



## EU-Enlargement Labour Market Access and Right of Residence

The seven years' **transition period** regarding the **free movement of workers in the EU** has already expired for citizens of the member states which acceded to the European Union on 1 May 2004 (**Estonia, Latvia, Lithuania, Poland, Slovakia, Slovenia, the Czech Republic and Hungary**) and for citizens of the member states which acceded on 1 January 2007 (**Bulgaria and Romania**).

Workers of these member states (and their family members<sup>1</sup>) do, therefore, **not need any permit** for taking up gainful employment. The Public Employment Service Austria can issue a "confirmation of exemption" (Ausnahmebestätigung) to make it easier to find work.

On 1 July 2013 the Republic of Croatia acceded to the European Union. Croatian citizens are also subject to a seven years' transition period (2+3+2 model) regarding the free movement of workers in the EU, which started on 1 July 2013. As a rule, Croatian citizens will be granted access to the labour market according to national regulations during this transition period:

**The following Croatian citizens are granted a "confirmation of free movement" (Freizügigkeitsbestätigung) and enjoy unrestricted access to the Austrian labour market, if**

- on the day of accession or later they are legally employed and have been admitted to the regular labour market for at least 12 months without interruption (e. g. by means of "employment permit" (Beschäftigungsbewilligung), "exemption certificate" (Befreiungsschein), residence title granting access to labour market, etc.);
- they correspondingly meet the preconditions of § 15 (e.g. persons who are integrated in an advanced way, holders of a valid work permit or a valid exemption certificate, etc.);
- they have permanently settled in the Federal Territory for the last 5 years and have a regular income from legal gainful employment;
- until the accession date, they were entitled to take up any employment throughout the Federal Territory according to § 17 (with "long-term resident – EU(EC)" / "red-white-red card - plus", etc.).

Regardless of their nationality, spouses, registered partners and children up to the age of 21 (or older, if maintenance is provided) of the persons mentioned above also receive a "confirmation of free movement" if they have a common legal residence with them in Austria.

A "confirmation of free movement" is issued on application by the regional offices of the Public Employment Service Austria (AMS). Already existing work authorizations (e.g. "exemption certificate", "long-term resident - EU(EC)", etc.) remain valid until their expiry date. Nevertheless we urgently recommend applying for a "confirmation of free movement"!!!

### Notes:

1. Family members (regardless of their nationality) are spouses (also registered partners), legitimate or illegitimate children (including stepchildren and adopted children) if they have not yet reached the age of 21 or if they are still provided maintenance, as well as parents and parents-in-law as long as they are provided maintenance. Citizens from Croatia who are family members of citizens of the mentioned states also enjoy free movement of workers in the EU.
2. Other relatives (regardless of their nationality) are, for example, partners or other relatives who can prove a close relationship to the reunifying person and are provided maintenance. (see pages 3 and 4)

## Access to the labour market for Croatian citizens who are nuclear family members<sup>3</sup> of third-country nationals and Austrians:

Members of the nuclear family are also entitled to a “confirmation of free movement” if the third-country national they are related to holds a valid residence title “red-white-red card”, “red-white-red card - plus”, “EU blue card”, “long-term resident – EU(EC)” or “proof of settlement” (Niederlassungsnachweis) or is eligible for asylum or is a special executive, a scientist or a researcher.

Nuclear family members of Austrians are exempt from the Employment of Foreign Nationals Act (AuslBG) and do therefore not require any permission for taking up gainful employment. The Public Employment Service Austria can issue a “confirmation of exemption” to make it easier to find work. These persons may also obtain a confirmation of free movement if they held a residence title “family member” or “long-term resident – family member” until the EU-accession date.

### **Other regulations and simplifications for Croatian citizens:**

Due to the current situation on the labour market it is hardly possible to obtain a permit for easy, unskilled work. Some things however have become easier:

**Certain** occupations (e.g. spiritual adviser, scientist, researcher, university assistant, diplomat, etc.) as well as **some occupations requiring full compulsory social insurance** (e.g. nurses in private homes, distributors of advertising material and deliverers of daily newspapers or periodical publications) are **exempt** from the Employment of Foreign Nationals Act and do **not** require **any permit**.

Skilled or key personnel according to § 12 Employment of Foreign Nationals Act, skilled workers according to the Ordinance on Exceeding the Maximum Number of Federal Work Permits - Skilled Workers (Fachkräfte-BHZÜV) and pupils or students up to a certain number of weekly working hours obtain an employment permit more easily if they find an appropriate workplace. They are also given preference when granting “seasonal permits” (Saisonbewilligungen).

### **For further information on work and occupations refer to the links below:**

AuslBVO: <https://www.ris.bka.gv.at/GeltendeFassung/Bundesnormen/10008711/AusLBVO%2c%20Fassung%20vom%2029.01.2018.pdf>

FachkräfteVO 2019: <https://media.anlaufstelle-erkennung.at/Fachkr%C3%A4fteverordnung2019.pdf>

Fachkräfte-BHZÜV: <https://www.ris.bka.gv.at/GeltendeFassung.wxe?Abfrage=Bundesnormen&Gesetzesnummer=20005577>

## **RIGHT OF RESIDENCE**

### **Preconditions:**

On the basis of the Directive on Free Movement<sup>4</sup> the following citizens of the mentioned states are entitled to reside in Austria for more than three months:

1. workers or self-employed persons in Austria and their family members<sup>1</sup>,
2. inactive persons or persons enrolled in schools or universities and their family members<sup>1</sup>, if they have sufficient resources and a comprehensive sickness insurance for themselves and their family members

### **Notes:**

3. The nuclear family includes spouses, registered partners and minor, unmarried children (incl. adopted and stepchildren).
4. The Directive on Free Movement does not only apply to all 28 EU states but also to Iceland, Liechtenstein, Norway and Switzerland. Also Austrians can benefit from the Directive for their family members if they themselves lived in one of those countries for more than three months in accordance with the Directive and then returned to Austria. Transitional rules for Croatian citizens only apply to the access to the labour market but not to the right of residence.

### **Confirmation of registration and confirmation of long-term residence:**

All citizens of the mentioned states (also family members<sup>1</sup> and other relatives<sup>2</sup> originating from EU states) need a **“confirmation of registration” (Anmeldebescheinigung)**<sup>5</sup> issued by the Immigration, Citizenship and Registry Offices (Vienna: MA 35) if they are residing in Austria for more than 3 months. The same has to be applied for at the Immigration, Citizenship and Registry Offices (Vienna: MA 35) within 4 months of the entry. If the preconditions mentioned above are met, the authority will issue such confirmation.

After five years of legal and uninterrupted residence in the Federal Territory these EU citizens acquire a right to long-term residence. On application and after checking the residence period they have to be granted a **“confirmation of long-term residence” (Bescheinigung des Daueraufenthaltes)** immediately. An absence due to certain reasons and up to a certain time does not interrupt the legal residence. Certain persons can also obtain this confirmation before the expiry of this 5-years' period.

**As a rule** the above mentioned preconditions have to be fulfilled until the **right to long-term residence** is obtained. If the family status ceases to exist (divorce, annulment of the marriage, death or emigration of the reunifying person, etc.) the former family member has to fulfil these preconditions him-/herself. After obtaining the **right to long-term residence** they have gained **permanent residency** and can only be expelled due to certain criminal offences.

Changed circumstances as well as the cessation of the family status have to be communicated to the Immigration, Citizenship and Registry Offices. Make sure you meet the mentioned prerequisites before the notification!!!

### **Residence cards and long-term residence cards:**

Third-country nationals who are family members of EU citizens entitled to residence need a **“residence card” (Aufenthaltskarte)** issued by the Immigration, Citizenship and Registry Offices (Vienna: MA 35) if they are staying in Austria for more than 3 months. The same has to be applied for at the Immigration, Citizenship and Registry Offices (Vienna: MA 35) within 4 months of the entry. If the preconditions mentioned above are met, the authority will issue such confirmation for a period of five years or for the planned period of a shorter stay.

Third-country nationals who continue to meet the above mentioned preconditions acquire the right to long-term residence if they are residing legally and without interruption in the Federal Territory for five years. On application and after checking the preconditions they have to be granted a **“long-term residence card” (Daueraufenthaltskarte)**<sup>6</sup> for a period of ten years. The application has to be filed before the validity of the “residence card” expires. An absence due to certain reasons and up to a certain time does not interrupt the legal residence. Certain persons can also obtain this confirmation before the expiry of this 5-years' period.

**As a rule** the above mentioned preconditions have to be fulfilled until the **right to long-term residence** is obtained. If the family status ceases to exist (divorce, annulment of the marriage, death or emigration of the reunifying person, etc.) the former family member has to fulfil these preconditions him-/herself. After obtaining the **right to long-term residence** they have gained **permanent residency** and can only be expelled due to certain criminal offences.

The family members have to communicate these circumstances, for example divorce, death or emigration of the reunifying EU citizen, to the Immigration, Citizenship and Registry Offices. Make sure you meet the mentioned prerequisites before the notification!!!

#### **Notes:**

5. Persons who have already registered according to the Registration Act (Meldegesetz) before 1 January, 2006, and since then have legally resided in the Federal Territory do **not** need any confirmation of registration. Their valid registration is considered a confirmation of registration. As of 1 July 2013 residence titles issued to Croatian citizens before the accession remain valid as confirmation of registration during their validity period. The confirmation of registration should be applied for before the validity of the residence title expires.
6. “Long-term residence cards” issued before 1 January 2010 remain valid as “residence card”. As a rule the above mentioned preconditions have to be fulfilled until the right to long-term residence is obtained.

## Other relatives<sup>2</sup> from third countries:

Other third-country relatives may obtain a “**settlement permit – relative**” (**Niederlassungsbewilligung-Angehöriger**), which is exempt from the general immigration quota, if the prerequisites for granting such title are fulfilled (for further details please check the info-sheet: “settlement and employment of family-members”). In any case the reunifying EU citizen has to make a declaration of liability and the same has to be plausible.

As a rule, the first application has to be filed abroad. After a visa-free entry into Austria or in certain cases the application can also be filed in Austria (Vienna: MA 35). Applications for prolongation have to be filed with the Immigration, Citizenship and Registry Offices at the latest before the expiry of the settlement permit. Applications filed after the expiry are treated as first applications.

Proof of appropriate knowledge of German prior to settlement (level A1) as well as the fulfilment of Module 1 of the Integration-Agreement within 2 years of further residence is obligatory. Some persons, however, are exempt from this obligation (e.g. minor children, etc.) or this obligation is considered fulfilled (completion of a certain level of school education).

During the first 2 years the “**settlement permit – relative**” (“**NB – Angehöriger**“) is issued for 1 year at a time. After that it is granted for 3 years if, apart from the granting prerequisites, also Modul 1 of the Integration-Agreement is fulfilled. After 5 years of uninterrupted settlement, the residence title “**long-term resident - EU**“ can be granted, if the granting prerequisites are still met and Module 2 of the Integration-Agreement is fulfilled.

The residence title “**long-term resident - EU**“ also includes the free access to the labour market. If persons holding a “**settlement permit – relative**” wish to work before obtaining the residence title “**long-term resident - EU**“ they can obtain a residence title “**red-white-red card - plus**” by means of proceedings to change the purpose of stay (Zweckänderungsverfahren) if **certain preconditions\*** (see notes on page 2 of the Information Sheet “Settlement and Employment of Family Members”) are met and a free **quota place** is available!

The status of relative can be lost at any time, if the EU citizen ceases to be **liable** for various reasons (e.g. divorce, death of the reunifying person, etc.). In such cases these persons may only remain in Austria, if **another** qualified EEA citizen or Austrian can assume the liability or if they themselves continue to meet the granting prerequisites (e.g. by employment). In such cases the Immigration, Citizenship and Registry Offices should be contacted and maybe an application for a further residence title has to be filed. Make sure you meet the mentioned prerequisites before the notification!!!

After receiving the residence title “long-term resident - EU“ these persons have gained permanent residency and can only be expelled due to certain criminal offences. In case of still restricted residence titles the person should generally continue to meet the granting prerequisites.

**Note:** Since the provisions at hand have been presented in a very abridged version, we kindly ask you to contact the Immigration, Citizenship and Registry Offices, Municipal Department 35 (MA 35), the Public Employment Service AMS or the Beratungszentrum für Migranten und Migrantinnen in order to obtain more detailed information. We refer to the fact that in spite of careful examination mistakes can happen, therefore no guarantee for details contained in this information can be assumed.

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