



■ Current Immigration  
Debates in Europe:  
A Publication of the  
European Migration  
Dialogue

Jan Niessen, Yongmi Schibel and  
Cressida Thompson (eds.)

## Austria

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for

Information and Advice Centre for Migrants

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The Migration Policy Group (MPG) is an independent organisation committed to policy development on migration and mobility, and diversity and anti-discrimination by facilitating the exchange between stakeholders from all sectors of society, with the aim of contributing to innovative and effective responses to the challenges posed by migration and diversity.

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## Austria

Karin König and Bernhard Perchinig<sup>1</sup>

### 1. Making the case

#### 1.1 The immigration debate

The debate on immigration in Austria focuses on asylum and asylum policy. Although asylum policies are quite different from immigration policies, the terms 'immigration' and 'asylum' are often mingled in Austrian discourse. In order not to confuse the two policy areas, this report focuses on immigration and not asylum.

In relative terms, Austria is one of the larger European immigration countries. According to the census of 2001, 12.5 per cent of the around eight million inhabitants were born abroad, around 8.9 per cent of the population hold a foreign passport. But Austria also is a country of emigration: According to estimates of the Ministry of Foreign Affairs, around 450,000 – 500,000 Austrians live abroad (Bauböck & Perchinig 2005, FN1).

According to the 2001 census, the largest immigrant groups come from the successor states of the former SFR Yugoslavia (351,256) and Turkey (125,026). Around 109,000 immigrants were born in an 'old' and around 165,000 immigrants were born in a 'new' European Union (EU) – Member State. Although immigration from the 'new' Member States has grown constantly since the 1990s, a large number of immigrants from Hungary, the Czech Republic and the Slovak Republic and Poland migrated to Austria between 1945 and the 1980s.

Because Austrian nationality law follows the principle of *jus sanguinis*, the figures for foreign nationals given in most official statistics should not be misunderstood as source for migration data. According to the 2001 census, 16.3 per cent of the around 711,000 foreign residents were born in Austria, and 5.6 per cent of the 7,322,000 Austrian citizens were born abroad. Due to the growing number of naturalisations on the one hand and the *jus sanguinis* principle on the other, the difference between the stock of foreign residents and the stock of immigrants will continue to grow.

According to the official position, the main tool for regulating immigration in Austria is a migration quota. Over the last three years (2002–2004) the general migration quota was set at about 8,000 persons per year. This quota also includes a sub-quota for family reunification for third country nationals, which in 2005 was set at 5,460 permits. Only a marginal part of the quota is used for permits for labour migration for highly qualified personnel. Supplementary quotas are set for temporary migration (ranging from a few weeks to six months). The maximum annual number for these permits has been 8,000 for those with a maximum duration of six months, and 7,000 with a maximum duration of six weeks (traditionally harvest workers), the quota system only regulates a small part of immigration, actual immigration is much higher. The figures of the population register of 'Statistik Austria' (the former federal office for statistics), which are based on registrations by the municipalities, give a different picture: Although in the last three years (2002 – 2004) the general migration quota was set at about 8,000 persons per year, in 2002 around 78,800 third country nationals registered in Austria for the first time. In 2003 and 2004 the figures were around 80,000 and 88,800 respectively, around ten times more than the set migration – quota. A large group of first time registrations concerns immigrants from the former

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<sup>1</sup> This report is based on information up to 31 August 2005.

Yugoslavia and Turkey, the two most important sending states. Between 2003 and 2005, there were about 28,000 first-time registrations from these areas per year (Statistik Austria 2005, own calculations).

It is not entirely clear how this rather significant difference can be explained. Part of the difference might be statistical (immigrants leaving the country normally do not deregister and are thus still counted) or it may be explained by improved counting of seasonal employees or asylum seekers (which previously were not counted in the population register). An increase in the registrations of irregular immigrants since the shift of registration from the police to the municipal authorities might also have an impact.

However, it seems clear that a more realistic explanation for this difference is associated with the family reunification of naturalised immigrants, which is not restricted by an immigration quota. In 2004, around 23,300 third-country nationals received a residence permit as a family member of an Austrian citizen (BMI 2005a, 83). These data have to be read in conjunction with the growing number of naturalisations in recent years (266,650 between 1995 and 2004). Because family reunification with Austrian citizens is not regulated by a quota, the restrictive quota system for family reunification with third country nationals might well have produced an incentive for naturalisation. Thus naturalisation has *de facto* become a major mechanism of migration management - the quota regime, which was intended to govern the management of migration, does not play a decisive role anymore.

#### Austrian Aliens Legislation (Aliens Law Package 2005)

The Austrian Alien legislation (Settlement and Residence Act, Aliens Police Act from 2006 on) regulates labour immigration and long-term residence in combination with the aliens' employment act (AEA, *Ausländerbeschäftigungsgesetz*) of 1975 within the framework of a highly complex and in-transparent double quota and double permit system. In addition to an immigration (access) quota system, all third-country nationals admitted for employment or resident as family members and wishing to take up employment are counted in a second (employment) stock quota system. The residence permits do not automatically contain the right to work - in principle an additional work permit has to be obtained. This system has been simplified with the introduction of the residence permit *for key personnel* and the certificate of permanent residency (Niederlassungsnachweis) in 2003, which includes both residence and labour permits.

On 7 July 2005, the Austrian parliament passed a comprehensive legislative reform<sup>2</sup> in order to implement five EU directives (long-term residence, family reunion, free movement of EU citizens, students, fight against trafficking in humans, proposal for researchers etc.) and strengthened measures against irregular immigration and fraudulent marriages and adoptions. The tendency is to implement the directives in the most limited way, leading to the most restrictive interpretation possible. The reform moreover introduces a number of provisions with a heavy focus on security aspects in response to recent terrorist acts in Europe.

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<sup>2</sup> The reform consists of four new acts and revises provisions in eight more acts and contains among others, the Settlement and Residence Act (SRA) (Niederlassungs- und Aufenthaltsgesetz), the Aliens Police Act (APA), (Fremdenpolizeigesetz), BGBl. I 100/2005, and the revised Aliens Employment Act (Ausländerbeschäftigungsgesetz), BGBl. I 101/2005, both issued on 16 August 2005 and will enter into force on 1 January 2006. For more detailed information of the reform see the Annex at the end of this report.

Under the Aliens law package (2005) the restrictive system of immigration and employment quotas and permits are in principle maintained and extended to the group of long-term residents from other EU Member States.

### **Labour migration**

In general, the immigration debate in Austria is couched in terms of restriction. Indeed, both the National Action Plan for Social Inclusion and the National Action Plan for Employment maintain that the restriction of immigration is the only basis for an effective labour market policy and social cohesion. The quota system has restricted labour migration to a minimum: In 2005, only 1,600 residence permits out of 7,500 were earmarked for qualified personnel and their family members.

In Austria, labour immigration is restricted to 'qualified personnel', and there are special provisions for the health-sector. Other professions have access to temporary employment only. The term 'qualified personnel' is defined by income: Any worker or employee in Austria has to contribute to the compulsory social security system up to a certain income threshold ('Höchstbeitragsgrundlage'), for parts of the income above this threshold no social security contributions are deducted. For 2005 the threshold is set at € 3,630.00, 14 times a year. 'Qualified personnel' are workers or employees earning more than 60 per cent of this threshold (which means more than € 2,178.00, 14 times a year) - an income well above the median income in Austria.

Following pressures of the provincial governments, who run most hospitals and have the political responsibility for care-taking institutions (some of which are run by provincial or municipal authorities, others by NGOs or private companies, all receive some state funding), this threshold has been lowered in 2004 for health and care-taking professions from the 'new' Member States to 40 per cent of the threshold, as trained nurses, for example, start their career with considerably lower wages.

Special provisions and a special quota exist for 'seasonal' employment, which is defined as employment up to six months (renewable once after two months of absence). For this type of employment, there are no restrictions with regard to profession, industrial sector, income or qualification. Furthermore, there are bilateral agreements with neighbouring 'new' Member States for commuters and temporary employment for training purposes.

Overall however, a negative undertone has dominated the debate in recent years. In the last few years unemployment has become a key issue of concern in Austria. There are labour shortages in some sectors, but with continuing high levels of unemployment, an increase in immigration is not generally desired.

In 2004 and 2005, for example, the increasing number of labour immigrants from Germany, particularly from the former GDR, became an issue of public concern. It should be noted that this influx is the result of an agreement between the Austrian Employment Service and its German counterpart, which set up a joint recruitment procedure to attract unemployed German citizens to work in Austria, particularly in tourism. The results have been so significant that between January 2003 and June 2005, the number of German workers and employees in Austria rose from 35,000 to about 50,000 (Berliner Zeitung, 30/7/2005).

This influx has been debated mainly in the context of rivalry and competition in the labour market. In a statement to the media the head of the Chamber of Labour Tyrol, Fritz Dinkhauser (ÖVP), called workers from Germany "*enemies of the Austrian*

*labour market*". According to the daily "Der Standard", Dinkhauser stated that "Germans in Tyrol would take every offer and the hotel owners thus can get cheap and compliant employees, which would generate job-losses for Austrians" (Der Standard, 2005/07/31). The head of the Austrian Chamber of Labour, Herbert Tumpel (SPÖ), criticised the choice of words but agreed that there were grave problems on the Austrian labour market caused by growing recruitment from the new *Länder* in Germany, which, together with the high number of seasonal employees, would lead to growing unemployment in tourism (ORF Tirol, 2005/08/01, <http://tirol.orf.at/stories/46711/>). These statements have been criticised by the Chamber of Commerce and the Association of Industrialists and MPs of the Conservatives, the Social - Democrats and the local Freedom Party as blatant populism. As EU Citizens have free access to the Austrian labour market, and employers in tourism prefer them to third country nationals, it is not likely that this debate will trigger any legal action.

Although the ageing of society is – as elsewhere in Europe – an issue of public debate in Austria, most actors agree not to see increased immigration as a part of the solution. Instead, policies and debates focus on reforms of the pension-system, reduction of early retirement and family-policies aimed at increasing birth-rates. In general, no political party dares to publicly declare that there is a need for more immigration, the successors of the Freedom Party publicly argue in favour of reducing or stopping migration all together. Recently the Viennese Social Democratic Party has argued in favour of a 'Commission for Migration' in order to analyse the need for migration and measures of integration, but this demand has not been met by the government.

In the debate, immigrants are mostly seen as a burden to economy and society. The debate is dominated by discussion of problems of integration, the alleged 'over-use' of the welfare system by immigrants and the pressure immigrants allegedly exercise on the labour market. In the summer of 2004, the Viennese Office of the International Organisation for Migration as the National Contact Point of the 'European Migration Network' published a pilot-study on the 'Impact of Immigration on Austria's Society' (National Contact Point 2004). Based on a survey of existing literature and research, the study concluded, that the impact of immigrants on society in a cultural, political and social context was beneficial and manifold, but had been hardly analysed at all. This view only had marginal influence on the undertone of the general debate.

### **Temporary/seasonal workers**

As mentioned above, despite concerns about unemployment, there are some labour shortages in Austria. According to the *Foreigners' Employment Act*, the Minister of Industry and Employment may set annual quotas for temporary employment.

In 2002, the possibility for granting seasonal employment permits was extended to all sectors of economy. This move fuelled the conflict between the Chamber of Commerce, the Association of Industrialists, the ÖVP and the Ministry of Economics and Labour on the one hand and the Chamber of Labour and the Trade Unions on the other. The latter criticise the Ministry for granting too many temporary employment permits in sectors with high unemployment, such as tourism (in practice, seasonal employment still concentrates on tourism and agriculture).

The Chamber of Labour and the Social Democratic Party also argued that extension of seasonal employment to other sectors would produce a vulnerable group of immigrants without rights to residence security or unemployment benefits. The

arguments of the Freedom Party and its successors against high quotas for seasonal employment focus on their alleged negative impact on unemployment among Austrian citizens.

The official data do not give a clear picture on the yearly number of seasonal employees in Austria, as only the permits, and not the persons holding them, are counted. In 2002, a total of 56,000 temporary permits were granted, mainly for employment in tourism and agriculture (Arbeitsmarktservice Österreich 2002, 40). This figure does not provide an accurate figure on the number of temporary employees resident in Austria, as there is no information on the duration of the permits (a person might hold two permits in one year – this person might therefore be counted twice).

### **Transition periods for the new Member States**

In light of concerns about the labour market, the Austrian government has announced its commitment to the full seven-year transition period possible under the accession treaties. This will delay the free access of citizens of the 'new' Member States to the labour market.

In the second half of 2004, this transition period became a central issue in the immigration debate. The Association of Industrialists pushed for a reduction of the transition period to help fill labour shortages. The Chamber of Labour, on the other hand, demanded that it be maintained to prevent a mass influx of cheap labour from the 'new' Member States. The Chamber argued that any reduction would ultimately lead to an increase in unemployment and a reduction in wages.

Within the government, the ministers of the BZÖ have strongly opposed a reduction of the transition periods. The Minister of Industry and Employment announced that the necessity and the length of the transition period would be analysed in due course. However, with the rise in unemployment in 2004/2005 the Minister has not broached the subject again. Instead, he has argued that the current situation is due largely to increasing labour immigration from Germany and a growing number of women looking for employment.

It is important to note however, that in some sectors of the economy, such as construction, the transition period appears to be somewhat irrelevant. Some citizens from the 'new' Member States seem to have used freedom of services laws to bypass the transition period all together. Indeed, since 1 May 2004 there have been a number of reports on the growing number of single person companies for simple construction work not regulated by industrial law, particularly for the 'setting up of plasterboard'. Whereas in most areas of construction a company must prove its competence by certificates, this is not necessary for simple construction works. According to the reports, the owners of the companies do not only set up plasterboards, but they perform all kinds of services in construction for low prices, which is illegal due to the confined scope of their permit under the industrial code. In this way legal employment is pushed out of the market. The Ministry of Economics and Labour has confirmed the emergence (and growth) of these companies and announced stricter controls.

### **Family reunification**

As already mentioned, the family reunification of third country nationals is restricted by a sub-quota of the overall immigration quota. In 2005, the quota was set at 5,460

permits. From this, only 1,600 permits are for qualified personnel, including their family members (BMI 2005a, 83).

The Settlement and Residence Act 2005 will introduce significant changes to provisions on family reunification in Austria. A cornerstone of the changes is the introduction of a distinctive status for family members of Austrian, Swiss and EU citizens, who have used their right to free movement within the EU (Freizügigkeitsberechtigte) and thus fall within EU free movement law; and family members of Austrian, Swiss and EU citizens who have not done so and thus – according to the legislator – may have their rights restricted. Whereas children of the first group have the right to quota free immigration and access to the labour market until the age of 21 (Par 47 and 48 Settlement and Residence Act 2005, SRA), children eligible for family reunion of Austrian and EU citizens of the latter group without free movement rights may do so only until the age of 18. Parents and grandparents of a sponsor and his/her spouse of the latter group may only be given a quota free immigration permit if the sponsor guarantees his/her/their living expenses. In this case the permit issued is a residence permit – restricted (meaning without access to the labour market). Parents and grandparents of EU citizens with free movement rights have access to the labour market. Family members without free movement rights are also obliged to enter into an 'integration agreement' which means that they must learn German within a certain period of time. Only half of the costs will be covered by the state.<sup>3</sup>

The aliens reform (2005) provides for the following change of provisions for family reunion with third country nationals: The system of quota restriction will be maintained but lifted when applications have been processed for three years.

Another significant development in family reunification law is the increased attention given to 'fraudulent' marriages and adoptions. There are now increased penalties for fraudulent marriages and adoptions under Austrian legislation. A special provision titled *Fighting residence marriages and adoptions* (Par 109 following Settlement and Residence Act, SRA, 2005) obliges courts and registry offices to inform the aliens police if there is any doubt about a marriage or adoption in accordance with the intentions of the aliens law. Also, for the first time the Austrian partner or adoptive parent is threatened with (administrative and criminal) penal sanctions: heavy fines or even imprisonment up to one year if a financial transaction formed part of the agreement (Par 117 and 118 Aliens Police Act, APA 2005). Persons who arrange such marriages and adoptions are threatened with imprisonment for up to three years.

### **The debate on naturalisation**

Over the last five years, representatives of the Freedom Party have regularly demanded restrictions to naturalisation legislation. They have paid particular attention to the extension of naturalisation to family members and to the imposition of compulsory language tests and courses for those family members to whom naturalisation is extended. Their main argument has been that access to naturalisation in Austria is too easy. They argue that naturalisation should stand at the end of the integration process and thus only be awarded to immigrants earning a stable income, speaking fluent German and who can demonstrate they have adapted to the 'Austrian way of life'. These moves have generally been rejected by the Greens and the Social Democrats, and particularly the local Viennese party.

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<sup>3</sup> Corresponding provisions of the Aliens Employment Act as revised recently and entering into force on 1 January 2006, are paragraph 1, section 2, subsection I and m.

At the beginning of February 2005, the FPÖ again *strongly* demanded restrictions on access to nationality, arguing that the high number of naturalisations in recent years demonstrated an unfavourably liberal attitude to nationality in Austria. In this context, the Deputy Chancellor announced the development of a new Nationality Code. The proposal recommended that the 'proof of *continuous* and *legal* residence of ten years' should be made obligatory (currently, proof of registration with the police or municipal authorities for ten years before naturalisation is the relevant criterion for proving domicile during this period). It was recommended that applicants be forced to prove they have been able to support themselves in the three years preceding naturalisation. Unemployment benefits, pension payments or other social security payments should not be counted in this regard, and a language requirement for the extension of nationality to family members should also be imposed.

On 1 March 2005, the Mayor of Innsbruck, Mr. Van Staa (ÖVP) demanded that the waiting period for naturalisation for 'Third Country Nationals' be extended to 15 years, and 13 years for EU citizens. He also suggested that all naturalisations should be made public, and the municipality in which the applicant resides should have the right to veto the decision to grant citizenship. On 1 March 2005, the Minister of the Interior, Lieselotte Prokop (ÖVP) rejected the Freedom Party's demands to restrict naturalisation, arguing that the waiting period of ten years was sufficient. The Minister did not comment on the planned extension of the language requirement for family members or any of the other recommended changes.

On 4 July, the Ministry of Justice, Karin Miklautsch (BZÖ, one of the two successors of the old Freedom Party) again advocated harsher naturalisation legislation. The waiting period should be extended to 12 years, social assistance payments and unemployment benefits should not be regarded as an adequate source of income, and the government should set higher requirements for fluency in German. According to the Minister, naturalisation should only be granted to a person who has demonstrated a desire to integrate and who has managed to adapt 'sufficiently'. The Minister also argued that the stricter regulations be set by law.

In this debate, *integration* is of vital importance, however, it appears to be understood in terms of possessing a stable income, having a good command of German and having 'assimilated' to the 'Austrian way of life'. This understanding of integration stands in clear contrast to the definitions of integration formulated by the Ministry of the Interior as well as by some other provincial governments (as outlined in section 1.2).

The Ministry is relatively silent on the reform of naturalisation legislation. However, leading civil servants are clear on the fact that the main aim of restricting access to naturalisation is the desire to reduce family reunification of naturalised immigrants.

Each year a quota for family reunification is set (currently approximately 5,500). As soon as the threshold is reached, the applicant has to wait for the next round (the following year).

The quota for family reunification is not applied to family members of Austrian or EU citizens. As the vast majority of resident immigrants already fulfil the conditions for naturalisation, naturalisation is used to bypass the restrictive conditions for family reunification.

As mentioned above, although in the last three years (2002–2004) the general migration quota was set at about 8,000 persons per year, in 2004, around 23,300

persons received a residence permit as family members of Austrian citizens for the first time (BMI 2005a, 83). Thus the restriction of family reunification by the quota regime has produced the unintended effect of making naturalisation *de facto* the main tool of migration management, making the quota regime somewhat redundant.

### **Undocumented migrants**

There are no serious studies on the number of undocumented migrants in Austria. In the public discourse, figures used by politicians (mainly from the Freedom Party and its successors) range from 100,000 to 500,000, however they fail to explain the methodology used.

In its yearly report, the Ministry of the Interior publishes figures on 'aliens-police measures', including i.a. figures on the numbers of rejections of entrance based on the absence of a visa (2004: 9,830) or the number of expulsions due to illegal entrance (2004: 244) (BMI 2005a, 87), but there are no studies on determining how these figures can be taken as indicators for undocumented migration. There are also regular figures on the apprehension of irregular immigrants at the borders. As these figures count the acts of apprehension and not the persons, they may count one person, who tries unsuccessfully to 'irregularly' (without the necessary documents) cross the border three times, and thus should therefore be read with caution.

In public debates the issue of undocumented employment – which need not entail irregular residence - is the most prominent. Undocumented employment is most common in four sectors – construction, hospitality, cleaning and child-care in private households, and in-house care for the elderly. While undocumented employment in construction and the restaurant business mostly concerns either legally resident *male* immigrants without an employment permit or commuters from the neighbouring 'new' Member States, undocumented employment in private households generally concerns legally resident immigrant *women* without an employment permit or *female* commuters from the neighbouring 'new' Member States.

In the last few years, associations offering 24 hours in-house care for the elderly making use of trained or untrained nurses from the 'new' Member States at considerably cheaper prices than the existing Austrian services have spread. In these cases, nurses from the 'new' Member States commute weekly into the household of the client. According to a report of the Austrian Broadcasting Company (18 August 2005) it is estimated, that some 30,000 to 40,000 nurses regularly work as care-takers in private households in Austria. According to Austrian employment law, their employment is illegal, but as EU Citizens they can reside legally in Austria.

Undocumented immigrants do have access to health, if they buy the appropriate insurance. Because hospitals are obliged to treat anyone in case of emergency, they also have access to emergency services without being in possession of appropriate insurance. They do not have access to other social services or support. It should also be noted that there is no connection between residence status and access to education. Undocumented minors do, therefore, have access to education. Although teachers regularly report the problems undocumented minors face, there are no serious estimates regarding numbers.

The regularisation of illegal immigrants is not envisaged.

## 1.2 The integration debate

The integration debate is characterised by inconsistencies - there are inconsistencies between the positions of the federal and provincial governments, and inconsistencies within ministries. What is more, integration is only partly reflected in legislation, if at all, making this already complex topic even more complex in Austria.

Between 2003 and 2005, the integration debate in Austria focused on the perceived failures of integration. At the federal level, there has been a lot of talk about 'the integration deficit of immigrants' leading to the formulation of an 'integration agreement' as set out in the revised *Aliens Law, 2002*, forcing immigrants to participate in German courses. Stronger demands for knowledge of German and the 'Austrian culture' also surfaced in the debate about naturalisation.

At the provincial level, several areas have started to address integration as a major public policy issue, and many have developed or are developing 'mission statements on integration'. Perhaps the most far-reaching and welcoming view of integration has been driven the City of Vienna, which has recently established a department of diversity and integration within the City administration and tried to introduce district voting rights for third country residents (outlined in more detail below).

It is also important to note that since the terrorist attacks in Madrid and London, the Islamic community has received more attention in the debate.

### Diversity policy in Vienna

In 2003 the City of Vienna announced that diversity policy should replace the traditional integration policy. This shift was based on a study of the *Europaforum Wien* (Antalovsky, Bauböck, Perchinig & Wolffhardt 2002), which compared urban integration policies in 13 cities in Europe, the USA and Canada. The study revealed that with a foreign-born population of some 25 per cent, the increasingly diverse city of Vienna had to be considered one of the larger immigration cities in Europe. What is more, it showed that both demographic development and key sectors of the economy would depend heavily on immigration in the future.

Throughout the study, the authors challenged the traditional image of 'guest-worker immigration', associated with Turkish and (former) Yugoslav immigrants employed in low status positions with low incomes. This was done by highlighting the increasing diversity of the immigrant population, and in the process they managed to portray immigrants as possessing a wealth of (generally hidden) knowledge and skills beneficial for the urban economy and society.

However, despite the changing characteristics of immigrants, integration policy in Austria still reflected 'the age of guest-worker' policies - migrants were excluded from the mainstream, and they were depicted as uneducated, a burden to society. While the growth of the immigrant population in other cities (outside Austria) has encouraged the development of administrative departments for diversity, the study showed that in Vienna, the Vienna Fund for Integration (the only body dealing with issues of migration set up in the beginning of the 1990s), was still a marginal institution, not connected to the regular administrative structure of the city.

In essence, the study suggested a cultural shift in Vienna. It promoted the positive acceptance of diversity and it called on the people of Vienna to look at diversity not as a threat, but as an asset for the city.

In 2003 the study started to take effect. The then Alderman for Integration, Renate Brauner (SPÖ), accepted several proposals, i.a. the foundation of a department for integration and diversity within the city administration. Following the demographic argument, the Alderman stressed, that Vienna had profited from immigration and that people should see immigrants and their cultural capital as an asset with the potential to drive forward urban development. With about a quarter of the population being immigrants, the City of Vienna could not continue to see immigrants as a marginal part of society, or as a minority. Instead, the city should acknowledge immigrants as a normal part of urban society. Their presence should, in turn, be reflected by the integration of diversity policies into the mainstream of administration.

As a consequence, the Vienna Fund for Integration was dismantled and replaced by a department for integration and diversity policies in 2004. A process of diversity mainstreaming in the city administration was initiated with the help of an external consultant, focusing on recruitment, the district administration, intercultural education in kindergartens and research and statistics. In an effort to welcome new immigrants, the City now provides booklets containing information on the infrastructure of the City, schools and kindergartens when they register with the town hall. The results of the process are envisaged for autumn 2005. The City also committed itself to an evaluation of its services with the aim of increasing service quality for all segments of society. The policy-shift was announced under the heading *From the margin to the centre* and it involved a clearer delineation of duties. The mainstreaming of diversity within the administration was identified as the chief objective of the new department. Lobbying for migrants' interests – which had also been a task of the Vienna Fund for Integration – became the responsibility of migrants' organisations and to facilitate this, the City of Vienna funded a networking office for migrants' organisations represented within the 'Vienna Integration Conference.'<sup>4</sup>

This positive position towards diversity has been carried forward by the new Alderman for Integration, Sonja Wehsely (SPÖ), who has repeatedly criticised the restrictive policy of the federal government and stressed that the growing diversity of the Viennese population should not be seen as threat, but as an asset for the city. It is also strongly supported by the Viennese Green Party.

It is important to note that the policy shift was also due to the political juxtaposition of the Social-Democratic city government to the federal Conservative–Freedom Party coalition. After the Social-Democratic Party gained the absolute majority of seats within the Municipal Assembly in the elections of 2001, the City of Vienna positioned itself as counter-model to the federal government in several policy fields, i.a. the field of integration. Controlled immigration and the socio-cultural diversity of the Viennese population were increasingly depicted as a strength of the city.

The city also stressed the demographic need for immigration to uphold the quality of services. The integration policy in Vienna differs substantially from the federal integration policy. As announced in official publications and advertisements, the Viennese integration policy pushes forward a number of concrete measures to aid the integration process.

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<sup>4</sup> The 'Vienna Integration Conference' brings together migrants' organisations in the City Hall. It was first convened in 2000.

In essence, the Viennese Government maintains that in Vienna:

*“Immigration and diversity of the resident population are accepted and respected as a social, cultural and economic resource. The City of Vienna strives for a peaceful and tolerant community of generations, genders, cultures and lifestyles where members of ‘minorities’ are respected and treated in the same way as members of the majority population.*

*The diversity-oriented integration policy of the City of Vienna is committed to the principles of a pluralistic society and aims at equality and equality of opportunities of all residents irrespective of their gender, ethnic origin, religion, age, sexual orientation, disability or fundamental beliefs (“Weltanschauung”).*

*This policy of diversity (= diversity policy) is based on the creation of equality and more broadly, equality of opportunities, which includes third country immigrants. A secure residence status, access to the labour market for all legal residents, equality with regard to social law and protection, occupational co-determination and participation<sup>5</sup>, individual and structural protection against discrimination as well as a variety of measures to support the voluntary acquisition of German to facilitate occupational and social advancement.” (Nationaler Kontaktpunkt 2005, p. 74, translation: Bernhard Perchinig)*

## **Language courses**

In practical terms, the Viennese government considers the acquisition of the German language a key tool for integration. Because of this, the City developed a programme on language acquisition in the late 1990s, which offers language training for about 8,000 people per year (2005). Newly settled immigrants receive a voucher for the course worth around €200, which reduces their expenses to around €10. The language courses funded by the City are not compulsory, but they are widely promoted in the most widely read newspapers through articles that accentuate the high level of interest in the courses (which are regularly overbooked). This image of immigrants being interested in the acquisition of German is quite different from the Federal Government’s approach, which threatens immigrants with the withdrawal of their residence permit if the compulsory German courses are not followed.

According to the new Settlement and Residence Act 2005, the obligation to learn German under the so-called ‘integration agreement’ has been extended (Par. 14 – 16 SRA): A2 level instead of A1 level of knowledge of German will be required in order to be allowed to remain in the country and get access to the long-term residence – EC status. Two modules of German courses are available (the first is for those who need a course for alphabetisation, and the second is a general language course). For module 2, the participant is now obliged to attend 300 hours of German and integration courses (instead of 100 hours). The federal government will continue to pay only half of the costs for family members on the condition that the person finishes the course within two years. Exceptions from the integration agreement will be reduced - only minors up to nine years remain exempted. The obligation to enter the agreement will also be extended to new groups, including family members of Austrian citizens who do not enjoy free movement rights.

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<sup>5</sup> This formula refers to voting rights in the works councils and the Chamber of Labour.

The legal sanctions for immigrants who do not fulfil the integration agreement (or not in time), such as reduction of reimbursement of expenses, fines and in the worst case expulsion are fully maintained. It is at least doubtful that these are in (full) compliance with the directives.

### **Local voting rights**

In the election campaign of 2001, the Viennese Social Democrats announced their intention to give third country nationals voting rights at the district level,<sup>6</sup> as the exclusion of resident immigrants from political participation would be detrimental to local policies and social inclusion. They argued that at the local level, resident third country nationals should have political rights comparable to those of EU citizens, as both form part of urban society.

This promise was a major element of the Social Democrat campaign, particularly within the immigrant community. In 2003, the Provincial Assembly of Vienna decided, with votes from the Social Democrats and the Greens, to revise the Viennese Law on Municipal Elections (1996) to grant third country nationals residing legally in Austria for at least five years, active and passive franchise at district elections. Due to constitutional reservations, however, third country nationals remain excluded from the right to be elected as district mayor or deputy district mayor, or the right to be elected to district building committees. These functions are seen as part of state administration ('Hoheitsverwaltung'), which by constitution is reserved to citizens.

The Conservative Party and the Freedom Party jointly challenged the bill before the Constitutional Court. Both stressed, that voting rights should remain the privilege of citizens. The main arguments brought before the Court were:

- 1.) The district councils are general representative bodies, thus the principle of the homogeneity of the electorate should apply. Therefore, the extension of the franchise should not be granted to third country nationals.
- 2.) The extension of the franchise would be in conflict with the privilege of citizens to fulfil function of state administration ("Hoheitsverwaltung"), as even the participation in the elections for these functions would be a fulfilment of state administration.
- 3.) The extension of the franchise to third country nationals would violate the imperative of practicality.

In the decision of 30 June 2004 (VfGH 30.6.2004, G 218/03), the Constitutional Court declared the revised Law on Viennese Municipal Elections as unconstitutional and thus blocked the attempt to extend the franchise to third country nationals. The arguments brought forward by the court deserve closer attention.

In the first part of its reasoning, the Court discusses the status of the district councils. Referring to the legal literature it states, that two opinions can be found – one

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<sup>6</sup> Due to a constitutional peculiarity, the City of Vienna a municipality as well as a province. The Viennese Municipal Council is identical to the Provincial Assembly of Vienna, and the members of the City Council are also members of the Provincial Assembly. According to the constitution, certain policy areas have to be addressed by the Municipal Council, others by the Provincial Assembly. Because of the particular characteristics of the Municipal Council and the Provincial Assembly, EU citizens are not allowed to vote for the Municipal Council, but exercise their right to vote at local elections by participating in the elections for the district councils (which only exist in Vienna). Therefore, third country nationals also should be granted voting rights at the district level.

assessing the councils as general representative bodies, the other as general administrative bodies. Depending on the interpretation, voting rights for third country nationals would either comply with the constitution or not. If one considers that EU citizens exercise their right to take part in municipal elections by participating at the district elections, the Court continues, one can consider them as general representative and administrative bodies. But as the constitution is silent on the Viennese district councils, the decision on this question cannot be derived by reference to its text, the Court continues, and thus leaves the question open.

Instead, the Court proceeds in a line of thinking which ignores the effects of Austria's accession to the European Union on local democracy. The decision reads as follows:

*“The most important fact (...) is, that the cited clauses, which define the right to vote at municipal and provincial elections as a privilege of Austrian citizens, only are an interpretation of the basic democratic principle of the Austrian constitution. The constitution states in Art 1 – BVG: “Austria is a democratic republic, her law stems from the people”. As the Constitutional Court already has stated in its decision VfSlg, 12.023/1989, “(...) the possession of Austrian citizenship is the main criterion for membership to ‘the Austrian people’” (“Zugehörigkeit zum österreichischen Staatsvolk”). “The changes of Art 1 – BVG following Austria’s accession to the European Union, whereby the Austrian law does not only stem from the people, but also from organs of the community, is irrelevant in this respect” (own translation).*

This connection between democracy and Austrian citizenship does not only reiterate a political understanding based on the concept of 19<sup>th</sup> century nationalism, but it also completely ignores the fact, that since Austria's accession to the European Union, the right to vote in municipal elections is not a privilege restricted to Austrian citizens and thus the possession of Austrian citizenship cannot be the sole criterion of membership to ‘the Austrian people’: In local elections, EU citizens are part of the politically sovereign, they do not participate in the elections as ‘organs of the community’, but as EU citizens. The reasoning of the Highest Court completely ignores the development of democratic thinking in Europe, which found its expression in the Tampere conclusions, demanding an approximation of the legal status of third country nationals to those of EU citizens and subsequent development of the concept of ‘civic citizenship’. But because the European Union does not have any competency with regard to voting rights of third country nationals, and the Constitutional Court is the highest relevant court in this case, only a change of the constitution based on an unlikely 2-3 majority in parliament could change the constitutional block of voting rights for third country nationals in Austria.

### **Integration debates at the provincial level**

Integration has also become a topic of activities and discussion in several provincial and municipal administrations, notably in Tyrol and Vorarlberg. The understanding of integration in these provinces focuses on equality of opportunities and the removal of structural barriers. Following the development of a ‘mission statement on integration’ in the small town of Dornbirn (Vorarlberg), the local government of Vorarlberg decided to fund the private association “okay. zusammen leben” (okay. living together) as a coordinating body for local integration policies and projects. Since its formation, the municipalities and towns of Rankweil, Mäder and Hohenems have also developed their own mission statements on integration. In Dornbirn a municipal

department on integration was established, and the City of Bregenz introduced a Commissioner for Integration (Nationaler Kontaktpunkt 2005, 95).

The understanding of integration of these institutions largely follows the definition of integration laid down in the mission statement of the town of Dornbirn (Nationaler Kontaktpunkt 2005, 95). This definition has been described in a recent study as follows (IOM 2005, 37f.):

### **“The Cornerstone: A Clear and Explicit Integration Concept”**

Dornbirn's integration model was developed to achieve the following goal: to integrate all of the city's inhabitants as much as possible at a structural, social, and cultural level. First and foremost, this calls for countering structural discrimination (Güngör & Ehret, 2002: 3). This approach highlights two characteristics in particular:

#### 1) General Character:

Integration efforts should not be directed solely at migrants but, rather, at the general population. Integration models should be a means of strengthening social cohesion in the city, which means that it is not about developing specific social-policy measures for immigrants, but, rather, about fighting or preventing social inequalities and ‘ethnic segmentation’ (Herzog-Punzenberger, 2003: 47). It is about the fundamental recognition of the value of a pluralistic society and about building cohabitation on the basis of principles of equality (civil rights, access to social services, and political rights). These basic principles of the European Commission have been expressed at greater length and in greater detail by its Economic and Social Committee, which defines the sum of these values as ‘civic integration’.

#### 2) Pragmatism:

Here, the accent is placed on the economic and political feasibility of the measures (Güngör & Ehret, 2002: 4). Pragmatism has shown a very positive side: in the process of designing the integration model, resources and manpower that could enrich and help carry out the model with specific experience and skills were sought in the city itself. In this way, partnerships and participation became part of the foundations from the very beginning. This approach was especially successful with regard to the work carried out with children and adolescents, thanks to a long tradition of these two groups, and of families, working with the city.” (Nationaler Kontaktpunkt 2005, 88f. translation: Bernhard Perchinig).

In Upper and Lower Austria, mission statements on integration are also being developed. Both provinces also plan to set up administrative structures for integration. In Lower Austria, this move follows the development of municipal integration strategies in the towns of Guntramsdorf, Hainburg, Krems, Traismauer funded by an EQUAL-project.

### **The role of Islam**

Following the terrorist attacks in Madrid and the murder of the filmmaker Theo van Gogh in Amsterdam in 2004, the debate on the role of Islam in the field of integration has become increasingly prominent. The terrorist attacks in London in 2005 have again fuelled the debate. Most advocates trying to advance integration argue that

Austrian Muslims are well integrated because of the special legal position of the Islamic faith.

Following the annexation of Bosnia-Herzegovina in 1908, the Habsburg Monarchy passed the *Law on Islam* (1912). This law guaranteed the freedom to practise the religion publicly, and it also guaranteed internal autonomy with regard to religious matters. This law remained in force until 1997, when a new law on religion was passed, which reiterated the public recognition of Islam as a recognised faith and of the Islamic Faith Community Organisation as a recognised religious body (other publicly recognised religious bodies include the Catholic Church, the Protestant Church, the Greek Orthodox Church and the Austrian Jewish Community Organisation). The status of a publicly recognised religion obliges the Republic of Austria to safeguard the practice of the religion in general, to allow the teaching of the faith in public schools and to fund teachers appointed by the religious community. Further, publicly recognised religious bodies are entitled to set up their own schools and teacher-training colleges, which have to be funded by the Austrian state as long as they follow the curriculum set by law for public schools. The schools are controlled by the relevant public school authorities in all matters except religion. With regard to religious matters, the religious community appoints supervisors who work within the framework set by school authorities. The religious bodies also cooperate regularly with the Ministry of Education, Science and Research and the provincial school authorities.

In most discussions on the relationship between integration and Islam, this particular legal status has been characterised as a determining factor of the high level of integration of the Islamic community in Austria. Because of its strong legal position, Islam does not face the same public disregard as it does in other European countries. At the same time, the legal recognition of the Islamic Community and the teaching of religion on public schools grants a certain amount of informal control to the authorities.

This congenial relationship is reflected, for example, in the lack of discussions on the wearing of a headscarf (which is a common image in schools) and the clear stance of the Islamic Community against terrorism. In this context, reference is made to the Fatwa against terrorism of the well respected Viennese Imam Adnan Ibrahim of 21 July 2005, shortly after the terrorist attacks in London, demanding that every Muslim that hears about planned terrorist acts must to inform the police immediately, without any prior consultation with an Imam (Kurier, 22/7/2005).

Nevertheless, there is a debate on the development of 'parallel societies'. Most experts deny their existence, but there are also voices pointing at the growing influence of Islamist thought among second generation immigrants and a growing closure of (mainly Muslim) immigrant communities. According to the Federal Report on the Protection of the Constitution (Verfassungsschutzbericht 2005), published by the Ministry of the Interior, the vast majority of Mosques in Austria do not adhere to radical Islamism and the development of Islamist sub-cultures lags far behind of other European countries, although in the long run the development of "parallel Muslim societies" could become a base for radicalisation (BMI 2005, 17 f.).

### **Broad social policy goals**

The integration debate in Austria only plays a minor role in social policy debates aimed at social cohesion or the fight against poverty, except for debates within the NGO-framework 'Armutskonferenz' (Conference on Poverty). In debates on social cohesion, immigrants are generally recognised by NGOs, as having a weak position

in the labour market, and there is a high risk of poverty confronting those from the former Yugoslavia and Turkey in particular. In labour market programmes, reference is often made to the growing unemployment rate of immigrants from third-countries, however, immigrants are not defined as a specific target group. As outlined in section 1.1, there is a tendency to view immigrants as unwanted competitors in an environment with few job opportunities.

It is important to recognise that the National Action Plan for Social Cohesion 2003–2005 does mention the risk of poverty and unemployment of third country nationals. It argues that the poverty risk of non–EU citizens (21 per cent of the population) is clearly greater than it is for Austrians (68 per cent of the population) and EU citizens (11 per cent of the population) (Republic of Austria 2003, 4). When compared to the previous plan, however, the report demonstrates that there have been some improvements with regard to access to the labour market and access to education and housing; and the number of people naturalised has increased considerably (Republic of Austria 2003, 9). Ultimately, the further integration of immigrants in Austria is regarded as one of twelve key targets in the report (Republic of Austria 2003, 13), but no measurable targets are given.

The following integration measures applied in 2000–2003 are mentioned in the report:

- The government granted about 20,000 first-time work permits for long-term resident foreigners and young foreign citizens between 2000 and 2003 (Republic of Austria 2003, 17).

It is important to mention here, however, that the Austrian labour market regime excludes several groups of long-term residents from access to the labour market, such as women for a period after giving birth (to bring up the child). Also, the children of immigrants, born in Austria, do not possess Austrian nationality due to the dominance of *jus sanguinis* in naturalisation legislation. If they do not complete the last year of compulsory school in Austria, they have to apply for a work permit when entering vocational training and employment.

- According to the report, in 2002 around 25,500 foreign citizens received support from the Public Employment Service (around ten per cent of all persons supported). By the end of May 2003, this proportion increased to 11 per cent of all persons supported (Republic of Austria 2003, 17).
- The 'integration package 2002', which came into effect in 2003, is mentioned as an important step towards the harmonisation of laws on the employment of foreigners and laws on residence. "*Young foreign citizens who have completed their last year of compulsory school in Austria have equal status to Austrians with regard to access to the labour market from the start of their working lives. Foreign citizens who are settled in Austria (with five years residence) can obtain a document granting them an unlimited right to work in Austria*" (Republic of Austria 2003, 19).
- In addition, the report mentions three development partnerships in the EQUAL framework that have focused on the psychological support and vocational training of asylum seekers with provisional residence permits, persons with the temporary right to residence, persons with humanitarian residence permits, persons with a limited right of residence, and foreign citizens whose deportation has been postponed (Republic of Austria 2003, 20).

The so-called 'integration agreement' is identified as an important tool for integration for the future. According to the report, a lack of linguistic proficiency and cultural barriers constitute the main difficulties for labour market integration. In response, the report highlights the fact that the republic contributes to the cost of these language acquisition measures, and the establishment of 'integration offices' and 'integration representatives' to assist integration at the provincial level (Republic of Austria 2003, 48). However, the report does not announce concrete measures for the future, and it does not make a connection between integration and the wider debate on social cohesion.

Reports on the National Action Plans on Employment for 2003 and 2004<sup>7</sup> also mention the improvements for immigrants based on the reformed residence law of 2003, which gave settled immigrants unlimited access to the labour market after five years of residence. The reports also mention the need to maintain the seven-year transition period for freedom of movement for citizens of the 'new' Member States, which could be accompanied by bilateral agreements for employment with the 'new' Member States and the application of existing regulations for seasonal employment. Finally, the reports also mention the 'integration agreement' and courses in adult learning centres for immigrants (Federal Ministry of Economics and Labour 2003, 2004).

Generally however, it seems both the National Action Plan for Social Inclusion and the National Action Plans for Employment focus on existing measures. They neither connect the issue of immigrant's integration with the overall theme of social inclusion nor do they develop a long-term perspective.

### **1.3 The brain drain debate**

There is no real immigration related brain drain debate in Austria. Brain drain is only discussed in connection with the growing number of Austrian scientists working at universities and research institutions in the United States and Canada. In 2002, the government tried to curtail high skilled emigration by setting up the association 'brainpower Austria'.

In general, foreign policy actors do not make reference to migration policy or the implications of migration for foreign policy. There has only been some limited debate with regard to Turkey's accession to the European Union. In this debate, reference was made to the overwhelmingly 'traditional orientation' of Turkish immigrants and the affect this image would have on the accession debate. In this respect, the key challenge was to manage a mass influx of untrained workers from Turkey following accession. In the negotiations within the European Union, the Austrian government supports 'open-ended negotiations' with Turkey, which need not necessarily lead to accession. It might be said that this restricts the potential for Turkish brain drain.

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<sup>7</sup> For 2004, only an evaluation report of the National Action Plan on Employment was published (Federal Ministry of Economics and Labour 2004).

In the field of development aid, Austria had a tradition of welcoming students from developing countries and always included their training expenses in the budget spent on development aid. However, with the imposition of university fees and the prohibition of employment for students from third countries, the threshold for studying at an Austrian university has been elevated, which has led to a declining number of students from third countries in Austria.

There are no return programmes for migrants in Austria.

## 2. Basing policies on evidence and consultation

### 2.1 Making use of knowledge

As enacted by the Residence Act (1992), the Austrian Institute for Economic Research (WIFO) publishes an annual estimate of the economic needs for migration and develops recommendations for the quota system, which is then used by the government when fixing the yearly immigration quota. In practice, the yearly immigration quota has been set at around 7,500 to 8,600 persons each year since 1998, independent of the changes in the economy (which have been significant over the last five years). It has to be noted, that only a marginal portion of this quota is set for labour immigration (2005: 1,600 permit for key personnel and their family members out of a total of 7,500).

The influence of the recommendations of the WIFO on the (highly political) setting of the immigration quota is low.

In general, migration policy development is not based on scientific studies or consultation with scientists. On the contrary, there often is mutual distrust between representatives of the government and members of the scientific community. However, it should be acknowledged that in recent years, two initiatives have tried to improve communication between these two groups. At the Austrian Academy of Sciences, a *Commission for Migration and Integration Research* was set up to organise public lectures and try to improve the discourse on migration within the academic community.

The Federal Ministry for the Interior represents Austria in the framework of the 'European Migration Network', IOM Austria serves as the National Contact Point for Austria and researchers from the Austrian Institute of Economic Research and the Austrian Academy of Sciences provide advice.

Within this framework, IOM Austria published a pilot-study on the *Impact of Immigration on Austrian Society* in 2004 (National Contact Point 2004). Based on a survey of existing literature and research, the study concluded, that there was extensive literature on topics that served a specific economic interest; but that the impact immigrants have on society in a cultural, political and social context had been hardly analysed at all. The study focused on the impact of immigration on culture and highlighted that since the 1990s immigrants had begun to exert significant influence in all areas of cultural production. In the same framework, a study on integration practices in Austria was published in 2005. The study is based on a survey of the understanding of integration of the federal ministries and the provincial governments and existing integration activities at the federal and the provincial level.

Statistical data on immigration and integration are based on nationality, not country of birth. Due to the growing number of naturalisations, these data produce a distorted picture of the situation of immigrants in Austria, as they do not include information about naturalised immigrants or their descendants. As the migration related data of the census of 2001, which would allow an analysis at least of the first generation of immigrants based on the country of birth, have not been analysed yet, statistical information about the immigrant population is limited and weak. However, the City of Vienna and the provincial government of Lower Austria plan to analyse these data in the future. Furthermore, the City of Vienna has commissioned an analysis of the living conditions of immigrants in Vienna based on a survey of about 1,600 immigrants.

The focus on nationality and not country of birth, which characterises nearly all public data, is the most immediate problem. Although Austrian scientists and EU-funded research projects (cf. COMPSTAT) suggest a move towards migration-based data collection, these suggestions have not been taken up by the government. There is no regular monitoring of integration, and the policy has not made use of existing national or international research on indicators. The lack of regular monitoring of immigration and integration also is reflected by discontinuous and dispersed funding of migration research.

## **2.2 Including stakeholders**

The Federal Ministry of the Interior is responsible for policies in the field of immigration regulation, asylum policies and the policing of migrants.

Within the framework of the Aliens Act, the provincial governments exercise the right to fix the maximum number of residence permits to be issued in the specific year for each province. The federal government may set the numbers lower but not higher than the provincial governments suggest. Thus the provincial governments are key players regarding the actual regulation of immigration. They must also be consulted on setting the quota for temporary employment.

In the area of immigration policy, the regulation of access to the labour market is generally decided by the social-partners. The Ministry of Economics and Labour consults them before setting the percentage quota for 'foreigners' employment (which should not be confused by the immigration quota, see above). Until 2000 the quota was normally set by agreement of the Trade Unions and the Chamber of Labour on the one hand and the Chamber of Commerce and the Association of Industrialists on the other. The recent decision by the Minister of Employment and Labour to extend seasonal employment even to non-seasonal industries and to allow seasonal employment for a year shows that this consensual style of policy-making is not followed any more. Nevertheless, the chambers and the associated interest groups are still the most important political actors after the political parties represented in parliament.

In the area of labour market policies, the Social Partners and the Federal Ministry of Economics and Labour<sup>8</sup> are the key players. The Federal Minister of Economy and Labour may issue decrees concerning the easing of conditions for the issue of work permits and can thus directly influence labour market regulations. The Federal Ministry of Economics and Labour is also in charge of policies and measures against unemployment, which can seriously affect migrants.

The Public Employment Service, which is in charge of the administration of work permits, is a formally independent body governed by the Social Partners and the Ministry of Economics and Labour. It (more or less) holds the monopoly for labour exchange. In administrative terms, the Public Employment Service can influence the practical implementation of policies exercising its discretionary powers, for instance by deciding whether an applicant could be considered as fulfilling the tasks of a "key employee".

With regard to policies on naturalisation, legal competence lies with the federal legislator (Bundesgesetzgebung), but the provincial governments are in charge of

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<sup>8</sup> Until the formation of the ÖVP-FPÖ government, the Ministry for Labour, Social Affairs and Health was responsible for this field.

executing the federal act and thus hold important powers to administratively interpret the conditions for naturalisation laid down in the Naturalisation Act.<sup>9</sup>

Housing policies are administered by the provincial governments, who have the power to legislate on the conditions of access to public social housing.<sup>10</sup> Educational policy planning is the domain of the Federal Ministry of Education, Science and the Arts. The provincial governments and the provincial school councils ('Landesschulrat') are responsible for the implementation of policies,<sup>11</sup> and the provincial governments regulate access to social assistance.<sup>12</sup>

Asylum policies fall solely into the realm of the Ministry of the Interior. The Federal Asylum Office ('Bundesasylamt') is the specialised entity within the Federal Ministry of the Interior directly responsible to the minister.

### **Non-governmental organisations and churches**

There are a number of NGOs in the field of migration and integration. The Catholic and the Protestant Church and their humanitarian associations such as Caritas or the 'Evangelische Diakonie' play an important role in the field of integration policies. They act as advocates of immigrants' rights in public; fund or organise advice-centres and language training courses; or provide shelter to asylum seekers, refugees and immigrants in need. Although immigrants are involved in their work, they cannot be found in the upper hierarchy of the churches and religious humanitarian associations. Another important association in the field of humanitarian work with immigrants is the humanitarian organisation 'Volkshilfe' (Peoples' Aid Organisation) with close connections to the Social Democratic Party.

In the 1990s, several new humanitarian associations engaged in immigration policies were established. The most important of them is the umbrella-organisation 'SOS Mitmensch', which *inter alia* includes union-youth-organisations, religious organisations such as Caritas, the 'Volkshilfe' and well-known intellectuals and artists. 'SOS Mitmensch' was the organiser of the torch-light demonstration against racism in 1993, which mobilised some 150,000 people, and constituted the main demonstration against the inclusion of the FPÖ in the new government in 2000.

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<sup>9</sup> For instance, applicants in the province of Upper Austria have to pass an examination on the history of the province, whereas no comparable requirement exists in Vienna. In some provinces, applicants are required to prove their proficiency in German by a test, whereas in other provinces the civil servant determines it him/herself on the basis of an interview with the applicant.

<sup>10</sup> Social housing is only available to non EU-citizens in some small towns. In the majority of Austrian cities, third-country nationals have either no, or restricted access to a rental contract in public housing. As e.g. the Province and City of Vienna owns 20 per cent of the Viennese housing stock, but third country nationals have restricted access to communal housing, this policy considerably influences the housing conditions of immigrants to the negative.

<sup>11</sup> Matters related to the integration of pupils with immigrant background are governed by the 'educational principle' of intercultural education, giving the provincial governments a high degree of autonomy in implementation. According to the principle, the child's mother tongue may either be taught as an optional subject in separate classes or integrated into the general timetable by a team of teachers including a native-language teacher. Whereas team teaching is the common model in Vienna, separate classes are given precedence in the other provinces. The number of lessons may vary from two to six per week depending on the province or even school the child attends, so that children of e.g. Turkish immigrants in one case may well be taught in their mother tongue up to a good level of competence, whereas in another case mother tongue teaching might only be an extracurricular and non-compulsory subject.

<sup>12</sup> In most provinces, third country nationals have none or only restricted access to social assistance payments.

Other important NGOs in the field include Helping Hands, a humanitarian organisation associated with the Austrian Students' Union (the 'chamber' of students with compulsory membership), which concentrates on giving free legal advice to immigrants and refugees; ZARA, an anti-discrimination watchdog, which gives legal advice, collects incidents of discrimination and publishes an annual 'racism-report'; and the Austrian Asylum Coordination, an umbrella group of NGOs working in the field of asylum.

As mentioned in section 1.2, the City of Vienna funds an office for networking of the 'Vienna Integration Conference', a platform comprised of more than 100 migrants' and consulting organisations which aim to further political participation and represent and lobby for immigrants' rights and interests and be a link to the municipality ([www.wik-vernetzungsbuero.at](http://www.wik-vernetzungsbuero.at)).

In the cities of Graz and Linz, elected foreigners' advice councils have been set up as measures to ensure some political participation of immigrants, despite the fact that non-EU citizens do not enjoy local voting rights in Austria. Several other cities (e.g. Dornbirn, Krems, Steyr, Leoben etc) have set up 'integration offices' or appointed commissioners for integration to tackle local integration questions. The provincial governments of Tyrol, Salzburg, Lower Austria and Upper Austria are currently discussing 'mission statements on integration' and are planning to set up or already have set up administrative units for integration.

### **Mechanisms through which stakeholders exercise influence**

The peculiar system of 'social partnership' in Austria with its nesting of political elites of the Conservative Party and the Chamber of Commerce and the Association of Industrialists on the one hand, and the Social Democratic Party with the Trade Union Federation and the Chamber of Labour on the other, has brought about a situation which, despite the diminishing influence of the social partners, these ties remain strong. Functionaries of the social partners regularly hold seats in parliament, and until end of the 1990s they were also regularly appointed ministers. Therefore the social partners continue to be strongly involved in policy-making at the parliamentary and governmental levels, which they can influence through direct involvement in the negotiation and drafting procedure.

Formally, the social partners are invited to comment on nearly all draft bills dealing with migration issues during the so-called 'assessment procedure'. Before being passed by parliament, draft bills introduced by the government have to undergo an assessment of all relevant organisations concerned with the discussed matter, and the social partners are regularly asked to assess all bills dealing with economic and social policy.

Whereas the social partners can influence law making already during the drafting and negotiation procedure, the assessment procedure is the only way NGOs can make their position known to parliament. Although most humanitarian NGOs in the field of migration do have working relationships with the parliamentary parties, their representatives do not hold seats in parliament. The parties are, however, free to suggest that NGOs take part in the assessment procedure. With regard to the 'integration package' of 2002 a platform of NGOs active in providing legal counselling to immigrants organised a coordinated series of assessment statements by all main NGOs in the field, which was then discussed in the parliamentary committees dealing with the draft.

Another way of influencing policy is taking part in parliamentary hearings, which may be organised by the political parties. As the number of hearings per year is limited, and each party may organise a certain number of hearings according to its size, hearings in the field of migration policy only take place every second or third year. A number of representatives of NGOs were for instance invited by political parties to give expert statements on the draft asylum and aliens law package 2005 in a parliamentary hearing of the committee for internal affairs before the summer. Few big NGOs are also represented in the Advisory council on asylum and migration affairs (Asyl- und Migrationsbeirat) to the Ministry for the Interior, which in the past has mainly performed the task to consult the minister in issuing humanitarian residence titles.

The general relationship between the government and NGOs in the migration field has changed dramatically since the ÖVP-FPÖ government came into power. During the SPÖ-ÖVP government, the ministers in charge of the policy (Interior, Social Affairs) (who during the 1990s were always nominated by the Social Democrats) and the chancellery held regular consultations with the NGOs, at least with those who were not seen as radical critics. In the 1990s, there was a good working relationship, including regular consultations with the chancellery and the Ministry for Justice, especially with regard to the implementation of anti-discrimination legislation. These regular consultations stopped soon after the ÖVP-FPÖ government came into power. Since then, most humanitarian NGOs have virtually been cut off from information and consultation.

Since the end of 2002 even Caritas, which until then (despite its critical stance) had a working relationship with the Ministry of the Interior, lost its contracts in the field of support to refugees and asylum seekers and was replaced by the quasi – NGO 'Menschenrechte Österreich', which was founded in November 2002 by the former executive director of 'SOS Menschenrechte', an NGO active in providing advice and care for refugees and foreigners in detention prior to deportation (Schubhaft).

## **ANNEX - Aliens Law Package (Fremdenrechtspaket) 2005**

Following is some additional information on core provisions of the comprehensive legislative reform with regard to the transposition of the directives:

### **System of immigration quotation maintained and extended for the group of long-term residents from other Member States**

The Settlement and Residence Act 2005 regulates long-term residence and employment immigration in combination with the aliens' employment act (AEA, *Ausländerbeschäftigungs-gesetz*) of 1975. These acts provide for a strict immigration control system by requiring the future immigrant to apply for immigration from abroad and subjecting would-be immigrants to a tight quota system.

From 1 January 2006 on residence permits subject to annual quotation may be given to:

- Key employees and managers and self-employed key personnel and their family members;
- Family members of permanent legal residents;
- Long-term residents from another EU Member State who wish to settle in Austria and their family members for employed or self-employed activities (NEW);
- Family members of Austrian, Swiss and EEA citizens who do not have free movement rights under EC law with a Residence permit who do not have access to the labour market (parents, partners ...) and wish to obtain access (NEW).
- Persons who wish to pursue a private residence purpose, thus do not have to rely on employment to secure their living such as pensioners, and their family members.

Groups 1 – 3 are subject to the restrictive aliens employment system. Groups 4 and 5 do not have access to the labour market.<sup>13</sup>

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<sup>13</sup> Immigration to Austria in order to do employed work is - in addition to the immigration quota - restricted by a second quota based on the aliens' employment act (AEA). The aliens' employment act restricts the number of migrant workers to eight per cent of the overall workforce ("Bundeshöchstzahl", federal foreigner's employment quota including persons registered as unemployed). Both the employment of key personnel and managers as well as seasonal work (short-term workers) are also restricted by that quota. Both groups are, however, listed in the decree determining the groups who may be employed even if the overall federal employment quota is exhausted ("Bundeshöchstzahlenüberziehungsverordnung").

In addition to the federal quota there are province employment quotas ("Landeshöchstzahlen"). Once these ceilings are reached issuance of work permits is tightened. In that case the future employer is compelled to accept another employee instead of the person who applied who is already part of the Austrian labour market.<sup>13</sup> Preferential treatment has in this context to be provided to

Persons with entitlement to unemployment assistance

Persons holding a two year work permit (Arbeitserlaubnis) or a five year license of exemption (Befreiungsschein), a certificate of residency or a long-term residence status EC (Daueraufenthalt - EG) and

Turkish nationals who enjoy rights under the EC association agreement.

Only if no such person with the required qualifications is available the labour market service may issue a work permit to the employer applying for the work permit. This system will continue to exist after the reform of 2005 will have entered into force on 1 January 2006.

## **Long-term resident status – EC (LTR EC)**

Immigrants having been residing legally and continuously in Austria for at least five years are entitled to be issued an unlimited 'long-term residence status – EC'. Periods of interruption of stay in Austria must not exceed ten months on the whole or six months without interruption; periods of absence for professional activities in other EU countries do not harm. In exceptional cases such as due to a serious illness or if s/he has to meet a social or a military type duty the holder may leave Austria for up to 24 months without having the residency period for acquiring the LTR status interrupted if the authority has been informed thereof and this is on record (Par. 45 SRA).

### Provisions for transition from the old to the new legal system ( Par. 81 section 2 SRA)

The Certificate of residency (CR) (*Niederlassungsnachweis*) (which is also called long-term residence permit - EC) which was introduced by the reform of 2002 is not considered to correspond automatically to the LTR-EC according to the reform of 2005. The Minister for the Interior will be entitled to decide upon decree which old titles are held equal to the new ones of the reform package. Since a very high number of CRs have been issued since the provision has been in force (some 141,000 according to statistics of the Ministry for the Interior) this appears to be highly questionable both from the point of view of the intentions of the directive and the principle of the rule of law under the Austrian Constitution.

### Conditions for acquiring long-term resident status (LTR EC)

*Stable and sufficient income:* Residence may not lead to a financial burden of the state – NEW: this is the case if the alien has a certain and regular amount of money which secures his/her living without having to rely on social assistance money and corresponds to an amount set by the General Law on Social Security (Par. 11 section 4 subsection 5 SRA).

*Submission of a health certificate* (introduced by the reform of 2002) continues to be a requirement (Par. 11 section 7 SRA).

*Public policy and public security* (NEW) (Par. 11 section 4 subsection 2 SRA): Residence of the alien may not be in conflict with public interests which is the case if the alien has a close relationship to a extremist or terrorist group and with regard to existing structures or future developments extremist or terrorist acts by this group cannot be excluded.

The long-term residence status EC permit is issued for five years and to be extended upon application under the condition that no expulsion measures were imposed and are to be implemented (before: ten years) (Par 20 section 3 SRA).

The LTR–EC expires if the holder is leaving the EEA for more than 12 months. In exceptional cases such as due to a serious illness or if s/he has to meet a social or the military duty or a type of civil service duty the holder may leave the EEA for up to 24 months without losing the status if the authority has been informed thereof (Par 20 section 4 SRA).

In case of expulsion measures that may lead to the loss of the LTR-EC that must not be implemented the LTR-EC status may be withdrawn and another residence title of a weaker type issued (Par 28 SRA).

After the alien has not been a resident of Austria for more than six years, the LTR-EC status will automatically lose its validity; no exceptions are provided in the SRA (Par. 10 section 3 subsection 3 SRA).

#### Equal treatment (Rights associated with status)

The holder of a LTR-EC has the unlimited right to work, free access to the labour market in Austria. The aliens employment act no longer applies (par 17 Aliens Employment Act, AEA).

Most benefits of the social security system are granted at the latest after five years of residence. This is will also the case for unemployment assistance in case of emergency (*Notstandshilfe*).

In the area of other forms of social assistance benefits and connected benefits, such as benefits for the blind and access to communal housing the federal provinces are asked to prepare the necessary legislative reforms. As far as the City of Vienna is concerned transposition of the two directives is being prepared. No official text have yet been submitted for public consultation. As of now no information is available as far as the transposition process of the other eight federal provinces is concerned.

#### Protection against expulsion

Special provision for aliens with long-term residence permit – EC or long-term residence permit - EC member as family member included (Par. 56 of the Aliens Police Act, APA, Fremdenpolizeigesetz 2005). Expulsion is only permitted if the person's further residence is considered a serious threat to public order or security, which the act sees given, for example, after a sentence because of a serious crime (threat of a sentence of more than three years), because of trafficking in humans, aiding and abetting with the offence of illegal residence, to marry or arrange marriages for the sake of residence status, specific drug-related and other serious crimes, as well as because of a sentence of more than six months if the person has already committed one or more similar offences and these have not yet been stricken from the criminal record.

Provisions for special protection of persons who were born in or have grown up from young age in Austria do apply. Previously this group was protected absolutely against expulsion or deportation no matter what offence was committed provided the person had been residing legally in Austria for many years, which is more than half of their life-time as well as three years preceding the committing of the crime. This absolute protection against the deportation ban will now be abolished.

Even persons of this special type of long-term stay may in the future be banned from staying in Austria (residence ban - Aufenthaltsverbot)

- if they have been convicted to a sentence of more than two years or
- are considered a threat to public order or security because of belonging or having belonged to a criminal organisation or terrorist group,
- or participating publicly in violent acts, or instigating publicly violent acts or
- supporting or inciting crimes against peace, war crimes or a crime against humanity or terrorist acts in a public assembly or by spreading written materials (Par 60 section 1 subsections 12 – 14 and par 61 section 4 APA).

**Residence in other EU member states** (Par. 13 section 2 subsection 2, par. 49 and 50 SRA)

The SRA stipulates that an additional group is to be included within the system for decreeing the annual quotas for immigration, which are those third-country nationals with a LTR-EC status from another EU Member State.

Introduction of provisions enabling third country nationals residing in another EU country to be admitted to Austria for employment or studies.

The group is totally subjected to the restrictive admission system of the Austrian aliens legislation which is the quota system as well as the Foreigners' Employment System (see above).

They may be given a residence permit for private purpose (Niederlassungsbewilligung – ausgenommen Erwerbstätigkeit), which does not allow them to take up a dependent or self-employed work. Alternatively, they may be given a residence permit with purpose restricted (Niederlassungsbewilligung – beschränkt), which allows dependent and also self-employed work if the person is able to meet the very restrictive criteria and to surmount the barriers of the foreigners' employment act (see above). Hence, the Austrian legislator made use of art. 14 section 4 of the directive. Family members are entitled to accompany them.

The Austrian system seems to be more restrictive than the Directive allows. The Directive speaks of assessment of the labour market situation (Arbeitsmarktprüfung) (Par. 14 section 3 SRA) but does not allow in addition to subject this group of persons to immigration quotas.

**Family Reunion with third country sponsors** (Par 12 section 7, par. 46 SRA)

Who is entitled to this type of family reunion?

- Spouses who have reached the age of 18; and
- Minor and celibate children, including adopted and step children, until the age of 18; no more requirement to submit application before the age of 15 (the legislator did not make use of article 4 section 6 of Directive 2003/86).

In cases of family reunion the SRA 2005 stipulates that the annual quota restrictions that applications are subjected to under the regular Austrian quota immigration system is applicable only for three years, after that period the application will be processed without this restriction.

Resource and other requirements

- level of income above social security level;
- legal entitlement to adequate housing;
- health certificate;
- signing of a "integration agreement" introduced by the reform of 2002; and
- no criminal record.

In case the applicant for family reunion does not succeed in providing authentic documents to prove the relationship the authority may call upon him to provide a

DNA analysis the costs of which the applicant will have to bear (Par 29 section 2 SRA).

**Provisions on quotation reformed, quota restriction lifted after three years (Par 12 section 7 SRA)**

Since 1992 immigration for the purpose of family (re-)union is subject to annual quotation. Family members have the right to obtain a residence permit provided they fulfil the abovementioned requirements and a space in the annual quota can be allotted. If all requirements are met and a residence permit cannot be granted due to exhaustion of the quota the application is put on hold until the following year and a new quota is available (waiting list system with backlog of applications).

In cases of family reunion the SRA 2005 stipulates that the annual quota restrictions that applications are subjected to under the regular Austrian quota immigration system is applicable only for three years, after that period the application will be processed without this restriction.

## Equal treatment

Access to the labour market for family members of holders of LTR-EC status: After one year of residence they will receive a residence permit without restrictions (Niederlassungsbewilligung – unbeschränkt) which means that the holder is no longer subjected to the restrictive aliens' employment law regulations (see description above). The residence permit is at the same time providing free access to the labour market (Par 46 section 4 SRA). If the sponsor does not yet enjoy LTR-EC status the family members will receive a corresponding weaker labour market access.<sup>14</sup>

Family members may obtain an autonomous status after five years of residence: (Par. 27 section 1 SRA) (Previously this was the case already after four years)

The debate on the fight and prevention of terrorism is also reflected in a number of provisions in the aliens law package 2005:

Visa or also residence permits must not be issued to an alien if this considered against the public interests because there are facts that lead to assume that the alien

- is belonging or has belonged to a criminal organisation or terrorist group;
- is a threat to national security by publicly participating in violent acts, or publicly instigating violent acts or violence;
- supporting or inciting crimes against peace, war crimes or a crime against humanity or terrorist acts in a public assembly or by spreading written materials (Par 21 section 4 and section 5 subsection 7, 8 and 9 Aliens Police Act (APA)).

Similar facts are introduced as reasons to impose a residence ban.

In this context the Austrian legislator has also abolished the absolute security for residence of persons who were born and/or have grown up in Austria from young age (Par 60 and following APA). Because of Austria's *jus sanguinis* principle in naturalisation law such persons may hold passports of the countries of their parents and would thus be deported to a country, which they may know only from vacation.

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<sup>14</sup> Corresponding provisions in the Alien Employment Act (AEA):

According to par. 4 section 6 subsection 4a AEA after certain federal province ceilings have been exceeded a work permit may be issued among other things if the alien is a spouse or minor and unmarried child of an alien residing permanently and working legally in the country.

Acc to par 4 section 8 - after one year of residence the labour market examination according to section 6 subsection 4a is no more applicable.

If the sponsor is holding a two-year work permit for the federal province of the last working place (Arbeiterlaubnis), the family member will be issued the same after one year of residence (par 14a section 1a AEA).

If the sponsor is holding a five-year certificate of work valid for the whole of Austria (Befreiungsschein) the family member receives the same title after one year of residence (par 15 section 1 subsection 5).

If the sponsor is holding a residence permit unrestricted (Niederlassungsbewilligung – unbeschränkt) the family member receives the same title after one year of residence and then enjoys free access to the labour market (par 17 AEA).

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