



The Organisation of Asylum and Migration Policies

Factsheet: Austria

1. Introduction

This factsheet provides an overview of how asylum and migration policies are organised in *Austria*, including the organisation of the institutional and regulatory context and framework for dealing with third-country nationals coming for the purpose of legal immigration or for international protection. It is based on information provided in the Austria National Report of the EMN Study *The Organisation of Asylum and Migration Policies in EU Member States*¹, as at **February 2010**, updated to reflect the situation in **September 2012**, following significant changes in legislation and policy in Austria. The Report was based on desk research: key sources were Schumacher/Peyrl 2007, Kuscher/Poschalko/Schmalz 2006, Bachmann 2008, Fassmann 2007 and Bauböck/Perchinig 2006. National EMN network partners were consulted, and statistics were provided by the Federal Ministry of the Interior, the Public Employment Service and the National Statistics Office.

2. Overview of organisation of political, legislative and institutional framework

2.1 The political system and institutional context

There is no single specific immigration office in Austria; a variety of institutions and organisations are involved in aspects of migration and asylum on all levels. The overall responsibility for asylum and migration issues lies with the Federal Ministry of the Interior (FMI). Access to the labour market is regulated by the Federal Ministry of Labour, Social Affairs and Consumer Protection. The Federal Ministry for European and International Affairs (FMEIA), through Austrian representation authorities, is competent regarding visa issuing procedures. The State Secretariat for Integration within the FMI is responsible for the coordination of integration measures in Austria.

Austria's federal structure is reflected in its institutional system on immigration. Within the framework of the Settlement and Residence Act, the provincial governments are, for example, involved in setting the annual quotas for specific residence titles to be issued for each province. The governors of the provinces, typically delegate this competence to the regional administrative authorities, who are responsible in the first instance in the proceedings according to the Settlement and Residence Act. The Federal Ministry of the Interior acts as the second instance. In some procedures, e.g. for the immigration of (highly) qualified workers, the Public Employment Service Austria, which is responsible for procedures regarding the access to the Austrian labour market, is involved.

The Municipalities and District Commissions implement integration measures on local level.

Asylum issues are within the competence of the Federal State. The Federal Asylum Office with branch offices in the Federal States, which is bound by instructions of the FMI, acts as first instance in asylum proceedings. The independent Asylum Court decides on appeals against its decisions. The aliens' police offices under the responsibility of the FMI, are located in district commissions and the Federal Police Headquarter, and are responsible for carrying out return proceedings. Appeals against decisions of the aliens' police authorities are in general, directed to the Independent Administrative Senates.

2.2 The legal framework

The Austrian national legal framework on asylum and migration encompasses: the Asylum Act (regulations on the application procedure for international protection, in conjunction with the Dublin Regulation), the Settlement and Residence Act (residence titles and respective procedures), the Aliens' Police Act (provisions on entry in conjunction with the Schengen Borders Code and the Visa Code, issuance of documents and return measures) and the Aliens' Employment Act (regulating access to the labour market).

3. Development of migration and international protection systems

The current legislation on asylum and migration is based on changes made to the aliens' law legislation in 2005 and subsequent amendments; in 2009, these included *inter alia*, regularisation possibilities for humanitarian reasons and a residence title for "individual protection". In 2011, new regulations in the framework of the Asylum Act and the Settlement and Residence Act were introduced, including the establishment of a system of free legal aid in asylum proceedings, and a new legislative framework for the immigration of (highly) qualified workers, which introduced new residence titles: a "Red-White-Red Card" and "Red-White-Red Card plus" as well as a "Visa for the Purpose of Job Search", allowing the immigration of highly qualified workers without labour market quota regulations, but based on a fixed point system.

4. Organisation of policy

4.1 Overview of migration and international protection policy

An underlying principle of the Austrian migration regime is the strict differentiation between short-term stays (up to six months) and long-term stays (over six months). Visas are issued for short-term stays of up to three months, and in the case of national "D visas", up to six months. For stays of over six months, residence titles are available, depending on the purpose of stay (studies, research, employment, family reunification, etc). First residence permits are applied for via the competent Austrian representation authority in the country of origin. Criteria include (amongst others) German language skills at A1 level of the Common European Framework of Reference; and at A2 level within two years after immigration. Level B1, German language knowledge for independent use is necessary for a long-term residence permit as well as citizenship.

Work permits are usually restricted to certain occupations and applications must be filed by the future employer; a working allowance gives labour market access in a particular Federal State and an exemption card provides access to the wider labour market. Asylum seekers are allowed to obtain work permits for specific sectors only; international protection status allows unrestricted access to the labour market.

An application for international protection can only be filed within Austria. The procedure is divided into two phases: 1) an admission procedure, clarifying the competence of Austria with regard to the Dublin Regulation and the principle of international protection in a safe third-country and 2) if Austria is found to be competent for the case, an assessment of the application for international protection with regard to the Geneva Convention and Art. 3 and 8 ECHR is carried out. Free legal aid is provided in both phases

In the Austrian return system, various possibilities exist, mainly depending on the (former) legal status of the person concerned, for terminating (irregular) stay: return decisions (in conjunction with entry bans), return bans, exclusion orders, expulsions and forcible return. To safeguard the implementation of forced return, detention pending deportation or more lenient measures are provided. There is no comprehensive legal basis for assisted (voluntary) return, although such return is given priority over forced return. Counseling on possibilities for assisted (voluntary) return is provided in all stages of asylum proceedings.

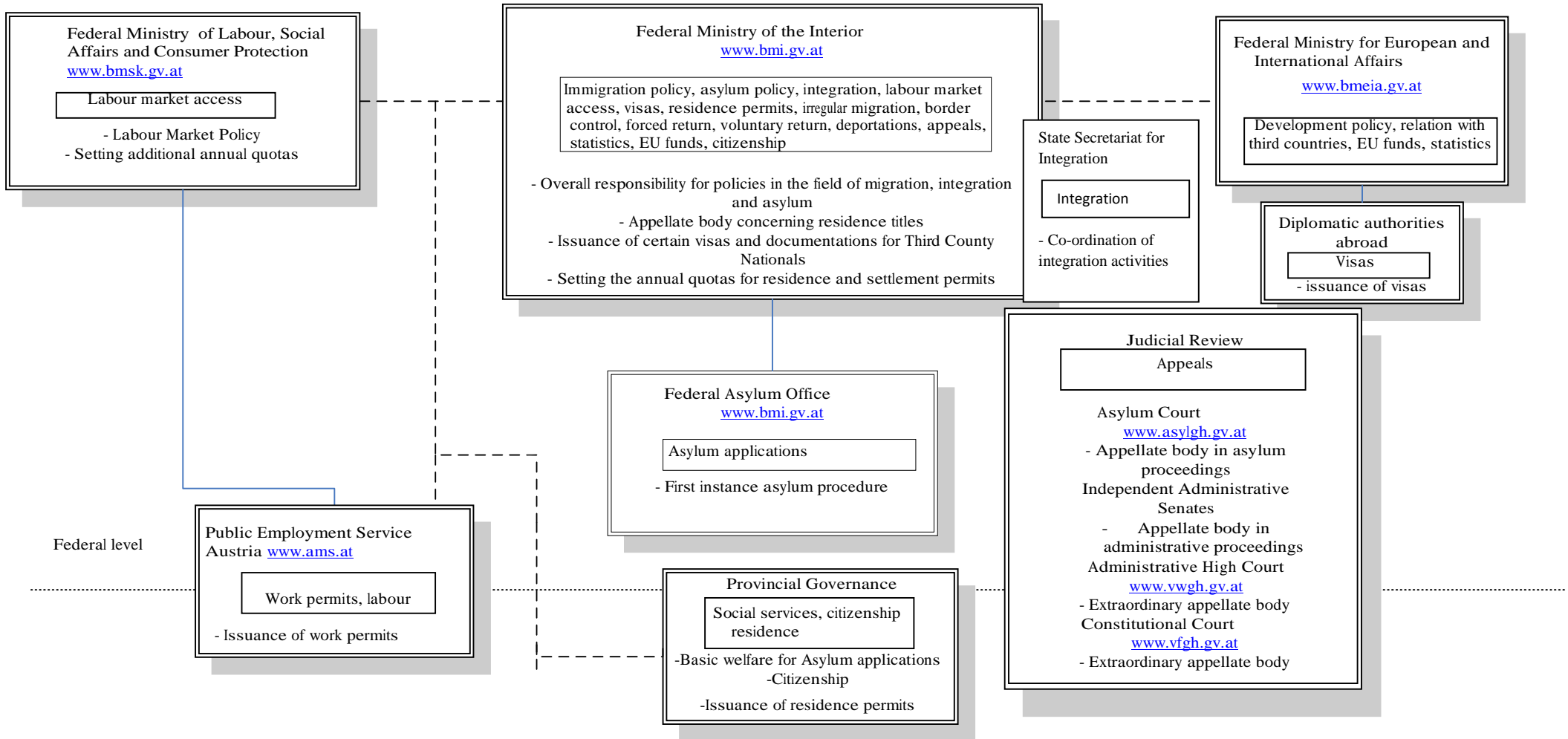
5. Analysis of asylum and migration systems

There has been a growing awareness of the necessity to adapt policies on the basis of the fact that Austria is a country of immigration. The need for policies to facilitate integration and the immigration of highly skilled workers, as well as to reduce irregular migration, are identified policy priorities. The goal of reducing the institutional complexity of the migration and asylum system is being realised, also with the decision to introduce a "Federal Office for Aliens' Affairs and Asylum" in January 2014. Once implemented, this office will, *inter alia*, be competent to decide on applications for international protection, as well as on humanitarian residence titles and in aliens' police proceedings.

ANNEX: Institutional Chart for Austria

Austria

Institutional Framework for Immigration and Asylum Policies*



*Please note that this institutional chart provides an indicative overview of the asylum and migration system in the Member State concerned. As such, it does not represent its complete structure.