



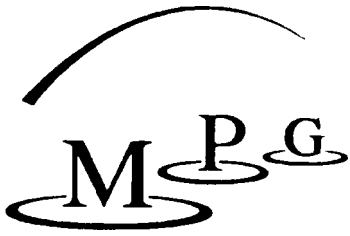
EU and US approaches to the management of immigration

Jan Niessen, Yongmi Schibel and Raphaële Magoni (eds.)

Austria

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

This report is part of a series of 18 country reports prepared in the framework of the project *EU and US approaches to the management of immigration*, which was carried out by MPG with the support of the German Marshall Fund of the United States and in co-operation with partners in the European Migration Dialogue. Countries included in the project are Austria, Belgium, the Czech Republic, Denmark, Finland, France, Germany, Greece, Hungary, Ireland, Italy, Luxembourg, the Netherlands, Poland, Portugal, Spain, Switzerland, and the UK.

Reports on these countries are available from MPG's website individually or jointly, together with EU-US comparative perspectives and European comparative perspectives. See Jan Niessen and Yongmi Schibel, *EU and US approaches to the management of immigration – comparative perspectives*, MPG/Brussels, May 2003.

All papers were presented and discussed at a transatlantic dialogue meeting preceding the official launch of the European Migration Dialogue attended by Commissioner António Vitorino (Brussels May 2003).

Brussels/Vienna, May 2003

Preface

The European Union and the United States are areas of immigration, and both are entities of multi-level governance facing the task of managing international migration. However, unlike the United States most European states do not consider immigration as a matter of national interest.

In the US a regulated immigration system aims to enhance the benefits and minimise the drawbacks of immigration. The country's bi-partisan immigration policy receives strong support from a wide variety of stakeholders.

In Europe the emphasis is on immigration restriction and prevention, reflecting the position of most stakeholders that the costs of immigration outweigh its benefits. Immigration is a sensitive and sometimes controversial issue, as is demonstrated in recent elections in a number of European countries.

On both sides of the Atlantic migration ranked high on the agenda throughout the nineties. Changes in the size and direction of migratory movements as a result of global developments, EU enlargement and NAFTA received a great deal of attention. The ways in which migration policies are designed and implemented were reviewed and underwent some important changes.

In 1997, the US Commission on Immigration Reform presented its final report to Congress, proposing important changes in US immigration policies and management.

In Europe the 1997 Amsterdam Treaty empowered the European Union's institutions to act on migration, changing intergovernmental co-operation among member states into the development of joint policies on immigration and immigrant integration. A new debate emerged on the role of immigration to address economic and demographic imbalances.

The events of September 11 did not in themselves have an impact on the foundations of immigration policies' governance structures, or lead to changes in them, other than those already proposed. The events added, however, a range of other issues to the overall policy agenda (issues related to the fight against terrorism became a top priority) and the immigration agenda (where security issues became a priority). This resulted in a stagnation of the further development of immigration policies (the best example probably being the US-Mexico migration agreement) and in a refocusing of attention on countering the victimisation of immigrants and the straining of community relations.

It is against this backdrop that MPG launched the project *EU and US approaches to the management of immigration* in an attempt to identify the main drivers of immigration management in EU and US systems of multi-level governance. Building on an understanding of how migration needs are assessed and translated into policy on the national or state level, the project focused on the way in which national or state governments promote their immigration related interests within the federation (in the case of the United States) and the Union (in the case of the European Union). How successful are the different entities in shaping common policies according to their needs? Do they consider centralisation (which the extension of EU powers suggests), or decentralisation (as the campaigns of some states for a greater say in immigration matters suggest) more useful for realising their immigration-related goals?

The reports on fourteen EU Member States, three candidate countries and one associated state each have four chapters:

The first chapter reviews the (emerging) debates on migration and pays particular attention to the terms of the debate. It examines whether migration is debated in terms of control, security and restriction, or rather in terms of migration management and the assessment of migration needs. It asks whether the terms of the debate are different for different types of migrants, for instance irregular migrants vs. highly qualified migrants. The chapter analyses whether immigration has been linked with and embedded in larger discussions about social and economic policies for the future. In particular, it looks at the debates around the labour market and demography and considers whether and how immigration has been considered as an option for meeting emerging challenges in these areas.

The second chapter provides an inventory of stakeholders and an analysis of their activities. It gives a detailed account of who is responsible for which area of migration management in the different government departments. It also covers the activities of the various non-governmental organisations active in this field. The central question is which groups (within government, employers, trade unions, NGOs, academics and other experts) assess national migration needs, which instruments and mechanisms they use to make these assessments, and how they assert influence in the political decision-making process to translate these assessments into policies.

The third chapter provides an analysis of migration management in the areas covered by three of the most important Directives proposed by the European Commission (on admission for employment, family reunification¹, and long-term residents). Rapporteurs compare the national legal framework with the proposed European measures, and assess the degree of convergence between the two. The chapter addresses each of the substantive points dealt with in the Commission's proposals and sets out the corresponding national provisions, if such provisions exist under the current system. Recent and impending changes of national law are also examined, with a view to assessing whether immigration management rules are moving closer to or further away from the proposed European legislation.

The fourth chapter offers concluding remarks and evaluations by the rapporteurs. It addresses the Commission proposal for an Open Method of Co-ordination and considers whether such a mechanism would fit well with existing policy-making structures. Where appropriate, the chapter looks more closely at the proposed Guidelines and evaluates the degree to which they are already tackled in national policy. The impact of the European Employment Strategy on immigration management is also assessed. The fourth chapter also gives the rapporteurs an opportunity to make recommendations and to suggest alternative benchmarks for future debates and policy developments.

¹ Reports were drafted before the definition of a common approach to family reunification, which Member States agreed to at the Justice and Home Affairs Council of 27/28 February 2003. Rapporteurs base their comments on the text of draft Directive COM (2002) 225, published on 2 May 2002.

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Chapter 1: The terms of the policy debates

1.1. Immigration policy in Austria until the 1990's

Despite a long history of immigration and emigration, Austria does not officially understand herself to be an immigration country. Whereas in many European countries the legal differences between citizens and non-citizens have gradually been reduced, the legal restrictions governing non-EU-immigrants with regard to employment, housing, social and political rights are the most important obstacles to social and political integration in Austria.

A significant pillar of the Austrian political system has for a long time been the elaborate system of social partnership. This corporatist political system has also influenced the history of Austria's immigration policies to a considerable extent. In policy decisions concerning the economy and the labour market and in central questions of social policy these 'social partners' have traditionally had a decisive influence, based on personal, formal and informal linkages with decision-makers in government, administration, parliament, and the political parties. The institutionalisation of the "Sozialpartnerschaft" however started in the beginning of the 1960s and was indeed initiated by a clash of interests regarding the opening of the labour market to foreigners. While the Chamber of Labour and the Trade Unions Congress were strictly opposed to this opening, the Chamber of Commerce pushed for it. Due to the hardened front lines, the consensus necessary to adopt a law that would regulate the employment of foreigners could not be achieved. Instead the unions agreed to open the labour market and the borders for a first temporary immigration of 47.000 guest workers in 1961 under the condition of equal payment, fixed one year-contracts and prior dismissal of immigrants in the case of job-losses. At the origin of this concession was an agreement about the increased influence of the employees' representatives in one of the central arenas of negotiation within the framework of "Sozialpartnerschaft", the "parity price and wage commission". Until 1975 the unions and the Chamber of Labour strengthened their position within the social partnership by using the yearly negotiations of the contingent for foreign workers as lever². In the following decades the initial social partnership-agreement, the 'Raab-Olah-Agreement', remained the determining framework for regulations of the labour market access by immigrants.

Until 1987 immigration policy was purely seen as labour market policy and thus the Ministry for Social Affairs was the only responsible authority. The unions, which by inclusion into the system of social partnership had become a part of the system of government, did not open their structures for immigrants, but instead focused their activities on workers and employees holding Austrian citizenship. They remained inactive with regard to the exclusion of non-Austrian citizens from passive voting rights at the shop floor level, so immigrants did not enter their ranks and files. Instead of opening up their own political structure, the unions and the chamber concentrated on funding migrants' sports and cultural associations.

From 1991 onwards, the Ministry of the Interior became a proactive player in the field, after having played only a nominal role until then. In addition, the political landscape had changed in the meantime and two parties – the extreme right wing FPÖ and the Greens - which had not been involved in the negotiating processes of the social partners before, started to actively use immigration issues to shape their political profile. Although representing opposite approaches, both were rather free in their argumentation without the restrictions of keeping the burden of traditionalised interests in mind. Mainly due to union concerns about loss of influence, a great reformation of the legal framework that regulated the residence and labour market access for non-Austrians was not feasible at the end of the 1980s. Consequently, only

2 Cf. Rainer Bauböck: Nach Rasse und Sprache verschieden. Migrationspolitik in Österreich von der Monarchie bis heute. Wien (Institut für Höhere Studien), Reihe Politikwissenschaft No.31. Wien 1996.

minor changes of the existing regulations were made, which still followed the concept of the 'guest-worker'-schemes.

The shift of migration policy from the social-partnership arena to the Ministry of the Interior and the changes within the Austrian parliamentary system with the rise of the xenophobic Freedom-Party and the first entry of the Greens into parliament led to a short phase of scientific and political discussion on the future of Austria 's migration policy. Between 1989 and 1992, the Ministry of the Interior together with the Office of the Federal Chancellor initiated several dialogue groups including civil servants, migration researchers and intellectuals. One outcome of the dialogue was a draft of an "immigration law" suggesting immigration control together with the abolishment of the existing labour-market regime and an equalisation of the legal status of immigrants and natives after a few years. As meanwhile public discourse on migration had shifted towards playing up the risk of mass immigration from Eastern Europe, and the Freedom Party had considerably gained support for its anti-immigration policies, the short phase of rational discussion soon came to an end. Immigration from Eastern Europe was now portrayed as a threat to the labour market and the social system, and trade unions as well as the Freedom Party and the government defined control of immigration as their major task.

At the end of the eighties a new subject entered the arena: The ageing of society. A study commissioned by the City of Vienna, which at that time was facing a continuous decline in population, was the first to use demographic arguments in favour for controlled immigration³. Leading demographers such as Rainer Münz and Heinz Fassmann argued for accepting reality and trying to develop a quota system for immigration aimed at compensating the foreseeable loss of population with its dramatic consequences for the pension- and health systems. The idea of immigration as a means of demographic planning found acceptance within the government, which had realised that the existing mode of migration management via control of the labour market was inefficient, and had started to discuss a scheme of quota-based immigration control. So the "demographic turn" was taken up by policy with the decision to implement a new regime of immigration quotas.

Between 1991 and 1993 the Austrian parliament passed several significant reforms in the area of the laws concerning foreigners' legal status in Austria: on June 1, 1992, a comprehensive reform of the Asylum Act entered into force; on January 1, 1993, the former "Aliens' Police Act" entered into force as "Aliens' Act " having been extensively revised; finally, on July 1, 1993, the new Residence Act entered into force. These comprehensive reforms were driven by the intention to prevent further use of the asylum procedure as an immigration path as well as to regulate and restrict future immigration and prevent illegal immigration into the country. The new legal regulations introduced the immigration quota system and stipulated that the Austrian Institute for Economic Research would each year have to produce an analysis of the economic situation with regard to immigration and recommendations for the setting of the annual immigration quota. Beyond that - and in contrast to official declarations - the new Residence Act also applied to legal residents in the country without giving credit to that fact. In contrast to the principle of strengthening the residence security of long-stay-immigrants, which has characterised the development of most European countries in recent years, the new laws in Austria resulted in the weakening of residence security of immigrants.

3 Eugen Antalovsky (ed.): Wien 2010. Stadtentwicklung bei Bevölkerungswachstum und offenen Grenzen. Wien , 1990.

1.2. The policy debate since the late nineties

1.2.1. Key concepts and terms

There are two key terms used in the policy debate: The term “foreigner/s” and the term “integration”. The first term is applied in discussions on the legal position of immigrants within Austrian society, which is still mostly shaped by a strong legal division between Austrian and EU-citizens on the one hand and third country nationals on the other. The term “integration” is mostly used in debates on immigration control, where it serves as an argument to stop further legal immigration: “Integration (shall come) before new immigration” (“Integration vor Neuzuwanderung”) is a key concept of the government since 1997, when it was introduced by the Social democratic – Conservative coalition, with a strong emphasis on understanding “integration” as German language acquisition and adapting to an “Austrian way of life”. It was used to legitimate further restrictions on legal immigration and asylum.

This policy was introduced after the then chancellor Franz Vranitzky (SPÖ) stepped down following a heavy defeat of the Social democratic Party and gains of the Freedom Party (FPÖ) at local elections in Vienna, which were attributed to a xenophobic campaign by the FPÖ against the liberal migration policy of his minister of the interior, Caspar Einem of the SPÖ’s left wing. Vranitzky’s successor Viktor Klima (SPÖ) appointed Karl Schlögl of the right wing of the SPÖ as Minister of the Interior. Already in his first interviews minister Schlögl announced a sharp reduction of immigration and a reform of the legal position of settled immigrants. This reform, called “integration package”, passed parliament in June 1997 and entered into force on January 1, 1998. It comprised a new Aliens Act and reforms of the Foreigners’ Employment Act and of the Asylum Act.

The major features of the reform included an improvement of the legal position of long-term settled immigrants and a weakening of the legal position of immigrants residing in Austria for less than eight years. For immigrants residing in Austria for at least eight years and children of immigrants born in Austria expulsion was made impossible, whereas it was made possible to expel long-term unemployed immigrants residing in Austria for less than eight years. Family reunification was limited to children up to the age of 14 and remained regulated by a specific quota within the overall quota-regime. Access of family members to an employment permit was eased minimally. The overall immigration quota, which had been at 17.320 in 1997 (including the quota for family reunification), was lowered to 8.660, with a sharp reduction of the family reunification quota from around 10.000 to 4.600. Although the ÖVP-FPÖ government again lowered the quota to around 8.300 in 2000 and 8.000 in 2003, the most important restriction of immigration already took place during the SPÖ-ÖVP coalition government.

The reform of the Aliens Act was followed by a reform of the Naturalisation Act in June 1998, which considerably restricted access to Austrian citizenship. The reformed Naturalisation Act reduced the possibility of naturalisations prior to ten years of residence, introduced a compulsory test of German as a precondition for naturalisation and excluded persons having been convicted to a sentence of three months imprisonment or more. Despite demands by the opposition and humanitarian NGOs, the prohibition of dual nationality was maintained.

The ÖVP/FPÖ coalition formed in 2000 reiterated the main concepts of immigration policy already laid down by the Social democratic - Conservative government and linked them strongly with security issues. Both in the governmental programme of 2000⁴ and of 2003⁵

4 Bundeskanzleramt: Österreich neu regieren. Regierungsprogramm der Österreichischen Bundesregierung für die XXI. Gesetzgebungsperiode.. Wien 2000.

5 Bundeskanzleramt: Regierungsprogramm der Österreichischen Bundesregierung für die XXII. Gesetzgebungsperiode.. Wien 2003.

migration issues are dealt with under the heading “internal security and integration” and “internal affairs, asylum and integration” respectively. Internal security and the clear-cut differentiation between immigration and asylum are clearly linked.

Under the heading “Internal Security and Integration” the governmental programme 2000 states: “In this legislative period the focus of internal security will be the fight against organised crime, drugs and trafficking.” Under the following heading “fight against crime” it lists the fight against trafficking as the second point. Under point 4 “Migration and Asylum”, it lists the development of the EURODAC-finger-printing system, a clear support of the Geneva Convention and the support of the European Union to conduct agreements with third countries to take back their own citizens⁶.

In both governmental programmes the term “integration” is used to describe immigration policy as opposed to asylum policy. Under the heading “Integration” the governmental programme of 2000 states: “Basically, one has to differentiate between “asylants” (“Asylanten⁷”), de-facto-refugees and immigrants (“Zuwanderern⁸)”⁹.

The first chapter of this part of the governmental programme 2000 deals with legal questions in the area of asylum and again stresses the need to fight trafficking and illegal immigration; the second chapter deals with immigration and employment. The chapter starts with the slogan “Integration of legally resident immigrants has to have priority over new immigration” and announces that Austrians and already legally resident immigrants enjoy privileged treatment in the area of occupation. It further suggests a study on the labour-market effects of granting access to the labour market to family members of resident immigrants, and announces a positive approach towards the further granting of seasonal work permits for employment. There are no deliberations with regard to migration management, but it is announced that the study mentioned should analyse the effects of migration on Austria’s economy and social systems in order to develop a sound migration policy in the future (see below).

The third chapter has the heading “Comprehensive Integration” and focuses on German language training for immigrants. It announces an active integration programme for newly arrived immigrants and an improvement of German language tuition in kindergartens and schools. Naturalisation is described as the completion of the integration process; therefore it would be necessary to “abide by the criteria set in the law¹⁰”. The programme also announces the introduction of examinations in German and basic knowledge about Austria and the European Union as precondition for the granting of Austrian citizenship. According to the programme, the possibility for receiving Austrian nationality prior to the ten years of residence laid down in the law on naturalisation should be reduced, and dual nationality should not be allowed. No references whatsoever to demographic or labour market related needs for immigration and immigration management can be found in the programme.

The term “integration” has been further restricted in its meaning to language acquisition by the introduction of the so-called “integration agreement” in 2002. In this context the reformed

6 Bundeskanzleramt: Österreich neu regieren. Regierungsprogramm der Österreichischen Bundesregierung für die XXI. Gesetzgebungsperiode.. Wien 2000, p.46ff.

7 The term “Asylant” is no legal term of asylum legislation, which defines an “asylum seekers” as a person asking for asylum and a “recognised refugee” as a person, to whom asylum was granted. The term often is used in colloquial German and embraces a negative attitude.

8 Immigrant does not translate literally into “Zuwanderer”, but into “Einwanderer”. The term “Zuwanderer” is often used in colloquial German and embraces a notion of limited time of residence and limited belonging to society, whereas the term “Einwanderer” clearly suggests permanent residence.

⁹ Bundeskanzleramt: Österreich neu regieren. Regierungsprogramm der Österreichischen Bundesregierung für die XXI. Gesetzgebungsperiode.. Wien 2000, p.49.

¹⁰ see FN 9.

Aliens Act provides for compulsory language training in German for 100 hours. Since January 1, 2003, all non-EU-immigrants and those who have been residing in Austria since January 1, 1998, except for “key personnel”, children, the elderly and any immigrant demonstrating suitable knowledge of German will have to attend such courses. The immigrant concerned will have to pay a growing part of the costs of the course, starting with 50%, if the course is finished within the first year and a half of residence, and increasing to 100%, if finished after the 2nd year. If the courses are not completed successfully within four years, the immigrant may lose his/her residence permit. This so-called « integration agreement » has been sharply criticised by both the opposition and humanitarian NGOs, who have pointed out that it merely serves as a threat to immigrants and thus does not at all aim at providing a better knowledge of German, which can hardly be acquired in 100 hours. Although the government stated that the “agreement” was inspired by the Dutch integration policy, which strongly links language tuition with labour-market integration, there is no connection made to labour market and qualification programmes like in the Dutch case.

The bill also improved the access of the second generation to the labour market and introduced the “certificate of residency” (CR), a long term residence permit (issued for 10 years) for immigrants residing legally and permanently in Austria for at least five years, who are able to sustain themselves. Immigrants who arrived in Austria after January 1, 1998, will have to fulfil the “integration agreement” to be issued the certificate.

The relation between security issues and immigration is even clearer in the governmental programme of 2003. Under the heading “Internal Affairs, Asylum and Integration” the 2003 governmental programme states:

“It is a target [of the government] to have and to support a democratic, effective and motivated security-executive, which, through her daily work, contributes to the preservation and enhancement of a democratic state under the rule of law (“Rechtsstaat”) and of human rights in Austria, as well as effectively targeting criminality. It is also a common target to unequivocally differentiate between immigration policy – as an answer to voluntary migration and economic considerations – and granting of asylum – as an answer to forced migration. Asylum policy is human rights policy and aims at offering protection to persecuted individuals. Immigration policy produces clear rules and conditions for legal immigration.”¹¹

The first points mentioned in the chapter concern the fight against organised crime, international terrorism and the internal reorganisation of the police, followed by several measures concerning inter alia traffic security, the fight against drug trafficking and a reform of service as a conscientious objector. These points are followed by several announcements in the field of migration and integration, namely the planned restriction of the possibility for naturalisation prior to 10 years of residence, the rejection of dual nationality and the announcement of a speeding up of the asylum procedure. In a further chapter the government reiterates that family unification is limited to the core family – spouses and unmarried minor children. To prevent undocumented employment, family members are to receive work permits immediately after immigration. As the programme also suggests “examining potential misuse in the area of quota – free immigration”, experts anticipate that the government plans to restrict the free immigration of third-country family members of Austrian citizens, which in fact can only be done by further restricting naturalisation. This is the most significant way to obtain access to quota-free immigration. Again no reference to migration needs and migration management can be found.

In general, the inclusion of immigrants into the labour market is not a priority of the Austrian Employment Strategy. Migrant workers are not explicitly mentioned in the labour market policy

¹¹ Bundeskanzleramt: Regierungsprogramm der Österreichischen Bundesregierung für die XXII. Gesetzgebungsperiode.. Wien 2003, p.7.

guidelines and are consequently not considered as a disadvantaged labour market group. The low relevance of migration issues can also be shown by an analysis of the National Action Plans for Employment. The National Action Plans of 1998¹² and 1999¹³ do not contain any reference to immigrants at all. The National Action Plan of 2000¹⁴ only notes in passing that “the vocational and social integration of ethnic minorities has been supported for years by offering German courses, vocational integration measures and active labour market counselling for migrants and autochthonous Roma in regions where they reside” (p. 13). It also mentions some training measures for the autochthonous Roma minority and a newly set up “Jewish Vocational Training Center”. The National Action Plan of 2001¹⁵ is even more vague on the issue of migrants’ integration into the labour market and only mentions, generally, that the Labour Market Service and foreigners’ associations care for the needs of immigrants and that a study on their integration would be commissioned (p.16). The National Action Plan of 2002¹⁶ mentions bilingual primary school tuition for the autochthonous minorities in Carinthia and the Burgenland – a measure not at all connected with labour market policies – and an internet project for the Roma minority in the Burgenland. Furthermore, German language courses within adult education centres and the so-called “integration-agreement” are mentioned as a way of improving the integration of immigrants into the labour market, especially with regard to the improved access of young immigrants to the labour market. Finally, the newly established extension of seasonal employment (see above) is mentioned as a measure “enabling businesses (...) to expand and safeguard existing jobs” (p. 40).

If one summarises the major changes introduced by the two consecutive ÖVP-FPÖ governments, one can see a mixture of small improvements in the position of settled immigrants on the one hand and an even more restrictive course against new immigration on the other, coupled with an extension of seasonal employment and quota-free labour immigration through bilateral agreements with the neighbouring accession countries, and a growing pressure on immigrants to learn German. Generally speaking, the main changes do not concern “Realpolitik” but the symbolic policies, which have painted immigrants as persons unwilling to learn German and to adjust to the “Austrian lifestyle”, who therefore need to be put under pressure to attend language and integration courses.

1.2.2. Different terms for different types of immigrants?

There are no specific programmes to recruit highly qualified immigrants, but the Aliens Act of 2002 does restrict new labour immigration to a) highly qualified personnel and b) so-called “seasonal workers”. As of 2003, labour immigration is restricted to persons earning at least 60% of the upper threshold for social security contributions, which in 2003 amounts to Euro 2016.- gross monthly, 14 times a year. In 2001 the median income in Austria has been Euro 1563.- gross monthly, 14 times a year, 1788.- Euros/monthly for men and 1.181 euros/monthly for women. The current threshold lies well above the starting income of many qualified professions, like nurses or trained salespersons, especially in sectors with a high level of female employment. At the same time, the employment rules for seasonal workers have been changed to allow the employment of seasonal workers two times consecutively for half a year, after which the worker has to leave Austria for at least two months before being able to be

¹² BMAS (Bundesministerium für Arbeit, Gesundheit und Soziales): National Action Plan for Employment 1998, Vienna 1998.

¹³ BMAS (Bundesministerium für Arbeit, Gesundheit und Soziales): National Action Plan for Employment 1999

¹⁴ BMWA (Bundesministerium für Wirtschaft und Arbeit): Implementation Report of National Action Plan for Employment 2000.

¹⁵ BMWA (Bundesministerium für Wirtschaft und Arbeit): Implementation Report of National Action Plan for Employment 2001.

¹⁶ BMWA (Bundesministerium für Wirtschaft und Arbeit): Implementation Report of National Action Plan for Employment 2002.

employed again. Consequently, lower qualified new immigrants may only enter Austria as “seasonal workers” and under cross-border commuter schemes.

Although the Chamber of Employers has repeatedly mentioned the lack of trained personnel and asked for an expansion of the immigration quotas, these discussions have virtually ceased after the implementation of the Aliens Act of 2002.

1.2.3. Migration and debates about social and economic policies

Irregular migration is only debated in terms of control and prevention; there are no debates about the need for a regularisation scheme. In general, the government does not link migration issues with a larger debate about social and economic policies for the future.

1.2.4. Demography and migration

Even considering the foreseeable ageing of society, migration is not seen as a remedy for the problems of the healthcare and pensions system. Within the ongoing debate regarding a reform of the state pension system in Austria, the governmental parties as well as the experts involved focus on a lowering of the net replacement rate, an extension of the minimum working years and a growth of the comparatively low employment rate of women in Austria. Although the unions partly resist the plans to lower the net replacement rates and the extension of working years, they also resist the idea of enhancing immigration in order to improve the sustainability of the pension system.

1.2.5. Studies and the use made of them

As enacted by the Residence Act 1992, the Austrian Institute for Economic Research (WIFO) every year publishes an estimate of the economic needs for migration and recommendations for the setting of the quota, which should be consulted by the government when fixing the yearly immigration quota. In practice, the yearly immigration quota has been set at around 8000 – 8600 persons each year since 1998, independently of the differences in economic conditions over the last five years. The influence of the recommendations of the WIFO on the political setting of the immigration quota is negligible.

As announced in the governmental programme, a comprehensive study on “Labour market relevant effects of foreigners’ integration in Austria”, commissioned by the Federal Chancellery, was conducted by the Austrian Institute for Economic Research (WIFO) in 2001¹⁷. Although focusing on labour market issues, the study also analysed Austria’s demographic development with regard to migration, the labour market and income position of immigrants, the effects of migration on Austria’s social system and the educational position of immigrants.

The study argued that immigration in general has supported economic growth in Austria and that the welfare state gains about the same amount of money from immigrants as it spends for them. The majority of resident immigrants in Austria are still lower qualified persons, whereas higher qualified immigrants leave for other immigration countries after a few years of stay. Immigrants still remain concentrated in smaller companies and lowly qualified positions, and immigration of lowly qualified persons has enhanced the income gap between high and low income groups. The study also clearly showed the need to improve the educational and labour market integration of the “second generation”.

¹⁷ WIFO (Österreichisches Institut für Wirtschaftsforschung): Arbeitsmarktrelevante Effekte der Ausländerintegration in Österreich. Vienna (WIFO) 2001.

According to the study, some 20.000 resident immigrants, who were not allowed access to the labour market, would actually be looking for employment. The study argued for the improved access to the labour market of family members of settled immigrants, criticised the extension of seasonal employment and suggested a further improvement of the legal status of long stay immigrants. Two suggestions from the study were implemented in 2002. Firstly, the access to the labour market for family members of resident immigrants was improved. This measure mainly improved the labour market participation of spouses, who had stayed at home during the time of child rearing. Secondly, in 2002 a long-term residence permit (“certificate of residency”) for immigrants residing legally and permanently in Austria for at least five years was introduced. The study was further cited in the explanatory notes to the draft immigration-quota regulation for 2003 to argue in favour of privileging settled immigrants on the labour market.

In October 2002, the “Migration – and Integration Report 2002” comprising an overview about the results of immigration research in Austria was finalised by the International Centre for Migration Policy Development (ICMPD) in Vienna¹⁸. The report, which was commissioned by the Ministry of the Interior and the Ministry of Science and Research, has not yet been made public.

Between 1995 and 2001, the Ministry of Science ran a research programme on xenophobia which included some 35 studies on different aspects of migration and integration. The results of the projects were published in a series of seven books at the publishing house Drava, which were well received among academics and NGOs. Humanitarian NGOs working in the field of migration as well as academics have often referred to the studies completed in the framework of this programme, especially to a study by Ulrike Davy and Harald Waldrauch developing an index of legal integration of immigrants, which demonstrated Austria’s rather weak position in this field¹⁹. The government rarely refers to academic studies it did not commission for a specific purpose or to the intellectual debate, which mainly stays confined to NGOs and academic circles.

1.3. The Opposition Parties and the debates on migration

During the Social democratic - Conservative coalition government, both the Freedom Party (FPÖ) and the Greens were in opposition. For both, migration issues were a major policy theme, which strongly shaped their political identity as anti-immigrant-party on the one hand and “human rights” party on the other. Thus the FPÖ has been pushing for zero immigration and using racist slogans against immigrants in several election campaigns, whereas the Green Party has demanded since the nineties to equalise the legal status of immigrants with that of citizens, to improve the residence and labour market position of immigrants and to introduce a comprehensive social policy fostering the social inclusion of immigrants.

As a coalition party regularly nominating the Minister of the Interior, the Social Democratic Party was on the forefront of restricting immigration and proliferating a harsh legal division between citizens and “foreigners” during most of the nineties, thereby establishing the sharp social exclusion of third country immigrants. With the exception of the move of the then Minister of the Interior, Caspar Einem, to introduce a comprehensive integration policy for immigrants in 1996, all ministers of the interior nominated by the SPÖ pursued a restrictive course both with regard to immigration as well as the integration of immigrants. The rationale behind this position was to stop the growth of Haider’s Freedom Party, which heavily

¹⁸ Jonas Widgren/Irene Stacher/Heinz Fassmann Hg.): Österreichischer Migrations- und Integrationsbericht 2002. Vienna (International Centre for Migration Policy Development) 2002.

¹⁹ Ulrike Davy (Hg.): Die Integration von Einwanderern. Rechtliche Regelungen im Internationalen Vergleich. Frankfurt/New York (Campus) 2001.

Harald Waldrauch: Die Integration von Einwanderern. Ein Index rechtlicher Diskriminierung. Frankfurt/New York (Campus) 2001.

campaigned against immigration and integration, by implementing most of his suggestions. This position was partly counteracted by the more liberal stance of cities governed by a social democratic majority (Vienna, Graz, Linz), which in the nineties established several measures for integration at the local level. Despite heavy criticism from the Party's left wing, the restrictive course was not changed substantially until the loss of power in 1999.

In 2000 – 2001, the Social Democratic Party invited intellectuals and activists to draft new policy conceptions, inter alia in the field of migration ("Netzwerk Innovation"). Without changing its restrictive position on new immigration, the suggestions developed by the experts are in favour of equalising the legal status of immigrants with that of citizens in most areas, abolishing the quota system for family reunification, introducing local voting rights for third country nationals, and passing and implementing anti-discrimination legislation. These positions show only few differences with the positions of the Green Party, and both of them often echo suggestions brought forward by the European Parliament and the European Commission.

1.4. The Social Partners and the debates on migration

As already explained, the regulation of immigration was the sole responsibility of the social partners until the end of the eighties. Although their influence in this area has been curtailed and they do not often publicly argue on the subject, they still are key players in migration policy. In recent years, the Association of Industrialists and the Chamber of Commerce have repeatedly demanded an easing of immigration rules for key personnel, and due to their pressure key personnel staying in Austria for less than 2 years was exempt from the obligation to learn German under the "integration agreement". Furthermore, the extension of seasonal employment, implemented in the amendment of the Aliens Act 2002, was based on their suggestions.

The Trade Union Federation and the Chamber of Labour only rarely comment on the subject in public. Generally, they are in favour of strict immigration controls and the existing quota regulations, in favour of restrictive family reunification and of the existing labour market regulation. Since 1996 they have been in favour of granting immigrants passive voting rights for work councillors, but they have not initiated any campaigns on the subject. No specific activities to include immigrants in own ranks and files can be found. Neither the trade unions nor the Chamber of Labour have a clear stance with regard to political rights for immigrants (voting rights at communal level) or with regard to access to council housing and other social rights, which are not associated with the status as dependent employee. Both strictly oppose the abolition of the Foreigners' Employment Act, which is called for by many NGOs and the Greens.

Both the unions and the Chamber of Labour strongly opposed the extension of seasonal employment to non-seasonal branches and the extension of cross-border-commuting agreements with neighbouring countries, arguing that they would put pressure on settled immigrants and Austrian citizens and undermine labour market stability. Both institutions have also strongly lobbied for a long transition period before freedom of movement for citizens of the accession countries will be introduced.

1.5. Non-governmental organisations and the debates on migration

The dominant approach among NGOs is not centred around economic or demographic considerations, but concentrates on human rights and arguments in favour of equality. Among the NGOs mentioned, there is a general understanding of the need to equalise the legal status of immigrants with that of EU-citizens. The implementation of programmes improving the social and economic position of immigrants, the abolition of the quota regulation for family reunification, and the right to vote at local elections as well as the need to implement anti-

discrimination legislation are further elements of their understanding of integration. Most of the NGOs also favour a more liberal immigration policy, but only few argue in favour of open borders.

A good example for the understanding of “integration” by NGOs is the position paper of the Viennese Fund for Integration on the “integration agreement”²⁰, which defines “integration” as

“Introduction of equal chances and equal legal status with Austrian nationals, participation in societal and political decision making processes, securing access to societal resources such as employment, education and housing, enhancement of individual and collective agency and competency leading to mutual recognition and promotion of cultural diversity” (p.6).

The position paper further calls for the introduction of residential citizenship (“Wohnbürgerschaft”), which would grant equality of rights now associated with nationality to every resident after a certain, short period of residence. To achieve equality of opportunity, the paper argues that affirmative action should be introduced and training measures for immigrants should be improved. To implement this idea, a whole range of concrete measures ranging from equalising the legal status of immigrants in the area of social rights to the introduction of municipal voting rights and the granting of dual nationality are suggested.

²⁰ Wiener Integrationsfonds: Positionspapier zur „Integrationsvereinbarung“. Vienna 2002, <http://www.wif.wien.at>

Chapter 2: The stakeholders

2.1. Ministries and non-governmental organisations contributing to policy

2.1.1. Ministries

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

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

In the area of immigration policy, the regulation of access to the labour market is up to now mainly decided by the social-partners. They are consulted by the Ministry of Employment and Labour before it sets the percentage quota for foreigners' employment. Until 2000 the quota was normally set by agreement of the Trade Unions and the Chamber of Labour on the one side and the Chamber of Commerce and the Association of Industrialists on the other. The recent decision by the Minister of Employment and Labour to extend seasonal employment even to non-seasonal industries and to allow seasonal employment for a year shows that this consensual style of policy-making is not followed any more. Nevertheless, the chambers and the associated interest groups are still the most important political actors after the political parties represented in parliament.

In the area of labour market policies, the Social Partners and the Federal Ministry of Economy and Labour²¹ are the key players. The Federal Minister of Economy and Labour may issue decrees concerning the easing of conditions for the issue of work permits and can thus directly influence labour market regulations. The Federal Ministry of Economy and Labour is also in charge of policies and measures against unemployment, which can seriously affect migrants.

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

With regard to policies on naturalisation, legal competence lies with the federal legislator (Bundesgesetzgebung), but the provincial governments are in charge of executing the federal law and thus hold important powers to administratively interpret the conditions for naturalisation laid down in the Naturalisation Act²².

Housing policies are administered by the provincial governments, who have the power to legislate on the conditions of access to public social housing²³. Educational policy planning is

²¹ Until the formation of the ÖVP-FPÖ government, the Ministry for Labour, Social Affairs and Health was responsible for this field.

²² For instance, applicants in the province of Upper Austria have to pass an examination on the history of the province, whereas no comparable requirement exists in Vienna. In some provinces, applicants are required to prove their proficiency in German by a test, whereas in other provinces the civil servant determines it him/herself on the basis of an interview with the applicant.

²³ Social housing is accessible to non EU-citizens only in some small towns. In the majority of Austrian cities, third-country nationals have no or only restricted access to a rental contract in public housing. As

the domain of the Federal Ministry of Education, Science and the Arts. The provincial governments and the provincial school councils („Landesschulrat“) are responsible for the implementation of policies²⁴. Access to social assistance is regulated by the provincial governments²⁵.

If existent at all, integration policies are mainly organised by municipal authorities or, in the case of Vienna, by the city (and provincial) government. The City of Vienna is the only city and province which has appointed a Governing City Councillor for Integration. Administrative units dealing with integration can be found in the City of Linz and the City of Graz; in Vienna the „Wiener Integrationsfonds“ (Viennese Fund for Integration), a city-controlled public endowment, is responsible for the implementation of integration measures such as training courses, advice-giving and conflict resolution.

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

2.1.2. Non-governmental organisations and churches

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

In the nineties, several humanitarian associations engaged in the field of immigration policies came into being. The most important of them is the umbrella-organisation „SOS Mitmensch“, which inter alia includes union-youth-organisations, religious organisations like the Caritas, the „Volkshilfe“ and well-known intellectuals and artists. „SOS Mitmensch“ was the organiser of the torchlight demonstration against racism in 1993, which mobilised some 150.000 people, and the main demonstration against the inclusion of the FPÖ in the new government in 2000.

Other important NGOs in the field are „helping hands“, a humanitarian organisation associated with the Austrian Students' Union (the „chamber“ of students with compulsory membership), which concentrates on giving free legal advice to immigrants and refugees; „ZARA“, an anti-discrimination watchdog NGO, which gives legal advice, collects incidents of discrimination

e.g. the Province and City of Vienna owns 20% of the Viennese housing stock, but third country nationals have restricted access to communal housing, this policy considerably influences the housing conditions of immigrants to the negative.

²⁴ Matters related to the integration of pupils with immigrant background are governed by the „educational principle“ of intercultural education, giving the provincial governments a high degree of autonomy in implementation. According to the principle, the child's mother tongue may either be taught as an optional subject in separate classes or integrated into the general timetable by a team of teachers including a native-language teacher. Whereas team teaching is the common model in Vienna, separate classes are given precedence in the other provinces. The number of lessons may vary from two to six per week depending on the province or even school the child attends, so that children of e.g. Turkish immigrants in one case may well be taught in their mother tongue up to a good level of competence, whereas in another case mother tongue teaching might only be an extracurricular and non-compulsory subject.

²⁵ In most provinces, third country nationals have none or only restricted access to social assistance payments.

and publishes an annual “racism-report”; and the „Austrian Asylum Coordination”, an umbrella group of NGOs working in the field of asylum.

The Viennese Fund for Integration („Wiener Integrationsfonds”), an endowment governed by the City of Vienna, is the most important quasi-nongovernmental city-based organisation. Besides running advice-centres and doing social work in this field, it takes a stance for immigrants’ rights, although its position is sometime muted by the fact that 100% of its financing comes from the Vienna city budget. Three out of the fifteen members of the Fund’s administrative board are immigrants. The Fund regularly organises the “Integration Conference”, comprised of individuals and representatives of migrants’ organisations, which meets 2-3 times a year. A member of the Integration Conference has recently been appointed as vice-president of the Fund.

In the cities of Graz and Linz elected foreigners’ advice councils have been set up as measures to ensure some political participation of immigrants, despite the fact that non-EU-citizens do not enjoy local voting rights in Austria.

The most important migrants’ organisations are the Association for Austrian-Turkish Friendship, the Serbian Association of Austria, the Croatian Association and the Umbrella-Group of Kurdish Associations. Their political influence is minimal.

2.2. Mechanisms through which stakeholders exercise influence

The peculiar system of “social partnership” in Austria with its nesting of political elites of the Conservative Party and the Chamber of Commerce and the Association of Industrialists on the one hand, and the Social Democratic Party with the Trade Union Federation and the Chamber of Labour on the other hand, has led to the fact that despite the diminishing influence of the social partners they still have strong and direct links to both parties mentioned. Functionaries of the social partners regularly hold seats in parliament, and until end of the nineties they were also regularly appointed ministers. Therefore the social partners continue to be strongly involved with policy-making on the parliamentary and governmental levels, which they can influence through direct involvement in the negotiation and drafting procedure.

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

Whereas the social partners can influence law making already during the drafting and negotiation procedure, the assessment procedure is the only way NGOs can make their position known to parliament. Although most humanitarian NGOs in the field of migration do have working relationships with the parliamentary parties, their representatives do not hold seats in parliament. The parties are however free to suggest NGOs to take part in the assessment procedure. With regard to the “integration package”, the Viennese Fund for Integration has organised a coordinated series of assessment statements by all main NGOs in the field, which has been discussed in the parliamentary committees dealing with the draft. Another way of influencing policy is taking part in parliamentary hearings, which may be organised by the political parties. As the number of hearings per year is limited, and each party may organise a certain number of hearings according to its size, hearings in the field of migration policy only take place every second or third year.

As a result, the main way of influencing policy-making is traditional lobbying, which in the field of migration is mainly done by the Viennese Fund of Integration, helping hands and ZARA. Being a city-funded institution, the Viennese Fund of Integration is the only institution with the

means to regularly organise press conferences and issue press statements, whereas NGOs mostly rely on public-relations work through publishing of reports and cases.

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

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

Since the ÖVP-FPÖ government came into power, the City Councillor for Integration of the City of Vienna, Renate Brauner, has been playing an increasingly important role in the policy field of migration and integration. As a member of the provincial government of Vienna she can directly influence the yearly setting of the migration quota and has been the only member of a provincial government who regularly has demanded more permits for family reunification and a more liberal immigration quota. Since the ÖVP-FPÖ coalition introduced the so-called “integration agreement”, she has also sharply criticised the restrictive approach to language tuition and integration which contrasts strongly with the long established tradition of the City of Vienna to offer language training free of charge and based on the free decision of immigrants.

Chapter 3: European legislative proposals

General remarks with regard to the Austrian immigration law system²⁶

The Austrian Aliens' Act (Fremdengesetz, FrG) of 1997 regulates short stays, long-term residence and employment immigration in combination with the Foreigners' Employment Act (Ausländerbeschäftigungsgesetz, AuslBG) of 1975. Both acts were recently revised in a comprehensive way, on July 9, 2002. They provide for a strict immigration control system by requiring the future immigrant in principle to apply for an immigration visa from abroad and subjecting would-be immigrants to a tight quota system.

Persons wishing to settle in Austria for an indefinite period of time or on a permanent basis need a so-called „Niederlassungsbewilligung“ (permanent residence permit)²⁷. Different categories of residence are provided for by the Aliens' Act, as are different categories of „quotas“.²⁸

Permanent residence permits subject to annual quotas may be given to key employees and managers and family members of (self-) employed key personnel; the quota for key self-employed persons is set separately. Family members of permanent legal residents who immigrated before 1. 1. 2003, and persons who wish to pursue a private residence purpose and who thus do not have to rely on employment to secure their living, such as pensioners, may also obtain residence permits subject to quotas. Permits are conditional on sufficient income (for key personnel see below under definition) and a legal claim to adequate housing being guaranteed for the newcomers.²⁹

Several groups of immigrants with permanent residence status are exempted from quota restrictions according to EC, constitutional or international law, for instance family members of Austrian and EEA citizens, artists, journalists working for foreign media, guest researchers and academic specialists, and priests and members of religious orders.

Procedure for determining the annual immigration quota³⁰

The quota system contains quantitative and qualitative criteria for determining annual immigration.

Every year the Austrian Economic Research Institute („Wirtschaftsforschungsinstitut“, WIFO) compiles a report on the situation of the labour market, schooling and health system, housing market, general demographic developments of the past year and assesses the developments of the following year including needs for and usefulness of immigration in the following year in the demographic and socio-economic context. The Austrian government then determines the maximum number for issuing long term residence permits to new immigrants as well as setting a ceiling for seasonal workers by passing a decree on permanent residence („Niederlassungsverordnung“) for the respective year. The overall quota for Austria is apportioned to the 9 federal provinces („Bundesländer“).

The number of immigrants already residing in Austria, the number of asylum seekers, the number of persons who were granted political asylum in the preceding year, the number of family members who are entitled to obtain a residence permit as well as the requirements of public peace, order and security have to be taken into account when determining that number.

²⁶ Legal texts to be found under: <http://www.ris.bka.gv.at> – Bundesrecht

²⁷ Article 7 FrG.

²⁸ Article 18 FrG.

²⁹ Articles 8, 10 FrG.

³⁰ Article 18 FrG.

The federal government issues a proposal for the quota, which is submitted to the federal province governments, the social partners and a whole range of institutions and bodies concerned to give their evaluation. The federal provinces (Bundesländer) are entitled to submit their own proposals. The maximum figures may be lower but not higher than what the federal provinces wish; the decision is taken after consultation with parliament. According to the comments to the law this broad involvement of the various stakeholders representing society's interests as regards immigration shall guarantee the broadest possible consensus on the issue.

3.1. Admission for economic purposes

3.1.1. Eligibility for permanent immigration, quotas and requirements

Permanent immigration is possible only for key personnel and managers, both employed and self-employed ("selbständige, unselbständige Schlüsselkräfte"). The relevant provisions are articles 14 para 4a, 17, 18, 19, 89 Aliens' Act (FrG) 1997 as revised in 2002; and articles 2 para 5, 12 and 24 Foreigners' Employment Act (AuslBG) as revised in 2002. The new provisions have partly been shaped in a way to comply with the proposed directive.

The reform of the Aliens' Act of 2002 above all reduced immigration for economic purposes to key personnel and highly qualified employees and self-employed persons. No further immigration including permanent residence is possible for other types of employment. Immigration for this group remains under the restriction of annually set quotas. The quota for self-employed key personnel is set separately. Family members of both groups are included in the overall quota for employed key personnel.

Who qualifies for immigration as key personnel according to the definition of the Foreigners' Employment Act is set out in its article 2 para 5 as revised in 2002. Eligible are third country nationals with special qualifications that are specially sought at the Austrian labour market or with special knowledge and skills. Prospective immigrants are required to have relevant professional experience and a gross income of 60% of the maximum basis for the contributions to the social security system (for 2003: 2016 Euro, Christmas and holiday remunerations not included). They also need to fulfil one of the following requirements:

- the employment aimed at has a special importance for the labour market branch concerned (importance of the employment goes beyond interests of the business or enterprise the person would work for);
- the employment helps to create new jobs or helps to secure existing jobs;
- the immigrant has considerable influence on the management of the enterprise (executive employee);
- the employment leads to a transfer of investment capital;
- the immigrant has passed an advanced college ("Fachhochschule"), university ("Hochschule") or other vocational training ("Berufsausbildung") that is especially sought.

The amount of € 2016 is well above the Austrian average income of 1,414 Euros and nearly double the average monthly income of women of 1,022 Euros. It is also well above the average salary paid in tourism or the health sector, which are characterised by massive labour shortages. Such a high required income level is likely to prevent future steady employment of immigrants in most sectors of the economy where they are currently needed. According to a study published in 2001 by the Austrian Academy of Science³¹, only 16% of Turkish and 40.4% of Yugoslav immigrants in 2000 had a monthly net income exceeding the range between 1,090 and 1,453 Euros. A person receiving a gross income of 1,962 Euros (level of

³¹Katharina Demel, Heinz Fassmann, u.a., Die soziale Mobilität der Ausländer/innen

2002) will receive a net amount of between 1,320 and 1,351 depending on the family situation. Even trained nurses in Viennese hospitals start with a gross monthly income of 1,491 Euros, excluding extras for nightshifts, an amount that is quite below the level of 1,962 Euros that can be reached only after 5 to 10 years of employment. Since 65% of all nurses working in Viennese hospitals were not born in Austria, the effects of the minimum income level for key personnel in the health sector may be disastrous. (MNS Sept. 2001)

It has to be asked whether this way of restricting immigration is a violation of article 22 of the directive because of indirect discrimination based on gender. Women are heavily discriminated against because their level of income is by and large lower than what the key qualification definition asks for.

Exempted from the quota restrictions are students who meet the criteria of a key employee (see above). They can settle in Austria permanently during or after the completion of their studies, especially after successful graduation. In this case, they can be issued a permanent residence permit without being subject to the quotas (article 14 para 2a FrG).

The government is entitled to negotiate and determine quotas (contingents) bilaterally and on a mutual basis for the employment of key personnel with neighbouring countries upon initiative by the minister for the industries and labour (art. 1 para 5 AuslBG). These are exempt from the quota system. No such agreement has been signed yet, although some have already been negotiated, e.g. with the Czech and Slovak Republics.

This type of immigration for employment is not covered by the directive (article 3.1)

3.1.2. Single national admission procedure for key personnel / combined residence and work title³²

While the general Austrian dual system for residence and work permits remained untouched by the reform of 2002, key personnel since January 1, 2003, needs to address only one authority in order to obtain a combined residence and work permit. The Foreigners' Employment Act as revised in 2002 provides for a special procedure for the admission of employed key personnel (article 12 AuslBG).

The residence authority is in charge of accepting and dealing with first time applications for admission of key employees. While the employee is formally the applicant, the application must be submitted by the future employer and must contain a declaration of consent by the employer ("Beiblatt für Arbeitgeber", "Schlüsselkraft – unselbständig"). The respective form asks for information about the job, salary, special qualification or training and certificates thereof in German translation. In principle first-time applications have to be submitted while the applicant for (self-) employment is still abroad. Exceptions are provided for those who are entitled to enter Austria as tourists without requiring a visa.³³

3.1.3. Economic needs test and beneficial effects test

Economic needs test for key employees

After examining the requirements according to the aliens act, the residence authority refers the application to the Labour market service ("Arbeitsmarktservice", AMS). The AMS is required to give an assessment within 3 weeks on whether the person's planned employment complies with the definition for „key personnel“.

³² Article 14 para 4a, 89 FrG, articles 2 para 5, 12 and 24 AuslBG; Fremden-gesetz-durchführungs-verordnung (FrG-DV), article 4 para 2, lit. 11 and 12.

³³ FrG-DV, article 2, lit. 4.

In addition to the immigration quota a second quota based on the foreigners' employment act restricts immigration to Austria in order to do employed work. The foreigners' employment act restricts the number of migrant workers to 8% of the overall workforce („Bundeshöchstzahl“, federal foreigner's employment quota including persons registered as unemployed). Both the employment of key personnel and managers as well as seasonal work (short-term workers) are restricted by that quota. Both groups are, however, listed in the decree determining the groups who may be employed even if the overall federal employment quota is exhausted (“Bundeshöchstzahlenüberziehungsverordnung”).

In addition to the federal quota there are provincial employment quotas („Landeshöchstzahlen“). Once they are exhausted, the issuance of work permits is tightened. In this case the future employer is compelled to accept another employee who is already part of the Austrian labour market instead of the person who applied (article 4b AuslBG). Preferential treatment is provided for:

- Austrian citizens and those foreign nationals held equal to them (EEA citizens and their family members etc.)
- Other foreign nationals with entitlement to unemployment assistance
- Those who hold a 2 year work permit (“Arbeitserlaubnis”) or a 5 year license of exemption (“Befreiungsschein”) or a long-term permanent residence permit = certificate of residency (CR) (“Niederlassungsnachweis”)
- Turkish nationals who enjoy rights under the EC association agreement.

Only if no such person with the same qualifications is available the AMS awards a positive decision.

If the AMS assessment is positive and all other requirements with regard to the Aliens Act are fulfilled, a special „permanent residence permit for key personnel“ is granted. This permit is valid for one year and comprises the right to work (article 14 para 4a FrG). If the assessment is negative the AMS issues a negative decision, which is handed over to the residence authority for delivery to the applicant and the future employer. Legal redress in such a case is to be directed to the province office of the AMS (“Landesgeschäftsstelle”). The whole procedure shall not take longer than six weeks (article 89 FrG).

The procedure more or less complies with article 6 para 1 of the directive. The short maximum period of time (3 weeks for the AMS assessment and another 3 weeks for issuing the decision) comes in conflict with the requirement of article 6 para 2 of the directive (procedure for inviting other employees to fill a job vacancy).

Beneficial effects test for key self-employed persons

If the applicant intends to be self-employed, a similar procedure applies (articles 12 para 8, 24 AuslBG). In that case the AMS gives an expert opinion (“Gutachten”) on the beneficial effects on the labour market, especially on planned investment of capital and the creation and securing of jobs. The law does not give any concrete reference as to which amount of capital is sufficient to qualify as key self-employer or as to how many jobs have to be created or secured. The AMS in this case does not issue a negative decision in the negative instance but the residence authority has to do so on the basis of the AMS opinion.

It is questionable whether these provisions comply with the directive's article 18 para 3 c and 29 para 4.

If the quota for key personnel is exhausted the application has to be rejected (article 22 para 2 FrG).

The quota system as such is in accordance with the directive's article 26. However, the Austrian legal system does not provide for detailed criteria as to the order of the applications if the quota is exhausted, but on the contrary provides for the repudiation of applications after exhaustion of the quota (article 22 FrG). This contradicts the last sentence of article 26 of the proposed directive.

3.1.4. Other conditions for admission

Persons who file an application for a first residence permit (temporary or permanent residence permit) for longer than six months after January 1, 2003, are also required to submit a health certificate. The application can be rejected if the health certificate indicates infection with a serious (reportable) illness as defined by the Epidemic and Tuberculosis Act that may present a serious threat to the health of a large number of people.

This requirement is in accordance with the directive's articles 5 para 3 lit. e and 27.

The signing of the so-called „Integration agreement“ („IA“) - also introduced by the reform of 2002 – is another requirement for obtaining the first-time permanent residence permit. It obliges the immigrant to learn the German language within certain periods of time. It has to be signed and fulfilled by key employees and managers and their family members only if they plan to stay for more than 24 months. Key (self-) employees and managers in international companies or research institutions and their family members who wish to stay for more than 24 months are exempted from signing and fulfilling the „IA“ if the AMS confirms that the (self-) employment is in the overall economic interest (article 50b para 1 lit 3 and 4 FrG).

This provision is in contradiction with the directive's article 5 para 3.

The single national title for key (self-) employed persons, the „Niederlassungsbewilligung: Schlüsselkraft – (un-)selbständig“, is issued for one year. The permit comprises the right to work as well as the right to reside for one year. This single national admission procedure plus combined title will be effective just for one year. After 1 year of residence and work – in the case of extension of the status - the dual system of separate residence and work permit becomes effective again. The key employee will then have to apply for a 2-year work permit („Arbeitserlaubnis“) with the Labour Market Service (Arbeitsmarktservice, AMS) and for extension of the permanent residence permit with the residence authority.

It is at least questionable whether this is in accordance with the directive.

3.1.5. Temporary or special forms of migrant labour

The reform of 2002 put a focus on the extension of temporary or special forms of migrant labour – (cross border) commuters, and temporary labour³⁴. The concept of seasonal work - already introduced by the Residence Act („Aufenthaltsgesetz“) 1992 – was considerably extended as well as the concept of commuting.

Temporary workers³⁵

The maximum number for temporary workers and workers in agriculture is set within the annual decree for permanent residence permits. After the change of government in 2000 the Christian Democrats and Freedom Party tripled the numbers of temporary workers. While in the preceding years the numbers were set at 5500 per year, from 2001 on they were set at 8000 temporary workers. The special category of agricultural temporary workers (Erntehelfer)

³⁴ Articles 1 para 11 and 12, 9, 18 para 3 lit 1 and 2 FrG; article 5 AuslBG.

³⁵ Article 5 AuslBG – heading: „Contingents for the temporary admission of foreign nationals“; article 9 FrG – residence permits for temporarily employed foreign nationals.

was introduced in 2000 and their number set at 7000 annually. Their permits may not exceed six weeks and are work and residence title in one. The reform of 2002 changed the definition of the ceilings for contingents of temporary workers. The term of reference in the law is now the weighted annual average (“gewichteter Jahresdurchschnitt”), which is set annually within the decree for permanent residence permits. The number of temporary work permits issued under this category may in principle not exceed the maximum number on any given day of the respective year.

The revised Act also set new conditions for the extension of a temporary employment permit. The Minister of Economy and Labour, after consulting with the province governments (the “Länder”) and the social partners, is entitled to establish quotas for the entry of temporary workers for all sectors of the economy, whenever the labour market, branches or region is in need of them. Temporary employment permits can be issued for all branches, even those without seasonal employment in the strict sense. The employment of temporary workers in practice used to be restricted to tourism and agriculture. In connection with the 2002 reform the government announced the extension of that type of labour to all economic sectors.

Temporary work permits may be issued for a period of up to six months. If the respective decree provides for this they are renewable once for another six months. Two months must then elapse before a temporary worker is entitled to reapply to work in Austria. There is no overall time limit for this type of temporary work.

This is clearly in contradiction with the directive’s article 12 which limits temporary work to 6 months per year even if this may be the case in 5 consecutive years.

(Cross-border) commuters³⁶

The definition of commuters (“PendlerInnen”) was also extended. According to the revised act, a commuter is a person who travels back and forth at least once a week. In the past the definition required travelling back and forth on a daily basis. Commuters are exempt from the residence quota system but their employers are required to obtain a work permit for them. They need to obtain a temporary residence permit (“Aufenthaltserlaubnis”).

The reform of the Foreigners’ Employment Act 2002 also provides for bilateral agreements for commuters with neighbouring countries (mostly future EU member states) in order to deal in a flexible way with labour migration during the transition period leading to freedom of movement for workers of the new Member States. Two such agreements have already been negotiated, one with the Czech and the other with the Slovak Republic. They have, however, not been signed. In addition, entry for work is provided for cross-border commuters (“Grenzgänger”, article 1 para 11 FrG). According to the legal definition they commute on a daily basis between their countries of residence and bordering Austrian political districts.

The provisions are in accordance with the proposed directive’s article 13.

Key employees who rotate within international branches (“Rotationsarbeitskräfte”)

Article 7 para 4 lit. 2 a) b) c) FrG provides for the entry of key employees who rotate within their international employer’s firm.

This provision in accordance with article 14 of the directive.

Au Pairs

³⁶ Articles 1 para 11, 12 and article 25 FrG.

Since April 1, 2001, au pairs do not any longer need a work permit according to a decree based on the AuslBG. Thus their temporary residence permits are not subject to quota restrictions either. Employment as au pair is restricted to persons between the age of 18 and 28 for a period of six months, which may be extended up to 12 months within a period of five years. This means that within the age range permitted persons may be employed under that rule twice for one year as au pairs.

This may contradict the directive's article 15 para 3.

3.1.6. Overall assessment

The Austrian legislation more or less seems to be in accordance with article 3 of the proposed directive as far as long-term immigration for purposes of work is concerned. It contradicts the proposal as far as the requirement of signing an "IA" (integration agreement) and the restriction of the single national title to one year are concerned. However, only a very small number of immigrants for purposes of work are covered by the directive. They are exclusively highly qualified persons, whether as employees or as self-employed workers and entrepreneurs. Austria's legal system makes use of all forms of restriction that are provided by the directive (article 6 para 4, 26).

Lower qualified work force is forced into temporary forms of immigration. The Austrian concept of seasonal work clearly contradicts the proposed directive. Most immigration in recent years took place outside the quota system according to EC and international law.

3.2. Family reunion

Family Reunion is regulated by articles 18, 19, 20 ff of the Aliens' Act.

3.2.1. General and special family reunion

Entitled to general family reunion are family members (re-) uniting with non-EEA citizens who settled permanently in Austria before 1 January 2003 under the special family (re-)union quota. Family members in this category are defined as spouses and minor and unmarried children, including adopted and step children; they are entitled to join their parents in Austria only if their application was filed before the children reached the age of 15. Special family reunion is the (re-) union with key (self-) employed personnel and private purpose residents. Family members under this category are spouses and minor unmarried children (until the age of 18), including adopted and step children. Their applications are dealt with under the same quota as the employed personnel and private purpose residents.

The rules for general family (re-)unification comply with Article 4 insofar as the directive allows for the examination of integration criteria for children above the age of 12.

3.2.2. Resource and other requirements

Requirements are: a level of income above social assistance, legal entitlement to adequate housing, a health certificate, signing of the „integration agreement (IA)“ introduced by the reform of 2002³⁷, and no criminal record. The "IA" requires immigrants who have arrived in Austria since 1st January 1998 and newcomers to acquire a basic knowledge of German within certain periods of time. Non-fulfilment (in time) of the "IA" may lead to a range of different sanctions, in the worst case to expulsion. According to the law, the purpose of the

³⁷ Articles 12 para 1a, 14 para 3a and 3b, 23 para 4, 24, 34 para 2a and 2b, 50a – d, 108 para 1a and b FrG.

„IA“ is to „make possible participation in social, economic and cultural life in Austria“. The applicants can fulfil this requirement by attending a „German and integration course“.

The requirement of the signing of a so-called „integration agreement“ contradicts article 7 of the directive. The other requirements mentioned comply with article 7.

3.2.3. Quota restrictions, waiting periods and duration of permits

Since July 1, 1993 immigration for the purpose of family (re-) union is subject to annual quotas. Family members have the right to obtain a residence permit provided they fulfil the above-mentioned requirements and a space in the annual quota can be allotted. If all requirements are met and a permanent residence permit cannot be granted due to exhaustion of the quota the application is put on hold until the following year when a new quota is available. This leads to a waiting list system with a considerable backlog of applications. At present some 12,000 applications of persons wishing to be (re-) unified with their family members are pending. According to the decree on permanent residence permits (PRP) for 2003 the immigration quota was reduced from 8.280 in 2002 to 8.070 PRPs. The quota for family reunification remained the same as in 2002, which is 5,490 PRPs.

No minimum residency period is required with regard to the already resident person.

The waiting periods for family members due to the quota system differ from federal province to federal province. According to the present system there is no guarantee that these periods do not exceed 3 years. That is why the present Austrian implementation of the quota system is in contradiction with article 8. The government could set, however, the annual quotas in such a number that waiting periods decrease. The system as such is therefore in compliance with article 8 of the directive provided the quotas are set accordingly by the government.

Permanent residence permits for family members are issued for 1 year. As long as the „integration agreement“ is not fulfilled the following permits are issued only for 1 year, fulfilment of the „IA“ provided they are issued for 2 years. After 5 years of permanent residence the new long-term residency permit (certificate of residence, CR) („Niederlassungsnachweis“) may be issued to family members if the first legal resident fulfils the legal requirements, above all a regular income out of gainful (self-) employment plus fulfilment of the „IA“ (article 24 FrG).

3.2.4. Conditions for residence including access to education and employment

Equal access to education is guaranteed to family members in Austria. Access to employment is subject to the restrictions of the Foreigners' Employment Act (AuslBG) requiring a separate work permit under the additional quota system (described under „admission for economic purposes“). According to the AuslBG and implementation guidelines („Durchführungserlass“), a work permit may be issued to an employer for family members who have progressed in their integration process („fortgeschritten integriert“). This means in practice that s/he has been living in Austria for at least 1 year and either has fulfilled the „IA“ or is exempt from it, or if the family member has an obligation to provide maintenance – esp. in the case of single parents – or has been guaranteed naturalisation.

Immigrants who have resided in Austria for more than 5 years on a permanent basis and who are able to substantiate regular means of existence from (self-) employment are now entitled to the new "long-term permanent residence permit - EC" or certificate of residency (CR) which also includes the unlimited right to work in Austria. The CR will be issued as a card and will be valid for 10 years. Family members of such persons are also entitled to the CR provided they

have been living in Austria for 5 years. Persons who are or were of school age in Austria are entitled to get it after 5 years of permanent residence.

Family members who have not (yet) access to the CR may have access to other forms of work permission, namely the Certificate of exemption (“Befreiungsschein”) for young immigrants. Persons who completed their last year of compulsory schooling in Austria and have a permanent residence permit (“Niederlassungsbewilligung”) are since 1 January 2003 entitled to the issue of a certificate of exemption. At least one parent must also have been gainfully employed in Austria for at least 3 of the last 5 years; the latter requirement does not apply if the parent is deceased.

With regard to access to employment family members are in a weaker position than the person already resident. No combined residence and work title is provided to them as is the case for key (self-) employed personnel. This is in contradiction with article 14.

3.2.5. Access to autonomous status

Spouses enjoy access to autonomous status after 4 years of residence at the latest (article 20 para 1 FrG). This is the case earlier if they are able to obtain a work permit. Children enjoy autonomous status after they reach full age provided they have legal access to the labour market.

The provisions are in compliance with Article 15.

3.2.6. Standstill and deadline clauses

Since the Austrian legal situation is already one of the most restrictive among the EU member states and the directive’s actual text enables Austria to keep most of the aspects of the system, the standstill clause seems realistic. Regarding the deadline clause for changes, having observed the negotiation process since the end of 1999 when the proposal for a directive was first submitted by the commission and especially the changes of the proposal by the Council during the past year the rapporteurs assume that the 2 year deadline clause is rather unrealistic as far as changes of the compromise provisions are concerned (articles 3, 4, 7, 8 and 13).

3.3. Status of long-term legal residents

3.3.1. General provisions

A long-term residence status after 5 years of legal and continuous residence, namely the Certificate of residency (CR) (“Niederlassungsnachweis”) (= long-term permanent residence permit - EC) was introduced by the reform of 2002³⁸. Immigrants who have resided legally and permanently in Austria for at least five years and who are able to substantiate regular means of existence from (self-) employment and sickness insurance are entitled to be issued a Long-term permanent residence permit - EC or Certificate of residency (CR). Access to long-term permanent residence status is dependent on having fulfilled the “Integration agreement” (IA). The CR will be issued as a card and will be valid for 10 years. Family members of such persons are also entitled to the CR provided they have been living in Austria for 5 years. Persons who are or were of school age in Austria can attain the status after 5 years of permanent legal residence.

³⁸ Article 24 of the FrG, article 17 of the AusIBG.

With regard to the duration of residence mentioned in article 5 of the directive, with the provision that periods of residence as students would count for half towards the required time, this is *not considered in the Austrian legislation*. The provision that interruptions of not more than 6 months do not prevent long-term residence status is *not considered in Austrian legislation*.

Regarding the resource requirements in article 6 of the directive, *Austrian legislation is in accordance with the proposed directive with respect to income and sickness insurance. The requirement of fulfilling an "IA" (see above) is in contradiction with the proposed directive.*

3.3.2. Withdrawal, expulsion and security of residence

The withdrawal of status and protection against expulsion are dealt with in articles 10 and 13 of the proposed directive. The status granted to holders of long-term permanent residence permits / CsR under the Austrian reform of 2002 is partly weaker and partly stronger than what is proposed by the directive.

The provisions on withdrawal of status under the reform of 2002 are *weaker than what is proposed by the directive*. Article 16 1b of the Austrian aliens act (FrG) as revised in 2002 provides for withdrawal of the long-term residence status if the holder has given up his/her will to be settled in Austria ("Niederlassungswille") and has left Austria for good. The provision also means that a person who leaves Austria for a longer period of time than 2 years and who can demonstrate that this is not for good, may avoid withdrawal of the long-term residence status (*stronger than the directive!*). There is no provision in the law that absences of less than 2 years will not lead to withdrawal of the status, but this will be examined individually in every case (*weaker than the directive!*).

The provisions on expulsion ("Ausweisung"), residence bans ("Aufenthaltsverbot") and increasing security of residence („Aufenthaltsverfestigung für Personen mit Niederlassungsbewilligung“) have not been changed by the reform of 2002. Thus holders of CsR are subject to the same system of expulsion and residence bans as any other immigrant³⁹. *This first grade of security of residence* (article 35 para 1 FrG) means that after 5 years of legal residence the immigrant is protected against expulsion if s/he has problems with meeting the otherwise required criteria with regard to the income situation. This protection against expulsion is subject to the immigrant's ability to demonstrate that s/he is willing and trying to care for her/his living and this has a realistic chance of succeeding.

Another provision is relevant in this context: In the period between 5 and 8 years of legal residence long-term legal residents (= holders of CsR) may still be expelled if they have not had gainful employment nearly without interruption for one year. This is regardless of whether the person has received unemployment assistance. Only after 8 years of legal residence the immigrant is protected against expulsion without such restrictions. After 10 years of uninterrupted legal residence, expulsion may only be imposed in case of severe or repeated criminal offences. Immigrants who were born and/or have grown up and lived for a long time in Austria may not be expelled at all. A person who may not be expelled may also not have a residence ban imposed.

3.3.3. Equal treatment with nationals in the area of employment, social benefits, recognition of qualifications and education

Employment

³⁹ Articles 34, 35 and 38 of the FrG.

The CR (“Niederlassungsnachweis”) includes the unlimited right to work in Austria. *With regard to employment rights Austrian legislation complies with the proposed directive.*

Social benefits

Most benefits of the social security system are granted after 5 years of residence. This is not the case for the unlimited unemployment assistance in case of emergency (“Notstandshilfe”). There is discrimination in context with the provisions for expulsion until a period of legal residence of 8 years has been completed⁴⁰.

There is no equal access to social assistance benefits (“Sozialhilfe”) and connected benefits (“Blindenbeihilfe”) at the level of the federal provinces after 5 years of legal residence. The laws of the provinces thus do not comply with the directive. For instance, in Vienna a legal residence of 10 years is required. Also access to communal housing in Vienna is not open even after 5 years of legal residence. Only a tiny part of social housing, the so-called flat for cases of emergency (“Notfallwohnungen”) can be obtained by legal residents after 5 years. They do not provide access to the rest of the communal housing system. These apartments are mostly in very poor shape.

Austrian legislation does partly not comply with the directive in that regard.

Recognition of qualifications

Recognition of qualifications is a complex topic in Austria, very hard to achieve, and no special provisions to facilitate these procedures for holders of CsR exist.

Austrian legislation does not comply with the proposed directive in that regard.

Access to education and vocational training

In general there is equal access to education. In some areas of professional training and schools, however, discrimination exists with regard to the requirement of fluent speaking of the German language, e.g. in the area of federal training schools for children’s nurses (“KindergärtnerInnen”). There is sometimes discrimination with regard to the fees that have to be paid, e.g. the training to become a nurse or assistant nurse (“Krankenpfleger/in, -helfer/in”) held by the city of Vienna. Other forms of discrimination are to be found on the informal level, e.g. with regard to professional trainings offered by the AMS.

Austrian legislation does not fully comply with the proposed directive in that area.

⁴⁰ Article 7 para 3 Arbeitslosenversicherungsgesetz, article 34 para 3 Fremdengesetz.

Chapter 4: Recommendations and open method of co-ordination

It is unlikely that the open coordination process suggested by the European Commission will bear fruit under the given conditions in Austria. As already explained in chapter 1, the contact between the government and NGOs in the field of migration policy has been dramatically reduced in the last years, and migration policy-making has become a domain where the government and the bureaucracy prepare and enact decisions with little or no discussion with civil society.

To improve the effectiveness for the open coordination method, there is the need to set incentives and sanctions for the governments to consult with NGOs and to develop measures to improve the socioeconomic position of immigrants. As a first step, we would suggest to implement an independent reporting system with regular reports of experts and NGOs as already implemented in the area of anti-discrimination policy. These reports shall be compared with the reports of the government, and the result of the comparison shall be made public. Furthermore, regular meetings between government officials, experts and NGOs shall be organised at European level in order to harmonise the approach of governments vis-à-vis NGOs and independent experts.

One of the most impressive success stories of EU-policies is the introduction of a common currency. When looking at the reasons for this success, one element can be seen immediately: The EURO would not have been possible without a common economic policy setting incentives for countries reaching the Maastricht criteria, and imposing sanctions on countries failing to achieve them. Thus we would suggest developing similar mechanisms of economic incentives and sanctions with regard to the implementation of the open coordination method and a foreseeable common migration policy. As a first step, a set of indicators measuring the degree of discrimination third country nationals have to face in each country and a set of indicators on their socioeconomic integration should be developed. This set of indicators could be used to set political targets for the integration of immigrants and the abolition of discrimination, with economic sanctions (fines) for countries failing to reach them and economic incentives for countries reaching them. A yearly report on the “ranking” of countries could be used to inform the public about major developments in the field.

Annex:

Decrees for settlement 1998 – 2002 (Table)
(BGBl. II 1997/371, II 1998/424, II 1999/460, 2001/96, II 2002/2).

		Key personnel, managers and their family Members	(self -) employed persons and their family members	Family reunion (with TCN residing in Austria as of Jan. 1 st 1998)	Private Residence Purpose	Special quota for youths between 14 and 19 (acc. article 113 (10) FrG 97 ⁴¹)
Total	2002	1.925	475	5.490	390	--
	2001	1.613	815	5.490	420	--
	2000	1.010	1.050	4.000	490	360
	1999	1.130	1.120	5.210	660	550
	1998	1.860	950	4.550	680	550
Burgenland	2002	45	15	160	10	--
	2001	30	40	160	10	--
	2000	20	50	160	20	30
	1999	40	80	180	40	30
	1998	50	100	150	50	30
Kärnten	2002	40	10	30	10	--
	2001	40	10	30	10	--
	2000	20	5	30	5	--
	1999	50	60	200	40	10
	1998	60	70	200	50	10
Niederösterreich	2002	290	150	1.060	70	--
	2001	225	250	1.060	70	--
	2000	150	250	950	100	200
	1999	150	250	950	150	200
	1998	300	150	800	130	200
Oberösterreich	2002	190	40	1.050	10	--
	2001	163	40	1.050	10	--
	2000	50	50	830	20	40
	1999	50	50	830	20	40
	1998	250	50	400	50	40
Salzburg	2002	70	20	210	45	--

⁴¹ This quota in acc. with article 113 para 10 FrG 1997 existed only in the years of 1998 through 2000 for the family (re-) union of minors between 14 and 19 with their parents having settled in Austria before January 1, 1998.

	2001	45	60	210	50	--
	2000	30	70	200	30	--
	1999	100	80	300	50	30
	1998	100	80	300	50	30
Steiermark	2002	260	30	450	30	--
	2001	210	50	450	30	--
	2000	140	90	450	60	20
	1999	100	100	450	80	40
	1998	200	120	600	100	40
Tirol	2002	110	40	280	25	--
	2001	90	70	280	25	--
	2000	60	90	280	30	10
	1999	50	100	300	50	10
	1998	100	80	300	50	10
Vorarlberg	2002	80	20	200	15	--
	2001	60	45	200	15	--
	2000	40	45	200	25	20
	1999	40	50	200	30	20
	1998	50	50	200	50	20
Wien	2002	840	150	2.050	175	--
	2001	750	250	2.050	200	--
	2000	500	350	1.900	200	40
	1999	550	350	1.800	200	170
	1998	750	250	1.600	100	170

Wiener Integrationsfonds – Viennese Fund for Integration

The Integration Fund's objectives are to achieve equal rights and opportunities for immigrants, participation of immigrants in social and political decision-making processes, equal access to social resources such as education, employment, housing and economy, thus to enlarge their individual and collective potentials and skills and promote mutual recognition and respect for cultural diversity in Austrian society. In order to achieve these objectives the Fund organises and gives financial and other support to projects in various fields relating to integration, serving a variety of target groups (e.g. young people, children, women and elderly people), provides advice on issues of residence and employment law, naturalisation and many other aspects of everyday life, mediates and moderates in conflicts and provides information and community services at district level, commissions research projects and studies, elaborates concepts for integration policy and gives assessments and recommendations concerning immigration law, gives advice to the city authorities in integration matters and initiates and supports measures of anti-racism education and awareness. The Viennese Fund for Integration was established in 1992. It has a central office with four departments as well as seven branch offices throughout the city, an office for counselling of immigrant pupils and runs an intercultural youth project.

www.wif.wien.at

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