



Legal Migration Fitness Check

Evidence base for practical
implementation

Member State summary

Austria

Annex 2 AT

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Limited

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LEGAL NOTICE

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More information on the European Union is available on the Internet (<http://www.europa.eu>).

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Introduction

This document provides an overview of the legal and practical implementation of EU legal migration acquis in **Austria**. The legal and practical implementation study is structured according to the eight steps – ‘phases’ of the migration process from the perspective of the migrant¹ for the following Directives and their respective national equivalent schemes, presented in the table below.

Directive	FRD (Family Reunification Directive 2003/86/EC)	LTR (Long Term Residence Directive 2003/109/EC)	SD (Students Directive 2004/114/EC)	RD (Researchers Directive 2005/71/EC)	BCD (Blue Card Directive 2009/50/EC)	SPD (Single Permit Directive 2011/98/EU)
National parallel scheme			Visa category C: Schengen visa, visa code § 20 – 21a and § 24 Aliens Police Act (visa category D)	§ 62 Settlement and Residence Act, § 1 (2) f and § 2 (5a) Act on the Employment of Aliens for Residence permits - special cases employment Visa category C: Schengen visa, visa code § 20 – 21a and § 24	Red-white-red Card Residence Permit - special cases employment Red-white-red Card plus §§ 41 (Red-white-red Card) 41a (Red-white-red Card plus) Settlement and Residence Act	

¹ . See ref document (EU summary) Under each phase, the following aspects are examined : :
Legal transposition of the EU legal migration acquis: including whether the MS has overall complied with the transposition of the relevant EU acquis in the respective phase and whether these possible non-compliance issues affect the practical application of the Directive;
Practical application of the EU legal migration acquis: overview of the main application issues/problems arising in the MS per each of the migration phases;
Differences between national statuses and the EU legal migration acquis: substantial differences at the level of legislation and practical implementation between the EU legal migration Directives and their national equivalents (where these exist).

		<p>Aliens Police Act (visa category D)</p> <p>§§ 12, 20c, 20d and Annex A Act on the Employment of Aliens for the Red- white-red Cards</p> <p>§ 20e Act on the Employment of Aliens for the Red- white-red Cards plus</p> <p>§ 62 Settlement and Residence Act, § 1 (2) f and § 2 (5a) Act on the Employment of Aliens for Residence Permits - special cases employment</p>
Options impleme nted?	Pupil Trainee Volunteer	

Main differences between EU statuses and the respective national parallel schemes

As indicated above Austria has equivalent national statuses with the SD, RD, and BCD. The main differences include:

- Third country nationals have the possibility to apply for a Red-white-red (RWR) card (and subsequently a RWR plus card) for exercising a highly qualified employment in Austria (§ 41 Settlement and Residence Act). For special key managers, their family members and employees (of special key managers) a Residence Permit - special cases employment (§ 62 Settlement and Residence Act) is available. There are only a few Blue Cards issued in Austria, whereas the national scheme of Red-white-red Cards or other national types of status (Residence Permit - special cases employment (for special key managers, their family members and employees) are more frequently used. The main reason is the high income requirement demanded by the BCD. Even national literature refers to the fact that the Blue Card is not used as most applicants do not fulfil the criteria. The income requirement for a Blue Card is the 1.5 times amount of an average Austrian income for full time employees. The income requirement is € 47,405 per year. It also requires a degree for a type of studies where the required duration of studies is three years. Red-white-red cards are easier to obtain as the income requirements are lower and the necessary points (or credits) can be obtained easier (by highly qualified workers). For Red-white-red Cards the requirement is that the person has to have sufficient resources. For single person € 889,84, for couples, € 1.334,17 and additional per child € 137,30 (per month).
- Alternatively to the permit issued based on the RD, researchers might obtain a Residence Permit – special cases employment. Researchers are exempt from the Act on the Employment of Aliens, which is a requirement for obtaining a residence permit according to § 62 Settlement and Residence Act. The general conditions for issuing residence permits have to be fulfilled. The Employment Service Austria (AMS, Arbeitsmarktservice), <http://www.ams.at/english.html>) has to confirm that the employment is exempt from the Act on Employment of Aliens in case the authority has well-reasoned doubt. Researchers who intend to stay less than six months could regulate their stay by obtaining a **visa C** or a visa D as a visa for employment. The category of visa C allows stays in Austria and all other Schengen States for a maximum of 90 days within 180 days. Gainful employment, however, is limited to Austria. They can also obtain a **residence visa D** as a visa for employment. This category allows a stay between 91 days and six months. Employment is limited to Austria. Stays within the Schengen zone are possible for a maximum of 90 days during this period.
- Alternatively to the permit issued based on the SD, students who intend to stay between three and six months may obtain a visa category C or category D. A travel visa C (Schengen-visa) allows stays in Austria and all other Schengen States for a maximum of 90 days within 180 days. A residence visa D allows stays in Austria for 91 days up to a maximum of 6 months. Persons who hold a valid visa category C or D are allowed to study in Austria.

1 Pre-application phase

1.1 Legal transposition of the EU legal migration acquis

Austria transposed the EU migration acquis. Not all provisions have been explicitly or literally transposed, but existing laws can be interpreted as to build the legal basis for the rights and obligations contained in the Directives. Of course an interpretative latitude may lead to a result where some parts of provisions are not fully transposed. These norms are mentioned in the next sections.

The SD has been transposed for volunteers, trainees and pupils. For pupils and volunteers a special residence permit has been created (§ 63 Settlement and Residence Act for pupils and § 66 for volunteers). Trainees may only obtain a visa category D. A residence visa D allows stays in Austria for 91 days up to a maximum of 6 months. Persons who hold a valid visa category D are allowed to work as a trainee in Austria.

The SWD has been transposed. The employer has to apply for a permit at the regional office of the Public Employment Service. The hiring out of workers is regulated by the Temporary and Agency Workers Act (*Arbeitskräfteüberlassungsgesetz*). Posting and leasing of workers according to the ICT are covered by the Act on the Combating of Wage and Social Dumping (LSD-BG), and the Construction Workers' Holidays and Severance Pay Act. A posting of workers platform has been created². The S&RD has not been transposed so far.

Some specific issues were identified.

In Austria a general quota system for immigration of third country nationals exists, in practice it is however only applied for family reunification cases. Hence, family reunification on the basis of the Settlement and Residence Act is still based on the general quota system for immigration into Austria. If no space is left in the annual quota, the person has to be informed about the actual ranking in the list of persons covered by the quota system (§ 12 (7) Settlement and Residence Act, § 73 (1) General Act on Administrative Procedures). § 12 (7) regulates cases where applicants for family reunification are registered because the actual annual quota is exhausted: "In cases of family reunification pursuant to Art. 46, paragraph 4, if the number of quota spaces in ... has been exhausted, the respective authority shall postpone the ruling until one quota space becomes available, provided, the concerned authority shall not reject or refuse the application for other reasons. ... The alien or the re-joining family member shall have the right of notification on the availability of quota number within the register until the postponement deadline. The notification regarding to sequence shall be procured one-time to the alien in the form of a decision - no appeals shall be admissible against it. Other sequence notifications may be presented in another technically appropriate manner which provides protection of personal data. Three years after submitting the application, an additional postponement shall not be admissible and the quota requirement pursuant to Art. 1 shall extinct."³ Thus after three years the quota system would no longer be a restriction for reunification.

Art. 18 (1) SD is not literally transposed as far as the time in order not to hamper the studies is concerned. Austrian authorities should decide within a period which allows the student to start studies in time, there is however no legal obligation. This is also the case for Art. 15 RD and the obligation to decide as soon as possible.

There is an issue with regard to Art. 5 (3) SPD, which obliges Member States to enact provisions that the competent authority shall notify the decision to the applicant in writing in accordance with the notification procedures laid down in the relevant national law. This provision is not literally transposed into national law. The Settlement and Residence Act only obliges the deciding authority in Austria to notify the diplomatic or consular representations that a positive decisions is taken. According to § 23 (2) Settlement and Residence Act the person has to apply for a visa within three months. The diplomatic or consular authorities have to inform and instruct the applicants. There is however no obligation to issue a written communication and the legal quality of the notification is unclear.

1.2 Practical application of the EU legal migration acquis

As shown in the tables below, there is a lot of information available on legal migration into Austria. There is however no information about the SPD.

Directi	Genera	FRD	LTR	SD	RD	BCD	SPD
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² http://www.postingofworkers.at/cms/Z04/Z04_10/home

³ Unofficial translation.

ve	l	(Family Reunification Directive 2003/86/EC)	(Long Term Residence Directive 2003/109/EC)	(Students Directive 2004/114/EC)	(Researchers Directive 2005/71/EC)	(Blue Card Directive 2009/50/EC)	(Single Permit Directive 2011/98/EU)
Language	National language(s) English French (if not national) Spanish (if not national) Russian Arabic Turkish Other	3	2	1	1	2	
Is the information easy to find*							

* 1: Strongly agree; 2: Agree; 3: Neither agree/nor disagree; 4: Disagree; 5: Strongly disagree

Information can be found on the following aspects of the application procedure:

Application procedure	Conditions for admission	Entry requirements (e.g. visa etc.)	Cost of application	Applicable deadlines	Rights upon admission	Any differences between the Directives
Yes	Yes	Yes	Yes	No	Yes / No	No information for SPD on: Application procedure, Conditions for admission, Entry requirements, Cost of application, Rights upon admission. Only for LTR information as found on applicable deadlines.

For a person interested in legal possibilities for immigration the information might be confusing. A number of websites exist which contain similar but not identical information. The website migration.gv.at is meant to be the central website. There are still many missing links on the website, especially on migration.gv.at, outlining that explanations will be provided ("coming soon").

The difficulties to find precise information in a certain case are especially true for family reunification. Family reunification information is given for EU, EEA and Swiss nationals, for Austrian citizens and for third country nationals. It is very difficult to find the relevant information.

Information upon request

Upon request most authorities are able to provide information or to provide contacts to other authorities. If applicants ask concrete questions and are able to understand the answer in German or English information may be obtained. The telephone contacts are mainly limited to contacts in German and English language. The diplomatic or consular authorities often provide information in the language of the host country.

Additional details about information channels are provided in the phase 1 questionnaire.

1.3 Differences between national statuses and the EU legal migration acquis

The information channels do not differ substantially for the different statuses. For students and researchers useful guides exist. There are however still outdated guides on some websites, so the situation is confusing. This is true for the SD and the RD transposition and also for national types of equivalent status. Austria does not require a liability declaration by the universities as the universities refused to sign such declarations as they would have had to bear the costs and did not have any funds for this. The outdated guide still refers to these liability declarations.

2 Preparation phase

2.1 Legal transposition of the EU legal migration acquis

In this phase the acquis is mainly transposed, and information is provided. As mentioned above the information could be structured in a better way. There is no information about the SPD and the fact that it is not necessary to apply for a work permit separately. The Employment Service Austria is involved in the procedure and has to consent if this is required, but no applications are necessary.

For many types of family reunification integration measures (language certificates) are required. Language diploma or course certificates according to the Common European Framework of Reference for Languages have to be submitted (see implementation regulation to the Settlement and Residence Act, § 9b), level A1 (basic knowledge) is required. Exceptions: Persons who have not completed 14 years of age at the time of application, persons who cannot reasonably be expected to provide such evidence on grounds of their physical or mental health condition; in such a case, the third-country national must provide a medical report issued by a public health officer or by a doctor appointed by an [Austrian consular representation](#).

According to practice reports it is nearly impossible to estimate the required time for obtaining documents in the country of origin.

The application forms are in German and in the language of the country of origin. It might be quite difficult understand all elements required. The applicants need guidance in most cases. It might be easier for persons seeking work and higher qualified work or for researchers and students than for cases of family reunification.

2.2 Practical application of the EU legal migration acquis

The practice appears broadly in line with the legal requirements.

In general there are no deadlines for applications. There is however a deadline for family reunification procedures based on the Asylum Act. This deadline applies to family reunification cases with recognised refugees in the so-called family procedure. The application has to be made within three months after the status has been granted to the sponsor. If the deadline is not met, applications are possible, but additional criteria have to be fulfilled and the cases are treated on the basis of the Settlement and Residence Act not on the basis of the Asylum Act. There might be an implementation gap with regard to that deadline. The reason is that it takes some

time to apply and to get the necessary documentation from the country of origin, which might be complicated in such cases (persecution in the country of origin, other threats, war, and civil war).

For most kinds of residence permits applications for a residence permit and an entry visa are required, if the person is a national of a state where a visa requirement exists.

In practice, only one application is necessary. If a residence permit will be issued the responsible authority notifies the consular or diplomatic authority that a permit will be issued and the consulates then issue a visa. The consular authorities have to inform the applicants and the visa has to be applied for within three months (§ 23 (2) Settlement and Residence Act). The diplomatic or consular authorities have to inform and instruct the applicants. There is however no obligation to issue a written communication and the legal quality of the notification is unclear. The application for a residence permit includes the application for access to work, if the person intends to work.

The tables below summarise the ease of the application procedure as well as the key information/ documents required.

Ease of the application procedure:

Step	FRD	LTR	SD	RD	BCD	SPD
The information that applicants need to complete is not extensive	3	1	2	2	3	NI
The application form is user-friendly	2	2	2	2	2	2

Note: 1: Strongly agree; 2: Agree; 3: Neither agree/nor disagree; 4. Disagree; 5. Strongly disagree

Key information/ documents required :

Type of information	FRD	LTR	SD	RD	BCD
Family ties	Yes, T, C				
Continuous legal residence	No	Yes, C			
Sufficient resources	Yes, C	Yes, C	Yes, T, C (trainees)	Yes, T, C	
			Yes (students)		
Accommodation/Address in territory	Yes, C				
Sickness insurance	Yes, T, C	Yes, T, C	Yes, T, C	Yes, T, C	Yes, T, C
Work contract (for RD host agreement)				Yes, T, C	Yes, T, C
Minimum salary threshold					Yes, R
Professional qualifications				No	
(Pre-) Integration	Yes, T, C			Possibly,	

measures	T, C ⁴				
Pre-departure conditions	Yes (students)				
Proof no threat to public	Yes, T, C	Yes, T, C	Yes, T, C	Yes, T, C	Yes, T, C
Medical examination certificate	Possibly T, C		No, T, C	No, T, C	No, T, C
Valid travel document	Yes			Yes	
Entry visa				Yes	Yes
Other	No	No	Yes, C	No	No

T = Translation; C = Certified, R = Requirement, i.e. without this proof the application cannot be lodged.

2.3 Differences between national statuses and the EU legal migration acquis

Concerning legal migration for work purposes the focus lies on the Red-white-red Card and other national types of status. There is detailed information about the points system, whereas the information about the Blue Card is limited.

For Red-white-red Cards: Applications for a residence permit and an entry visa are required, if the person is a national of a state where a visa requirement exists. If a residence permit will be issued, the responsible authority notifies the consular office that a permit will be issued and the consulates then issue a visa. In the processing stage of the application different authorities are involved. The Labour Market Service has to consent if the person intends to work in Austria. A so called point system or credit system exists.⁵

3 Application phase

3.1 Legal transposition of the EU legal migration acquis

The relevant provisions of the EU legal migration acquis have been transposed. Some of the provisions are not literally transposed, but it can be concluded from other provisions that the content is transposed.

3.2 Practical application of the EU legal migration acquis

TNCs have to lodge an application in the diplomatic mission in the capital or in consulates. In general they have to apply in person, which might be complicated and expensive. The applicant has to be present at least once in the diplomatic mission or consulate. Personal data are checked and fingerprints are taken.

For certain residence titles applications may be submitted in Austria as well. Competent authorities are either the district administrative authorities or the local authorities in certain towns. Personal application is necessary. Online applications are not possible. All application forms are available on the websites⁶.

The decision information has to be notified (communicated) to the person. This is done via e-mail or via telephone or in person. There is no specific legal basis for this type of communication. For notifying the applicant of a decision, the Member State issues one

⁴ For some types of national equivalent status pre-integration measures and translated and certified documents about the fulfilment are required.

⁵ <http://www.migration.gv.at/en/types-of-immigration/permanent-immigration/very-highly-qualified-workers/> .

⁶ See the website of the Ministry of the Interior.
http://www.bmi.gv.at/cms/BMI_Niederlassung/formulare/Antragsformulare.aspx.

administrative act. If an application is rejected, the reasons have to be provided. These are provided in German. A third-country national may file a complaint. The Administrative Courts in the Federal States are competent to deal with complaints. If the authority does not communicate a decision within the given limit (administrative silence), the applicant can file a so called application for devolution. The appeals authority is competent to decide, in this case the Administrative Courts in the Federal States.

In cases the applicant is an employer, the third-country national is not involved personally in the first phase of the application, but he or she is the applicant. Besides the employer, the third country national has to be informed when a decision is made. The third-country national has to collect the residence permit personally.

Usually the person receives an entry visa, if he or she needs a visa for entry. The residence document as such is issued in Austria and has to be collected with the authorities in Austria. The embassy or consulate informs the applicant that a residence permit will be issued (instruction, Belehrung).

The granting fees: for residence permits vary between € 100 (€ 80 upon application, additional € 20 when granted) and € 150,00. In addition costs of personalisation (photography and signature) have to be paid (€ 20).⁷

The application process, including processing times is summarised in the tables below.

Directive	General	FRD	LTR	SD	RD	BCD	SPD
Application from third country (Q3a)	Yes / No						
Permit received in third country	No						
Number of authorities	Maximum 3						
Number of authorities involved in the issuance of the residence permit	1-2						
Application modalities	In person						
Existence of a standard application form for all statuses	No						
Language of the application form	National language						
Fees charged ⁸	NI						

⁷ Konsulargebührengesetz 1992, Law on Consular Fees, FLG No. 100/1992 as amended, Annex 1. See also http://www.bmi.gv.at/cms/bmi_niederlassung/english/start.aspx. On this site there is a mistake specifying € 10 for a certain category.

⁸ Information about granting fees is provided upon request and is published on the websites (there are sometimes slight mistakes).

Other fees charged?	Yes	Yes	Yes	Yes	Yes	Yes
Fees charged for permit issuance	Yes	=				
Fees charged for renewal / replacement of the permit (Q6b.(ii))	100€	150€	100€	100€	150€	

The processing times are as follows:

Directive	FRD	LTR	SD	RD	BCD	SPD
Processing time /deadlines (according to law)	183 days	183 days	183 days	183 days	56 days	183 days
Processing time (in practice)	NI	NI	NI	NI	NI	NI

3.3 Differences between national statuses and the EU legal migration acquis

In the application phase there are no major differences between national statuses and the EU legal migration acquis. All the necessary documents have to be submitted. The original version and a copy have to be submitted. The authority where the application is filed, checks if the copy is identical to the original document and certifies this on the copy. In general a translation of documents is required. In most cases a certified translation is necessary. The competent authorities decide if a translation is required. The regulation implementing the Settlement and Residence Act says that translations have to be provided upon request of the authority. It depends on language knowledge of the diplomatic or consular offices, on the state of origin and the required type of document.

4 Entry and travel phase

4.1 Legal transposition of the EU legal migration acquis

The relevant provisions of the EU legal migration acquis have been transposed.

4.2 Practical application of the EU legal migration acquis

As the third-country national is not yet in the possession of a residence permit following the positive decision on the application, the Member State issues a visa and has put a specific timeframe for issuing the latter. Also in cases where the employer is the main applicant the third-country national needs to request the visa (for applications under the Blue Card or the Red-White-Red Card).

The Member State allows third country nationals who hold a valid permit and valid travel document to enter and re-enter their national territory only on the basis of the permit. The third-country national is allowed to travel to other Schengen Member States only on the basis of the permit and valid travel document. The Member State does not impose specific entry requirements to third-country nationals of a visa free country. Third-country nationals do not encounter any obstacles in practice to leave

the third country, transit and/or enter the Member State. Upon arrival, third-country nationals are required to register with the local authority, with social security institutions, with healthcare providers.

4.3 Differences between national statuses and the EU legal migration acquis

There are hardly any differences. In general there is no special timeframe for issuing a visa. The General Act on Administrative Procedures requires that the authorities decide within six months. As the BCD requires a decisions within eight weeks, this eight weeks limit for decisions is especially regulated for applications for Blue Cards. As mentioned above the responsible authority notifies the consular or diplomatic authority that a permit will be issued and the consulates then issue a visa. The consular authorities have to inform the applicants and the visa has to be applied for within three months after the notification (§ 23 (2) Settlement and Residence Act). The diplomatic or consular authorities have to inform and instruct the applicants. There is however no obligation to issue a written communication and the legal quality of the notification is unclear.

The registration obligations are the same for EU types of status and national types of status.

5 Post-application phase

5.1 Legal transposition of the EU legal migration acquis

The relevant provisions of the EU legal migration acquis have been transposed.

5.2 Practical application of the EU legal migration acquis

There are no issues with the practical application.

For unremunerated trainees visa D may be issued, which is valid for six months. The permit for long term residents is issued for five years and may be prolonged. Even if the permit expired, the residence is still legal (declaratory nature of the permit). The table below gives an overview of the validity of different permits.

Directive	FRD	LTR	SD	RD	BCD	SPD
Minimum validity of the first permit	12 months	60 months	12 months	6 months	24 months	
Maximum validity of first permit	12 months	60 months	12 months	24 months	24 months	
Minimum validity of permit renewal						
Maximum validity of permit renewal	unlimited	60 months	12 months	12 months	24 months	

The Member State does not have a set timeframe to deliver the permit following the notification of the decision. The employer is the main applicant but is not involved in the delivery of the permit.

5.3 Differences between national statuses and the EU legal migration acquis

The duration of a residence permit Blue Card is two years, whereas in general Austrian residence titles are issued for one year. Certain residence permits (red-white-red Card plus, Settlement Permit, Settlement Permit – family member, and Settlement Permit without authorization to work) are granted for a three-year period if the third-country national has fulfilled module 1 of the Integration Agreement and has been continuously lawfully established in Austria for the last two years. The national equivalent status to the Blue Card, the Red-white-red Card is issued for one year.

6 Residency phase

6.1 Legal transposition of the EU legal migration acquis

The relevant provisions of the EU legal migration acquis have been transposed.

The residence permits have a constitutive nature, except the long term residence permit which is declarative.

A prolongation of residence permits is possible, usually the duration is the same as for first time permits.

In general permit holders have to change the permit, if the status changes and this new status is not covered by the permit issued.

6.2 Practical application of the EU legal migration acquis

a. Use of the permit:

The residence permit is issued using the format as set out in Regulation (EC) No 1030/2002 for residence permits. The permit has a constitutive value. It gives third-country nationals to right to move freely on the Member State's territory.

The Member State allows third-country nationals holding residence permits from other Member States applying the Schengen acquis (together with a valid travel document) to enter and move freely within its territory.

The permit is required as a legal document for the following other administrative procedures:

Access to education	Access to healthcare	Registration with PES	Fixed telephone subscription	Utility subscription	Open a bank account	Social security registration
X	X	X	X	X	X	X

b. Renewals of the permit:

National or EU law imposes a direct or indirect requirement to renew a valid residence document.

The renewal process follows /a single procedure, involving more than one authority. The same authorities are involved as in the first application procedure.

c. Change of status and naturalisation

Status changes are possible for all statuses. The procedure for requesting a status change is the same as the first application procedure.

Special status changes are foreseen for Blue Card holders and for persons who have a long term residence permit of another EU Member State. All other types of status changes are covered by § 26 Settlement and Residence Act. Persons you want to

change have to apply and have to fulfil the criteria for the permit they want to obtain. In case they fulfil the criteria they have a legal claim that the permit is issued.

Changes from student permits to employment-based permits are allowed. A student may apply for a permit according to § 41 Settlement and Residence Act (Red-white-red Card) after the finalisation of studies (§ 64 (4) Settlement and Residence Act). The permit is valid for six months and enables the person to search for employment.

Blue Card or other temporary work permits may be changed to Red-white-red Cards plus in course of the prolongation procedure.

In order to obtain citizenship, the third-country national needs to comply with conditions regulated in the Nationality Act. They require a certain duration of residence and the fulfilment of integration criteria. These are: in general 10 years legal and continuous residence in Austria, therefrom minimum of 5 years with a residence permit, integrity, proof of one's own fix and regular earnings out of acquisition, income, judicial claim to maintenance or insurance benefits over a period of 36 months on average within the last 6 years before the time of application. German language skills at B 1 level of the Common European Framework of Reference for Languages basic knowledge of the democratic system and the fundamental principles deriving therefrom, as well as the history of Austria and of each province, positive attitude towards the Republic of Austria and warranty that there is no danger for the public peace, order and security.

d. Employment rights on the basis of the permit

In general, a work-related permit is linked to a certain employer. When changing employer, the third-country national needs to request a change to the permit. Holders of a Red-White-Red Card plus may change the employer without having to apply for a new permit.

e. Equal treatment

The general provisions of the EU framework on equal treatment apply.

With regard to identifying labour exploitation, the Member State does not have a mechanism in place to monitor the exploitation of third-country nationals.

f. Integration:

Specific integration procedures and conditions apply to third-country nationals once established on the territory of the Member State.

There are two modules. The completion of Module 1 is a requirement for the issuance of several types of residence permits (see above 5.3.). Module 1 is intended to provide German language skills for in-depth basic language use (i.e. language skills at A2 level according to the Common European Framework of Reference for Languages). Module 2 is required for obtaining a long-term residence title ("Long-term Resident – EC" and "Long-term Resident – Family Member"), as well as for obtaining citizenship. Module 2 is intended to provide German language skills for in-depth autonomous language use (i.e. German language skills at B1 level according to the Common European Framework of Reference for Languages).

There are consequences if the third-country national does not participate in these or fails the integration measure.

6.3 Differences between national statuses and the EU legal migration acquis

In this phase there are hardly any differences. Integration measures however are mainly required for family reunification and for Red-white-red Cards and Red-white-red Cards plus. If integration measures are required third country nationals have to conclude an integration agreement. Integration measures are not required by Blue Card holders, only if they change to a Red-white-red Card in the course of a

prolongation procedure. For acquisition of a Long Term Residence Permit module 2 is required, for all other module 1.

7 Intra-EU mobility phase

7.1 Legal transposition of the EU legal migration acquis

The relevant provisions of the EU legal migration acquis have been transposed.

Also long term residents who hold a long term resident permit in another EU state are treated – with few special rules – as new applicants who have to fulfill the general requirements. Several residence permits may be obtained by these applicants. § 49 Settlement and Residence Act applies.

Freedom to travel and short term mobility is generally allowed. The persons only have to report and deregister if they give up their residence in Austria or change residence within Austria.

7.2 Practical application of the EU legal migration acquis

For short-term mobility, the Member State:

- Does not require the third-country national to notify
- Does not require the third-country national to ask for authorisation.

However, very limited intra-EU mobility possibilities exist. Rules have only been enacted if the Directives explicitly required these rules. Blue card holders of other member States may get a Blue Card in Austria after 18 months of holding a Blue Card in another Member State. The requirements for the issuance of a Blue Card in Austria apply (§ 50a Settlement and Residence Act). Applications may be filed in Austria within one month after entry or from abroad. Family members of such Blue Card holders are entitled to obtain a Red-white-red Card plus with unlimited access to the labour market (§ 50a Settlement and Residence Act). They are also entitled to apply in Austria.

In general family members of mobile third country nationals are entitled to apply for the same kind of permit as family members of persons who apply for a permit for the first time in Austria.

7.3 Differences between national statuses and the EU legal migration acquis

In this phase there are hardly any differences. Only for long term residents the completion of integration module 2 is required.

8 End of legal stay / leaving the EU phase

8.1 Legal transposition of the EU legal migration acquis

The acquis has been transposed. There is however very little information about the portability of social rights. Most possibilities, e.g. the portability of unemployment payments and benefits is not practical.

All acquired rights for retirement pensions remain. The application for the retirement pension has to be made in Austria.

8.2 Practical application of the EU legal migration acquis

There are specific procedures in place for third-country nationals who choose to leave the Member State. These include:

- De-registration from national / local registers
- Returning the residence permit
- Leaving responsible authorities with an address in the next country of residence

The Member State does not allow third-country nationals to export certain social security benefits. Rights to retirement pension remain valid, they are however not transferable. In theory unemployment payments would be transferable. As the person has to remain available for the Employment service this is very unlikely⁹.

Information on the portability of social security benefits is not easy to find and not clear.

There are no rules about the number of days of absence which are allowed. A residence permit remains valid as long as no return decision, residence ban or expulsion order is issued and may be enforced. Residence titles also become invalid when the authorities issue a decree deciding that the residence permit is invalid because the person left Austria, § 10 (2) Settlement and Residence Act. The absence of third-country nationals is not monitored by the Member State.

The Member State does not have measures or a scheme in place to allow circular migration. It is however possibly for persons who held a residence permit and left the country to apply again for a permit of the same kind or for another permit.

If a third-country national deliberately overstays the residence becomes illegal, the Aliens Police Act applies and a return decision may be issued. For persons with a residence permit –long term resident EU the residence is still legal as the permit only has declaratory nature.

8.3 Differences between national statuses and the EU legal migration acquis

There are no differences in this phase.

9 Main findings and conclusions – state of practical implementation of EU legal migration legislation in the Member State

There appear to be no major issues with the practical implementation of the EU acquis in Austria.

Family reunification on the basis of the Settlement and Residence Act is still based on the general quota system for immigration into Austria.

Issues also arise with Art. 18 (1) SD and Art. 15 RD. Austrian authorities should decide within a period which allows the student to start studies in time, there seems to be, however, no legal obligation.

There is an issue with regard to Art. 5 (3) SPD, which obliges States to enact provisions that the competent authority shall notify the decision to the applicant in writing in accordance with the notification procedures laid down in the relevant national law. This provision is not literally transposed into national law. The Settlement and Residence Act only obliges the deciding authority in Austria to notify the diplomatic or consular representations that a positive decisions is taken. According to § 23 (2) Settlement and Residence Act the person has to apply for a visa within three months. The diplomatic or consular authorities have to inform and instruct the applicants. There is however no obligation to issue a written communication and the legal quality of the notification is unclear.

⁹ The person could receive unemployment payment if he or she remains available starting a new employment if this is offered by the Employment Service. The person has to contact the employer and has to be available to conduct a hearing and so on. He or she could however seek for employment in another State and already stay in this State.

There are only few provisions facilitating intra EU-mobility.

Austrian aliens and immigration laws are quite complex. All areas have been amended many times in recent years. Reasons were the general migration situation, the EU acquis which had to be transposed and implemented and also the jurisprudence of the Constitutional Court where the Court decided that provisions are violating Constitutional Law. This lead to a situation where it is even difficult for advanced migration lawyers to keep an overview over all rules and assess whether rules and practice comply with detailed provisions of the EU acquis.

Annex 1 References

Interviews undertaken

Member State	Organisation/authority interviewed	Contact person/contact details
Austria	Telephone contact with visa service hotline at the Ministry of Interior, Hotline number 0043 (0)1531 26 3557, Department II/3.	
Austria	Telephone and e-mail contact with various district administrative authorities and Magistrat Vienna (MA 35).	
Austria	Telephone and e-mail contact with Tracing Service and Family Reunification, Österreichisches Rotes Kreuz, Landesverband Salzburg,.	Sterneckstraße 32, 5020 Salzburg, Österreich,
Austria	Dr. Johannes Peyrl Kammer für Arbeiter und Angestellte für Wien, Telephone and e-mail contact with,	Prinz-Eugen-Straße 20-22 1041 Wien, E-mail: johannes.peyrl@akwien.at.

Websites:

www.help.gv.at

www.bmi.gv.at

www.migration.gv.at

EU immigration portal

Websites of different Austrian embassies, see the search form on <https://www.bmeia.gv.at/en/embassies-consulates/search-for-austrian-representations/>

Application forms provided on several websites.

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http://2016.oead.at/fileadmin/oead_zentrale/willkommen_in_oe/Recht/Leitfaden_fuer_internationale_Studierende_en.pdf.

Telephone and e-mail contact with various district administrative authorities and Magistrat Vienna (MA 35).

Telephone and e-mail contact with Tracing Service and Family Reunification, Österreichisches Rotes Kreuz, Landesverband Salzburg, Sterneckstraße 32, 5020 Salzburg, Österreich,

Telephone contact with visa service hotline at the Ministry of Interior, **Hotline number 0043 (0)1531 26 3557**, Department II/3.

Telephone and e-mail contact with Kammer für Arbeiter und Angestellte für Wien, Prinz-Eugen-Straße 20-22, 1041 Wien

Websites of different Austrian embassies, see the search form on <https://www.bmeia.gv.at/en/embassies-consulates/search-for-austrian-representations/>.

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