



IOM International Organization for Migration



European Migration Network

# VISA POLICY AS MIGRATION CHANNEL IN AUSTRIA

## Study of the National Contact Point Austria in the European Migration Network

Mária Temesvári

The EMN was established via Council Decision 2008/381/EC. The National Contact Point Austria in the EMN is financially supported by the European Union and the Austrian Federal Ministry of the Interior.



**BM.I**



REPUBLIC OF AUSTRIA  
FEDERAL MINISTRY OF THE INTERIOR

Mária Temesvári

## **VISA POLICY AS MIGRATION CHANNEL IN AUSTRIA**

Study of the National Contact Point Austria  
in the European Migration Network

The opinions presented in the national study are those of the author and do not necessarily represent the position of the Austrian Federal Ministry of the Interior or the International Organization for Migration.

Coverdesign: NNWest

Editor: International Organization for Migration in Vienna  
National Contact Point Austria in the European Migration Network  
Nibelungengasse 13/4  
1010 Vienna  
ncpaustria@iom.int  
www.emn.at

© February 2012 International Organization for Migration in Vienna

All rights reserved. No part of this publication may be reproduced, stored in retrieval system, or transmitted in any form or by any means, electronic, mechanical, photocopying, recording, or otherwise, without prior written permission of the editor.

## EMN INFORMATION

The EMN was launched in 2003 as a pilot project and was formally established by Council Decision 2008/381/EC<sup>1</sup> in May 2008. “As stipulated in Council Decision 2008/381/EC, the objective of the [...] EMN is to meet the information needs of Union institutions and of Member States’ authorities and institutions on migration and international protection, by providing up-to-date, objective, reliable and comparable information on migration and international protection, with a view to supporting policymaking in the European Union in these areas. The EMN will also serve to provide the wider public with such information.”<sup>2</sup>

The EMN is co-ordinated by the European Commission (under the direct responsibility of the Directorate General Home Affairs) with the assistance of two service providers<sup>3</sup>, and is overseen by the EMN Steering Board. At present the EMN consists of the European Commission and National Contact Points (NCPs), which are established in 26 EU Member States and Norway. The EMN NCPs have been designated by the government of their Member State.<sup>4</sup> In Austria the EMN NCP is based at the International Organization for Migration (IOM) in Vienna.<sup>5</sup>

The core activities of the EMN NCPs include the preparation of Annual Policy Reports and Annual Reports on Asylum and Migration Statistics, undertaking research and draft studies, issuing ad-hoc queries and responding promptly to such requests from other EMN NCPs. Last but not least, the NCPs are establishing a national network composed of national organisations, institutions and individuals active in the area of migration and asylum.

The EMN NCPs do not engage in primary research, but rather collect, gather and evaluate pre-existing data. EMN Studies such as “Visa Policy as Migration Channel” are developed according to a common methodology in order to have comparable findings. To increase the comparability of the outputs, a Glossary has been launched by the EMN to ensure that similar terminology is used in the national reports.

Specifications for studies and reports are developed by the EMN NCPs in co-operation with the European Commission and its service providers. Using these, each EMN NCP produces a national report (whenever possible in co-operation with their national network members). A synthesis report is then prepared by the European Commission with the service provider GHK-COWI giving the key findings from each national report, highlighting the most important aspects and placing them within an EU perspective. All national and synthesis reports are available on the EMN website.<sup>6</sup>

---

<sup>1</sup> Council Decision of 14 May 2008 establishing a European Migration Network, 2008/381/EC, available at <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:32008D0381:EN:NOT> (accessed on 13 September 2011).

<sup>2</sup> European Commission: *EMN Status Report 2009*, Version 1, April 2010, p. 6.

<sup>3</sup> In 2009, the European Commission appointed GHK-COWI and iLiCONN as Service Providers. GHK-COWI’s priorities are to increase the coordination capacity of the network and to produce the Synthesis Reports, whilst iLiCONN is responsible for developing an online Information Exchange System and a Website.

<sup>4</sup> Denmark is not formally required to designate an EMN NCP but participates in the EMN as observer.

<sup>5</sup> For more information on the EMN NCP AT visit [www.emn.at](http://www.emn.at) and for more information on the IOM Vienna visit [www.iomvienna.at](http://www.iomvienna.at).

<sup>6</sup> For more information on the EMN visit <http://emn.sarenet.es/html/index.html> (consulted on 4 June 2010).

## TABLE OF CONTENTS

EMN INFORMATION	3
EXECUTIVE SUMMARY	5
1. INTRODUCTION: PURPOSE AND METHODOLOGY	6
1.1 Purpose	6
1.2 Methodology	6
1.3 Definitions	7
2. POLICY AND LEGAL FRAMEWORK FOR THE GRANTING OF VISA IN AUSTRIA	8
2.1 National policy and legislative framework	8
2.1.1 Policy framework	8
2.1.2 Legislative framework	9
2.2 Agreements with third countries	10
2.2.1 Visa facilitation agreements and other bilateral/multilateral agreements	10
2.3 Recent changes to visa policy and legislation within context of a common EU dimension	11
2.3.1 Implementation of the Visa Code and the VIS	11
2.3.2 Influence of EU Directives on different forms of legal migration	11
2.4 Recent changes to visa policy and legislation relating to national visas	12
3. PRACTICAL IMPLEMENTATION AND ORGANISATION	13
3.1 General procedure followed in the stages of the visa procedure	13
3.1.1 Application stage	13
3.1.2 Examination stage	14
3.1.3 Entry, Stay and Exit	14
3.2 Links between visa policy and legal migration: applicability of different scenarios for the visa procedure	15
3.3 Visa procedures for the purpose of preventing irregular migration	16
3.3.1 Prevention of irregular migration during visa issuing and monitoring process	16
3.3.2 Prevention of irregular migration through other measures during visa issuing	17
4. CO-OPERATION WITH THIRD COUNTRIES: INDIA & NIGERIA	18
4.1 INDIA	18
4.2 NIGERIA	19
5. EFFECTS OF EU POLICY AND LEGISLATION	20
6. DATA AND EMPIRICAL EVIDENCE ON VISAS ISSUED BY AND IMMIGRATION TO AUSTRIA	21
7. CONCLUSIONS	22
ANNEX 1	23
ANNEX 2	25

## EXECUTIVE SUMMARY

The key objective of the study is to analyse the effects of visa policy on the management of migration, both in terms of facilitating legal migration and of preventing irregular migration in Austria. As visa policy is mainly an EU competence, the focus of the study lies on national visa policies.

In the Austrian context the importance of the national visa policy has decreased since the entry into force of the Schengen Treaty in 1997. Since the foundation of the common EU visa policy Austria strove towards harmonisation of the national visa legislation with the EU *aquis*. National visas are mainly issued for course purposes, for studies or to third country nationals who have been granted a residence permit to travel to Austria and 'collect' the permit. In certain cases it is granted to carry out dependent or independent gainful employment or in order to seek a job.

An underlying principle of the Austrian migration regime is the strict differentiation between short term stays of up to six months for which a visa is necessary and long term stays of over six months which are only possible if the third country national has obtained a residence permit, usually in the country of origin. As the validity of the visa is strictly limited to a maximum of six months and as there are few possibilities to apply for a residence permit within Austria, the role of the national visa for the immigration policy remains rather limited.

Various measures applied in the visa application procedure aim at the prevention of irregular migration (to prevent document fraud or overstaying etc.). However, as irregular migration has different forms visa procedures alone are not able to prevent irregular migration in every case.

The introduction of a so-called "job seeker visa" in July 2011 can be seen as the most significant legislative development in recent years in the field of visas. The job seeker visa aims to facilitate the immigration of exceptionally highly qualified third country nationals to Austria. However, due to the lack of statistics at the time of the drafting of the study at hand, its impact on immigration to Austria cannot be analysed. Nevertheless, due to the narrowly defined target group - exceptionally highly qualified third country nationals - it cannot be expected that migration flows to Austria will increase significantly due to these new regulations. Recent EU legislation in the field of visas, in particular the Visa Code or the VIS, did not lead to significant changes in the Austrian visa legislation.

Austria has not concluded any bilateral visa facilitation agreements; however as an EU Member State participating in the Schengen Agreement Austria participates in the EU Visa Facilitation Agreements. Moreover Austria has bilateral visa liberalisation agreements in particular concerning diplomatic personal and readmission agreements with several EU Member States and third countries.

The outcome of the case studies on India and Nigeria is very limited. Due to the lack of statistical data on visas by citizenship of the applicants it was not possible to analyse the effects of the different practices in the countries on the issuance or non-issuance of visas. Further research and data collection in this area would be necessary.

# 1. INTRODUCTION: PURPOSE AND METHODOLOGY

## 1.1 Purpose

The key objective of the study is to analyse the nexus between visa policy and migration management and control, including tackling irregular migration. The study serves to inform policymakers and analysts about the effects of visa policy on the management of migration, both in terms of facilitating legal migration and of preventing irregular migration. In addition, the study should generate evidence concerning the effectiveness of different strategies to use visa policy to manage migration, including co-operation with third countries, particularly concerning facilitation and bilateral/multilateral agreements and highlighting best practice, as well as helping to contextualise national policies and practices by providing an overview of policy in this area across the EU. Finally, the study will explore the effects of EU policy and legislation on national policymaking and practices.

The country report on Austria provides an overview of the policy and legal framework with regard to national visas and outlines the practical implementation of national visa policy and legislation, by looking at the three main stages of the visa procedure (application, examination, entry and stay). Particular attention is paid to links with residence permit issuance and visa procedures. Furthermore, the effects of EU policy and legislation on national policy, procedures and practices are explored and the available statistical data on the issuing of visas is presented.

## 1.2 Methodology

The study at hand is the Austrian contribution to the EMN Study “Visa Policy as Migration Channel”. This country report follows the common specifications developed by the EMN in order to enable comparison of the different policies, legislative frameworks and practices in the EU Member States. As much as possible terms and definitions given are based on the definitions provided in the EMN Glossary. (EMN 2011)

The EMN studies and reports are primarily based on secondary research: they analyse available data, literature and information. Literature and information on Austrian visa policy and practice was very scarce and it was limited mainly to the information on the public websites of the Ministries and authorities. Thus expert interviews with representatives from the Federal Ministry of the Interior and the Federal Ministry for International and European Affairs were carried out:

- Karl-August Lux, Department for Travel- and Border Traffic, Federal Ministry for European and International Affairs
- Veronika Petzak, Department for Passport and Visa Affairs, Federal Ministry of the Interior

Data collection regarding visa in Austria is fragmentary. In particular, there is a lack of data on the citizenship of the applicants. Data was only available on the number of visas issued according to visa categories and by place of issuance. Thus the findings, particularly of the case studies, are very limited.

Consistent with the remit of EMN and with previous studies, the study focuses on third-country nationals (except those who are covered by Council Directive 2004/38/EC<sup>7</sup>), since EU citizens are entitled to visa free travel within the EU and Iceland, Liechtenstein, Norway<sup>8</sup> and Switzerland, and

---

<sup>7</sup> Directive 2004/38/EC of the European Parliament and of the Council of 29 April 2004 on the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States, available at <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2004:158:0077:0123:EN:PDF> (accessed on 13 December 2011).

<sup>8</sup> Norway will also participate in this EMN study and for the purpose of these specifications is considered as equivalent to a Member State.

their family members can benefit from flexible visa, entry and residence procedures which fall outside of the scope of Article 77 and 79 Treaty on the Functioning of the European Union.

### 1.3 Definitions

The Austrian Aliens' Law does not provide a national legal definition of the term 'visa'. As the Regulation No 810/2009 of the European Parliament and of the Council of 13 July 2009 establishing a Community Code on Visas (Visa Code) is directly applicable in Austria, the legal definition provided there is fully applicable. Accordingly, a visa

*"means an authorisation issued by a Member State with a view to:*

*(a) transit through or an intended stay in the territory of the Member States of a duration of no more than three months in any six-month period from the date of first entry in the territory of the Member States; (visa C)*

*(b) transit through the international transit areas of airports of the Member States; (visa A)"*

Additionally, long-stay or nation visas (visa D) are defined by Article 18 Convention implementing the Schengen Agreement. Accordingly

*"visas for stays exceeding three months shall be national visas issued by one of the Contracting Parties [of the Schengen Agreement] in accordance with its national law. Such visas shall enable their holders to transit through the territories of the other Contracting Parties in order to reach the territory of the Contracting Party which issued the visa, unless they fail to fulfil the entry conditions referred to in Article 5(1) (a), (d) and (e) or they are on the national list of alerts of the Contracting Party through the territory of which they seek to transit."<sup>9</sup>*

---

<sup>9</sup> Convention implementing the Schengen Agreement of 14 June 1985 between the Governments of the States of the Benelux Economic Union, the Federal Republic of Germany and the French Republic on the gradual abolition of checks at their common borders, available at <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:42000A0922%2802%29:en:HTML> (accessed on 21 May 2012).



## 2. POLICY AND LEGAL FRAMEWORK FOR THE GRANTING OF VISA IN AUSTRIA

### 2.1 National policy and legislative framework

#### 2.1.1 Policy framework

The Treaty on the Functioning of the European Union provides a distinction between short stays and long stays of third country nationals. While visa policies concerning short stay visa,<sup>10</sup> also referred to as Schengen visa, are a Union competence, the development and the implementation of visa policies concerning long stay visa belongs largely to the competence of the EU Member States. Short stay refers to stays not exceeding three months per six-month period, thus stays longer than three months encompassed by visas are regulated largely by national policy and legislation. Since the entry into force of the Schengen Treaty in 1997 laying down the foundation of a common EU visa policy, Austria strove towards harmonisation of the national visa legislation with the EU aquis.<sup>11</sup> Since then, the importance of the national visa policy has decreased.

An underlying principle of the Austrian migration regime is the strict differentiation between short term stays of up to six months and long term stays of over six months. Stays of up to six months are regulated by the Aliens' Police Act and stays of more than six months by the Settlement and Residence Act. Visas are issued for short term stays of up to three and in the case of national visas up to six months.<sup>12</sup> For residence longer than six months different residence permits are envisaged depending on the purpose of the stay (studies, research, employment, family reunification, etc). If the third country national is not entitled to visa-free entry, first residence permits have to be applied for in the country of origin.<sup>13</sup> National visas are mainly issued for course purposes or studies or to third country nationals who have been granted a residence permit to travel to Austria and 'collect' the permit. In certain cases it is granted in order to seek a job. Generally, visas do not entitle the holder to employment; only in a few specifically described cases can a national visa be granted to carry out work in Austria for a short period of time. As the validity of the visa is strictly limited to a maximum of six months and as there are only very limited possibilities to apply for a residence permit within Austria, the role of the national visa for the immigration policy – although it has grown very recently – remains rather limited.

In July 2011 the possibility to apply for a residence permit in Austria after the third country national entered with a visa was opened for highly qualified third country nationals. These provisions address a narrowly defined group and target "*very highly qualified and experienced top-level personnel, such as scientists and senior top-level management*"<sup>14</sup> and aim to enhance Austria as a business location.<sup>15</sup> Highly qualified third country nationals can obtain a national visa (valid for six months) for the purpose of seeking a job in Austria. If the visa holder finds a job within this period, he/she can obtain the residence title "Red-White-Red – Card"<sup>16</sup> which entitles the holder to residence of up to one year and respective (limited) employment<sup>17</sup> and provides the opportunity to subsequently acquire a long-term residence title. The issuance of the visa does not automatically imply the granting of a residence title. The respective authorities in Austria have to check if all

<sup>10</sup> Art. 77 para 2 Treaty on the Functioning of the European Union.

<sup>11</sup> Interview with Karl-August Lux, Department for Travel- and Border Traffic, Federal Ministry for European and International Affairs and Veronika Petzak, Department for Passport and Visa Affairs, Federal Ministry of the Interior, 3 August 2011.

<sup>12</sup> Aliens' Law Amendment 2005, Government Proposal, Explanatory Notes, available at [www.parlament.gv.at/PAKT/VHG/XXII/I/I\\_00952/fnameorig\\_040777.html](http://www.parlament.gv.at/PAKT/VHG/XXII/I/I_00952/fnameorig_040777.html) (accessed on 13 February 2012).

<sup>13</sup> Art. 21 Settlement and Residence Act. Exceptions are granted for narrowly described groups of third country nationals, such as family members of EEA and Swiss nationals, children born in Austria, etc. (Art. 21 para 2 Settlement and Residence Act).

<sup>14</sup> Migration.gv.at, Frequently asked Questions, available at [www.migration.gv.at/en/service-and-links/frequently-asked-questions.html](http://www.migration.gv.at/en/service-and-links/frequently-asked-questions.html) accessed on 13 February 2012).

<sup>15</sup> Aliens' Law Amendment 2011, Government Proposal, Explanatory Notes, available at [www.parlament.gv.at/PAKT/VHG/XXIV/I/I\\_01078/fnameorig\\_206974.html](http://www.parlament.gv.at/PAKT/VHG/XXIV/I/I_01078/fnameorig_206974.html) (accessed on 13 February 2012).

<sup>16</sup> Art. 24a Aliens' Police Act.

<sup>17</sup> Art. 8 para 1 subpara 1 Settlement and Residence Act.

conditions for the residence permit are met. Moreover, if the authorities do not decide on the application during the validity period of the visa, the third country national has to leave Austria and must await proceedings abroad.<sup>18</sup>

In Austria, the Federal Ministry for European and International Affairs is in charge of the technical processing of visa via its diplomatic or consular authorities, whereas the Federal Ministry of the Interior is responsible for the policy and the implementation of the EU acquis and thus has functional supervision. The Federal Ministry of the Interior is furthermore responsible for the development of migration policies and for the implementation thereof.

### *2.1.2 Legislative framework*

The legal framework in Austria concerning visa is mainly provided by the Articles 20 et seq. of the Aliens' Police Act and the Regulation No. 810/2009 (EC) of 13 July 2009 of the European Parliament and of the Council establishing a Community Code on Visas (Visa Code). (Pfleger/Eberwein 2011:26)

In accordance with the Visa Code the visa categories A (airport transit visa)<sup>19</sup>, C (short-stay visa)<sup>20</sup> and D (residence visa or national visa) exist in Austria. National visa entitle its holder to a stay in Austria for 91 days up to six months, and to free movement in the Schengen area for three months.<sup>21</sup>

The granting or non-granting of national visas depends on the fulfilment of the criteria defined in Art. 21. Accordingly, a visa may be issued to a third country national if he/she holds a valid travel document, it appears certain that the person will depart again<sup>22</sup>, the issuance of the visa is not in conflict with the public interest (unless the interests of the third country national to obtain a visa outweigh the public interest not to issue the visa (balancing of interests)) and if no ground for refusal<sup>23</sup> exists. When balancing the interest of the applicant against the interest of the state, the following factors have to be taken into account<sup>24</sup>: the purpose and duration of the third country national's residence, the applicant's personal situation, in particular family ties, financial circumstances and, if applicable, the duration of his/her present residence in Austria as well as the public interest, in particular security police, economic matters and public health.<sup>25</sup>

Regarding the criteria of guaranteed departure the Austrian Administrative High Court found that the applicant must prove this at the application stage. The general assumption that the applicant will "overstay" the period of validity on the basis of indications of a close relationship to Austria or a loose relationship to the applicant's country of origin, is not acceptable however. Thus, if no evidence to the contrary is provided, authorities shall assume that departure is guaranteed.<sup>26</sup>

Visas can be prolonged in Austria only where it is not possible for the holder to leave Austria due to

---

<sup>18</sup> Aliens' Law Amendment 2011, Government Proposal, Explanatory Notes, available at [www.parlament.gv.at/PAKT/VHG/XXIV/I/I\\_01078/fnameorig\\_206974.html](http://www.parlament.gv.at/PAKT/VHG/XXIV/I/I_01078/fnameorig_206974.html) (accessed on 13 February 2012).

<sup>19</sup> For nationals of some countries, a visa for transit is mandatory. It has to be requested already before the journey and may never be issued at the border.

<sup>20</sup> Visa C is also known as Schengen Visa and is the standard tourist visa which entitles to residence of 90 days within 180 days in the Schengen area.

<sup>21</sup> The right to free movement is provided for three months within a six months period, whereby this can only be restricted if the holder is a national of an exempted state.

<sup>22</sup> An exception applies for the job seeker visa according to Art. 24a Aliens' Police Act.

<sup>23</sup> According to Art. 21 para 7 Aliens' Police Act, the visa has to be refused if: a residence prohibition has been imposed; if a contracting state has communicated a ground for rejection at the border; a travel document is submitted which is not recognised by all contracting states; a travel visa in connection with an already expired travel visa would enable residence exceeding three months within the six-month period following first entry; the applicant has attempted to deceive with regard to his/her true identity, his/her nationality or the authenticity of his/her documents.

<sup>24</sup> Art. 21 para 4 Aliens' Police Act.

<sup>25</sup> Aliens' Law Amendment 2005, Government Proposal, Explanatory Notes, available at [www.parlament.gv.at/PAKT/VHG/XXII/I/I\\_00952/fnameorig\\_040777.html](http://www.parlament.gv.at/PAKT/VHG/XXII/I/I_00952/fnameorig_040777.html) (accessed on 13 February 2012).

<sup>26</sup> Administrative High Court, 19 June 2008, Case Nr. 2007/21/0169.

circumstances beyond his/her control or because of humanitarian or serious personal reasons according Art. 33 of the Visa Code.<sup>27</sup> The following requirements must be met and respective documents submitted as evidence: entry requirements according to Art. 5 para 1 subpara a, c, d and e of the Schengen Borders Code;<sup>28</sup> presence of vis major, humanitarian reasons, serious personal reasons; legal entry and stay; general requirements for the issuance of visas as described above; previous residence of less than 90 days within 180 days in the Schengen Area.

A national visa can be obtained for various purposes.<sup>29</sup> Although not all purposes are regulated in detail, in practice, it is not sufficient to simply state the wish of staying longer than three months. Typically the national visa is issued in order to collect a residence title in Austria once the residence title has been issued or to follow courses not falling within the scope of residence titles e.g. study stays not exceeding six months (Schumacher/Peyrl 2007:28).<sup>30</sup> Moreover, national visas can be granted for the purpose of taking up a merely temporary independent gainful occupation, a merely temporary dependent gainful occupation, or seasonal work.<sup>31</sup> Eventually, after the expiration of national visas, a stay for a further six months can be legal if an employment permit for the respective time-period exists.<sup>32</sup> In addition to the general requirements for visa described above, the employer of a third country national has to obtain a conditional assurance (*Sicherungsbescheinigung*) which serves as a pre-employment permit, if the activity falls under the scope of the Aliens' Employment Act (e.g. in case of seasonal work).<sup>33</sup> Since July 2011, national visas can also be issued to highly skilled workers for the purpose of seeking a job (job seeker visa).<sup>34</sup> The fulfilment of the criteria for highly skilled workers is regulated by a point-system based on academic qualification, professional experience/career, language knowledge and age.<sup>35</sup> The applicant must prove his/her qualifications through the submission of respective documents.<sup>36</sup> Additionally, the general requirements as described above with the exception of guaranteed exit must be met.<sup>37</sup> If the visa is issued, the third country national has to – if she/he finds an adequate job – apply in Austria for the residence title Red-White-Red Card<sup>38</sup> which is then issued for a one year period and provides the opportunity to subsequently acquire a long-term residence title. However, if the authority does not decide on the application within six months, the third country national has to leave Austria and must await proceedings abroad.<sup>39</sup>

## 2.2 Agreements with third countries

### 2.2.1 Visa facilitation agreements and other bilateral/multilateral agreements

As a Member State party to the Schengen Agreement Austria participates in the EU Visa Facilitation Agreements, such as the one with the Russian Federation, Moldova or Ukraine.

---

<sup>27</sup> Federal Ministry of the Interior, *Fremdenpolizei und Grenzkontrollwesen Einreise mit Visum*, available at [www.bmi.gv.at/cms/BMI\\_Fremdenpolizei/einreise\\_visa/Visum\\_2.aspx](http://www.bmi.gv.at/cms/BMI_Fremdenpolizei/einreise_visa/Visum_2.aspx) (accessed on 13 February 2012).

<sup>28</sup> These are: (a) a valid travel document or documents authorising to cross the border; (c) justification of the purpose and conditions of the intended stay, and sufficient means of subsistence, both for the duration of the intended stay and for the return to the country of origin or transit to a third country; (d) no alert has been issued in the SIS for the purposes of refusing entry; (e) no threat to public policy, internal security, public health or the international relations of any of the Member States, in particular where no alert has been issued in Member States' national data bases for the purposes of refusing entry on the same grounds.

<sup>29</sup> Federal Ministry of the Interior, *Fremdenpolizei und Grenzkontrollwesen Einreise mit Visum*, available at [www.bmi.gv.at/cms/BMI\\_Fremdenpolizei/einreise\\_visa/Visum\\_2.aspx](http://www.bmi.gv.at/cms/BMI_Fremdenpolizei/einreise_visa/Visum_2.aspx) (accessed on 13 February 2012).

<sup>30</sup> Art. 24 para 4 Settlement and Residence Act. Similarly a visa can be issued also in case of family procedures in the asylum procedure.

<sup>31</sup> Art. 24 para 1 Aliens' Police Act, in case that the (self-) employment is limited to three month, the applicant can obtain alternatively a visa C.

<sup>32</sup> Art. 31 para 1 subpara 6 Aliens' Police Act.

<sup>33</sup> Art. 24 para 1 Aliens' Police Act.

<sup>34</sup> Art. 24a Aliens' Police Act in connection with Art. 5 Aliens' Employment Act.

<sup>35</sup> Art. 12 Aliens' Employment Regulation, Attachment A.

<sup>36</sup> Art. 24a para 2 Aliens' Police Act.

<sup>37</sup> Art. 24 para 1 subpara 1.

<sup>38</sup> Art. 21 para 2 subpara 7 Settlement and Residence Act.

<sup>39</sup> Art. 24a Aliens' Police Act in the version of BGBl. I Nr. 38/2011, explanatory remarks.

Austria has not concluded any bilateral visa facilitation agreements. However, visa facilitation agreements are closely linked to readmission agreements. They aim at the facilitation of the readmission of persons residing without authorisation in Austria to their own country. Specifically, these contain agreements on procedures for the assessment of citizenship and return, transfer modalities and issuance of possible travel document substitutes/laissez passer.

Austria has concluded bilateral readmission agreements with the following third countries: Bosnia and Herzegovina (entry into force, 1 September 2007), Kosovo (entry into force, 1 March 2011), Croatia (entry into force, 1 November 1998), FYROM (entry into force, 1 February 2007), Montenegro (entry into force, 29 April 2004), Serbia (entry into force, 29 April 2004), Tunisia (entry into force, 1 August 1965), Switzerland (entry into force, 1 January 2001), as well as Liechtenstein (entry into force, 1 January 2001) as members of the EEA. The following readmission agreements with EU member states are in place: Belgium (entry into force, 1 April 1965), Bulgaria (entry into force, 30 November 1998), Germany (entry into force, 15 January 1998), Estonia (entry into force, 1 September 2001), France (entry into force, 1 November 2007), Italy (entry into force, 1 April 1998), Latvia (entry into force, 1 September 2000), Lithuania (entry into force, 1 September 2000), Luxembourg (entry into force, 1 April 1965), the Netherlands (entry into force, 1 April 1965), Poland (entry into force, 30 May 2005), Rumania (entry into force, 6 February 2002), Slovakia (entry into force, 1 October 2002), Slovenia (entry into force, 1 September 1993), Czech Republic (entry into force, 9 October 2005) and Hungary (entry into force, 20 April 1995).<sup>40</sup>

Austria has concluded implementing protocols to the EU's readmission agreements with the following third countries: Albania (entry into force 6 March 2008), Russian Federation (entry into force, 3 June 2011), Serbia (entry into force, 4 April 2011), Moldova (entry into force, 6 November 2010) and FYROM (entry into force, 18 July 2011) Montenegro (entry into force 22 September 2010).

## **2.3 Recent changes to visa policy and legislation within context of a common EU dimension**

### *2.3.1 Implementation of the Visa Code and the VIS*

The Visa Code is directly applicable in Austria since 5 April 2010 and it did not require legislative amendments as such.

Amongst others, the Visa Code newly defined the legal framework for representation agreements and forms of co-operation (e.g. co-location, common application centres, recourse to honorary consuls and co-operation with external service providers). Respective agreements concerning joint consular services were made with Switzerland, Lithuania, Latvia, Malta, Estonia, Belgium, Slovakia and Hungary. Other forms of agreements concerning joint consular services were concluded with Slovenia.

The VIS is operational since 11 October 2011. In conjunction with the implementation of the VIS at representation authorities, border control at external borders at international airports was further developed: e-pass-readers and a user interface with wider possibilities of tracing and information query were introduced.

### *2.3.2 Influence of EU Directives on different forms of legal migration*

The Directives 2009/50/EC, 2005/71/EC and 2004/114/EC set up harmonised conditions of admission for students, researchers and highly skilled third country nationals under their scope and committed the Member States to granting them "every facility for obtaining the requisite visa"<sup>41</sup>.

<sup>40</sup> Presiding Officer of Austrian Parliament, *Parlamentarische Anfragebeantwortung*, BMI-LR2220/0126-II/3/2011, 4 April 2011.

<sup>41</sup> See, for example, Article 7 para 1 of Directive 2009/50/EC

The implementation of these directives did not require adjustments to the Austrian visa policy. In terms of admission of third country nationals - with the exception of researchers, who can apply in Austria - residence titles have to be applied for in the country of origin; the application is then forwarded to the settlement and residence authorities in Austria. Once there is a positive decision on the residence permit the third country national has to obtain a national visa to travel to Austria to pick up the residence permit. (Schumacher/Peyrl 2007:62). As most of the exclusion criteria for a visa are already checked during the residence and settlement procedures it is no longer possible to refuse a visa application due to a lack of health insurance, means of subsistence or because the person could constitute a financial burden for the Austrian authorities or for irregular employment.<sup>42</sup> The costs have to be borne by the applicant; the visa is valid for four months.

## 2.4 Recent changes to visa policy and legislation relating to national visas

The latest amendment to the aliens' law also affected the national visa legislation. Since July 2011, Austria's visa legislation provides the opportunity for highly skilled third country nationals to obtain a national visa (valid for six months) for the purpose of seeking a job in Austria. Holders of such visas can consequently – if they find a job – obtain the residence title “Red-White-Red – Card”<sup>43</sup> which entitles the holder to limited residence and corresponding (limited) employment.<sup>44</sup> The application has to be filed in Austria. After one year, holders of the residence title “Red-White-Red – Card” can obtain a “Red-White-Red – Card plus”<sup>45</sup> which further entitles the holder to unlimited employed and self-employed work<sup>46</sup>. After five years, these highly skilled third country nationals can obtain a permanent residence title.<sup>47</sup> These changes to Austrian migration legislation were made to foster legal immigration regulated by personal and job market criteria, allowing for permanent immigration and to enhance Austria as a business location.<sup>48</sup>

Further adaptations were made for national visas. Before 2009, seasonal work was only permitted to holders of a “hybrid” visa (national long-stay visa valid concurrently as a short-stay visa, D+C). In practice, however, this regulation had proven inadequate, as it only allowed residence in other Schengen States for of the first three months. Especially after Hungary's and Slovenia's entry to the Schengen Area, major problems concerning the return of seasonal workers occurred: After expiration of the “C-part” of their visas (max. 90 days after the begin of validity of the visa), these seasonal workers were not entitled to stay in countries outside of Austria and thus had no right to transit other Schengen States to reach their countries of origin. In view of this difficult situation, Austria's visa legislation/policy changed with the effect that from 2009, seasonal workers were issued standard national visas. Additionally, a short-stay visa could be issued if necessary for transit. These amendments to Austria's visa system anticipated developments on the EU-level, as with the entry into force of the EU's Visa Code this type of visa was abolished.<sup>49</sup> Moreover, since 5 April 2010 a long-stay visa enables the holder to travel to other Member States during their stay or to transit through the territories of other Member States, thus the issuance of an additional short-stay visa is no longer necessary.<sup>50</sup>

---

<sup>42</sup> Art. 24 para 3 Aliens' Police Act.

<sup>43</sup> Art. 24a Aliens' Police Act.

<sup>44</sup> Art. 8 para 1 subpara 1 Settlement and Residence Act.

<sup>45</sup> Art. 41a para 1 Settlement and Residence Act.

<sup>46</sup> Art. 8 para 1 subpara 2 Settlement and Residence Act.

<sup>47</sup> Art. 45 para 1 Settlement and Residence Act.

<sup>48</sup> Federal Ministry of Labour, Social Affairs and Consumer Protection, *Kriteriengeleitete Zuwanderung*, p. 1, available at [www.bmask.gv.at/cms/site/attachments/5/0/4/CH0020/CMS1306164706818/2011-07-22\\_de\\_info\\_rwr-karte.pdf](http://www.bmask.gv.at/cms/site/attachments/5/0/4/CH0020/CMS1306164706818/2011-07-22_de_info_rwr-karte.pdf) (accessed on 14 February 2012).

<sup>49</sup> Aliens' Law Amendment 2009 (BGBl. I Nr. 29/2009), Government Proposal, Explanatory Notes, available at [www.parlament.gv.at/PAKT/VHG/XXIV/I/I\\_00088/fnameorig\\_150562.html](http://www.parlament.gv.at/PAKT/VHG/XXIV/I/I_00088/fnameorig_150562.html) (accessed on 13 February 2012).

<sup>50</sup> Regulation (EU) No 265/2010 of the European Parliament and of the Council of 25 March 2010 amending the Convention Implementing the Schengen Agreement and Regulation (EC) No 562/2006 as regards movement of persons with a long-stay visa, available at <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2010:085:0001:01:EN:HTML> (accessed on 13 February 2012).

### 3. PRACTICAL IMPLEMENTATION AND ORGANISATION

#### 3.1 General procedure followed in the stages of the visa procedure

The visa procedure comprises the filing and examining of visa applications as well as communicating the outcome of the procedure to the applicant. Entry exit and control lie within the responsibility of the Aliens' Police and are not part of the visa procedure.

Austrian legislation does not describe the visa procedure in detail. According to the permanent ruling of the Austrian Administrative High Court however the "principles of an orderly constitutional procedure in administration as stipulated in the General Administrative Act" apply also in procedures at the Austria's diplomatic missions.<sup>51</sup> These principles were defined in detail by the Aliens' Law 1992 and comprise the duty of the applicant to collaborate, the duty of the authority to provide legal instruction, free assessment of evidence, the party's right to be heard, the possibility to correct vice errors, the written form of the decisions, the duty to give reasons, the drawing up and delivery of decisions, the devolution of the decision making to the Federal Minister of the Interior as well as the traceability of facts in the files.

##### 3.1.1 Application stage

In Austria, the Federal Ministry for European and International Affairs is in charge of the technical processing and issuance of visa via its diplomatic or consular authorities. Thus the diplomatic and consular authorities are the leading authorities concerning the application procedure.

For visas in general, the principle of "application prior to entry" applies.<sup>52</sup> Nationals from countries with visa requirements have to apply for a visa at the Austrian diplomatic or consular authority in their respective country of origin. If there is none, the applicant is required either to apply in a neighbouring country where there is an Austrian diplomatic or consular authority or at an authority entitled by Austria to represent Austria in visa affairs. An exception applies for national visas, which always have to be applied for and issued by an Austrian authority directly.

Additionally, some Austrian diplomatic and consular authorities involve external service providers, i.e. call centres or visa facility services in order to be more service oriented towards the applicants. Visa facility services accept applications, send them to the diplomatic or consular authority, receive and hand over the visa or inform the applicant about the negative decision. They function as physical replacement for personal appointments with the embassy or consulate, but they may not counsel applicants.

The issuance of visas at a border inspection post is only possible in exceptional cases and in accordance with the entry requirements of Art. 5 para 1 subpara a, c, d and e of the Schengen Borders Code, if the applicant can prove that it was impossible for him/her to apply for a visa before departure and that his/her return journey is guaranteed.<sup>53</sup> In such cases a visa C can be issued for a onetime entry and a period of validity of maximum 15 days. In specific cases, proof of humanitarian reasons or reasons of national interest or international duties has to be brought forward by the applicant.

The applicant has to hand in the following documents when applying for a visa<sup>54</sup>: completed application form; passport photo; travel document which is valid in Austria and exceeds the validity

<sup>51</sup> See for example Administrative High Court, 5 October 1988, Case Nr. 88/01/0140.

<sup>52</sup> See also Administrative High Court, 29 November 2006, Case Nr. 2006/18/0341.

<sup>53</sup> Federal Ministry of the Interior, *Fremdenpolizei und Grenzkontrollwesen Einreise mit Visum*, available at [www.bmi.gv.at/cms/BMI\\_Fremdenpolizei/einreise\\_visa/Visum\\_2.aspx](http://www.bmi.gv.at/cms/BMI_Fremdenpolizei/einreise_visa/Visum_2.aspx) (accessed on 13 February 2012).

<sup>54</sup> Federal Ministry for European and International Affairs, *Visainformation*, available at [www.bmeia.gv.at/aussenministerium/buergerservice/pass-und-visum/visainformation-englisch.html](http://www.bmeia.gv.at/aussenministerium/buergerservice/pass-und-visum/visainformation-englisch.html) (accessed on 14

of the visa by three months; proof of sufficient means of subsistence for the period of residence or a declaration of commitment;<sup>55</sup> findings of a medical specialist or an affirmation from a hospital; medical and accident insurance covering all risks; other required proof (hotel reservation, invitation letter, voucher, return air ticket, proof of current employment etc); proof of secure return trip; non-existence of other reasons for denial.

During the visa procedure, the burden of proof lies with the applicant; which means the applicant has to present his/her request plausibly.

### 3.1.2 Examination stage

The examination and verification of visa is incumbent on the diplomatic and consular authorities. If necessary, they are assisted by document advisors, specifically trained law enforcement officers of the Federal Ministry of the Interior. Additionally, the Labour Market Service in Austria carries out the examinations for applications for job seeker visas.<sup>56</sup> It checks whether the applicant meets the criteria set for highly-skilled workers to obtain a Red-White-Red - Card (see under 2.3.).<sup>57</sup>

Various methods are applied to verify documents and statements of the application; *inter alia* interviews with the applicant or consultation of third parties are carried out.<sup>58</sup>

Furthermore, Austrian authorities operate the Schengen-wide system "VISION" (Visa Inquiry Open Border Network), which is a fully automatic inquiry method to check visa applications..<sup>59</sup>

If the visa application is rejected, the applicant is informed by letter including the final decision and the decisive legislation where he/she requested a written counterpart of the decision.<sup>60</sup> Decisions can also be issued orally.<sup>61</sup>

### 3.1.3 Entry, Stay and Exit

*Extension of the visa:* As described under 2.1 there are only limited possibilities to extend a visa in Austria. For the extension, *inter alia*, the following documents need to be submitted: application form, valid travel document whose validity exceeds that of the visa by at least three months and which should have at least two blank pages and have been issued within the preceding ten years, passport photo, travel insurance covering all risks, proof of sufficient financial means to cover living expenses for the period of intended stay and return to home country; for medical treatment in Austria: if neither a declaration of commitment nor health and accident insurance exist, a verification / confirmation of the recovery of costs of treatment is required, medical findings or hospital receipts, as well as written confirmation from the airline or the airport.<sup>62</sup>

*Withdrawal:* A visa has to be declared invalid, if facts become known or subsequent events occur

---

February 2012).

<sup>55</sup> In case the applicant does not have sufficient means of subsistence, a person, company or association can issue an "Electronic letter of guarantee" (EVE, Elektronische Verpflichtungserklärung) to ensure that the stay is financially secured.

<sup>56</sup> Interview with Karl-August Lux, Department for Travel- and Border Traffic, Federal Ministry for European and International Affairs and Veronika Petzak, Department for Passport and Visa Affairs, Federal Ministry of the Interior, 3 August 2011.

<sup>57</sup> Art. 12 Aliens' Employment Act.

<sup>58</sup> Interview with Karl-August Lux, Department for Travel- and Border Traffic, Federal Ministry for European and International Affairs and Veronika Petzak, Department for Passport and Visa Affairs, Federal Ministry of the Interior, 3 August 2011.

<sup>59</sup> Federal Ministry of the Interior, *Visa unter Kontrolle*, in: *Öffentliche Sicherheit* 11-12/10, p.28-29, available at [www.bmi.gv.at/cms/BMI\\_OeffentlicheSicherheit/2010/11\\_12/files/SCHENGEN.pdf](http://www.bmi.gv.at/cms/BMI_OeffentlicheSicherheit/2010/11_12/files/SCHENGEN.pdf) (accessed on 6 June 2011). <sup>59</sup> Once the VIS becomes operational at all Schengen visa issuing point, the "VIS Mail mechanism" will replace the VISION.

<sup>60</sup> Art. 11 para 3 Aliens' Police Act.

<sup>61</sup> See Art. 11 para 2 Aliens' Police Act and Administrative High Court, 8 September 2009, Case Nr. 2009/21/0173.

<sup>62</sup> Federal Ministry of the Interior, *Fremdenpolizei und Grenzkontrollwesen Einreise mit Visum*, available at [www.bmi.gv.at/cms/BMI\\_Fremdenpolizei/einreise\\_visa/Visum\\_2.aspx](http://www.bmi.gv.at/cms/BMI_Fremdenpolizei/einreise_visa/Visum_2.aspx) (accessed on 13 February 2012).

which would justify a non-issuance.<sup>63</sup> Where a visa is to be declared invalid at the border crossing-point, the aliens' police authority, after establishing the relevant facts of the case, has to give the person concerned an opportunity for comment. If the visa is declared invalid, such invalidity has to be entered in the travel document and the relevant facts of the case have to be recorded in a reproducible manner.<sup>64</sup> Moreover, visas become invalid if an exclusion order or an expulsion order becomes enforceable against the third country national. Visas become non-relevant if an additional visa or a residence permit with overlapping validity is issued or the person acquires Austrian, EEA or Swiss citizenship.<sup>65</sup> Generally, the declaration of invalidity of visas is the competence of the Aliens' Police.<sup>66</sup>

Appeals against declarations of invalidity of visas can be filed with the Independent Administrative Senates.

*Appeal:* Generally, the applicant does not have a right to appeal against a negative decision. An exemption applies for third country nationals who are spouses, registered partners or dependent relatives (also of the spouse and registered partner) in direct ascending and descending (third country nationals must be under the age of 21) line of a mobile EEA-citizen.<sup>67</sup> However, after issuance of a written decision, an extraordinary appeal to the Constitutional Court or the Administrative High Court is possible within six weeks after issuance of the decision. Such an appeal has to be signed by a lawyer.<sup>68</sup>

*Devolution:* If the diplomatic authorities do not decide within six months after application or two months after requesting a written counterpart of the decision – a right which is given to the applicant – the competence of jurisdiction passes over to the Federal Minister of the Interior. A corresponding application has to be issued directly at the Federal Minister of the Interior.<sup>69</sup>

### **3.2 Links between visa policy and legal migration: applicability of different scenarios for the visa procedure**

The specifications of the study outline four different scenarios for the visa procedures. Depending on the policies and the legislation of the respective Member State, the scenario which is applicable to the Member State should be indicated. If this is not possible the alternative scenario is to be described. The aim of this differentiation is to better understand the connections between visa issuance and the possibility of legal immigration.

Scenario 1 encompasses policies where the visa is a prerequisite for obtaining a residence permit; the residence permit has to be applied for in the country of origin. The following key assumptions indicate the existence of this scenario: visa conditions are checked in country of origin; visa is a condition for admission to the Member State; admission/residence conditions are checked in the country of origin (part of the visa issuing process) and possibly further upon arrival (part of the immigration process).

Scenario 2 refers to policies which stipulate that a visa is a prerequisite for obtaining a residence permit and the residence permit application has to be applied for upon arrival in the respective Member State. The following key assumptions have been identified to establish the existence of this scenario: visa conditions are checked in country of origin; visa is a condition for admission to

---

<sup>63</sup> Art. 26 para 1 Aliens' Police Act.

<sup>64</sup> Art. 26 para 2 Aliens' Police Act.

<sup>65</sup> Art. 27 para 2 Aliens' Police Act.

<sup>66</sup> Art. 6 para 4 Aliens' Police Act.

<sup>67</sup> According to Art. 9 para 4 Aliens' Police Act, these 'privileged third country nationals' can file appeals to the Independent Administrative Senates.

<sup>68</sup> Art. 24 para 2 Administrative High Court Act and Art. 17 para 2 Constitutional Court Act.

<sup>69</sup> Federal Ministry of the Interior, *Fremdenpolizei und Grenzkontrollwesen Einreise mit Visum*, available at [www.bmi.gv.at/cms/BMI\\_Fremdenpolizei/einreise visa/Visum\\_2.aspx](http://www.bmi.gv.at/cms/BMI_Fremdenpolizei/einreise visa/Visum_2.aspx) (accessed on 13 February 2012).



the Member State; admission/residence conditions are checked upon arrival (part of the immigration process).

Scenario 3 applies if a residence permit can be obtained directly in the country of origin. The following indicators have been defined for this scenario: no visa requirements exist; admission/residence conditions are checked in country of origin (part of the immigration process);

In the case of scenario 4 the visa is a residence title in itself; no residence permit is required. A number of key assumptions have been identified to establish the existence of this scenario, such as: visa conditions are checked; admission/residence conditions are checked in country of origin (part of the visa issuing process); no (further) residence permit required.

In all four scenarios - including scenario 3 - the visa issued is medium to long term (> 3 months).

None of the scenarios is fully applicable in the Austrian context. In general, the Austrian national visa and immigration law requires that the third country national first applies for a residence permit in the country of origin and a visa is only granted after he/she receives a notification from the competent residence and settlement authorities that the residence permit is issued. The visa is not a prerequisite for the residence permit, but the applicant has to hold a visa in order to collect his/her residence permit in Austria.

To some extent it could be argued that the job seeker visa for highly qualified third country nationals falls under scenario 2 as the third country national applies first for a visa and the residence permit can be obtained – after an additional application – in Austria. However, there is no automatic link between the granting of a visa, the arrival in Austria and the application for a residence permit which is implied by the term “upon” in the description of the scenario. On the contrary, the admission conditions are not checked “upon” arrival but when the applicant has found a suitable job. Moreover, if the authority does not decide on the application during the validity period of the visa, the third country national has to leave Austria and must await proceedings abroad.<sup>70</sup>

### **3.3 Visa procedures for the purpose of preventing irregular migration<sup>71</sup>**

#### **3.3.1 Prevention of irregular migration during visa issuing and monitoring process**

Irregular migration has different forms; visa procedures alone are not able to prevent irregular migration in every case (e.g. if a person crosses the border without any visa or travel document). Nevertheless various measures are applied to make sure that the applicants meet all the required entry conditions, particularly that the documentation provided by the applicant is correct and that the applicant does not overstay the period set out in the visa. The measures during the application and examination phase are of particular importance; some of these measures are described here:

In the application stage key consideration is given to evaluate the applicant's intention to leave the Schengen Area when the visa expires: the requirement to prove that the return to the country of origin is secured (e.g. through a return ticket), ties (family relations, employment) in the country of origin etc., are seen as important factors in this regard.<sup>72</sup>

---

<sup>70</sup> Aliens' Law Amendment 2011, Government Proposal, Explanatory Notes, available at [www.parlament.gv.at/PAKT/VHG/XXIV/II/01078/fnameorig\\_206974.html](http://www.parlament.gv.at/PAKT/VHG/XXIV/II/01078/fnameorig_206974.html) (accessed on 13 February 2012).

<sup>71</sup> This specifically addresses irregular migration in the context of visas (e.g. visa abuse) and complements the EMN Study on Irregular Migration which addresses other issues.

<sup>72</sup> Interview with Karl-August Lux, Department for Travel- and Border Traffic, Federal Ministry for European and International Affairs and Veronika Petzak, Department for Passport and Visa Affairs, Federal Ministry of the Interior, 3 August 2011.

At examination stage the involvement of document advisors and the employment of the Schengen-wide network VISION (Visa Inquiry Open Border Network) contribute to the prevention of irregular migration. Document advisors are law enforcement officers of the Federal Ministry of the Interior.<sup>73</sup> They train officers of Austrian consulates and staff of airline companies on how to check the validity of documents and in the profiling and identification of applicants. Moreover, document advisors support the consulates with the verification of documents and also the staff of airline companies with the check in of passengers in the countries of origin. Cooperating with consulates of other EU Member States and supporting the police and immigration authorities in the countries of origin are further tasks of document advisors.

The VISION network allows for consultation with various national authorities and other EU Member States before the issuance of a visa and provides information on the applicant available from various authorities in other Member States that might be relevant to evaluate whether the person fulfills the entry conditions to Austria.<sup>74</sup> In course of the implementation of VISION, Austria has introduced electronic invitation letters/ declarations of commitment that are entered in the database. The invitation letter/ declaration of commitment has to be filled in and filed personally by the sponsor at an Aliens' Police authority in Austria. Subsequently the sponsor communicates the code of the invitation letter to the applicant. The applicant in turn has to refer to the code when he/she files his/her application. The advantage of this system is that the Aliens' Police in Austria can check that the sponsor exists and that his/her documents are correct as well as that the sponsor and the applicant know each other.<sup>75</sup> Since the introduction of the electronic invitation/ declaration of commitment, it is no longer necessary to notarise or legalise the invitation.

In terms of prevention of over-staying, the entry and exit of third country nationals are monitored via stamping the travel document. Where the entry was not registered officially, other documentation is used such as hotel bills, train tickets etc.<sup>76</sup> In future, it is expected that the EU-wide entry-exit system will improve the recording of entry and exit data and enable the monitoring of overstayers.<sup>77</sup>

### 3.3.2 Prevention of irregular migration through other measures during visa issuing

*Training:* the Federal Ministry of the Interior and the Federal Ministry for European and International Affairs carries out regular trainings for staff working in the area of visa. These trainings consist of theoretic and practical modules. Multipliers offer trainings to staff located in the field.<sup>78</sup>

---

<sup>73</sup> Federal Ministry of the Interior, *Einsatz in Kairo*, in: *Öffentlich Sicherheit*, 09-10/05, p.94-95, available at [www.bmi.gv.at/cms/BMI\\_OeffentlicheSicherheit/2005/09\\_10/files/DOKUMENTENBERATER.pdf](http://www.bmi.gv.at/cms/BMI_OeffentlicheSicherheit/2005/09_10/files/DOKUMENTENBERATER.pdf) (accessed on 6 June 2011).

<sup>74</sup> Once the VIS becomes operational at all Schengen visa issuing point, the "VIS Mail mechanism" will replace the VISION. See Europa – A Summary of EU Legislation, VIS Regulation, available at [http://europa.eu/legislation\\_summaries/justice\\_freedom\\_security/free\\_movement\\_of\\_persons\\_asylum\\_immigration/114517\\_en.htm](http://europa.eu/legislation_summaries/justice_freedom_security/free_movement_of_persons_asylum_immigration/114517_en.htm) (accessed on 6 June 2011).

<sup>75</sup> Federal Ministry of the Interior, *Visa unter Kontrolle*, in: *Öffentliche Sicherheit* 11-12/10, p.28-29, available at [www.bmi.gv.at/cms/BMI\\_OeffentlicheSicherheit/2010/11\\_12/files/SCHENGEN.pdf](http://www.bmi.gv.at/cms/BMI_OeffentlicheSicherheit/2010/11_12/files/SCHENGEN.pdf) (accessed on 6 June 2011).

<sup>76</sup> Interview with Karl-August Lux, Department for Travel- and Border Traffic, Federal Ministry for European and International Affairs and Veronika Petzak, Department for Passport and Visa Affairs, Federal Ministry of the Interior, 3 August 2011.

<sup>77</sup> Federal Ministry of the Interior, *Bericht der Bundesministerin für Inneres an das österreichische Parlament. Legislativ- und Arbeitsprogramm der Europäischen Kommission für 2011*, p. 2, available at [http://www.parlament.gv.at/PAKT/VHG/XXIV/III/III\\_00210/imfname\\_206270.pdf](http://www.parlament.gv.at/PAKT/VHG/XXIV/III/III_00210/imfname_206270.pdf) (accessed on 27 September 2011).

<sup>78</sup> Interview with Karl-August Lux, Department for Travel- and Border Traffic, Federal Ministry for European and International Affairs and Veronika Petzak, Department for Passport and Visa Affairs, Federal Ministry of the Interior, 3 August 2011.

## 4. CO-OPERATION WITH THIRD COUNTRIES: INDIA & NIGERIA

India and Nigeria are the countries best suited for case studies for Austria in the context of visa procedures. The interest in India lies in the system of external service providers for visa applications, while Nigeria is interesting in the context of document fraud perceived by Austrian representations in that country. Common to both countries is that their nationals represent a relatively small group of third country nationals in Austria.<sup>79</sup> At the same time looking at asylum applications, Nigeria and India were among the top five of the main countries of citizenship of asylum applicants in 2010. For both groups the recognition rate was very low.<sup>80</sup>

However, due to the lack of statistical data on visas by citizenship of the applicants it was not possible to analyse the effects of the different practices in the countries on the issuance or non-issuance of visas. Further research and data collection in this area would be necessary.

### 4.1 INDIA

Austria and India have had close and amicable relationship for a long time. There are numerous agreements between the two countries particularly in the field of economic co-operation and finance.<sup>81</sup> Recently, in February 2011 the President of the Austrian Parliament visited India in order to further strengthen the bilateral relationship in this field.<sup>82</sup> There are no visa facilitation or liberalisation agreements in force with India. In terms of migration the Agreement on Scientific and Technological Co-Operation from 2008<sup>83</sup> could be considered relevant. The aim of the agreement is to foster the exchange between universities and higher education institutions, academies of sciences, research centres for science and technology and other institutions, including the exchange of scientists, researchers and experts within bilateral projects or consultations, symposia and special studies.

Austria is represented in India via the Austrian Embassy in New Delhi, covering also Bangladesh, Bhutan, India, Maldives, Nepal and Sri Lanka,<sup>84</sup> the General Honorary Consulate in Mumbai as well as the Honorary Consulates in Kolkata, Chennai and Goa.<sup>85</sup> Additionally, there are five external service providers located in Chennai, Goa, Calcutta, Mumbai and New Delhi.<sup>86</sup> Visa facility services and call centres were established in order to be more service oriented towards the applicants and to facilitate the application procedure.

---

<sup>79</sup> According to the national population register, on 1 January 2011, a number of 6,446 Indian nationals were resident in Austria. The number of persons born in India amounted to 11,764 persons. On 1 January 2011, the number of resident Nigerian nationals in Austria was 5,662; a number of 6,947 persons were born in Nigeria. (Statistik Austria, Bevölkerungsstand 1 January 2011).

<sup>80</sup> Asylum applications, 2010: Nigeria 571 (top 4), India 432 (top 5); In 2010 rejections: on first and second instance 97% of the asylum application of Nigerian nationals were rejected, while 99% of asylum applications of Indian nationals were decided negatively on first instance and all applications were rejected on second instance. (Source: Eurostat Database, as of 23 February 2012).

<sup>81</sup> For further information see Federal Ministry for European and International Affairs, *Bilaterale Staatsverträge. Österreich – Indien*, available at [http://staatsvertraege.html?LNG=de&submit=1&mode=country&vb\\_vp\\_id=62&dv\\_staat=61&dv\\_name=Indien&cHash=79f6b4c76fb247d6e527d132e1705a28](http://staatsvertraege.html?LNG=de&submit=1&mode=country&vb_vp_id=62&dv_staat=61&dv_name=Indien&cHash=79f6b4c76fb247d6e527d132e1705a28) (accessed on 28 September 2011).

<sup>82</sup> Austrian Parliament, *Bilanz über Indien Reise fällt positiv aus*, available at [www.parlinkom.gv.at/PAKT/PR/JAHR\\_2011/PK0143/index.shtml](http://www.parlinkom.gv.at/PAKT/PR/JAHR_2011/PK0143/index.shtml) (accessed on 28 September 2011).

<sup>83</sup> Agreement between the Government of the Republic of Austria and the Government of the Republic of India on Scientific and Technological Co-Operation, BGBl. III – in the version of 21 August 2008, N 106.

<sup>84</sup> For further information see Federal Ministry for European and International Affairs, *Österreichische Vertretungsbehörden. Indien*, available at [www.bmeia.gv.at/aussenministerium/buergerservice/oesterreichische-vertretungen.html?dv\\_staat=61&cHash=5a9d742998710904e6444c42be6e263f#New%20Delhi](http://www.bmeia.gv.at/aussenministerium/buergerservice/oesterreichische-vertretungen.html?dv_staat=61&cHash=5a9d742998710904e6444c42be6e263f#New%20Delhi) (accessed on 28 September 2011).

<sup>85</sup> For further information see Federal Ministry for European and International Affairs, *Bilaterale, Staatsverträge, Indien*, available at [www.bmeia.gv.at/aussenministerium/aussenpolitik/voelkerrecht/staatsvertraege/bilaterale-staatsvertraege.html?dv\\_staat=61&mode=country&submit=1&vb\\_vp\\_id=62&cHash=a3fac838f7dfe8392ce0716e378f181d](http://www.bmeia.gv.at/aussenministerium/aussenpolitik/voelkerrecht/staatsvertraege/bilaterale-staatsvertraege.html?dv_staat=61&mode=country&submit=1&vb_vp_id=62&cHash=a3fac838f7dfe8392ce0716e378f181d) (accessed on 28 September 2011).

<sup>86</sup> Interview with Karl-August Lux, Department for Travel- and Border Traffic, Federal Ministry for European and International Affairs and Veronika Petzak, Department for Passport and Visa Affairs, Federal Ministry of the Interior, 3 August 2011.

Visa facility services accept applications, send them to the diplomatic or consular authority, receive and hand over the visa or inform the applicant about a negative decision. They function as physical replacement for personal appointments with the embassy or consulate, but they may not counsel applicants. The external service providers are well received, only approximately 20% of all applicants go directly to the Austrian Embassy, the rest process the application via the external service providers.<sup>87</sup> Therefore it is planned to open new ones.<sup>88</sup>

According to the national population register, on 1 January 2011, 6,446 Indian nationals were resident in Austria. The number of persons born in India amounted to 11,764 persons. There is no data available on the number of visas issued to Indian nationals. Since the Austrian embassy in New Delhi covers not only India but also Bangladesh, Bhutan, the Maldives, Nepal and Sri Lanka, statistics refer to these groups of citizens. In 2010 80,798 visas were issued to this group in total.

## 4.2 NIGERIA

The Austrian embassy is located in Abuja and covers the countries Nigeria, Equatorial Guinea, Cameroun, Gabon, Chad, Central African Republic, São Tomé and Príncipe, Benin, Togo and Ghana. Furthermore, the honorary consulate is located in Kaduna.<sup>89</sup> Austria does not operate external service providers in Nigeria. Document fraud and false declarations concerning family relations is perceived as the main challenge for the diplomatic and consular authorities in Nigeria. Thus, since 2004 document advisors are supporting the diplomatic and consular authorities.<sup>90</sup>

There is no data available on the number of visas issued to Nigerian nationals, only on the number of visas issued at diplomatic or consular authority. In 2010 in total 8,685 visas were issued. Since the diplomatic and consular authorities are not only responsible for visa issuance to Nigerian citizens, but also to citizens of Equatorial Guinea, Cameroun, Gabon, Chad, Central African Republic, São Tomé and Príncipe, Benin, Togo and Ghana, figures of visa issuance to Nigerian citizens alone are not available.

---

<sup>87</sup> Interview with Karl-August Lux, Department for Travel- and Border Traffic, Federal Ministry for European and International Affairs and Veronika Petzak, Department for Passport and Visa Affairs, Federal Ministry of the Interior, 3 August 2011.

<sup>88</sup> Idem.

<sup>89</sup> For further information see Federal Ministry for European and International Affairs, *Österreichische Vertretungsbehörden. Nigeria*, available at [www.bmeia.gv.at/aussenministerium/buergerservice/oesterreichische-vertretungen.html?dv\\_staat=125&cHash=35f940f702db663021dd9ca4d2dcabfb](http://www.bmeia.gv.at/aussenministerium/buergerservice/oesterreichische-vertretungen.html?dv_staat=125&cHash=35f940f702db663021dd9ca4d2dcabfb) (accessed on 3 October 2011).

<sup>90</sup> Interview with Karl-August Lux, Department for Travel- and Border Traffic, Federal Ministry for European and International Affairs and Veronika Petzak, Department for Passport and Visa Affairs, Federal Ministry of the Interior, 3 August 2011.

## 5. EFFECTS OF EU POLICY AND LEGISLATION

As Austria regards visa policy as part of the responsibility of the Union, the respective EU regulations are directly applicable in Austria. Since the entry into force of the Schengen Agreement Austria strove towards harmonisation of the national visa policy with the EU visa policy.

In particular, there was no effect of the Visa Code, which is directly applicable in Austria, on Austria's legislation and policy, besides terminological adaptations in the Aliens' Police Act and changes concerning visa fees in the Consular Fees Act.

As with other EU Member States, Austria experienced an increase of asylum applications after the introduction of the Visa Facilitation Agreement with FYROM. In August 2010, 114 applications for international protection were filed from Macedonian nationals.<sup>91</sup> In comparison, in August 2009 only 13 applications were filed.<sup>92</sup> These applications were quickly processed and the persons concerned were returned to FYROM. At the same time, the Austrian liaison officer in FYROM conducted an information campaign in cooperation with the Macedonian Ministry of the Interior to communicate via Macedonian media that applications for international protection from Macedonian nationals do not have any prospect of success in Austria.<sup>93</sup> Concerning Serbian and Montenegrin nationals, no significant increase was experienced.<sup>94</sup>

---

<sup>91</sup> Federal Ministry of the Interior, *Asylstatistik 2010*, available at [www.bmi.gv.at/cms/BMI\\_Asywesen/statistik/files/Asylstatistik\\_Jahresstatistik\\_2010.pdf](http://www.bmi.gv.at/cms/BMI_Asywesen/statistik/files/Asylstatistik_Jahresstatistik_2010.pdf) (accessed on 14 February 2012).

<sup>92</sup> Federal Ministry of the Interior, *Asylstatistik 2009*, available at [www.bmi.gv.at/cms/BMI\\_Asywesen/statistik/files/Asyl\\_Jahresstatistik\\_2009.pdf](http://www.bmi.gv.at/cms/BMI_Asywesen/statistik/files/Asyl_Jahresstatistik_2009.pdf) (accessed on 14 February 2012).

<sup>93</sup> Gerhard Reischer, Head of Department for Foreign Police and Border Control, Federal Ministry of the Interior, 3 October 2011.

<sup>94</sup> Austrian Press Agency, "*Falsche Asylwerber*" – *Serbien geht gegen Dokumentenfälscher vor*, 6 May 2011.

## 6. DATA AND EMPIRICAL EVIDENCE ON VISAS ISSUED BY AND IMMIGRATION TO AUSTRIA

Over the years, the number of visas issued for airport transit have been diminishing significantly from 1,293 in 2001 to 14 in 2010; the same tendency can be observed for transit visas which declined from 107,399 to 83 in 2010. The number of short stay visas decreased about one third from 327,324 in 2001 to 268,401. In 2010; however, the number of national visas doubled (24,111) compared to the figures from 2001 (12.168). Visas D+C were introduced in 2004 and were abolished in 2010.

Data on rejections has only limited significance: figures are available only since 2005 and only for rejections which were based on material reasons (e.g. the person constitutes a risk to national security), however negative decision for formal reasons are not recorded (for instance due to insufficient validity of the passport). In 2010 the rate of A, B and C visas not issued compared to the visas applied for amounted to 4.37%.<sup>95</sup>

**Table 1: The total number of visas issued and refused for material reasons 2001–2010**

Year/Visa	Airport transit (A)	Transit (B)	Short Stay (C)	National Visa (D)	Hybrid Visa (D+C)	Rejections (material)
2001	1,293	107,399	327,324	12,168	n.a.	n.a.
2002	898	105,079	309,984	11,131	n.a.	n.a.
2003	749	98,539	312,049	8,847	n.a.	n.a.
2004	1,025	82,471	309,284	7,193	780	n.a.
2005	1,322	81,424	339,940	4,532	3,364	18,969
2006	589	43,422	324,642	16,517	11,027	21,093
2007	484	12,296	364,700	22,680	9,645	18,540
2008	71	999	343,083	20,680	12,422	20,389
2009	54	456	286,985	27,433	2,357	20,685
2010	14	83	268,401	24,111	65	11,155
<b>Total</b>	<b>6,499</b>	<b>532,168</b>	<b>3,186,392</b>	<b>155,292</b>	<b>39,660,00</b>	<b>110,831</b>

Source: Federal Ministry for European and International Affairs

Due the lack of data on national visas differentiated by the purpose of stay and nationality of the applicant, it is not possible to analyse the links between the number of visas issued and residence permits. At the same time it has to be considered that visa policy has very limited influence on immigration of third country nationals to Austria. Looking at statistics on job seeker visas and on residence titles "Red-White-Red Card" could be interesting; however, at the time of the drafting of this study these data were yet not available. This visa category and residence permit was introduced during the drafting of this study. Further research at a later stage would be necessary.

For the purpose of the Synthesis Report data on residence permits issued by Austria are included in the Annex.

<sup>95</sup> DG Home, available at <http://ec.europa.eu/home-affairs/policies/borders/docs/Totals%202010.xls> (accessed on 23 January 2010).

## 7. CONCLUSIONS

The importance of the national visa policy has decreased since Austria joined the Schengen Agreement. Since then Austria has striven towards a harmonisation of the national visa legislation with the EU acquis. National visas are primarily issued to third country nationals for course purposes or to collect a residence permit which was previously granted to the person. In specifically defined cases it can be granted to carry out work for short period of time or to seek a job. The visa procedures relating to national visa were adapted to the procedures set out in the Visa Code and Handbook.

Generally, visa cannot be considered as a migration channel to Austria. A central characteristic of the Austrian migration regime is the strict differentiation between short term stays of up to six months for which a visa is required and long term stays of over six months, which is only possible if the third country national has obtained a residence permit in the country of origin. This principle was softened to some extent very recently through the introduction of the job seeker visa and the residence title "Red-White-Red Card". However as these provisions entered into force very recently and there are no statistics available, it is not possible to analyse the effects of the new policy. Nevertheless, due to the narrowly defined target group – the job seeker visa is only available to exceptionally highly qualified third country nationals - it cannot be expected that migration flows to Austria will increase significantly due to these new regulations.

# ANNEX 1

## Table 2: Overview Visas issued and not issued, Austria 2010

Third Country	Town	A visas issued	Multiple A visas issued	B visas issued	C visas issued (mev included)	Multiple C visas issued	C visas applied for	Total A,B,C visas issued	Total A,B,C visas applied for	Total A,B,C visas not issued	Not issued rate for A,B,C visas (in %)	Total LTV visas issued	D visas issued	"D+C" visas issued	Total A,B,C,LTV, "D,C" visas issued
Albania	Tirana	0	0	0	3,040	1,477	3,172	3,040	3,172	132	4.16	77	128	0	3,245
Algeria	Algiers	0	0	0	626	555	749	626	749	123	16.42	10	42	0	678
Argentina	Buenos Aires	0	0	0	8	8	8	8	8	0	0.00	0	55	5	68
Australia	Canberra	0	0	0	187	159	193	187	193	6	3.11	0	139	0	326
Azerbaijan	Baku	0	0	0	834	119	847	834	847	13	1.53	0	19	0	853
Belgium	Brussels	0	0	0	0	0	0	0	0	0	0.00	0	4	0	4
Bosnia and Herzegovina	Sarajevo	0	0	0	8,905	3,699	10,142	8,905	10,142	1,237	12.20	3	4,088	0	12,996
Brazil	Brasilia	0	0	0	37	37	37	37	37	0	0.00	0	67	0	104
Bulgaria	Sofia	0	0	0	152	95	152	152	152	0	0.00	1	6	1	160
Canada	Ottawa	0	0	0	196	152	206	196	206	10	4.85	2	187	1	386
Chile	Santiago de Chile	0	0	0	17	4	17	17	17	0	0.00	0	21	0	38
China	Beijing	0	0	61	13,157	1,009	13,882	13,218	13,882	664	4.78	1	913	0	14,132
China	Shanghai	0	0	0	6,094	337	6,122	6,094	6,122	28	0.46	0	363	0	6,457
Colombia	Bogota	0	0	0	919	919	958	919	958	39	4.07	0	117	10	1,046
Croatia	Zagreb	0	0	0	311	225	317	311	317	6	1.89	10	427	0	748
Cuba	Havana	0	0	0	254	12	296	254	296	42	14.19	0	64	0	318
Cyprus	Nicosia	0	0	0	229	88	246	229	246	17	6.91	0	1	0	230
Czech Republic	Prague	0	0	0	11	8	11	11	11	0	0.00	0	15	0	26
Denmark	Copenhagen	0	0	0	0	0	0	0	0	0	0.00	0	2	0	2
Egypt	Cairo	0	0	2	3,373	661	3,605	3,375	3,605	230	6.38	105	328	0	3,808
Estonia	Tallinn	0	0	0	0	0	0	0	0	0	0.00	0	0	0	0
Ethiopia	Addis Abeba	0	0	0	303	22	467	303	467	164	35.12	8	141	0	452
Finland	Helsinki	0	0	0	0	0	0	0	0	0	0.00	0	9	0	9
Former Yugoslav Republic of Macedonia	Skopje	0	0	1	864	814	1,274	865	1,274	409	32.10	729	1,385	0	2,979
France	Paris	0	0	0	4	3	4	4	4	0	0.00	0	5	0	9
France	Strasbourg	0	0	0	1	1	1	1	1	0	0.00	0	5	0	6
Germany	Berlin	0	0	0	8	6	8	8	8	0	0.00	0	34	0	42
Germany	Hamburg	0	0	0	1	1	1	1	1	0	0.00	0	3	0	4
Germany	Munich	0	0	0	7	6	7	7	7	0	0.00	0	122	0	129
Greece	Athens	0	0	0	0	0	0	0	0	0	0.00	0	1	0	1
Holy See (Vatican City State)	Vatican City	0	0	0	0	0	0	0	0	0	0.00	0	0	0	0
Hong Kong S.A.R.	Hong Kong	0	0	0	291	286	292	291	292	1	0.34	12	72	1	376
Hungary	Budapest	0	0	0	0	0	0	0	0	0	0.00	0	3	0	3
India	New Delhi	0	0	1	8,244	4,969	9,601	8,245	9,601	1,356	14.12	30	841	0	9,116
Indonesia	Jakarta	0	0	0	2,207	657	2,379	2,207	2,379	172	7.23	10	135	0	2,352
Iran, Islamic Republic of	Teheran	5	0	0	7,361	2,819	9,546	7,366	9,546	2,180	22.84	259	2,154	0	9,779
Ireland	Dublin	0	0	0	357	187	383	357	383	26	6.79	2	7	0	366
Israel	Tel Aviv	0	0	0	234	83	248	234	248	14	5.65	23	32	0	289
Italy	Milan	0	0	0	3	1	3	3	3	0	0.00	0	9	1	13
Italy	Rome	0	0	0	1	0	1	1	1	0	0.00	1	9	0	11
Japan	Tokyo	0	0	1	185	66	189	186	189	3	1.59	3	60	1	250
Jordan	Amman	0	0	1	2,400	1,214	2,518	2,401	2,518	117	4.65	139	71	2	2,613
Kazakhstan	Astana	0	0	0	1,603	290	1,628	1,603	1,628	25	1.54	1	107	0	1,711
Kenya	Nairobi	0	0	0	996	296	1,215	996	1,215	219	18.02	1	171	0	1,168
Korea, Republic Of	Seoul	0	0	0	52	27	52	52	52	0	0.00	0	134	4	190
Kuwait	Kuwait	0	0	0	3,588	3,581	3,674	3,588	3,674	86	2.34	15	10	0	3,613
Latvia	Riga	0	0	0	0	0	0	0	0	0	0.00	0	1	0	1
Lebanon	Beirut	0	0	0	1,655	1,647	1,680	1,655	1,680	25	1.49	35	30	0	1,720
Libyan Arab Jamahiriya	Tripoli	1	0	0	1,684	669	1,760	1,685	1,760	75	4.26	392	118	0	2,195
Lithuania	Vilnius	0	0	0	0	0	0	0	0	0	0.00	0	0	0	0
Luxembourg	Luxembourg	0	0	0	0	0	0	0	0	0	0.00	0	0	0	0
Malaysia	Kuala Lumpur	0	0	0	55	44	68	55	68	13	19.12	0	30	0	85
Malta	Valetta	0	0	0	0	0	0	0	0	0	0.00	0	1	0	1
Mexico	Mexico City	0	0	0	40	33	43	40	43	3	6.98	0	89	22	151
Morocco	Rabat	0	0	0	472	469	475	472	475	3	0.63	0	57	0	529
Netherlands	The Hague	0	0	0	5	2	5	5	5	0	0.00	3	10	0	18
Nigeria	Abuja	0	0	0	989	175	1,160	989	1,160	171	14.74	67	255	0	1,311
Norway	Oslo	0	0	0	0	0	0	0	0	0	0.00	0	2	0	2
Oman	Muscat	0	0	0	1,264	1,262	1,265	1,264	1,265	1	0.08	33	33	0	1,330
Pakistan	Islamabad	0	0	0	934	927	1,176	934	1,176	242	20.58	26	402	0	1,362
Peru	Lima	0	0	0	625	625	647	625	647	22	3.40	0	96	0	721
Philippines	Manila	0	0	2	1,015	57	1,315	1,017	1,315	298	22.66	4	194	1	1,216
Poland	Krakow	0	0	0	1	1	1	1	1	0	0.00	0	1	0	2
Poland	Warsaw	0	0	0	2	2	2	2	2	0	0.00	0	4	0	6
Portugal	Lisbon	0	0	0	10	7	10	10	10	0	0.00	0	0	0	10
Romania	Bucharest	0	0	0	332	135	354	332	354	22	6.21	5	48	1	386



Russian Federation	Moscow	0	0	3	111,948	110,608	112,445	111,951	112,445	494	0.44	128	1,526	3	113,608
Saudi Arabia	Riyadh	0	0	0	4,914	4,886	5,050	4,914	5,050	136	2.69	49	79	0	5,042
Senegal	Dakar	0	0	0	581	202	1,034	581	1,034	453	43.81	1	83	0	665
Serbia	Belgrad	0	0	0	685	446	786	685	786	101	12.85	146	387	0	1,218
Slovakia	Bratislava	0	0	0	12	9	12	12	12	0	0.00	0	86	0	98
Slovenia	Ljubljana	0	0	0	2	0	3	2	3	1	33.33	0	26	0	28
South Africa	Cape Town	0	0	0	1,300	1,300	1,303	1,300	1,303	3	0.23	27	14	0	1,341
South Africa	Pretoria	0	0	0	5,304	1,795	5,305	5,304	5,305	1	0.02	217	73	3	5,597
Spain	Madrid	0	0	0	3	3	3	3	3	0	0.00	0	7	2	12
Sweden	Stockholm	0	0	0	0	0	0	0	0	0	0	8	0	0	8
Switzerland	Bern	0	0	0	10	4	10	10	10	0	0.00	0	20	0	30
Switzerland	Zurich	0	0	0	4	3	4	4	4	0	0.00	0	6	0	10
Syrian Arab Republic	Damascus	0	0	7	812	367	1,053	819	1,053	234	22.22	134	133	0	1,086
Taiwan, Province Of China	Taipei	0	0	0	9,255	9,253	9,262	9,255	9,262	7	0.08	1	115	0	9,371
Thailand	Bangkok	0	0	0	10,751	10,751	11,079	10,751	11,079	328	2.96	1	277	4	11,033
Tunisia	Tunis	0	0	0	690	147	708	690	708	18	2.54	1	132	0	823
Turkey	Ankara	0	0	0	3,392	3,391	4,493	3,392	4,493	1,101	24.50	3	2,062	0	5,457
Turkey	Istanbul	0	0	0	6,233	6,203	6,553	6,233	6,553	320	4.88	16	1,062	0	7,311
Ukraine	Kiev	0	0	0	26,338	4,889	26,655	26,338	26,655	317	1.19	4	2,217	2	28,561
United Arab Emirates	Abu Dhabi	3	0	0	3,356	3,354	3,449	3,359	3,449	90	2.61	57	89	0	3,505
United Kingdom	London	1	0	0	3,430	1,685	3,667	3,431	3,667	236	6.44	42	69	0	3,542
USA	Chicago, Il	2	1	0	234	115	259	236	259	23	8.88	4	625	0	865
USA	Los Angeles, Ca	0	0	0	308	308	326	308	326	18	5.52	4	282	0	594
USA	New York, Ny	0	0	0	610	111	629	610	629	19	3.02	8	305	0	923
USA	Washington, Dc	2	0	4	430	417	440	436	440	4	0.91	2	318	0	756
Venezuela	Caracas	0	0	0	72	27	126	72	126	54	42.86	1	112	1	186
Viet Nam	Hanoi	0	0	0	917	851	1,001	917	1,001	84	8.39	0	52	0	969
Zimbabwe	Harare	0	0	0	249	34	261	249	261	12	4.60	2	40	0	291

Source: European Commission, <http://ec.europa.eu/home-affairs/policies/borders/docs/synthese%202010%20with%20filters.xls>

**Table 3: Residence permits issued by Austria by reason, 2008-2010**

Reason/Time	2008	2009	2010
Education reasons	2,853	3,233	3,735
Family reasons	14,400	14,572	14,559
Remunerated activities reasons	3,096	2,692	2,923
Other reasons	1,434	7,538	9,379
<b>Total</b>	<b>21,783</b>	<b>28,035</b>	<b>30,596</b>

Source: Eurostat Database, as of 23 February 2012.

## Annex 2 Bibliography

### Austrian Federal Government

- 2008 *Konkrete Ergebnisse der EU-Mitgliedschaft für die Österreichische Bevölkerung*, available at [http://www.europainfo.at/dokumente/Konkrete\\_Ergebnisse\\_EU.pdf](http://www.europainfo.at/dokumente/Konkrete_Ergebnisse_EU.pdf) (accessed on 27 September 2011).

### Austrian Parliament

- 2006 *Anfragebeantwortung*, 3843/AB XXII.GP, available at [http://www.parlinkom.gv.at/PAKT/VHG/XXII/AB/AB\\_03843/fnameorig\\_060114.html](http://www.parlinkom.gv.at/PAKT/VHG/XXII/AB/AB_03843/fnameorig_060114.html) (accessed on 3 October 2011).
- 2008 *Anfragebeantwortung*, 4308/AB XXIII. GP, available at [http://www.parlinkom.gv.at/PAKT/VHG/XXIII/AB/AB\\_04308/fnameorig\\_115134.html](http://www.parlinkom.gv.at/PAKT/VHG/XXIII/AB/AB_04308/fnameorig_115134.html) (accessed on 3 October 2011).
- 2011 *Bilanz über Indien Reise fällt positiv aus. Parlamentarierdelegation beendet einwöchige Reise*. Parlamentskorrespondenz 143 vom 14.02.2011, available at [http://www.parlinkom.gv.at/PAKT/PR/JAHR\\_2011/PK0143/index.shtml](http://www.parlinkom.gv.at/PAKT/PR/JAHR_2011/PK0143/index.shtml) (accessed on 28 September 2011).

### Pfleger/Eberwein

- 2011 *Fremdenrecht für Studium und Praxis*, Wien.

### Federal Ministry of Labour, Social Affairs and Consumer Protection

- 2011 *Kriteriengeleitete Zuwanderung nach Österreich*, available at [http://www.bmask.gv.at/cms/site/attachments/5/0/4/CH0020/CMS1306164706818/2011-05-20\\_de\\_info\\_-\\_rwr-karte.pdf](http://www.bmask.gv.at/cms/site/attachments/5/0/4/CH0020/CMS1306164706818/2011-05-20_de_info_-_rwr-karte.pdf) (accessed on 20 June 2011).

### Federal Ministry for European and International Affairs

- 2011 *EU-Arbeitsprogramm 2011*, III-427-BR/2011 d.B. available at [http://www.parlament.gv.at/PAKT/VHG/XXIV/III/III\\_00212/fname\\_206276.pdf](http://www.parlament.gv.at/PAKT/VHG/XXIV/III/III_00212/fname_206276.pdf) (accessed on 3 June 2011).
- 2011 *Außen- und europapolitischer Bericht 2010*, available at [http://www.bmeia.gv.at/fileadmin/user\\_upload/bmeia/media/2-Aussenpolitik\\_Zentrale/Aussenpol.\\_Berichte/Aussen-\\_und\\_Europapolitischer\\_Bericht\\_2010.pdf](http://www.bmeia.gv.at/fileadmin/user_upload/bmeia/media/2-Aussenpolitik_Zentrale/Aussenpol._Berichte/Aussen-_und_Europapolitischer_Bericht_2010.pdf) (accessed on 3 June 2011).
- 2010 *Außenpolitischer Bericht 2009*, available at [http://www.parlinkom.gv.at/PAKT/VHG/BR/III-BR/III-BR\\_00409/imfname\\_192765.pdf](http://www.parlinkom.gv.at/PAKT/VHG/BR/III-BR/III-BR_00409/imfname_192765.pdf) (accessed on 3 June 2011).

### Federal Ministry of the Interior

- 2011 *Einreise mit Visum, Visumkategorien*, available at [http://www.bmi.gv.at/cms/BMI\\_Fremdenpolizei/einreise\\_visa/Visum\\_3.aspx](http://www.bmi.gv.at/cms/BMI_Fremdenpolizei/einreise_visa/Visum_3.aspx) (accessed on 3 June 2011).
- 2011 *Einreise mit Visum, Allgemeine Grundsätze der Visumerteilung*, available at [http://www.bmi.gv.at/cms/BMI\\_Fremdenpolizei/einreise\\_visa/Visum\\_4.aspx](http://www.bmi.gv.at/cms/BMI_Fremdenpolizei/einreise_visa/Visum_4.aspx) (accessed on 3 June 2011).
- 2011 *Visumfreie Einreise, Erlaubte visumfreie Einreise*, available at [http://www.bmi.gv.at/cms/BMI\\_Fremdenpolizei/einreise\\_visa/Visumfrei\\_3.aspx](http://www.bmi.gv.at/cms/BMI_Fremdenpolizei/einreise_visa/Visumfrei_3.aspx) (accessed on 3 June 2011).

- 2011 *Einreise mit Visum, Zuständigkeiten*, available at [http://www.bmi.gv.at/cms/BMI\\_Fremdenpolizei/einreise visa/Visum 2.aspx](http://www.bmi.gv.at/cms/BMI_Fremdenpolizei/einreise visa/Visum 2.aspx) (accessed on 3 June 2011).
- 2011 *Einreise mit Visum, Verfahren und Rechtsmittel*, available at [http://www.bmi.gv.at/cms/BMI\\_Fremdenpolizei/einreise visa/Visum 8.aspx](http://www.bmi.gv.at/cms/BMI_Fremdenpolizei/einreise visa/Visum 8.aspx) (accessed on 3 June 2011).
- 2011 *Einreise mit Visum, Ausnahmsweise Visumpflicht bei grundsätzlicher Visumfreiheit*, available at [http://www.bmi.gv.at/cms/BMI\\_Fremdenpolizei/einreise visa/Visum 7.aspx](http://www.bmi.gv.at/cms/BMI_Fremdenpolizei/einreise visa/Visum 7.aspx) (accessed on 3 June 2011).
- 2011 *Fremdenpolizei und Grenzkontrollwesen Einreise mit Visum*, available at [www.bmi.gv.at/cms/BMI\\_Fremdenpolizei/einreise visa/Visum 2.aspx](http://www.bmi.gv.at/cms/BMI_Fremdenpolizei/einreise visa/Visum 2.aspx) (accessed on 13 February 2012)
- 2011 *Asylstatistik 2010*, available at [www.bmi.gv.at/cms/BMI\\_Asywesen/statistik/files/Asylstatistik\\_Jahresstatistik\\_2010.pdf](http://www.bmi.gv.at/cms/BMI_Asywesen/statistik/files/Asylstatistik_Jahresstatistik_2010.pdf) (accessed on 14 February 2012).
- 2011 *Einreise mit Visum, Wiedereinreisebewilligung*, available at [http://www.bmi.gv.at/cms/BMI\\_Fremdenpolizei/einreise visa/Visum 5.aspx](http://www.bmi.gv.at/cms/BMI_Fremdenpolizei/einreise visa/Visum 5.aspx) (accessed on 3 June 2011).
- 2010 *Visa unter Kontrolle*, in: *Öffentliche Sicherheit* 11-12/10, p.28-29, available at [http://www.bmi.gv.at/cms/BMI\\_OeffentlicheSicherheit/2010/11\\_12/files/SCHENGEN.pdf](http://www.bmi.gv.at/cms/BMI_OeffentlicheSicherheit/2010/11_12/files/SCHENGEN.pdf) (accessed on 6 June 2011).
- 2010 *Bericht der Bundesministerin für Inneres an das österreichische Parlament. Legislativ- und Arbeitsprogramm der Europäischen Kommission für 2011. Achtzehnmonatsprogramm des spanischen, belgischen und ungarischen Vorsitzes.* BMI-LR2220/0989-I/7/2010. available at [http://www.parlament.gv.at/PAKT/VHG/XXIV/III/III\\_00210/imfname\\_206270.pdf](http://www.parlament.gv.at/PAKT/VHG/XXIV/III/III_00210/imfname_206270.pdf) (accessed on 27 September 2011).
- 2010 *Einsatz in Kairo*, in: *Öffentliche Sicherheit*, 09-10/05, p.94-95, available at [www.bmi.gv.at/cms/BMI\\_OeffentlicheSicherheit/2005/09\\_10/files/DOKUMENTENBERATER.pdf](http://www.bmi.gv.at/cms/BMI_OeffentlicheSicherheit/2005/09_10/files/DOKUMENTENBERATER.pdf) (accessed on 6 June 2011).
- 2010 *Asylstatistik 2009*, available at [www.bmi.gv.at/cms/BMI\\_Asywesen/statistik/files/Asyl\\_Jahresstatistik\\_2009.pdf](http://www.bmi.gv.at/cms/BMI_Asywesen/statistik/files/Asyl_Jahresstatistik_2009.pdf) (accessed on 14 February 2012).
- 2008 *Innere Sicherheit – 10 EU-Vorteile für den Bürger*, available at <http://www.bmi.gv.at/cms/cs03documentsbmi/566.pdf> (accessed on 27 September 2011).
- 2007 *Mehrjahresprogramm Österreich 2007-2013, Europäischer Außengrenzenfonds*, available at [http://www.bmi.gv.at/cms/BMI\\_Fonds/aussengrenzenf/downloads/files/Kerninhalte\\_des\\_Mehrjahresprogramms.pdf](http://www.bmi.gv.at/cms/BMI_Fonds/aussengrenzenf/downloads/files/Kerninhalte_des_Mehrjahresprogramms.pdf) (accessed on 6 June 2011).

#### European Migration Network

- 2011 *Glossary*, available at <http://emn.intrasoft-intl.com/Glossary/index.do> (accessed on 20

March 2012).

2010 *Asylum and Migration Glossary*, Brussels, January 2010, available at [http://www.emn.at/images/stories/downloads/EMN\\_GLOSSARY\\_Publication\\_Version\\_January\\_2010.pdf](http://www.emn.at/images/stories/downloads/EMN_GLOSSARY_Publication_Version_January_2010.pdf) (accessed on 3 June 2011).

2010 *EMN Status Report 2009*, Version 1, April 2010, available at <http://emn.intrasoft-intl.com/Downloads/prepareShowFiles.do;jsessionid=04E615A006FEDB1DBA1BCCEB2BA1B433?entryTitle=EMN%20Status%20Report%202009> (accessed on 3 June 2011).

#### Federal Chancellery

2011 *News from Austria, Russian-Austrian readmission agreement adopted*, 3 January 2011, available at [http://www.bka.gv.at/site/infodate\\_03.01.2011/7459/default.aspx?id42057](http://www.bka.gv.at/site/infodate_03.01.2011/7459/default.aspx?id42057) (accessed on 3 June 2011).

#### HELP.gv.at

2011 *Visum für Drittstaatsangehörige*, Vienna, 27 April 2011, available at <http://www.help.gv.at/Content.Node/12/Seite.120900.html#Antrag> (accessed on 3 June 2011).

#### International Organization for Migration (IOM) in Vienna

2011 *Annual Policy Report 2011*, National EMN Report, available at <http://www.emn.at/en/policy-reports/> (accessed on 6 June 2011).

#### Riel/Schrefler-König/Szymanski/Schmalzl

2009 *Fremdenpolizeigesetz (Kommentar)*, Wien.

#### Schuhmacher/Peyrl

2007 *Fremdenrecht*, Wien.

#### Statistik Austria

2011 *Statistisches Jahrbuch Österreichs*, available at [http://www.statistik.at/web\\_de/services/stat\\_jahrbuch/index.html](http://www.statistik.at/web_de/services/stat_jahrbuch/index.html) (accessed on 28 September 2011).

#### Statistik Austria,

2011 *Bevölkerungsstand*, 1 January 2011

### Press Releases

#### Die Presse,

2011 *Neues Vis-System soll das Reisen erleichtern*, 11 October 2011, available at <http://diepresse.com/home/politik/eu/700248/Neues-VisaSystem-soll-das-Reisen-erleichtern> (accessed on 24 October 2011).

#### Europa,

2011 *Frequently Asked Questions: The Visa Information System goes live*, MEMO/11/682, Press Release, 11 October 2011, Brussels, available at <http://europa.eu/rapid/pressReleasesAction.do?reference=MEMO/11/682> (accessed on 24 October 2011).

2011 *Europa – A Summary of EU Legislation, VIS Regulation*, available at [http://europa.eu/legislation\\_summaries/justice\\_freedom\\_security/free\\_movement\\_of\\_persons\\_asylum\\_immigration/l14517\\_en.htm](http://europa.eu/legislation_summaries/justice_freedom_security/free_movement_of_persons_asylum_immigration/l14517_en.htm) (accessed on 6 June 2011).

## **Jurisdiction**

Administrative High Court, 5 October 1988, Case Nr. 88/01/0140.

Administrative High Court, 29 November 2006, Case Nr. 2006/18/0341

Administrative High Court, 19 June 2008, Case Nr. 2007/21/0169.

Administrative High Court, 8 September 2009, Case Nr. 2009/21/0173.

Administrative High Court 22 May 2007, Case Nr. 2006/21/0117.

## **Legislation**

### *National*

Administrative High Court Act BGBl. Nr. 10/1985 in the version of BGBl. I Nr. 111/2010

Agreement between the Government of the Republic of Austria and the Government of the Republic of India on Scientific and Technological Co-Operation, BGBl. III – in the version of 21 August 2008, N° 106.

Aliens' Employment Act. BGBl. Nr. 218/1975 in the version of BGBl. I Nr. 25/2011.

Aliens' Police Act BGBl. I Nr. 100/2005 in the version BGBl. I Nr. 38/2011

Aliens' Law Amendment 2005, Government Proposal, Explanatory Notes, available at [www.parlament.gv.at/PAKT/VHG/XXII/I/I\\_00952/fnameorig\\_040777.html](http://www.parlament.gv.at/PAKT/VHG/XXII/I/I_00952/fnameorig_040777.html) (accessed on 13 February 2012).

Aliens' Law Amendment 2009 (BGBl. I Nr. 29/2009), Government Proposal, Explanatory Notes, available at [www.parlament.gv.at/PAKT/VHG/XXIV/I/I\\_00088/fnameorig\\_150562.html](http://www.parlament.gv.at/PAKT/VHG/XXIV/I/I_00088/fnameorig_150562.html) (accessed on 13 February 2012).

Aliens' Law Amendment 2011, Government Proposal, Explanatory Notes, available at [www.parlament.gv.at/PAKT/VHG/XXIV/I/I\\_01078/fnameorig\\_206974.html](http://www.parlament.gv.at/PAKT/VHG/XXIV/I/I_01078/fnameorig_206974.html) (accessed on 13 February 2012).

Constitutional Court Act BGBl. 85/1953 in the version of BGBl. I 111/2010

Residence- and Settlement Act. BGBl. I Nr. 100/2005 in the version of BGBl. I Nr. 38/2011

### *European Union*

Convention implementing the Schengen Agreement of 14 June 1985 between the Governments of the States of the Benelux Economic Union, the Federal Republic of Germany and the French Republic on the gradual abolition of checks at their common borders, available at <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:42000A0922%2802%29:en:HTML> (accessed on 21 May 2012).

Council Regulation (EC) No 343/2003 of 18 February 2003 establishing the criteria and mechanisms for determining the Member State responsible for examining an asylum application lodged in one of the Member States by a third-country national, available at <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:32003R0343:EN:NOT> (accessed on 13

December 2011).

Regulation (EU) No 265/2010 of the European Parliament and of the Council of 25 March 2010 amending the Convention Implementing the Schengen Agreement and Regulation (EC) No 562/2006 as regards movement of persons with a long-stay visa, available at <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2010:085:0001:01:EN:HTML> (accessed on 13 February 2012).

Directive 2004/38/EC of the European Parliament and of the Council of 29 April 2004 on the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States, available at <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2004:158:0077:0123:EN:PDF> (accessed on 13 December 2011).

Commission Decision of 19 March 2010 establishing the Handbook for the processing of visa applications and the modification of issued visas, C(2010) 1620 final, p. 78, available at <http://www2.mfa.gr/softlib/00.%20HANDBOOK%20FOR%20THE%20PROCESSING%20OF%20VISA%20APPLICATIONS%20AND%20THE%20MODIFICATION%20OF%20ISSUED%20VISAS.PDF> (accessed on 22 September 2011).

Council Decision of 14 May 2008 establishing a European Migration Network, 2008/381/EC, available at <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:32008D0381:EN:NOT> (accessed on 13 September 2011).

Treaty on the Functioning of the European Union, available at <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:C:2008:115:0047:0199:en:PDF> (accessed on 22 September 2011).

## Websites

<http://www.migration.gv.at/en/service-and-links/points-calculator.html> (accessed on 22 September 2011).

<http://www.bmeia.gv.at/botschaft/agram/ratgeber/ihre-reise-nach-oesterreich/visainformationen.html> (accessed on 27 September 2011).

<http://www.bmeia.gv.at/botschaft/new-delhi/bilaterale-beziehungen/oesterreich-indien.html> (accessed on 28 September 2011).

[http://www.bmeia.gv.at/aussenministerium/aussenpolitik/voelkerrecht/staatsvertraege/bilaterale-staatsvertraege.html?LNG=de&submit=1&mode=country&vb\\_vp\\_id=62&dv\\_staat=61&dv\\_name=indien&cHash=79f6b4c76fb247d6e527d132e1705a28](http://www.bmeia.gv.at/aussenministerium/aussenpolitik/voelkerrecht/staatsvertraege/bilaterale-staatsvertraege.html?LNG=de&submit=1&mode=country&vb_vp_id=62&dv_staat=61&dv_name=indien&cHash=79f6b4c76fb247d6e527d132e1705a28) (accessed on 28 September 2011).

[http://www.bmeia.gv.at/aussenministerium/buergerservice/oesterreichische-vertretungen.html?dv\\_staat=61&cHash=5a9d742998710904e6444c42be6e263f#New%20Delhi](http://www.bmeia.gv.at/aussenministerium/buergerservice/oesterreichische-vertretungen.html?dv_staat=61&cHash=5a9d742998710904e6444c42be6e263f#New%20Delhi) (accessed on 28 September 2011).

[http://www.bmeia.gv.at/aussenministerium/buergerservice/oesterreichische-vertretungen.html?dv\\_staat=125&cHash=35f940f702db663021dd9ca4d2dcabfb](http://www.bmeia.gv.at/aussenministerium/buergerservice/oesterreichische-vertretungen.html?dv_staat=125&cHash=35f940f702db663021dd9ca4d2dcabfb) (accessed on 3 October 2011).