third countries, etc.)</i>	<p>business owners/investors with information on Austria as a business location in the framework of activities such as Economic forums¹³ and economic missions of Austrian stakeholders (visits of Ministers abroad accompanied by business missions)¹⁴;</p> <ul style="list-style-type: none"> • Availability of the ABA Webpage¹⁵ in German, English, French, Italian, Chinese, Japanese, Russian; • Cooperation with consultants in third countries that approach potential investors/business persons interested in establishing a company in Austria; • Cooperation with actors that could spread information about Austria as a business location (tax consultants, lawyers); • Brochures; • ABA office in China.
Does a list of specific procedural facilitations for admission exist?	<p>The procedure for a RWR card is faster compared to other residence titles; an application has to be processed within eight weeks.</p> <p>In contrast, the residence authority has to process the application for a "settlement permit – gainful employment excepted" within six months.</p>
Are there specific tax incentives? (benefits, exemptions, etc.)	No. ¹⁶
Does the possibility exist for immigrant investors to be accompanied by family members? Are family members allowed to access the labour market?	<p>Settlement Permit - Gainful Employment Excepted:</p> <ul style="list-style-type: none"> • Yes, spouse, registered partner, unmarried minors including adoptive and step children, "adequate means of subsistence" for family members have to be proved. No labour market access.¹⁷ <p>RWR card for self-employed key workers:</p> <ul style="list-style-type: none"> • Family members (spouse, registered partner, unmarried minors including adoptive and step children) of holders of a "RWR card" can apply for a "RWR card plus". • Holders of a RWR card plus have free labour market access.¹⁸
Are immigrant investors granted access to social benefits?	<p>"Settlement Permit - Gainful Employment Excepted":</p> <ul style="list-style-type: none"> • No. A fixed and regular income "enabling him/her to meet his/her livelihood without resorting to welfare aid from local authorities" is a requirement for this residence title.¹⁹

¹³ In German: "Wirtschaftsforum".

¹⁴ For events in that regard, see <http://investinaustria.at/EN/Home/ABA%20-%20Invest%20in%20Austria/Events/Where+you+can+meet+us.aspx> (accessed on 5 December 2014).

¹⁵ For further information see www.investinaustria.at (accessed on 27 November 2014).

¹⁶ Information obtained by telephone interview from ABA-Invest in Austria, 17 November 2014.

¹⁷ Art. 46 para 5 Settlement and Residence Act in conjunction with Art. 17 para 1 Act Governing the Employment of Foreign Nationals e contrario.

¹⁸ Art. 46 para 1 Settlement and Residence Act in conjunction with Art. 17 Act Governing the Employment of Foreign Nationals.

¹⁹ Art. 11 para 2 subpara 4, 44 para 1 subpara 3 Settlement and Residence Act.

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	<p>RWR card for self-employed key workers:</p> <ul style="list-style-type: none"> As business owners and, for example, managers, or other self-employed in Austria, they are insured in Austria (compulsory social insurance scheme) and thus are entitled to social benefits (eligibility and benefit level can depend on contributions and contribution periods).
Are immigrant investors granted access to citizenship?	<p>Yes, if they meet the general requirements (10 years legal and non-stop residence in Austria, including a minimum of 5 years with a settlement permit).²⁰</p> <p>Apart from that, Austrian citizenship can be awarded to individuals for "outstanding achievements that are in the interest of the Republic of Austria"²¹ see Art. 10 para 6 Austrian Citizenship Law). In this case there is no requirement for a minimum period of residence in Austria. This category may be of relevance to immigrant investors, as the criteria set out for this "fast track" to Austrian citizenship comprise economic achievements/performance:</p> <ul style="list-style-type: none"> Owner of a company or senior position with substantial influence in the company, board member is not sufficient; High economic performance of the company; Creation and protection of employment in the Austrian labour market to a relevant degree, especially in economically weaker regions; Substantial investment or projects of the company already implemented, a simple flow of capital is not sufficient; Reputation of the company abroad; Promotion of Austria's bi- or multilateral external relations in this economic sector.²² <p>From 2002–2011, the yearly number of citizenships awarded for "outstanding achievements", ranged between 17 and 39.²³</p> <p>Between the years 2012–13 there no awards were issued, due to a politician who was found guilty of corruption. He had signalled (vis-à-vis a consultant) willingness to engage in Austrian citizenship for a Russian investor, if the investor invested in Carinthia, the citizenship would be "part of the game". The politician had also claimed that, in case of investment, "the usual 5 to 10 per cent" should go to his political party.²⁴</p>

²⁰ Art. 10 para 1 (1) Citizenship Law. For further information see www.help.gv.at/Portal.Node/hlpd/public/content/136/Seite.1360000.html (accessed on 8 December 2014).

²¹ In German: "außerordentliche Leistungen im besonderen Interesse der Republik".

²² Art. 10 para 6 Citizenship Law. For further information see www.bmi.gv.at/cms/BMI_Staatsbuergerschaft/verleihung/start.aspx.

²³ Statistics Austria/Statistics of naturalisations.

²⁴ Der Standard, *Sieben Monate bedingt: Uwe Scheuch schuldig gesprochen*, 19 December 2014, available at <http://derstandard.at/1355460084480/Uwe-Scheuch-heute-in-Graz-vor-Gericht> (accessed on 21 December 2014); Die Presse, "Part of the Game": Die Chronologie eines Politskandals, 2 August 2011, available at <http://diepresse.com/home/politik/innenpolitik/682940/Part-of-the-Game-Die-Chronologie-eines-Politskandals> (accessed on 27 November 2014).

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On 25 February 2014, the Council of Ministers issued a decision with a criteria catalogue that should guide the decisions and make them more transparent.²⁵ It is up to the Federal Government to decide whether an applicant meets the listed criteria.²⁶

Q5a Does your Member State have any bilateral or other agreements in place with Third Countries to attract immigrant investors?

No.

There are bilateral investment treaties, whose initial purpose is to protect the investment of Austrian natural persons/companies in the respective country.

Q5b. Does your Member State share information with other Member States? Does your Member State consult other Member States on the issuing of the documents listed in Q4.b to immigrant investors?

No conclusive answer could be defined.

Section 1.2: Immigrant investors national policies: pre-arrival stage (admission criteria) and stay (renewal)

Q6a. Please indicate which of the list act as criteria to admit immigrant investors in your Member State in the table below. All listed requirements imply a Yes/No answer: in affirmative cases, EMN NCPs are asked to describe the criteria. If possible, EMN NCPs should also explain whether the same criteria apply to third-country nationals admitted to the national territory under a different immigration channel (family reunification, study, etc.) but willing to change their status into immigrant investors.

Admission criteria	Explanation	Do the same criteria apply to third-country nationals present in your Member State who have another status and are willing to change it into investor?
Minimum financial amount to invest (please indicate the financial amounts applied to each of the investment types identified above in	Yes. There is a minimum of 100,000 euros ²⁷ mentioned in the preamble to the amendment of the Act Governing the Employment of Foreign Nationals. Practitioners observe that the minimum can differ between provinces, namely	If they apply for a settlement permit gainful employment excepted or a RWR card for self-employed key workers, the same criteria apply.

²⁵ Decision of the Council of Ministers from 25 February 2014, available from www.bmi.gv.at/cms/BMI_Staatsbuergerschaft/verleihung/start.aspx (accessed on 5 December 2014).

²⁶ Ibid.

²⁷ Amendment of the Act Governing the Employment of Foreign Nationals, Government Proposal, Explanatory Notes, p. 44, available at www.parlament.gv.at/PAKT/VHG/XXI/I/I_01172/fname_000786.pdf (accessed on 11 November 2014).

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Question 2b point c)	the requirements set by the provincial ²⁸ Public Employment Service.	
Investment plan <i>If Yes, please complete the table in Q6b</i>	Not required by law. For the evaluation of macroeconomic benefits documents are required "which allow an analysis and evaluation of the market and competitive situation and the headquarter location, including a detailed description and the objectives of the intended professional undertaking ("business plan")". ²⁹	
Expected Impact of proposed investment in the Member State <i>(economy, public life, etc.)</i>	<p>Yes: RWR card for self-employed key workers</p> <ul style="list-style-type: none"> Macro-economic benefit (sustained transfer of capital, creation/protection of employment in the Austrian labour market). <p>No: Settlement Permit - Gainful Employment Excepted</p>	
Minimum Education / Professional skills	<p>Yes: RWR card for self-employed key workers</p> <ul style="list-style-type: none"> Evidence of the qualification necessary for the self-employed professional activity; Business licenses³⁰ where necessary. <p>No: Settlement Permit - Gainful Employment Excepted</p>	
Language knowledge <i>(certification, pre-entry tests, mandatory courses, etc.)</i>	<p>No: RWR card for self-employed key workers</p> <p>Yes: Settlement Permit - Gainful Employment Excepted</p> <ul style="list-style-type: none"> Evidence of German language skills ("German prior to immigration"), skills at level A1 according to the Common European Framework of Reference for Languages.³¹ 	

²⁸ "provincial" means on level of the provinces (in German "Länder").

²⁹ For further information see www.migration.gv.at/en/types-of-immigration/permanent-immigration-red-white-red-card/self-employed-key-workers.html (accessed on 14 December 2014).

³⁰ In German: "Gewerbeberechtigungen".

³¹ For further information see www.migration.gv.at/en/types-of-immigration/permanent-immigration-red-white-red-card/other-forms-of-settlement.html (accessed 8 December 2014).

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Age requirement for applicants (minimum / maximum)	No	
Security / health / background checks in place (origin of investment, fraud checks, previous bogus activities, etc.)	<p>Yes.</p> <p>Ad Settlement Permit - Gainful Employment Excepted:</p> <ul style="list-style-type: none"> • Health insurance coverage; providing benefits in Austria and covering all risks; • Evidence of a legal contract for accommodation (for instance by presenting a lease contract) considered adequate for his/her family size according to local standards; • Evidence of means of secure subsistence (pay slip, pay certificate, employment contracts, certificates of state pension, pension insurance or other insurance benefits, evidence of adequate amounts of invested capital or owned assets). <p>Ad RWR card</p> <ul style="list-style-type: none"> • Evidence of locally customary accommodation (for instance lease contracts, preliminary agreement on tenancy rights or ownership evidence); • Evidence of health insurance covering all risks (compulsory health insurance or equivalent insurance policy); • Evidence of adequate means of subsistence (payslips, pay certificates, employment contracts, insurance benefit certificates, evidence of retirement or other pension or insurance benefits, investment capital or sufficient own assets). 	

Q6b. In case an investment plan is required, EMN NCPs are asked to complete the table below. All listed requirements imply a Yes/No answer: in affirmative cases, EMN NCPs are asked to describe the requirements with additional information.

Investment plan requirements	Explanation
Information required on legal aspects of the investment.	N/A

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Information required on the commercial and financial aspects (nature of the investment, origin of the capital to invest, target groups, preliminary contracts, performance indicators, etc.)	RWR card for self-employed key workers: <ul style="list-style-type: none"> • Company agreement (where necessary); • Business plan; • If there are the origin of the capital.
National institution responsible for the assessment/ approval	RWR card for self-employed key workers: <ul style="list-style-type: none"> • The provincial³² Public Employment Service has to assess whether the applicant's self-employed economic activities would generate substantial macroeconomic benefits, Art. 24 Act Governing the Employment of Foreign Nationals. • Residence authority is responsible for the general requirements. Settlement permit – gainful employment excepted: <ul style="list-style-type: none"> • Residence authority.
Duration of examination / due diligence phase	RWR card in total 8 weeks (regulated by the Settlement and Residence Act) <ul style="list-style-type: none"> • The Public Employment Service has to issue the expertise on macroeconomic benefits within 3 weeks. Settlement permit – gainful employment excepted: 6 months.
Documentation required	N/A
Review period	N/A

Q7. If the criteria for admission are satisfied what initial document is issued? Please provide any detail on:

- type of document issued (e.g. short-stay visa, authorisation to stay, long-stay visa, residence permit, etc.)
- its duration
- whether it is longer than the usual duration which applies to other categories of third-country nationals
- whether its validity differs (and how) from its renewal.

A RWR card for self-employed key workers is issued. It is valid for one year. If it is renewed for the first time (change from RWR card to settlement permit) the validity is again 1 year (for more see Q9).

Settlement permit – gainful employment excepted is issued. It is valid for one year. If it is renewed for the first time (change from RWR card to settlement permit) the validity is again 1 year (for more see Q9).

For both: The validity does not differ from other residence titles, which are also first issued for one year. In case of the first renewal the validity is also one year.

Q8. Where and by which institution / organisation (internal or abroad) are the documents issued? (e.g. diplomatic mission in the third country; other responsible representative; intermediary agency, etc.)

RWR card for self-employed key workers:

³² “provincial” means on level of the provinces (in German “Länder”).

- If the application is accepted, the Austrian consular representation abroad informs the applicant accordingly. Persons who need a visa to enter Austria then have to apply there for a visa D in order to get their residence title from the competent residence authority in Austria.

Settlement permit- gainful employment excepted:

- Persons who need a visa to enter Austria have to apply for a visa D (within 3 months) at the Austrian consular representation in order to obtain their settlement permit from the competent residence authority in Austria.

Q9. EMN NCPs are asked to provide information on the criteria to be met in case of extension of the document issued for the stay of immigrant investors. Please provide details of the type of document issued and its duration.

Renewal criteria	Explanation
What are the requirements related to the purpose of stay (investment) that need to be met in order to prolong/extend the initial authorisation of stay/ long-stay visa/residence permit?	<p>RWR card for self-employed key workers</p> <ul style="list-style-type: none"> • After 12 months holders of a RWR card for self-employment can receive a settlement permit³³ (Art. 8 para 1 subpara 4 Settlement and Residence Act) if all legal requirements are met, among them the criteria for self-employed key workers. The settlement permit is issued for twelve months and entitles its holder to fixed-term settlement and the pursuit of the self-employed occupation. After a completed total settlement period of two years the settlement permit is issued for three years. After 5 years of lawful residence they can apply for a residence title "Long-term Residence – EU" (they have to meet the general requirements and have completed Module 2 of the Integration Agreement). <p>Settlement permit – gainful employment excepted is issued</p> <ul style="list-style-type: none"> • It is valid for one year. • If the requirements are met (among them "Adequate means of subsistence") the migrant can again apply for a settlement permit, valid for one year. • It can be issued for three years if the third-country national has completed Module 1 of the Integration Agreement (namely German language skills at A2 level) and has lawfully resided in Austria without interruption during the previous two years. After five years of lawful residence without interruption, a residence title "Long-term Residence – EU" may be applied for if the general requirements have been met and Module 2 of the Integration Agreement has been completed (namely German language skills B1 level).

³³ In German: "Niederlassungsbewilligung".

Section 1.3: Immigrant business owners: overview of national policies

Q9. How does the national legislation of your Member State define immigrant business owners?

Red-White-Red card immigration scheme "self-employed key workers": owners of a business, sole proprietorships or shareholders of a limited liability company (minimum 25 of shares). Furthermore the business has to generate an "overall economic benefit ..., especially with regard to the associated transfer of investment capital and/or the creation and securing of jobs" (Art. 24 Act Governing the Employment of Foreign Nationals).

Q10a. Does your Member State have a specific policy, programme or scheme for immigrant business owners?

Partly

Q10b. If yes, please provide more information about the specific policy, programme or scheme, including a) the name of the policy / programme / scheme: b) its main policy objectives (Neutral, pro-active); whether it targets c) specific type of businesses and / or d) economic sectors / geographical areas / strategic partners; and whether d) a quota / limitation system is in place to govern the number of entries or permits that can be issued to immigrant business owners?

a) Name of policy / programme

Within the RWR card scheme "RWR card for self-employed key workers".

Legal basis: Art. 24 Act Governing the Employment of Foreign Nationals, Art. 8 para 1 subpara 2, Art. 41 para 2 subpara 4 Settlement and Residence Act.

b) Main policy objectives

To attract individuals whose self-employed activities in Austria generate overall economic benefits (see Q 2b).

c) Type of business (e.g. any specific sector, knowledge-based sector, start-up / spin-off, etc.)

There is no specification in Austrian legislation. On the website www.migration.gv.at (run by the Federal Ministry of Labour, Social Affairs and Consumer Protection, Federal Ministry of the Interior and Federal Ministry for Europe, Integration and Foreign Affairs) the "transfer of know-how respectively the introduction of new technologies" is listed as a possible criterion for generating macro-economic benefits.

d) Priority national economic sectors / priority national geographical areas / countries of origin targeted / strategic partners required.

No priority sectors, regions, countries.

e) Quotas in place

No quotas.

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Q11a. What is/are the main actor(s) and institution(s) involved in the development of policies to attract immigrant business owners? If multiple authorities are involved, how are they coordinated? Is there an official mandate – e.g. an Action Plan – governing the involvement of these authorities?

Federal Ministry of Science, Research and Economy

Federal Ministry of the Interior

Federal Ministry of Labour, Social Affairs and Consumer Protection

Federal Ministry for Europe, Integration and Foreign Affairs

Austrian Economic Chamber

Federation of Austrian Industries

Austrian Business Agency (ABA)³⁴: national investment promotion agency is the first point of contact for foreign companies aiming to establish their own business in Austria. We are owned and operated by the Republic of Austria, and report directly to the Austrian Ministry of Science, Research and Economy.

There might also be regional actors, such as the Vienna Business Agency.³⁵

There is no Action Plan.

11b. Which actor / institution is responsible for the promotion of the policy with the target group?

Austrian Business Agency (ABA), Austrian Trade Commissions

Q12a. Does your Member State have specific measures to attract immigrant business owners?

Yes

Q12b. If yes, Please complete the table below with regard to the policy measures in place to attract immigrant business owners in your Member State.

Measures	Brief description of the measure in the Member State
What do these specific measures entail? (active promotion / information dissemination / campaigns / events including in third countries, etc.)	Active promotion by ABA: <ul style="list-style-type: none"> Regular activities in third country markets, specific events for potential business owners/investors with information on Austria as a business location in the framework of activities such as Economic forums, economic missions of Austrian stakeholders (visits of Ministers abroad accompanied by business missions)³⁶;

³⁴ For further information see www.investinaustria.at (accessed on 15 December 2014).

³⁵ For further information see www.wirtschaftsagentur.at (accessed on 28 November 2014).

³⁶ For events in that regard, see <http://investinaustria.at/EN/Home/ABA%20-%20Invest%20in%20Austria/Events/Where+you+can+meet+us.aspx> (accessed on 17 December 2014).

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	<ul style="list-style-type: none"> • ABA Webpage³⁷ is available in German, English, French, Italian, Chinese, Japanese, Russian; • Cooperation with consultants in third countries that approach potential investors/business persons interested in establishing a company in Austria; • Cooperation with actors that could spread information about Austria as a business location (tax consultants, lawyers); • Brochures; • ABA office in China.
Does a list of specific procedural facilitations for admission exist? If yes, please explain what they entail (reduced costs, shortened processing time, reduced documentary requirements, minimum residence period required (per year), possibility of renewal, etc.)	The procedure for a RWR card is faster than for other residence titles. The Public Employment Service has to issue an expertise on macro-economic benefits within three weeks. Then the competent residence authority has to examine the application within 8 weeks. For example, the abovementioned settlement permit – gainful employment excepted (section 1.1) – the residence authority has to process the application within six months.
Do specific support measures exist? (financial / logistic, business support to applicants to establish a business plan, recognition of qualification, etc.)	Support by ABA on all issues relevant to selecting an appropriate location, detailed information about Austria as a business location.
Are there specific tax incentives? (benefits, exemptions, etc.)	No ³⁸
Are immigrant business owners granted access to social benefits?	As business owners and, for example, managers, or other self-employed migrants, in Austria they are insured in Austria (compulsory social insurance scheme) and they are entitled to social benefits (eligibility and benefit level can depend on contributions and contribution periods).
Are immigrant business owners granted access to citizenship?	Yes. See Q4b referring to RWR card for self-employed key workers
Does the possibility exist for immigrant business owners to be accompanied by family members? Are family members allowed to access the labour market?	Yes. See Q4b referring to RWR card for self-employed key workers

Q13a Does your Member State have any bilateral or other agreements in place with Third Countries to attract immigrant business owners?

No

³⁷ For further information see www.investinaustria.at (accessed on 19 November 2014).³⁸ Information obtained from ABA-Invest in Austria, 17 November 2014.

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Q13b. Does your Member State share information and coordinate its policies with other Member States? Does your Member State consult other Member States on the issuing of the documents listed in Q15 to immigrant business owners?

As this is no policy issue, no active exchange with other Member States takes place (information provided by Chamber of Commerce and Labour).

Section 1.4: Immigrant business owners national policies: pre-arrival stage (admission criteria) and stay (renewal)

Q14a. Please indicate the criteria to admit immigrant business owners in your Member State in the table below. All listed requirements imply a Yes/No answer: in affirmative cases, EMN NCPs are asked to describe the criteria. If possible, EMN NCPs should also explain whether the same criteria apply to third-country nationals admitted to the national territory under a different immigration channel (family reunification, study, etc.) but willing to change their status into immigrant investors. If possible, EMN NCPs should also explain whether the same criteria apply to third-country nationals admitted to the national territory under a different immigration channel (family reunification, study, etc.) but willing to change their status into immigrant investors.

Admission criteria	Explanation	Do the same criteria apply to third-country nationals present in your Member State who have another status and are willing to change it into business owners?
Evidence of entrepreneurial skills (experience in running businesses, turnover of activities in the country of origin, etc.)	Can be necessary to prove the qualification for the proposed self-employed activity. The Public Employment Service assesses whether the suggested activity is a self-employed activity or not. It can be assumed that it is helpful if the applicant can prove experience in running a business and a prosperous business in the country of origin, respectively. ³⁹	It depends whether the resident third-country national applies for a Red-White-Red card for self-employed key workers. Then the same criteria apply. If the resident third-country national already has a long-term residence title, for example, he/she has to fulfil the same criteria as natives. Additionally, there might be obstacles in the recognition of foreign qualifications that might be necessary to start a certain business, for instance for business licenses.
Minimum level of educational achievement / professional skills (please specify)	Evidence of the qualification necessary for the self-employed professional activity; Business licenses are necessary.	
Evidence of capital (minimum sum required)	There is a minimum of 100,000 euros mentioned in the preamble to the amendment of the Act Governing the Employment of Foreign Nationals. ⁴⁰ Practitioners observe that the minimum	

³⁹ Art. 60 para 1 subpara 3 Settlement and Residence Act.

⁴⁰ Amendment of the Act Governing the Employment of Foreign Nationals (FLG I No. 126/2002), Preamble, Government Proposal, Explanatory Notes, p. 24, available at www.parlament.gv.at/PAKT/VHG/XXI/I/I_01172/fname_000786.pdf (accessed on 23 December 2014).

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	can differ between the provinces, namely the requirements set by the provincial ⁴¹ Public Employment Service. The general requirements depending on the legal form of the business have to be met. For example, the minimum charter capital for a limited liability company in general is 35,000 euros.	
Contribution to the economy / employment of the Member State (<i>national interest, "jobs - created", contribution to specific sector, innovativeness of activity, introduction of new technologies, etc.</i>)	<ul style="list-style-type: none"> • the intended occupation involves a sustained transfer of investment capital to Austria; • the intended occupation creates new jobs or secures existing jobs in Austria; • the settlement of the key worker involves the transfer of know-how respectively the introduction of new technologies; • the key worker's company is of considerable significance for the entire region. 	
Business plan <i>If a business plan is required, please complete the table in Q14b</i>	Yes	
Language knowledge (<i>certification, pre-entry tests, mandatory courses, etc.</i>)	No	
Age requirement for applicants	No	
Insurance requirement (<i>personal and/or for the investment</i>)	No ⁴²	
Security / background checks in place (<i>fraud checks, tax avoidance, previous bogus activities, money origin / money laundering, etc.</i>)	<p>The residence authority examines the personal background (criminal records, etc.). If there are doubts as to money origin, the authority can require additional evidence.</p> <p>(An Austrian bank account is required for the establishment of a business in Austria – there are background checks by banks.)</p>	

⁴¹ "provincial" means on level of the provinces (in German "Länder").

⁴² Information obtained from Federal Ministry of the Interior by telephone on 17 November 2014.

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Q14b. In case a business plan is required, EMN NCPs are asked to complete the table below. All listed requirements imply a Yes/No answer: in affirmative cases, EMN NCPs are asked to describe the requirements with additional information:

Business plan	Explanation
National institution responsible for the approval / Self-assessment	Public Employment Service: The provincial ⁴³ Public Employment Service has to assess whether the applicant's self-employed economic activities would generate substantial macroeconomic benefits (Art. 24 Act Governing the Employment of Foreign Nationals).
Information required on legal aspects of the business (form of the business, principal activity, subsidiary of existing activity)	"Documents which allow an analysis and evaluation of the market and competitive situation and the headquarter location, including a detailed description and the objectives of the intended professional undertaking", Art. 41 Settlement and Residence Act in conjunction with Art 20d para 1 Act Governing the Employment of Foreign Nationals. ⁴⁴
Information required on the commercial and financial aspects (type of business / services, origin of the capital to invest, target groups, preliminary contracts, nature of the investment, performance indicators, feasibility analysis, etc.)	"Documents which allow an analysis and evaluation of the market and competitive situation and the headquarter location, including a detailed description and the objectives of the intended professional undertaking", Art. 41 Settlement and Residence Act in conjunction with Art 20d para 1 Act Governing the Employment of Foreign Nationals. ⁴⁵
Duration of examination of the business plan	3 weeks
Documentation required (please provide a list of the documents required)	<p>The required documentation is as follows:</p> <ul style="list-style-type: none"> • Valid travel document (for example a passport); • Birth certificate or similar document acknowledged by the Austrian authorities • Photo (dimensions: 45x35mm) not older than six months; • Evidence of locally customary accommodation (for example lease contracts, preliminary agreement on tenancy rights or ownership evidence); • Evidence of health insurance covering all risks (compulsory health insurance or equivalent insurance policy); • Evidence of adequate means of subsistence (payslips, pay certificates, employment contracts, insurance benefit certificates, evidence of retirement or other pension or insurance benefits, investment capital or sufficient own assets). <p>In addition to the general requirements (see above), for the evaluation of the macroeconomic benefit, the following documents must be submitted:</p> <ul style="list-style-type: none"> • Documents which allow an analysis and evaluation of the market and competitive situation and the headquarter location, including a detailed description and the objectives of the intended professional undertaking ("business plan");

⁴³ "provincial" means on level of the provinces (in German "Länder").

⁴⁴ For further information see: www.migration.gv.at/en/types-of-immigration/permanent-immigration-red-white-red-card/self-employed-key-workers.html (accessed on 10 December 2014).

⁴⁵ Ibid.

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	<ul style="list-style-type: none"> • Evidence of the transfer of investment capital to Austria and of the intended creation of new jobs or securing of existing jobs in Austria; • Evidence of the qualification necessary for the self-employed professional activity; • Possibly company agreements; • Business Licenses, where necessary.⁴⁶
Review period	<i>In total, from application to approval/refusal: 8 weeks</i>
Other	The ABA provides applicants that used their services with an analysis of the expected macroeconomic benefits of the intended investment/business in Austria if they seek to apply for a RWR card for self-employed key workers. The applicants can enclose this document in their application.

Q15. If the criteria for admission are satisfied what initial document is issued? Please provide any detail on:

- type of document issued (e.g. short-stay visa, authorisation to stay, long-stay visa, residence permit, etc.),
- its duration
- whether it is longer than the usual duration which applies to other categories of third-country nationals
- whether its validity differs (and how) from its renewal.

A RWR card for self-employed key workers is issued. It is valid for one year. If it is renewed for the first time (change from RWR card to settlement permit) the validity is again one year (for more see Q9).

Q16. Where and by which institution / organisation (internal or abroad) are the documents issued? (e.g. diplomatic mission in the third country; other responsible representative; intermediary agency, etc.)

Generally, initial applications have to be submitted with the Austrian consular representation abroad.⁴⁷ If the application is accepted, the Austrian consular representation abroad informs the applicant accordingly. Persons who need a visa to enter Austria then have to apply there for a visa D as per Art. 24a Aliens Police Act⁴⁸ in order to get their RWR card for self-employed key workers from the competent residence authority in Austria. The competent authority is the governor of the province⁴⁹ or, if delegated, the district administrative authority⁵⁰, Art. 3 para 1 Settlement and Residence Act.

Q17. EMN NCPs are asked to complete the information requested in the table below in relation to registration of businesses by immigrant business owners in your Member State:

Registration of businesses by immigrant business owners in your Member State	Explanation
National institution responsible for the registration of the business in the Member State	Commercial register kept at the Austrian Regional Courts.

⁴⁶ For further information see www.migration.gv.at/en/types-of-immigration/permanent-immigration-red-white-red-card/self-employed-key-workers.html#c2853 (accessed 27 November 2014).

⁴⁷ Art. 21 para 1 Settlement and Residence Act.

⁴⁸ Art. 21 para 2 subpara 7 Settlement and Residence Act.

⁴⁹ In German: "Landeshauptmann".

⁵⁰ In German: "Bezirksverwaltungsbehörde".

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Type of business (main business, subsidiary or branch. Please explain whether it is a transparent or non-transparent entity for tax reasons, i.e. determining if the business owners registers himself/herself as an individual or as a legal entity).	Sole proprietorships have to be registered if their annual turnover exceeds 700,000 euros for 3 consecutive years or 1,000,000 euros in 1 year, Art. 8 para 1 and Art. 189 para 1 subpara 2 and para 2 Companies Act. ⁵¹ Capital companies/corporations have to be registered. ⁵²
Place of registration of business (in the Member State or in the country of origin / a third country. Is it mandatory for a third country national to be present in a country when registering a business or can this be done outside (using an agent / third party)?	Companies that have their business location in Austria have to be registered in the commercial register. Subsidiaries of foreign companies have to be registered in the commercial register. ⁵³ A third-country national can authorize an agent (for instance a lawyer) to register the business.
Main requirements for registration of business (capital, employees. Please state whether the requirements is different from that applied to EU nationals)	There are no requirements with respect to capital or employees. However, it might be necessary to submit an assessment issued by the Public Employment Service confirming the self-employed character of the planned activities, more precisely that it is not an employment relationship and that the establishment of a business is not an attempt to avoid the Act Governing the Employment of Foreign Nationals (Art. 2 para 4 Act Governing the Employment of Foreign Nationals). ⁵⁴
Does your Member State impose restrictions to admit immigrant business owners based on the type of business, the specific sector or their country of origin?	No
Other (Health, etc.)	N/A

Q18. EMN NCPs are asked to provide information on the criteria to be met in case of extension of the document issued for the stay of immigrant business owners. Please provide details of the type of document issued and its duration.

Renewal criteria	Explanation
What are the requirements related to the purpose of stay (business) that need to be met in order to prolong/extend the	After 12 months, holders of a RWR card for self-employment can receive a settlement permit ⁵⁵ (Art. 8 para 1 subpara 4 Settlement and Residence Act) if all legal requirements are met, among them the criteria for self-

⁵¹ In German: "Unternehmensgesetzbuch".

⁵² Information obtained from Vienna Economic Chamber (in German: "Wirtschaftskammer Wien/Gewerberecht"), 13 November 2014.

⁵³ For further information see www.wko.at/Content.Node/Service/Wirtschaftsrecht-und-Gewerberecht/Gesellschaftsrecht/Unternehmensrecht/Unternehmensrecht--Handelsrecht-/firmenbuch.pdf (accessed on 7 December 2014).

⁵⁴ Information obtained from Vienna Economic Chamber (in German: "Wirtschaftskammer Wien/Gewerberecht"), 13 November 2014.

⁵⁵ In German: "Niederlassungsbewilligung".

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<p>initial authorisation of stay/ long-stay visa/residence permit?</p>	<p>employed key workers. The settlement permit is issued for twelve months and entitles its holder to fixed-term settlement and the pursuit of the self-employed occupation. After a completed total settlement period of two years the settlement permit is issued for three years. After 5 years of lawful residence, they can apply for a residence title "Long-term Residence – EU" (they have to meet the general requirements and have completed Module 2 of the Integration Agreement).</p>
<p>Is there a requirement that a business is active during the extension of permits?</p> <p>If so, what indicators are used to assess this? (Volumes of turnover, amount of paid taxes, staff employed, compliance of immigrant investors and their investment, etc.)</p> <p>Who assesses this information?</p>	<p>Yes, the applicant has to pursue its self-employed activity. The residence authority checks whether it is still active, when it assesses the application.</p> <p>There are no specific indicators used to assess this.</p> <p>Competent authority for assessment is the residence authority.⁵⁶</p>
<p>Are there time-related requirements during which a business needs to have been started up, taxes paid and staff employed in order to get the validity of the document extended?</p>	<p>There are no specified criteria.⁵⁷</p>

⁵⁶ Mag. Dietmar Hudsky, Federal Ministry of the Interior, by telephone, 17 November 2014.

⁵⁷ Ibid.

Section A1.5: Other business persons: overview of national policies

Q19. How are the following categories (listed in Annex 2) defined under the national legislation of your Member State?

Categories of other business persons	Definitions
<i>Business visitors for establishment purposes (BVEP)</i>	<p>There is no category of its own in Austrian legislation. BVEP could be admitted as</p> <ul style="list-style-type: none"> • Seconded employees: Foreign nationals employed in Austria by a foreign employer which has no registered office and who are employed exclusively in connection with short-term work, for which, due to its nature, domestic labour is not used, such as business negotiations, visits to fairs, conferences and the like (Art. 18 Act Governing the Employment of Foreign Nationals). • Special senior executives "foreign nationals who occupy executive positions at board or management levels in internationally active groups or companies, or who are internationally recognized researchers, and whose employment serves to open up or improve sustainable economic relations or to create or secure qualified jobs in the federal territory, and who receive a monthly gross pay of generally at least 120 per cent of the maximum assessment basis pursuant to Art. 108 para 3 of the General Social Insurance Act plus special bonus payments." (Art. 2 para 5a Act Governing the Employment of Foreign Nationals). They are not subject to the Act Governing the Employment of Foreign Nationals according to its Art. 1 para 2 (f). • If the foreign company has already a subsidiary in Austria and a further branch should be established the BVEP could be admitted as "rotational worker" (see next line ICT).
<i>Intra-corporate transferees (ICT)</i> ⁵⁸	<p>ICT are reflected in Art. 2 para 10 Act Governing the Employment of Foreign Nationals as "Rotational workers", which "shall mean foreign nationals whose work contract with their internationally operating employer designates them either</p> <ol style="list-style-type: none"> 1. as senior executives having been assigned leading management functions with own terms of reference and responsibility, or 2. as qualified employees assigned to corporate management and obliged to enter in-house training or further training (junior executives), or 3. as representatives of foreign bodies representing stakeholder interests <p>and using rotation for the place of assignment."</p>
<i>Business sellers (BS)</i>	<p>Foreign nationals employed in Austria by a foreign employer not having registered office and being employed exclusively in connection with short-term work, for which, due to its nature, domestic labour is not used, such as business negotiations, visits to fairs, conferences and the like (Art. 18 Act Governing the Employment of Foreign Nationals).</p>
<i>Independent professionals (IP)</i>	<p>IP are treated as self-employed. Self-employed workers are not subject to the Act Governing the Employment of Foreign Nationals. They are considered as self-employed if they are not in an employment relationship, an employment-assimilated relationship, a trainee relationship including voluntary trainees, summer trainees or interns,</p>

⁵⁸ For intra-corporate transferees, please indicate where the scope of current legislation and the definition used therein differ from Directive 2014/66/EU on intra-corporate transferees.

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	seconded employees, workers hired out within the meaning of the Temporary Employment Act and Agricultural Labour Act.
<i>Contractual services suppliers (CSS)</i>	Foreign nationals employed in Austria by a foreign employer not having registered office in the federal territory (Art. 18 para 1 Act Governing the Employment of Foreign Nationals) shall require an employment permit, unless otherwise specified below. If the duration of this work does not exceed six months, foreign nationals shall require a posting permit that may be issued for a period not exceeding four months.
<i>Graduate trainees (GT)</i>	<p>GT are partly covered in Austrian legislation in</p> <ul style="list-style-type: none"> Art. 2 para 10 subpara 2 Act Governing the Employment of Foreign Nationals 'Rotational workers' shall mean foreign nationals whose work contract with their internationally operating employer designates them as qualified employees assigned to corporate management and obliged to enter in-house training or further training (junior executives)" and Art. 18 para 3 subpara 2 Act Governing the Employment of Foreign Nationals "Foreign nationals posted by an internationally operating group on the basis of a qualified intra-group initial training and further training programme by a foreign affiliate to the headquarters in the federal territory for no more than 50 weeks."
<i>Other (please describe)</i>	N/A

Q20. Does your Member State have a specific policy (programme, scheme) for other business persons as defined by the study template? EMN NCPs are asked to complete only the sections that are relevant to their national context.

Categories of other business persons	Is there a specific policy, for this categories of other business persons? Is it based on tailored multilateral/bilateral trade agreements with third countries?	Name of policy / programme	What are its main policy objectives (include info on priority national economic sectors / geographical areas / countries of origin if relevant)	Are there any quotas in place?
<i>Business visitors for establishment purposes (BVEP)</i>	No, but persons may come and visit for establishment purposes, more precisely the door is open without having an explicit policy; therefore no data available			
<i>Intra-corporate transferees (ICT)</i>	Partly	"Rotational workers"	For as senior executives having been assigned leading management functions with own terms of reference and responsibility, or as qualified employees assigned to corporate management and obliged to enter in-house training or further training (junior executives), or as representatives of foreign bodies representing stakeholder interests and using rotation for the place of assignment.	no

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<i>Business sellers (BS)</i>	No			
<i>Independent professionals (IP)</i>	No			
<i>Contractual services suppliers (CSS)</i>	Partly	"Seconded Employees /posted workers"	The following sectors are sheltered from competition: gardening, certain services in the stone, metal and construction industry, security and cleaning services, home care services and social work. An authorization has to be requested which has to state that the national interests are not jeopardized by the specific service provision. For the construction industry an employment permit is required.	no
<i>Graduate trainees (GT)</i>	Partly, see definition in Q19			
<i>Other (please describe)</i>	N/A			

Q21. Considering the specific policy (programme, scheme) in the previous question, what are the actor(s) and institution(s) involved in the development and implementation of policies on other business persons? If multiple authorities are involved, how are they coordinated? Is there an official mandate – e.g. an Action Plan - governing the involvement of these authorities? Which actor / institution is responsible for the promotion of such policy abroad?

Categories of other business persons	Actors/institutions involved in the development of these policies	Actors/institutions involved in the implementation of these policies	If multiple authorities are involved, how do they coordinate?	Is there an official mandate governing their roles?	Actors/institutions responsible for the promotion of such policy abroad
<i>Business visitors for establishment purposes (BVEP)</i> <i>- should they come, they have to address the following institutions-</i>	<ul style="list-style-type: none"> Federal Ministry of Labour, Social Affairs and Consumer Protection Federal Ministry of the Interior Federal Ministry of Science, Research and Economy Federal Ministry for Europe, Integration and 	Consular representations abroad Residence authority	The Consular representation processes visa applications. The Consular representation sends the application for a residence title to the residence authority in Austria. The latter	Settlement and Residence Act (Art. 21)	

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	Foreign Affairs • Social partners (Economic Chamber, Chamber of Labour, Federation of Austrian Industries)		processes the application and informs the Consular representation of the decision (approval/refusal). If approved, the applicant has to apply for a Visa D to pick up the residence title in Austria.		
<i>Intra-corporate transferees (ICT)</i>		Residence authorities, Public Employment Service, consular representations abroad			
<i>Business sellers (BS)</i>		consular representations abroad			
<i>Independent professionals (IP)</i>		consular representations abroad, residence authority for stays exceeding 6 months, Public Employment Service (assessment of actual self-employment)			
<i>Contractual services suppliers (CSS)</i>		Public employment service (posting permit, employment permit), Austrian consular representation abroad (Visa C or D)			
<i>Graduate trainees (GT)</i>		Public Employment Service, Residence Authority, consular representation abroad			

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Section 1.6: Other business persons national policies: pre-arrival stage (admission criteria) and stay (renewal)

Q22. What are the criteria for the admission of other business persons to your Member State? Please answer by completing the table below entering in the last column also useful information on any pre-entry assessment which may be required (labour market test, proof of minimum period of employment, evidence of commitment to return after the temporary stay, minimum education / professional skills, language knowledge, qualifications/certifications, entry quotas, age requirement, insurance requirement, etc.).

Categories of other business persons	Are these categories admitted/endorsed in your systems (under a different name)? (Yes/No)	If yes, under which name are they registered in your systems?	What is the maximum duration of their stay?	What kind of document is issued when admitting other business person?	Is there a (exhaustive) <u>list</u> of admission criteria? If yes, please indicate the criteria.
<i>Business visitors for establishment purposes (BVEP)</i>	Yes	<ul style="list-style-type: none"> • Seconded employees (posted workers) • Special senior executives • Rotational worker (under certain circumstances) 	<ul style="list-style-type: none"> • Seconded employees: 6 months • Rotational workers: 6–12 months 	<ul style="list-style-type: none"> • Seconded employees: Posting permit (< 4 months) or work permit, Visa C or D • Special senior executives: residence permit "Specific cases of gainful employment" • Rotational worker: confirmation of employment or employment permit as rotational employee, residence permit "rotational worker" 	See Q19
<i>Intra-corporate transferees (ICT)</i>	Yes	"rotational worker" (posted worker)	12 months (renewal possible)	confirmation of employment or employment permit as rotational employee, residence permit "rotational worker"	See Q19
<i>Business sellers (BS)</i>	Yes	Seconded worker (posted worker)	short-term work (1 week)	Visa	See Q19
<i>Independent professionals (IP)</i>	Yes	Self-employed (if definition of "employment" criteria set out in the Act Governing	Up to 12 months	Visa/Residence permit "Self-employed person"	See Q19

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		the Employment of Foreign Nationals are not met)			
<i>Contractual services suppliers (CSS)</i>	Yes			Posting permit/employment permit, Visa C/D or residence permit "seconded employee"	See Q19
<i>Graduate trainees (GT)</i>	Yes	"Rotational worker" Seconded employee (posted worker)	Up to 50 weeks	<ul style="list-style-type: none"> Rotational worker: confirmation of employment or employment permit as rotational employee by Public Employment Service, Visa C/D or residence permit "rotational worker" Seconded employee: confirmation of notification by Public Employment Service, residence permit, Visa C/D "seconded employee" 	See Q19

Q23. EMN NCPs are asked to provide information on the criteria to be met in case of extension of the document issued for the stay of other business persons. Please provide details of the type of document issued and its duration.

Categories of other business persons	What are the requirements related to the purpose of stay (business) that need to be met in order to prolong/extend the initial documents issued?
<i>Business visitors for establishment purposes (BVEP)</i>	N/A
<i>Intra-corporate transferees (ICT)</i>	N/A
<i>Business sellers (BS)</i>	The Act Governing the Employment of Foreign Nationals excludes foreigners from the requirement of a posting permit/employment permit only for "short-term work". This is considered to last in general up to one week (Deutsch/Nowotny/Seitz, 2014: 405).
<i>Independent professionals (IP)</i>	N/A
<i>Contractual services suppliers (CSS)</i>	If it lasts more than four months, one has to apply for an employment permit (this may include labour market testing).

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<i>Graduate trainees (GT)</i>	N/A
<i>Other (please describe)</i>	N/A

Section 2: Measures to prevent misuse / abuse of immigration channels for business purposes

Q24. Please provide the following information with respect to the prevention and detection of misuse abuse of immigration channels for immigrant investors, business owners and other business persons at admission stage and during stay. EMN NCPs are first asked to provide the definitions of misuse and abuse according to their national legislation and identify differences where possible.

Issue	Immigrant investors	Business owners	Other business persons
<p>Does your national legislation provide for a definition of misuse and and/or abuse?</p> <p>If yes, do they differ? Please describe</p> <p>If no, how are they defined in practice?</p>	<p>Austria does not have a specific immigrant investors' programme. As outlined above there are some limited possibilities to come to Austria as a wealthy immigrant.</p> <p>In practice, abuse might occur with respect to the origin of the money.</p>	<p>Bogus self-employment: On the outer appearance of facts, it suggests self-employment, based on the actual economic content it is an employment relationship (see Art. 2 para 4 Act Governing the Employment of Foreign Nationals).</p>	<p>"Wage dumping" and "Undermining Social Security Contributions/Social rights"</p>
<p>What are the specific measures in place in the Member States to monitor, detect and prevent misuse/abuse at admission stage? (in addition to the criteria to be satisfied as reported under Sections 1.2)</p>	<p>If there are doubts, for example, as to the origin of the money, the residence authority can require additional evidence.</p>	<p>Public Employment Service is involved in the issuance of the Red-White-Red card for self-employed key workers. In this framework it verifies whether the envisaged activity is a self-employed activity.</p> <p>When registering a business in the commercial register, it might be required to submit an assessment issued by the Public Employment Service confirming the self-employed character of the planned activities, more precisely that it is not an employment relationship and that the establishment of a business is not an attempt to avoid the Act Governing the</p>	<p>For sheltered sectors a posting permit⁵⁹ is required. For posting workers in the construction sector an employment permit is required.</p>

⁵⁹ In German: "Entsendebewilligung".

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		Employment of Foreign Nationals (Art. 2 para 4 Act Governing the Employment of Foreign Nationals).	
<p>What are the entities responsible for the monitoring of compliance of immigrant business owners and immigrant investors and what are their specific responsibilities? (Labour Inspectorate, Labour Exchange office, Tax authorities, Ministry of Interior, Migration services)</p> <p>Does a national referral mechanism (or its equivalent) exist? (Yes/No).</p> <p>If yes, how is information shared between stakeholders involved?</p> <p>Is there an obligation to inform about misuse/abuse identified by other institution (migration services, police, tax authority, etc.)</p>		<p>Central Coordination Unit of the Ministry for Finance to Uncover Illegal Employment of Foreigners.</p> <p>Centre of Excellence Combating Wage Dumping and Undermining Social Security Contributions⁶⁰ located at the Vienna Health Insurance Fund, Construction Workers' Annual Leave and Severance Pay Fund.</p>	<p>Central Coordination Unit of the Ministry for Finance to Uncover Illegal Employment of Foreigners.</p> <p>Centre of Excellence Combating Wage Dumping and Undermining Social Security Contributions⁶¹ located at the Vienna Health Insurance Fund, Construction Workers' Annual Leave and Severance Pay Fund.</p>
What is the frequency of control?	N/A	N/A	N/A
<p>What are the main sectors where misuse/abuse occurs? (real estate, transfer of capital, national funds / bonds, business investments, etc.)</p> <p>Please list the top three</p>			Construction sector. A newspaper article also mentions: cleaning services, IT services, and (small scale transport services). ⁶²
<p>If misuse/abuse is detected, what are the penalties imposed on the third-country national concerned (withdrawal of long-stay visa/residence permit, loss of any other related right/benefit, loss of the certificate of establishment, legal proceedings, fines, removal order, confiscation of activities/revenues, etc.)</p>	If a criminal conviction exists, the general requirements for a residence/settlement title are no longer met, namely the criteria of no criminal record.	If a criminal conviction exists, the general requirements for a residence/settlement title are no longer met, namely the criteria of no criminal record.	If misuse is detected, that wages are below Austrian standards, violation of working conditions, a complaint is made and the employer receives a fine.

⁶⁰ In German: "Kompetenzzentrum Lohn- und Sozialdumping-Bekämpfung".

⁶¹ Ibid.

⁶² Der Standard. *Scheinselbstständigkeit: AK macht mobil*, 6 August 2014, available at <http://derstandard.at/2000004055540/AK-macht-gegen-Scheinselbststaendigkeit-mobil> (accessed on 8 December 2014).

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What other circumstances might result in the withdrawal / non-renewal of a long-stay visa / residence permit?	If the criteria (adequate means of subsistence) no longer exist.		If there is a legally binding criminal conviction against a foreign employer for having paid wages below the Austrian basic wage to more than three employees, this employer must not provide services (namely posted workers) in Austria for at least a year. This might affect the employer's posted workers.
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Q25a. Is there any evidence of the effectiveness of the measures used in your Member State to monitor, detect and prevent misuse / abuse and the problems/challenges faced (lack of instruments, lack of cross-analysis, access to data, etc.)?

No.

With respect to the RWR card for self-employed key workers and the residence permit for self-employment, it assumed that no misuse can be observed as the yearly numbers of these residence titles are low (strict controls by the Public Employment Service on macroeconomic benefits and the criteria that characterise self-employment).

Q25b. If yes, please indicate to which business persons the evidence refers to (investors, business owners, other business people) and please summarise the main findings here and include a reference to the source in an annex to your national report.

N/A

Section 3: Evaluation of policies to admit third-country nationals for business purposes, challenges and barriers

Section 3.1: Immigrant investors

Q26a. Have any evaluations or studies in your Member State considered the effectiveness of national policies to attract immigrant investors?

Partly

Q26b. If yes, please summarise the main findings here and include a reference to the evaluation or study in an annex to your national report.

There are studies that deal with Austria as a business location and Austria's competitiveness. For example Falk & Falk (2006) studied the differences in innovation intensity between foreign-owned and domestic firms. Friesenbichler & Url (2013) focused on location factors and the investment potential of risk capital in Austria. They find that risk capital market is underdeveloped in Austria and, in addition to the country-specific features of the financial and innovation system, key determinants for risk capital investment are sector-specific regulations, the underlying industrial structures and firm dynamics. Falk (2012) investigated the determinants of bilateral greenfield FDI projects (business services, design, development and testing activities, headquarters activities, and research and development services) and flows in knowledge intensive business services from OECD and BRIC countries⁶³ to the EU countries for the period 2003-2010. For Austria, he found that greenfield investments in headquarter functions remain stable whereas greenfield investments in research and development and related activities declined during the sample period. The results showed that wage costs, tertiary education, corporate taxes, having a common border and sharing a common language all play a significant role in determining bilateral greenfield FDI projects in the knowledge intensive services. However, the impact of corporate taxation and labour costs differs widely across the functions and does not play a role for greenfield investments in research and development, design and testing services.⁶⁴

If no, please provide also any other evidence/indicator that may be available in your Member State in this regard (media reporting, media debates, assessment by experts, etc.).

In the first half of 2014 the number of new business locations in Austria by foreign investors/business owner increased by 30 per cent compared to the previous year. Most investors come from Germany, Italy and the Russian Federation, but an increased interest from Eastern and Southern investors was also observed – 33 out of 144 projects come from these regions. This also represents an increase by one third compared to the previous period.⁶⁵

There is little debate about immigrant investors. It gained wider attention in 2011–12 when it became public that a provincial politician was supposed to have "offered" Austrian citizenship to a potential investor and required some donation to their political party (see Q4b with respect to citizenship).

⁶³ For information about all OECD members see www.oecd.org/about/membersandpartners (accessed on 29 December 2014); BRIC is an acronym for Brazil, Russia, India and China, for further information see www.spiegel.de/international/world/economy-slows-in-brics-countries-as-worries-mount-a-951453.html (accessed on 23 November 2014).

⁶⁴ For further information see www.wifo.ac.at/publikationen?detail-view=yes&publikation_id=45398 (accessed on 2 December 2014).

⁶⁵ Wirtschaftsblatt, Interesse ausländischer Investoren an Österreich steigt, 20 July 2014, available at <http://wirtschaftsblatt.at/home/nachrichten/newsletter/3840925/Interesse-auslaendischer-Investoren-an-Oesterreich-steigt> (accessed on 20 December 2014).

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Q27a. Have any evaluations or studies in your Member State considered the effectiveness of the national policies to attract immigrant investors to the growth of the national economy and/or in competing with other larger economies, and have specific indicators been developed?

No.

Q27b. If yes, please summarise the main findings here and include a reference to the evaluation or study in an annex to your national report.

If no, please provide also any other evidence/indicator that may be available in your Member State in this regard (media reporting, media debates, assessment by experts, etc.).

From the website of the Austrian Business Agency (ABA): "In 2013, ABA-Invest in Austria provided professional consulting services to 228 companies locating their business operations in Austria, accounting for a total investment volume of EUR 347.8 million. 1,479 new jobs were created as a result of these investments. Since it was first established in 1982, ABA-Invest in Austria has concluded projects attracting total investments of EUR 6.9 billion, creating more than 47,100 new jobs".⁶⁶
These numbers reflect total investment, namely from EU- and non-EU states. The business operations can fall under the definition of immigrant investors or immigrant business owners.

The processing of applications for a Red-White-Red card for self-employed key workers requires an expertise of the Public Employment Service on the macroeconomic benefits of the envisaged self-employed occupation/investment. Being administrative documents, they are not publicly available.

Q28a. Have any evaluations or studies in your Member State considered the impact of the national policies to attract immigrant investors on other social issues (employment, access to housing, discrimination, etc.) and have specific indicators been developed?

No

Q28b. If yes, please summarise the main findings here and include a reference to the evaluation or study in an annex to your national report.

If no, please provide also any other evidence/indicator that may be available in your Member State in this regard (media reporting, media debates, assessment by experts, etc.).

Immigrant investors are not visible and not an issue; therefore they do not figure in media or any other report.

Q29. What evidence exists (policy documents, political discourses, media coverage, NGO campaigns, case law examples, etc.) that immigrant investors are perceived as abusing national migration rules in your Member State?

See Q4b (citizenship for investors)

⁶⁶ For further information see <http://investinaustria.at/EN/Home/ABA%20-%20Invest%20in%20Austria/ABA+-+About+us.aspx> (accessed on 15 December 2014).

Section 3.2: Business owners

Q30a. Have any evaluations or studies in your Member State considered the effectiveness of national policies to attract immigrant business owners?

No

Q30b If yes, please summarise the main findings here and include a reference to the evaluation or study in an annex to your national report.

If no, please provide also any other evidence/indicator that may be available in your Member State and provide any examples of good practice in this regard.

The studies available focus on how to promote entrepreneurship of resident immigrants and on ethnic businesses, respectively. Haberfellner (2000) investigated the activities of ethnic businesses in Vienna. The term ethnic business describes the economic activity of an ethnic minority; it does not necessarily include a migratory movement. Haberfellner states that until 2000 there is very little research on immigrants as self-employed and employers in Austria in the social sciences. The focus had been on immigrants as workers and employees. Schmid et al. (2006) do focus on foreigners and foreign born that are self-employed/employers. Based on census data (1981–2001) the structure of immigrant business owners is analysed with respect to company size, economic sectors, age, and regional differences. 30 immigrant business owners were interviewed about their motivation to start a business and their experience associated with the creation of their business.

Q31a. Have any evaluations or studies in your Member State considered the effectiveness of the national policies to attract immigrant business owners to the growth of the national economy, and/or in competing with other larger economies, and have specific indicators been developed? For this question please consider also the contribution of immigrant business owners who are already present on the territory of your Member State.

No

Q31b. If yes, please summarise the main findings here and include a reference to the evaluation or study in an annex to your national report.

If no, please provide also any other evidence/indicator that may be available in your Member State and provide any examples of good practice in this regard.

Austrian Business Agency (ABA) publishes figures on the yearly attracted companies per year, the investment volume and number of newly created jobs.

"In 2013, ABA-Invest in Austria provided professional consulting services to 228 companies locating their business operations in Austria, accounting for a total investment volume of EUR 347.8 million. 1,479 new jobs were created as a result of these investments. Since it was first established in 1982, ABA-Invest in Austria has concluded projects attracting total investments of EUR 6.9 billion, creating more than 47,100 new jobs."⁶⁷ The numbers reflect total investment, namely from EU and non-EU countries and may refer to both definitions (immigrant investor, immigrant business owner).

⁶⁷ For further information see <http://investinaustria.at/EN/Home/ABA%20-%20Invest%20in%20Austria/ABA+-+About+us.aspx> (accessed on 15 December 2014).

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Q32a. Have any evaluations or studies in your Member State considered the impact of the national policies to attract immigrant business owners on other social issues (employment social security, discrimination, etc.) and have specific indicators been developed?

No

Q32b. If yes, please summarise the main findings here and include a reference to the evaluation or study in an annex to your national report.

If no, please provide also any other evidence/indicator that may be available in your Member State in this regard (media reporting, media debates, assessment by experts, etc.).

N/A

Q33. What evidence exists (policy documents, political discourses, media coverage, NGO campaigns, case law examples, etc.) that immigrant business owners are perceived as abusing national migration rules in your Member State?

In 2013, 23 Red-White-Red cards for self-employed key workers and eight residence titles for self-employed workers were issued. Based on these small numbers, it is assumed that these two routes are not used for abuse/misuse.

[Section 3.3: Other business persons](#)

Q34a. Have any evaluations or studies in your Member State considered the effectiveness of national policies to attract other business persons?

No

Q34b If yes, please summarise the main findings here and include a reference to the evaluation or study in an annex to your national report.

If no, please provide also any other evidence/indicator that may be available in your Member State and provide any examples of good practice in this regard.

N/A

Q35a. Have any evaluations or studies in your Member State considered the effectiveness of the national policies to attract other business persons to the growth of the national economy, and/or in competing with other larger economies, and have specific indicators been developed?

Partly

Q35b. If yes, please summarise the main findings here and include a reference to the evaluation or study in an annex to your national report.

Biffl & Skrivanek (2014) analysed the evolution of seasonal and posted work in Austria and contrasted the two phenomena. They concluded: "Posted work is a rather new phenomenon in Austria. It may be seen as another facet of the diversification of employment forms at the margins of the labour market where core workers (insiders) are increasingly complemented by temporary workers (outsiders), such as seasonal workers, employees of leasing firms or posted workers. Both involve challenges for industrial relations. (...) So far, the proportion of posted workers is relatively small. A rapid growth in this source of labour could cause social discontent in those EU-Member States with relatively better pay, conditions of work and welfare benefits. There remains an unresolved legal question raised by Chanda who suggests that the host country could impose a tax on the service provider in order to neutralize its competitive advantage arising from the lower pay and welfare imposts in the source country. Such a tax would place the service providers and local employers on a more level playing field." (2001: 25)

The Annual SOPEMI Report on Labour Migration Austria (the OECD's reporting system on Migration) has a section (2–3 pages) on posted workers since 2010 (reporting period 2009–10). The focus of the analysis is on the evolution of posted workers from new EU-member states as Austria made transition agreements to control the access of migrants from new member states and to limit cross-border service provision for certain occupations and industries.⁶⁸

Raza conducted a pre-assessment of the consequences of liberalizing the temporary movement of natural persons (mode 4) from a workers' representative viewpoint. He pointed out: "In Austria, IPs are not subject to the regulations of the Act Governing the Employment of Foreign Nationals unless they are only 'fictionally' self-employed. The emergence of fictional self-employment is therefore the main issue in this regard. Experiences – again largely in the German construction industry – have shown that sending companies from third countries (for example Turkey) make their employees company partners or such like for the duration of their stay abroad. This means they are formally self-employed entrepreneurs and are (or at least appear to be) no longer subject to the regulations of the Act Governing the Employment of Foreign Nationals. In this case, the competent immigration authorities have the problem of controlling for evidence of fictional self-employment each time a natural person enters the country for business purposes. Realistically speaking, authorities will face severe capacity constraints in effectively implementing these monitoring requirements." (2008: 19)

If no, please provide also any other evidence/indicator that may be available in your Member State and provide any examples of good practice in this regard.

N/A

Q36. Does any evidence exist on the impact of other business persons on increased volume of trade, increased mobility, increased visibility, etc. for your Member State? EMN NCPs are asked to corroborate information provided with any available data or source.

There is no data on these issues, for example to what extent business migration contributes to the trade volume or mobility.

Q37. What evidence exists (policy documents, political discourses, media coverage, NGO campaigns, case law examples, etc.) that other business persons are perceived as abusing national migration rules in your Member State?

Riesenfelder and Wetzel (2013) analysed indications for bogus self-employment in the Austrian construction sector and in 69 per cent of the controlled self-employed workers several indicators for bogus self-employment were found. The authors also analysed social security data with respect to status changes from employment to self-employment. They found that in the last years the status change to self-employment was rather constant. However, they found that income levels decreased after changing to self-employment. Furthermore, they found that income levels of the studied group were below the cross-sectorial range.

⁶⁸ See for instance Biffl, 2013, page 64–67.

By 1 May 2011 the Act on Combating Wage Dumping and Undermining Social Security Contributions/Social Rights came into force. It should guarantee that persons employed in Austria receive at least the basic wage as stated in the respective collective agreement.

The Chamber of Labour addresses the issue of bogus activities and lobbies for measures to prevent misuse. It observes misuse not only in the construction sectors but also, for example, in cleaning services, IT services and small scale transport business.⁶⁹

The Economic Chamber provides its members with an information sheet about bogus self-employment.⁷⁰

Section 3.4: Challenges and obstacles to admitting third country nationals for business purposes

Q38. What are the main challenges related to the admission of immigrant investors, immigrant business owner and other business persons in your Member State?

Categories of other business persons	Challenges for national stakeholders associated with the design and implementation of policies for business persons. <i>If possible studies should be included (sourced as appropriate).</i>	Challenges for applicant at both admission (pre-arrival) and stay stages (e.g. documentation required, waiting times, restrictions, etc.) <i>If possible, the views of the business community, of the immigrant community and studies should be included (sourced as appropriate).</i>
<i>Immigrant investors</i>		It is observed that demand for “settlement permits – gainful employment excepted” is much higher than the set yearly quota. RWR card for self-employed key workers: the criteria for the assessment are of general nature (see Q2b). There is no publicly available set of indicators that have to be met for a positive decision by the authorities. Business stakeholders observe uncertainty, namely not knowing exactly what criteria would be decisive for an approval of the application. Others argue that the generally defined criteria offer flexibility.
<i>Immigrant business owners</i>	There is a tension between demands to improve the admittance of immigrant business owners and fears of creating opportunities for bogus self-employment.	See line above with respect to RWR card for self-employed key workers. In addition, the provisions in the law (macroeconomic benefits) do not reflect recent trends. The Austrian Business Agency observes

⁶⁹ Der Standard, *Scheinselbstständigkeit: AK macht mobil*, 6 August 2014, available at <http://derstandard.at/2000004055540/AK-macht-gegen-Scheinselbststaendigkeit-mobil> (accessed on 8 December 2014).

⁷⁰ For further information see www.wko.at/Content.Node/branchen/b/Scheinselbststaendigkeit.html (accessed on 9 December 2014).

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		establishments mainly in the service sector that generally start on a small scale, for instance with a manager, a secretary and one sales staff member. As a result, investment levels are rather low as well as job creation compared to the setup of a production plant for example.
<i>Business visitors for establishment purposes (BVEP)</i>	This does not constitute a category in Austrian legislation.	
<i>Intra-corporate transferees (ICT)</i>	Prevent social dumping. Limited to senior positions ("rotational workers").	
<i>Business sellers (BS)</i>	N/A	
<i>Independent professionals (IP)</i>	Prevent bogus employment	
<i>Contractual services suppliers (CSS)</i>	Prevent social dumping, wages below Austrian basic wage levels, unfair competition with domestic firms due to lower labour costs	For the posting company: Administrative procedures: Visa for the posted workers (application abroad), approval by the Public Employment Service (application in Austria) - either a confirmation of employment ⁷¹ or an employment permit ⁷² . The issuance of an employment permit can take three days to three weeks.
<i>Graduate trainees (GT)</i>	N/A	
<i>Other (please describe)</i>	N/A	

⁷¹ In German: "Sicherungsbescheinigung".

⁷² In German: "Beschäftigungsbewilligung".

Section 4: Conclusions

Austria does not have specific policies in place for immigrant investors or immigrant business owners, even though Austria may be an interesting country to invest in. The issues that draw attention are misuse issues and difficulties involved in controlling misuse (fake self-employed). Those who do settle tend to be small-scale service providers of marginal character, the macro-economic benefits are hard to fathom/guesstimate rather than any formal databased analysis. As there are no clear criteria for business migrants in Austria, no differentiation of cases is possible, and as there is also no data there is a real lack of transparency. The numbers involved in the RWR card are insignificant (approx. 20 cards in 2013). The residence title, which does not allow access to work, was meant to invite business migrants but instead has become a means to bypass strict settlement requirements. A special case is the posting of workers as it challenges industrial relations.

As far as residence titles and visa are concerned data is lacking and at times inconsistent. We, therefore, do not have information on the success rates of applications in case of visa-applications per year for business purposes, the acceptance and rejection rate. The same holds for the RWR card for self-employed key skills. Currently no data is available except for the annual sum of cards granted, but no information on applications and rejection is provided (e.g. by economic sector, source country of the applicant, etc.). Therefore no evaluation based on data is possible.

The Red-White-Red card (RWR card) for self-employed key workers is the category in Austrian migration law to admit third-country business owners and business investors. The Red-White-Red card system came into force in July 2011, since then the yearly number of permits for self-employed key workers has ranged from 13 to 24 RWR cards, which reflect very low levels of admissions.

The generation of macroeconomic benefits is the decisive criterion for the admission of self-employed business owners and business investors. From the perspective of the applicants several problems are observed with the definition of macro-economic benefits. The evaluation is based on a case-by-case assessment. In the amendment of the Act Governing the Employment of Foreign Nationals of 2001, a minimum of 100,000 euros to invest or the creation of at least one additional job are set as criteria to be admitted as self-employed key worker. Due to the case-by-case assessment the required minimum to invest can be higher. According to the Austrian Business Agency (ABA) the trend goes towards the establishment of smaller companies at first. The average number of created jobs was 11.8 in 2012 according to ABA statistics. Especially trading companies do not involve substantial investments or job creation. Usually it is the charter capital for a limited liability company, which is used for office infrastructure and rent. In a first step a sales manager or a secretary are employed, i.e. trading company as a first hub in the new market. Furthermore, the trend goes towards establishments in the services sector, which do not involve large investment (for example in machines). The transfer of know-how or the introduction of new technologies is listed as criteria for the assessment of macroeconomic benefit. In practice it is often difficult to demonstrate these criteria. A newly established company rarely involves significant economic importance for an entire region. Start-ups with innovative potential are not reflected in the law.

The ABA observes an increased trend towards establishments from emerging economies, mainly from the Russian Federation and CIS-countries, but also from Brasil, Asia as well as from former Yugoslavia and Turkey. Establishments from the USA and Canada also fall in the category of third countries. According to the ABA Austria has a very good reputation in these countries as a business location. Usually innovative companies that have evolved as regional players start internationalization activities. Therefore it would be a good idea, according to the ABA, to promote Austria as business location accordingly. This is supported by the fact that headquarters of Western companies for Middle and Eastern Europe might need to close down with the rising maturity of Eastern European markets.

The ABA suggests a change of the criteria for the definition of macroeconomic benefits or a start up residence permit to better reflect the current trends and to be a competitive player in the field of business investments and establishments.

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Annex 1

Table 1: Statistics on immigrant investors and immigrant business owners

Indicators	2009	2010	2011	2012	2013	Source / further information
Statistics on immigrant investors						
Number of visa applications (national D-type visas)	N/A *	N/A *	N/A *	N/A *	N/A *	
Number of visa issued (national D-type visas)	N/A *	N/A *	N/A *	N/A *	N/A *	
Number of visa refused (national D-type visas)	N/A *	N/A *	N/A *	N/A *	N/A *	
Number of applications for residence permits (perhaps an estimate e.g. admissions)	N/A	N/A	N/A	N/A	N/A	Federal Ministry of the Interior
Number of residence permits issued (perhaps an estimate e.g. admissions)	206	188	248	225	250	There is no specific residence permit for investors. Instead the number of Settlement permits – gainful employment excepted ⁷³ is provided. ⁷⁴ Source: Federal Ministry of the Interior: "Fremdenstatistik 2009, 2010, Niederlassungs- und Aufenthaltsstatistik" 2011-13, www.bmi.gv.at/cms/BMI_Niederlassung/statistiken/
Number of residence permits refused / withdrawn (perhaps an estimate e.g. admissions)	N/A	N/A	N/A	N/A	N/A	Federal Ministry of the Interior
Average age of migrant investors who were granted residence permits (and national D-type visas?)	N/A	N/A	N/A	N/A	N/A	Federal Ministry of the Interior
Statistics on immigrant business owners						
Number of visa applications (national D-type visas)	N/A *	N/A *	N/A *	N/A *	N/A *	
Number of visa issued (national D-type visas)	N/A *	N/A *	N/A *	N/A *	N/A *	
Number of visa refused (national D-type visas)	N/A *	N/A *	N/A *	N/A *	N/A *	
Number of applications for residence permit	N/A	N/A	N/A	N/A	N/A	Federal Ministry of the Interior

⁷³ In German: "Quotenpflichtige Erst-NB, ausgenommen Erwerbstätigkeit".

⁷⁴ This number includes all titles issued, i.e. persons that could prove "adequate means of subsistence".

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Number of residence permits issued	23	26	24 ⁷⁵	13	23	There is no specific residence permit for business owners. Instead, the number of Red-White-Red cards self-employed key worker (Art. 41 para 2 subpara 4 Settlement and Residence Act) and – before 1 July 2011 – settlement permits for self-employed key workers ⁷⁶ are provided. <i>Source:</i> Federal Ministry of the Interior: “Fremdenstatistik 2009, 2010, Niederlassungs- und Aufenthaltsstatistik” 2011-13, www.bmi.gv.at/cms/BMI_Niederlassung/statistiken/
Number of residence permits refused / withdrawn (perhaps an estimate e.g. admissions)	N/A	N/A	N/A	N/A	N/A	Federal Ministry of the Interior
Number of residence permits reflecting a change of status into business owner (specifying, if possible, from which category – i.e. student, family member, beneficiary of international protection, etc.)	5	2	3 ⁷⁷	2	3	Change to Red-White-Red card self-employed key worker (Art. 41 para 2 subpara 4 Settlement and Residence Act) and – before 1 July 2011 – to settlement permit for self-employed key workers ⁷⁸
Average age of immigrant business owners	N/A	N/A	N/A	N/A	N/A	Federal Ministry of the Interior
Statistics on other business persons corresponding to Annex 2 (EU Mode 4 categories) and other business persons as recognised by Member States						
Number of third-country nationals admitted under EU Mode 4 categories or equivalent categories indicated in Q22.						
Number of visa applications (national D-type visas)	N/A *	N/A *	N/A *	N/A *	N/A *	
Number of visa issued (national D-type visas)	N/A *	N/A *	N/A *	N/A *	N/A *	

⁷⁵ Ten settlement permits for self-employed key workers (“Niederlassungsbewilligung Schlüsselperson - nur Selbständige”) and 14 Red-White-Red cards were issued. The Red-White-Red cards came into force by 1 July 2011.

⁷⁶ In German: “selbständige Schlüsselperson” and “Niederlassungsbewilligung Schlüsselperson, selbständig”.

⁷⁷ Two changes to settlement permit for self-employed key workers, one change to Red-White-Red card for self-employed key workers.

⁷⁸ In German: “selbständige Schlüsselperson” and “Niederlassungsbewilligung Schlüsselperson, selbständig”.

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Number of visa refused (national D-type visas)	N/A *	N/A *	N/A *	N/A *	N/A *	
Number of visa applications (Schengen C-type visas)	N/A *	N/A *	N/A *	N/A *	N/A *	
Number of visa issued (Schengen C-type visas)	N/A *	N/A *	N/A *	N/A *	N/A *	
Number of visa refused (Schengen C-type visas)	N/A *	N/A *	N/A *	N/A *	N/A *	
Residence permits issued for: Seconded Employees/posted workers ⁷⁹	107	104	75	76	109	Source: Federal Ministry of the Interior, "Fremdenstatistik 2009, 2010, Niederlassungs- und Aufenthaltsstatistik" 2011-13 www.bmi.gv.at/cms/BMI_Niederlassung/statistiken/
Residence permits issued for: Rotational Workers ⁸⁰	84	157	203	156	144	
Residence permits issued for: Self-employed workers ⁸¹	8	9	19	14	8	
Seconded Employees/posted workers⁸²						Obtained from Public Employment Service Austria/Statistics Department
Employment permits issued to third country nationals	1,429	1,692	803	440	790**	
Posting permits ⁸³ issued to third country nationals	960	1,386	1,502	1,473	1,176**	
EU Posting confirmation ⁸⁴ issued to third country nationals	4,578	5,764	3,677	3,796	4,932**	
Employment permits issued to rotational workers ⁸⁵	78	240	447	436	453	Obtained from Public Employment Service Austria/Statistics Department

* The available visa statistics include only the total number of visas issued. There is a field asking for the purpose of the trip ("business"). However, this information is not processed by the Ministry for Europe, Integration and Foreign Affairs.⁸⁶

** including Croatia.

⁷⁹ In German: "Betriebsentsandter".

⁸⁰ In German: "Rotationsarbeitskraft".

⁸¹ In German: "Selbstständiger".

⁸² In German: "Betriebsentsandter".

⁸³ In German: "Entsendebewilligung".

⁸⁴ In German: "EU Entsendebestätigung".

⁸⁵ In German: "Rotationsarbeitskraft".

⁸⁶ Federal Ministry of the Interior, 13 November 2014 and Federal Ministry for Europe, Integration and Foreign Affairs, 14 November 2014.

*Admitting third-country nationals for business purposes***Table 2: indications of the average length of time needed for each of the following indicators**

The table below is not intended as having detailed, 'hard' statistics on the average length of time taken, but rather as approximate indications. In case you concrete statistics or data are available however, please provide them separately.

- Please indicate with 'X' the (approximate) average length of time needed for each of the indicators.

Average length of time expected (in days)	A few days	From a few days to a week	Up to two weeks	Up to a month	More than a month
Average time expected between lodging an application and the final decision for a visa application of an <u>immigrant investor (national D-type visa)</u>					
Average time expected between lodging an application and the final decision for a visa application of an <u>immigrant business owner (national D-type visa)</u>					
Average time expected for registering a business (from application to establishment)					x
If possible to change status: the average time expected for third-country nationals already present in the Member State to change their status into <u>immigrant investor</u> , i.e. in the Austrian case settlement permit gainful employment excepted (from family reasons, study reasons, asylum, etc.)					x
If possible to change status: the average time expected for third-country nationals already present in the Member State to change their status into <u>immigrant business owner</u> (from family reasons, study reasons, asylum, etc.)					x

Please indicate if statistics are available on businesses established by immigrant business owners and by Business Visitors for Establishment Purposes (BVEP): (such as total number of businesses established by third-country nationals; number of FTEs created by migrant investors and business owners; number of survived / closed businesses; share of businesses per size (share of 1; 2-10, 11-19, 20-49, 50+ employees).

Number of business established available (ABA), investment volume, number of created jobs

- Please indicate if statistics are available on the economic effects of immigrant investments or businesses (such as the share of migrant investments out of total annual national investments; number of FTEs created/supported as a result of investments by third-country nationals; the tax contribution to the national revenue systems; the increased economic ties / trade volumes with specific third countries as a result of immigrant business owners and investors).

N/A

List of translations and abbreviations

English term	English Abbreviation	German term
Act Governing the Employment of Foreign Nationals	-	Ausländerbeschäftigungsgesetz
Aliens Police Act	-	Fremdenpolizeigesetz
Austrian Business Agency	ABA	Austrian Business Agency
Austrian Federal Economic Chamber	-	Wirtschaftskammer Österreich
Bilateral Investment Treaty	BIT	Bilaterale Investitionsschutzabkommen
Brazil, Russian Federation, India and China	BRIC	Brasilien, Russland, Indien und China
Business license	-	Gewerbeberechtigung
Centre of Excellence Combating Wage Dumping and Undermining Social Security Contributions	-	Kompetenzzentrum Lohn- und Sozialdumping-Bekämpfung
Chamber of Labour	-	Arbeiterkammer
Citizenship Law	-	Staatsbürgerschaftsgesetz
Commonwealth of Independent States	CIS	Gemeinschaft Unabhängiger Staaten
Companies Act	-	Unternehmensgesetzbuch
Confirmation of employment	-	Sicherungsbescheinigung
District administrative authority	-	Bezirksverwaltungsbehörde
Economic forum	-	Wirtschaftsforum
Employment permit	-	Beschäftigungsbewilligung
EU posting confirmation	-	EU-Entsendebestätigung
European Union	EU	Europäische Union
Federal Law Gazette	FLG	Bundesgesetzblatt
Federal Ministry for Europe, Integration and Foreign Affairs	-	Bundesministerium für Europa, Integration und Äußeres
Federal Ministry of Labour, Social Affairs and Consumer Protection	-	Bundesministerium für Arbeit, Soziales und Konsumentenschutz
Federal Ministry of Science, Research and Economy	-	Bundesministerium für Wissenschaft, Forschung und Wirtschaft
Federal Ministry of the Interior	-	Bundesministerium für Inneres
Federation of Austrian Industries	-	Industriellenvereinigung
Foreign Direct Investment	FDI	Ausländische Direktinvestitionen
General Social Insurance Act	-	Allgemeines Sozialversicherungsgesetz
Governor of the province	-	Landeshauptmann
Gross Domestic Product	GDP	Bruttoinlandsprodukt
Organisation for Economic Co-operation and Development	OECD	Organisation für wirtschaftliche Zusammenarbeit und Entwicklung
Posted worker	-	Betriebsentsandter
Posting permit	-	Entsendebewilligung

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Promotion of international trade	-	Exportförderung
Province	-	Bundesland
Red-White-Red card	RWR card	Rot-Weiß-Rot Karte
Rotational worker	-	Rotationsarbeitskraft
Self-employed key worker	-	Selbständige Schlüsselkraft
Self-employed worker	-	Selbstständiger
Settlement	-	Niederlassung
Settlement and Residence Act	-	Niederlassungs- und Aufenthaltsgesetz
Settlement and Residence Act – Implementation Act	-	Niederlassungs- und Aufenthaltsgesetz Durchführungsverordnung
Settlement permit	-	Niederlassungsbewilligung
Settlement permit – gainful employment excepted	-	Niederlassungsbewilligung, ausgenommen Erwerbstätigkeit
Settlement permit for self-employed key workers	-	Niederlassungsbewilligung Schlüsselkraft, selbständig
Shortage occupations	-	Mangelberufe

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