

REPORT
on the Free Movement of Workers
in Austria in 2010-2011

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Introduction

Free Movement of Workers isn't a 'priority topic' in Austria, neither in politics nor in science. Of course there are political discussions about foreigners – but they do not concern Union citizens or their family members. The discussion focuses on asylum seekers and unqualified immigrants. Even the fact, that Germans are the largest group of foreign workers in Austria, was hardly mentioned (or even discussed).

In 2011 the transitional periods for eight EU member states ended. There hasn't been great debate on that fact. Newspapers quoted trade unions and employers chambers that there aren't any impacts to expect.

In July 2011 an amendment to the Austrian Immigration Law will enter into force. These provisions (Federal Law Gazette I 38/2011) implement the Blue card-Directive, solve some short comings and add some more restrictions; they concern Union citizens as well as Third-country nationals.

Chapter I: The worker: Entry, residence, departure and remedies

The Austrian Immigration Law is codified in the Austrian Police Act 2005 ('Fremdenpolizeigesetz' [FPG]; Federal Law Gazette I 100/2005; in the following quoted as 'APA'), the Settlement and Residence Act 2005 ('Niederlassungs- und Aufenthaltsgesetz' [NAG]; Federal Law Gazette I 100/2005; in the following quoted as 'SRA') and the Asylum Act 2005 ('AsylG'; Federal Law Gazette I 100/2005); these Acts have been supplemented by implementation orders: 'Fremdenpolizei-Durchführungsverordnung' (Federal Law Gazette II 450/2005) and 'Niederlassungs- und Aufenthaltsgesetz-Durchführungsverordnung' (Federal Law Gazette II 451/2005). With 1 July 2011 a lot of provisions will change: there are structural reforms (e.g. points-based system for immigration) as well as new chapters (e.g. Blue Card) or change of wording ('Union Law' instead of 'Community Law'). At the moment no consolidated versions of APA and SRA are available.

As far as I found out, there is no English translation for the APA or the SRA available. You'll find the German version of the APA and the SRA on the Federal Minister for Interior Affairs' homepage (<http://www.bmi.gv.at/gesetzesvorlagen/>) or in the Republic's online law resource <http://www.ris.bka.gv.at>.

1. TRANSPOSITION OF PROVISIONS SPECIFIC FOR WORKERS

The Commission is interested in the implementation of Art. 7 (1a), 7 (3a-d), 8 (3a), 14 (4a-b), 17 and 24 (2) Directive 2004/38. The situation in Austria seems to be as follows:

- Art. 7 § 1/a has the same wording as Sect. 51 pt. 1 SRA and the legislative materials to Sect. 51 SRA¹ explicitly refer to Art. 7 § 1.
- Art. 7 § 3 is implemented (word by word) by Sect. 51 § 2 SRA.
- Art. 8 § 3 is implemented by Sect. 53 § 2 SRA.
- There will be an implementation of Art. 14 § 4 by the APA-amendment 2011 (new Sect. 66 § 1 APA, entering into force 1 July 2011).
- Art. 17 is implemented (word by word) by Sect. 53a SRA (Federal Law Gazette I 135/2009).
- The implementation of Art. 24 § 2 has to be done by the Laender (as regards Social Aid) and the federal parliament (as regards Study Grants); it seems that there aren't any specific provisions (- except Sect. 7a Vienna Social Aid Act).

¹ Sect. 51 SRA reads as follows: EEA nationals who are entitled to free movement under EU law and who reside in the federal territory for longer than three months, shall have the right to settle if 1. they are Austrian nationals or self-employed, or 2. they have sufficient sickness insurance for themselves and for their family, and disposes of enough means to support themselves and the members of their family, without recourse to the social assistance system or 3. they complete an education from a legal accredited public or private school or educational institution and meet the requirements under Point 2.

2. SITUATION OF JOBSEEKERS

Union citizens can stay in Austria up to three months without registration at the aliens police authorities or settlement authorities (see Sect. 84 APA). But they have – like any other person – to register within three days if they take a residence. Probably this is not in line with ECJ C-265/88, Messner: a three-days-period for registering is too short. According to that, Union citizens, who have to register in Austria for the first time, do not violate Sect. 3 Registration Act ('Meldegesetz', Federal Law Gazette 9/1992 as amended by I 135/2009) if they need a little bit more than three days for registering. The duty to register is given for workers as well as for employers, jobseekers or students or family members – it is an obligation for everybody. But there are no specific obligations or formalities to register with respect to residence requirements.

If jobseekers look for a job with the help of the State's employment agencies, they have to register there and will receive job offers.

If the foreign jobseeker is not entitled to a foreign unemployment benefit, he/she usually is not entitled to an Austrian (financial) unemployment benefit. But the same goes for Austrians: If they are no more entitled to unemployment payments, they can apply for 'Notstandshilfe', which is only granted when there was a claim on unemployment payments before. If the Austrian wasn't entitled to an unemployment payment, he/she is not entitled to 'Notstandshilfe' afterwards. He/she has to apply for 'social welfare'-payments which are within the responsibility of the Länder. These payments do (usually) not depend on citizenship. But then we have the problem of 'being self-maintaining' as a prerequisite of free movement of union citizens.

According to the new Immigration Law (new Sect. 24a APA, entering into force on 1 July 2011) third-country nationals can apply for a jobseeker-visa (valid for six months).

3. OTHER ISSUES OF CONCERN

The Constitutional Court (16.12.2009, U 957/09; 28.1.2010, U 2369/09; 26.4.2010, U 2309/09) confirmed the direct applicability of Directive 2004/38/EC.

The Administrative Court's judgments mainly refer to the Directive's provisions when the term 'family member' is in dispute (e.g. 5.5.2011, 2009/22/0265). A Third-country national who is the husband of a German wife living in Austria, is entitled to a residence right according to the Directive 2004/38/EC (Administrative Court 13.12.2010, 2008/21/0031). According to the Constitutional Court (16.12.2009, G 244/09) it is irrelevant whether the German wife was born in Austria or came to Austria to settle down: both cases are 'using the right of free movement' in the sense of the SRA. But on the other hand: A Bulgarian wife of an Austrian (who lives in the United States since 1993) is not 'accompanying' in the sense of Art. 3 § 1 Directive 2004/38/EC (Administrative Court 16.9.2010, 2007/09/0111).

The Administrative Court (14.4.2011, 2010/21/0232) confirmed that Art. 31 § 3 Directive 2004/38/EC asks for an individuell assessment in review procedures.

The Administrative Court (24.2.2011, 2009/10/0212) had to deal with Art. 24 § 2 Directive 2004/38/EC: The Court stated that this provision requests a right to stay 'according to the directive' and only those persons mentioned in Art. 24 § 2 Directive 2004/38/EC are entitled to non-discrimination. Therefore a Member State is not obliged to grant social aid to

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Union citizens within within the first three months of their stay or to jobseekers (Sect. 14 § 4 lit. b Directive 2004/38/EC).

4. FREE MOVEMENT OF ROMA WORKERS

Roma workers aren't a topic in Austria. Neither the media nor the academic literature nor the case law show any specific problems.

Chapter II: Members of the Family

1. THE DEFINITION OF FAMILY MEMBERS AND THE ISSUE OF REVERSE DISCRIMINATION

There are two definitions in the Austrian Immigration Law. Within the scope of the APA, Sect. 2 § 4/12 APA stipulates: family member is a third-country national who is spouse or an unmarried minor child (including adopted child and stepchild) (so-called ‘core family’) or a registered partner. Additionally there is a (quite complex) definition of ‘favoured Third-country nationals’ (Sect. 2 § 4/11 APA).² Within the scope of the SRA, Sect. 2 § 1/11 SRA states: spouse or unmarried minor child (including adopted child and stepchild) (so called ‘core family’) or registered partner; spouses/partners have to be older than 21; if in the case of ‘multiple marriage’ one spouse is already living in Austria, the other wives/husbands are not entitled to a ‘residence permit – family member’.

As mentioned in last year’s report, the Constitutional Court didn’t dismiss the different treatment of family members of Unions citizens and family members of Austrians. The Constitutional Court (16.12.2009, G 244/09) stated that it is optional for the legislator to differentiate between facts that are linked with EC Law and those without a connection; the Court found that the distinction is justified in objective facts. In March 2011 the ECJ released its Zambrano-decision (C-34/09) and in May 2011 the McCarthy-judgment (C-434/09) followed. In the Administrative Court’s mind, there are still a few questions to answer as regards family members of Union citizens (and especially of Union citizens who didn’t go abroad). Therefore the Court started a preliminary procedure (C-256/11) concerning ‘Art. 20 TFEU and Third-country nationals (family members) of immobile Union citizens’.

2. ENTRY AND RESIDENCE RIGHTS

Entry and residence rights of (third-country) family members of Union citizens are regulated in the APA (as regards entry) and in the SRA (as regards residence). Favoured Third-country nationals are entitled to stay for three months and usually need a visa (Sect. 85 APA); the same is true for family members of EEA citizens, Swiss nationals and Austrians who are not entitled to stay longer than three months according to Directive 2004/38/EC (Sect. 87 APA). Sect. 52-57 SRA provides for the residence right of family members of EEA citizens, Swiss nationals and Austrians.

2 Sect. 2 § 4/11 APA: ‘begünstigter Drittstaatsangehöriger: der Ehegatte, eingetragene Partner, eigene Verwandte und Verwandte des Ehegatten oder eingetragenen Partners eines EWR-Bürgers oder Schweizer Bürgers oder Österreichers, die ihr unionsrechtliches oder das ihnen auf Grund des Freizügigkeitsabkommens EG-Schweiz zukommende Aufenthaltsrecht von mehr als drei Monaten in Anspruch genommen haben, in gerader absteigender Linie bis zur Vollendung des 21. Lebensjahres, darüber hinaus, sofern ihnen Unterhalt tatsächlich gewährt wird, sowie eigene Verwandte und Verwandte des Ehegatten oder eingetragenen Partners in gerader aufsteigender Linie, sofern ihnen Unterhalt tatsächlich gewährt wird, insofern dieser Drittstaatsangehörige den unionsrechtlich aufenthaltsberechtigten EWR-Bürger oder Schweizer Bürger, von dem sich seine unionsrechtliche Begünstigung herleitet, begleitet oder ihm nachzieht’.

In practice, Third-country nationals often argue with the ‘*Metock*-ruling’, especially if family life was founded after immigration. It seems that in the meantime the authorities are used to apply that decision: Third-country family members are entitled to free movement in Austria irrespective of whether they have become family members before or after taking up residence in Austria or before or after they have moved with the Union citizen into Austria. There is no information available whether there exists a circular written by the Federal Ministry for Interior Affairs; circulars are not made public in Austria.

For Austrian case law regarding the *Metock*-judgment see previous reports as well as the next chapter.

3. IMPLICATIONS OF THE METOCK JUDGMENT

The Administrative Court proceeded with case law quoting the *Metock*-judgment (C-127/08). The Administrative Court mentioned the *Metock*-judgment a few times (e.g. 12.4.2011, 2007/18/0241; 7.4.2011, 2011/22/0005). And the Court stated that according to the *Metock*-judgment, it is not requested that a Third-country national marries a (British) Union citizen before he comes to Austria (Administrative Court 14.12.2010, 2008/22/0175). Directive 2004/38/EC is applicable to Third-country nationals, who came to Austria alone and started their family life with a (non-Austrian) Union citizen only after immigration (Administrative Court 14.12.2010, 2008/22/0846, quoting the *Sahin*-decision). But there are limits to that interpretation: A Turkish citizen married a German wife but after a few months she left her husband and moved to Germany. The man referred to Directive 2004/38/EC; he argued that his status of ‘family member’ is perpetuated as long as they are not divorced. The Administrative Court (2.7.2010, 2007/09/0194) pointed on the specific fact of the case: According to the *Sahin*-case and the *Metock*-case, prior family relationship is no prerequisite for (re)unification. But what happens if the Union citizen leaves the country? The Administrative Court mentioned the Directive’s system: Chapter III for a short stay, Chapter IV for permanent stay. The latter requires five years of permanent residence. The Turkish man was not able to prove that. But Chapter III-provisions do not grant a residence right independent of existing relationship or the Union citizen’s presence (except Art. 12 § 3 Directive 2004/38/EC). Therefore the Court stated that the husband is not able to refer to Art. 23 Directive 2004/38/EC. In another case the Administrative Court (9.11.2010, 2007/21/0558) overruled a residence ban: a Nigerian man married a Dutch woman in April 2005 (in Austria) and they lived together in Austria until September 2007 when she died. The Administrative Court confirmed that according to Art. 12 § 2 Directive 2004/38/EC the widower is entitled to stay in Austria.

4. ABUSE OF RIGHTS, I.E MARRIAGES OF CONVENIENCES AND FRAUD

Sect. 55 APA deals with the limited possibilities of expulsion after five, eight or ten years of legal residence. If the foreigner is sentenced by a court for concluding or arranging a marriage/partnership of convenience and fraud, it is possible to expell him/she. A similar provision is Sect. 56 APA for foreigners possessing the residence title ‘permanent stay – EC’ or ‘permanent stay – family member’.

According to Sect. 60 § 1 APA, a residence prohibition can be enacted when there are specific reasons to assume that the foreigner's stay endangers public order or security or violates other public interests in the sense of Art. 8 § 2 ECHR. As a 'specific reason' has to be taken the fact that a foreigner enters into a marriage or refers on a marriage for the issuing of a residence title or a working permit, when the foreigner never had a common family life in the sense of Art. 8 ECHR (Sect. 60 § 2/9 APA). It is not necessary that the spouse receives benefits or payments.

For family members of Union citizens, Swiss citizens or Austrians, Sect. 86 and 87 APA state, that a residence prohibition is justified if their personal behaviour endangers public order or security. In constant jurisprudence the Administrative Court uses Sect. 60 § 2 APA as benchmark.

Sect. 60 § 2/9 APA does not require that the marriage is declared null and avoid by authorities or courts (constant case law).

Sect. 109 APA obliges the courts or the administrative bodies to inform the aliens police if they have founded suspicion; Sect. 110 APA provides for the collaboration of aliens police and residence authority.

Concluding or arranging a marriage/partnership of convenience and fraud is an offence which is to be sentenced by courts (fine up to 360 day rates); doing the arrangement of marriages of convenience and fraud in a commercial way is to be sentenced with up to three years imprisonment (Sect. 117 APA).

Amendment I 135/2009 introduced Sect. 30a into the SRA. This provision concerns forced marriage and stipulates that the beneficiary of the compulsion is not allowed to refer to family relationship as regards residence titles or residence rights.³

5. ACCESS TO WORK

The Aliens Employment Act was amended by Federal Law Gazette I 25/2011, entering into force with 1 July 2011. Originally Sect. 1 § 2/l and § 2/m stipulated that the spouse and unmarried minor children of EEA citizens or Austrians have free access to the labour market; they didn't have to apply for a working permit. In future, the provisions read as follows:

Sect. 1 § 2: The Aliens Employment Act is not applicable to:

- l: foreigners, who are entitled to free movement of workers according to a legal act of the European Union
- m: spouse and minor unmarried children (including adopted children and stepchildren) ('core family') of Austrian citizens who are entitled to reside according to the SRA

At the moment there is no specific provision about family members; but Third-country family members fall within the scope of Sect. 1 § 2/l: According to the drafting materials for that amendment, this provision includes all EEA citizens, Swiss nationals and family members

³ Sect. 30a SRA reads as follows: 'Wurde eine Person gezwungen, gegen ihren Willen eine Ehe zu schließen oder eine eingetragene Partnerschaft zu begründen, kann sich keiner der Ehegatten oder eingetragenen Partner für die Erteilung und Beibehaltung eines Aufenthaltstitels oder den Erwerb und die Aufrechterhaltung eines unionsrechtlichen Aufenthaltsrechts auf diese Ehe oder eingetragene Partnerschaft berufen. § 69a Abs. 1 Z 3 gilt.' Sect. 69a SRA is a provision about protection of the victims.

according to Directive 2004/38/EC and family members of Austrians who used their right of free movement before coming back to Austria. Family members of an Austrian who hasn't been abroad before have free access to the labour market only if they are part of the 'core family' (Sect. 1 § 2/m).

Romanians or Bulgarians are not entitled to free movement in the sense of Sect. 1 § 2/1 (except they are family members of an EEA citizen according to Sect. 52 SRA). But under certain circumstances, Sect. 32a § 2 and 3 stipulate the right to access to the labour market for Romanians and Bulgarians (e.g. those, who have been legally employed already) and their family members (see Chapter VII).

6. THE SITUATION OF FAMILY MEMBERS OF JOB-SEEKERS

There are no specific provisions on family members of jobseekers. If the jobseeker is Union citizen, he/she is entitled to come to Austria to look for a job. His/her Third-country family members are allowed to stay for three months but have to apply for a visa (Sect. 85 APA). If they want to stay for a longer period, they have to apply for a residence permit. But it is to notice that this preferred treatment of family members depends on the fact, that the Union citizen is 'entitled to free movement'. That points on sufficient financial means. Therefore it is doubtful whether or not a family member of a jobseeker benefits from that provision. But it has to be stated, that – although the Germans are by now the largest group of foreign employees – there have no cases been reported as regards EU jobseekers or their family members. Neither in the academic literature nor in the media.

Chapter III: Access to employment

1. ACCESS TO EMPLOYMENT IN THE PRIVATE SECTOR

1.1 *Equal treatment in access to employment (e.g. assistance of employment agencies).*

The Equal Treatment Act (Federal Law Gazette I 66/2004) has a specific provision about non-discrimination in the field of employment. According to Sect. 17 § 1/1 nobody is to be discriminated, especially as regards access to an employment. And Sect. 18 stipulates non-discrimination as regards access to careers guidance, vocational training, further training or retraining. Nevertheless it has to be kept in mind that the mentioned provisions refer to discrimination on ethnical reasons, religion, age or sexual orientation and not on nationality.

The Act on the State's employment agencies ('Arbeitsmarktservicegesetz', Federal Law Gazette 313/1994 as amended by I 111/2010) has no specific provision about non-discrimination. Sect. 29 and 31 stipulate the guidelines for the assistance.^{4 5}

4 Sect. 29 Act on the State's employment agencies reads as follows:

§ 1 Ziel des Arbeitsmarktservice ist, im Rahmen der Vollbeschäftigungspolitik der Bundesregierung zur Verhütung und Beseitigung von Arbeitslosigkeit unter Wahrung sozialer und ökonomischer Grundsätze im Sinne einer aktiven Arbeitsmarktpolitik auf ein möglichst vollständiges, wirtschaftlich sinnvolles und nachhaltiges Zusammenführen von Arbeitskräfteangebot und -nachfrage hinzuwirken, und dadurch die Versorgung der Wirtschaft mit Arbeitskräften und die Beschäftigung aller Personen, die dem österreichischen Arbeitsmarkt zur Verfügung stehen, bestmöglich zu sichern. Dies schließt die Sicherung der wirtschaftlichen Existenz während der Arbeitslosigkeit im Rahmen der gesetzlichen Bestimmungen ein.

§ 2 Das Arbeitsmarktservice hat zur Erreichung dieses Zieles im Rahmen der gesetzlichen Bestimmungen Leistungen zu erbringen, die darauf gerichtet sind, 1. auf effiziente Weise die Vermittlung von geeigneten Arbeitskräften auf Arbeitsplätze herbeizuführen, die möglichst eine den Vermittlungswünschen des Arbeitssuchenden entsprechende Beschäftigung bieten, 2. die Auswirkungen von Umständen, die eine unmittelbare Vermittlung im Sinne der Z 1 behindern, überwinden zu helfen, 3. der Unübersichtlichkeit des Arbeitsmarktes entgegenzuwirken, 4. quantitative oder qualitative Ungleichgewichte zwischen Arbeitskräfteangebot und Arbeitskräftenachfrage zu verringern, 5. die Erhaltung von Arbeitsplätzen, wenn sie im Sinne des Abs. 1 sinnvoll ist, zu ermöglichen und 6. die wirtschaftliche Existenz der Arbeitslosen zu sichern.

§ 3 Zu den Aufgaben des Arbeitsmarktservice gehört insbesondere auch die Sicherstellung von beruflichen Ausbildungsmöglichkeiten für Jugendliche durch Vermittlung auf geeignete Lehrstellen und ergänzende Maßnahmen wie die Beauftragung von Ausbildungseinrichtungen zur überbetrieblichen Lehrausbildung gemäß § 30b des Berufsausbildungsgesetzes (BAG), BGBl 142/1969, oder von Ausbildungseinrichtungen gemäß § 2 Abs. 4 des Land- und forstwirtschaftlichen Berufsausbildungsgesetzes, BGBl I 298/1990.

The core contents of this provision: The main goal of the employment agencies is to bring together 'supply and demand'. It should be ensured that the economy finds employees, that all persons available on the Austrian labour market get employed and that there are subsidies for the time of unemployment. Therefore the agencies should 1. find jobs according to the qualification of the job seekers, 2. reduce obstacles to placements, 3. simplify the labour market, 4. reduce the unbalance of jobseekers and job offers, 5. contribute to the securing of jobs and 6. secure the existence of unemployed people.

5 Sect. 31 Act on the State's employment agencies reads as follows:

§ 1 Die Leistungen des Arbeitsmarktservice, die nicht im behördlichen Verfahren erbracht werden, kann jedermann bei allen Geschäftsstellen und Einrichtungen des Arbeitsmarktservice in Anspruch nehmen, die diese Leistungen anbieten, sofern dem die in Abs. 5 genannten Grundsätze nicht entgegenstehen.

§ 2 Sofern auf Leistungen des Arbeitsmarktservice kein Rechtsanspruch besteht, haben sich Wahl, Art und erforderlichenfalls Kombination der eingesetzten Leistungen nach den Erfordernissen des Einzelfalles unter dem Gesichtspunkt zu richten, daß sie dem in § 29 genannten Ziel bestmöglich entsprechen. Bei Erfüllung seiner Aufgaben hat das Arbeitsmarktservice auf einen angemessenen Ausgleich der Interessen der Arbeitgeber und der Arbeitnehmer zu achten.

§ 3 Für Personen, die entweder wegen ihrer persönlichen Verhältnisse oder ihrer Zugehörigkeit zu einer auf dem Arbeitsmarkt benachteiligten Gruppe bei der Erlangung oder Erhaltung eines Arbeitsplatzes besondere

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1.2 Language requirements

There are no specific provisions about language requirements. There haven't been reported any problems.

2. ACCESS TO EMPLOYMENT IN THE PUBLIC SECTOR

2.1 Nationality condition for access to positions in the public sector

The situation is the same as in the last years: According to Sect. 4 and Sect. 42a Civil Servants Act ('Beamten-Dienstrechtsgesetz'; Federal Law Gazette 333/1979) the applicant has to be Austrian citizen if he/she applies for a job reserved to Austrians or to 'a citizen of a state, who has – due to an international treaty within the scope of European integration – to get an equal legal position in access to an employment than Austrian have'. Sect. 42 Civil Servants Act defines which jobs are reserved to Austrians: jobs requiring a special loyalty to Austria, especially those exercising public authority or protecting general interest of the state. The same applies to contractual employees for civil services (Sect. 3 and Sect. 6c Contractual Employed Civil Servants Act ('Vertragsbedienstetengesetz'; Federal Law Gazette 86/1948). The final decision about the posts to be reserved for Austrians is made on a case by case basis; there is neither an exhaustive nor an exemplary list of 'reserved' public sector posts. But there is a specific exception regarding citizenship: Sect. 3 § 2 states that if there is no Austrian applicant for the job, the employer can refrain from citizenship in justified cases).

That means that in principle civil service is restricted to Austrian citizens and those who have an equal position according to EU Law.

Schwierigkeiten haben, sind die Leistungen des Arbeitsmarktservice im Sinn des Abs. 2 so zu gestalten und erforderlichenfalls so verstärkt einzusetzen, daß eine weitestmögliche Chancengleichheit mit anderen Arbeitskräften hergestellt wird. Insbesondere ist durch einen entsprechenden Einsatz der Leistungen der geschlechtsspezifischen Teilung des Arbeitsmarktes sowie der Diskriminierung der Frauen auf dem Arbeitsmarkt entgegenzuwirken.

- § 4 Die Tätigkeit des Arbeitsmarktservice ist, soweit es die Sicherstellung der Beachtung und Umsetzung der Arbeitsmarktpolitik der Bundesregierung, die Gleichbehandlung gleichartiger Angelegenheiten, die notwendige Einheitlichkeit des Vorgehens und die Erreichung höchstmöglicher Effizienz und Zweckmäßigkeit der Leistungserbringung erlauben, dezentral durchzuführen. Die Leistungen des Arbeitsmarktservice sind, soweit nicht ausdrücklich etwas anderes bestimmt ist, durch die regionalen Organisationen zu erbringen.
- § 5 Bei allen Tätigkeiten hat das Arbeitsmarktservice auf die Grundsätze der Sparsamkeit, Wirtschaftlichkeit und Zweckmäßigkeit unter dem Gesichtspunkt der bestmöglichen Erreichung des in § 29 genannten Zieles Bedacht zu nehmen. Zur Bewertung der Effizienz der Tätigkeit des Arbeitsmarktservice ist ein internes Controlling einzurichten.
- § 6 Das Arbeitsmarktservice hat insbesondere bei Vorhaben betreffend die Sicherstellung von beruflichen Ausbildungsmöglichkeiten für Jugendliche gemäß § 29 Abs. 3 auf unterschiedliche Bedürfnisse in den einzelnen Bundesländern Bedacht zu nehmen und zur bestmöglichen Erfüllung der Aufgaben die Mitwirkung und angemessene finanzielle Beteiligung des jeweiligen Bundeslandes anzustreben.
- § 7 Bei der Maßnahmenplanung hat das Arbeitsmarktservice darauf zu achten, dass für Personengruppen, die besonders von Arbeitslosigkeit bedroht sind, geeignete Unterstützungsleistungen angeboten werden.
- § 8 Die Maßnahmen sollen insbesondere die Erhaltung und den Ausbau marktfähiger Qualifikationen der Arbeitnehmer fördern. Das Arbeitsmarktservice kann sich an Maßnahmen anderer Rechtsträger zur Verbesserung der Rahmenbedingungen zur langfristigen Aufrechterhaltung der Gesundheit beteiligen.

The core contents of this provision: Everybody can make use of the agencies' services (§ 1). According to § 2, the services depend on the affords of the single case in the light of Sect. 29. Members of a disadvantaged group should receive specific help (§ 3). The agencies are decentralized (§ 4). According to § 5, the agencies have to work in an economic and effective way, taking into account the goals of Sect. 29.

2.2 Language requirements

As regards language skills, Sect. 4 § 1a Civil Servants Act / Sect. 3 § 1a Contractual Employed Civil Servants Act asks for ‘good command in word and writing; if the job requires less, an adequate command has to be shown’.

2.3 Recognition of professional experience for access to the public sector

For becoming an employee within the public sector, you have to meet the appointment requirements (see above Sect. 4 § 1/3, § 2 and § 3 Civil Servants Act or Sect. 3 § 1/3 Contractual Employed Civil Servants Act). According to the job description, professional experience might be required (and therefore is a condition for application or a bonus for the appointment [- see e.g. Sect. 4 § 3 Civil Servants Act: the best candidate has to be appointed]) but there is no need for ‘Austrian experience’. There are no extraordinary recruitment procedures; for higher posts there might be a cooperation with a personnel consultant but most often it is a hearing in front of a commission. But nevertheless, relevant professional experience can be a merit point in recruitment procedures.

3. OTHER ASPECTS OF ACCESS TO EMPLOYMENT

There are no other specific aspects to be reported.

Chapter IV: Equality of treatment on the basis of nationality

1. WORKING CONDITIONS – DIRECT AND INDIRECT DISCRIMINATION

Specific issue: Working conditions in the public sector

Civil servants and contractual employees to public service receive an automatic salary increase all two years. The exact date is fixed by the so called ‘Vorrückungstichtag’. This date is ascertained in a complicate procedure which is laid down in Sect. 12 Gehaltsgesetz (Salary Act for Civil Servants; Federal Law Gazette 54/1956). Specific times in other jobs are counted (e.g. military service or scientific work). The similar provision is Sect. 26 Contractual Employed Civil Servants Act. § 2f of these provisions deal with employment abroad. Following the ECJ-judgment C-195/98, Österreichischer Gewerkschaftsbund, these provisions have been amended (Federal Law Gazette I 165/2005). But limitations regarding working periods in Turkey or in Switzerland remained unchanged. The provision regarding Switzerland has been modified in 2007 (Federal Law Gazette I 53/2007); additionally prior periods of employment within EU institutions are taken into account now. The question of Turkish working periods is still unsolved;⁶ there have been several amendments to the Salary Act since 2007 but not one of them concerned Sect. 12 § 2f.

Sect. 50a § 4 Salary Act for Civil Servants (‘Gehaltsgesetz’) regarding the special benefit for university professors after 15 years was modified by Federal Law Gazette I 53/2007. As regards employment times as a professor within the EEA, the limitation of ‘after 7 November 1968’ was eliminated; as regards times in Switzerland or in Turkey, the problematic limitation has been left unchanged.⁷ None of the amendments since 2007 refer to Sect. 50a Salary Act.

⁶ Sect. 12 Salary Act for Civil Servants / Sect. 26 Contractual Employed Civil Servants Act:

- (2f) Soweit Abs. 2 die Berücksichtigung von Dienstzeiten oder Zeiten im Lehrberuf von der Zurücklegung bei einer inländischen Gebietskörperschaft, einer inländischen Schule oder sonst genannten inländischen Einrichtung abhängig macht, sind diese Zeiten auch dann zur Gänze für den Vorrückungstichtag zu berücksichtigen, wenn sie
1. bei einer vergleichbaren Einrichtung eines Staates zurückgelegt worden sind, der oder dessen Rechtsnachfolger nunmehr Mitgliedstaat des Europäischen Wirtschaftsraumes oder der Europäischen Union ist, oder
 2. nach dem 31. Dezember 1979 bei einer vergleichbaren Einrichtung des Staates zurückgelegt worden sind, mit dem das Assoziierungsabkommen vom 29. 12. 1964, 1229/1964, geschlossen worden ist, oder
 3. bei einer vergleichbaren Einrichtung der Schweiz (Abkommen zwischen der Europäischen Gemeinschaft und ihren Mitgliedstaaten einerseits und der Schweizerischen Eidgenossenschaft andererseits über die Freizügigkeit, BGBl. III Nr. 133/2002) zurückgelegt worden sind,
 4. bei einer Einrichtung der Europäischen Union oder bei einer sonstigen zwischenstaatlichen Einrichtung, der Österreich angehört, zurückgelegt worden sind.

⁷ Sect. 50a Salary Act:

- (1) Einem Universitätsprofessor, der eine fünfzehnjährige Dienstzeit in dieser Verwendungsgruppe im Dienststand an österreichischen Universitäten aufweist und vier Jahre im Dienststand im Bezug der Dienstalterszulage gemäß § 50 Abs. 4 gestanden ist, gebührt ab dem Zusammentreffen beider Voraussetzungen eine ruhegenussfähige besondere Dienstalterszulage in der Höhe der Dienstalterszulage gemäß § 50 Abs. 4.
- (2) § 48 Abs. 3 und 5 ist auf die besondere Dienstalterszulage nicht anzuwenden.
- (3) Mit dem Anfall dieser besonderen Dienstalterszulage vermindert sich eine gemäß § 52 Abs. 1 Z 2 in der bis 28. Februar 1998 geltenden Fassung zuerkannte Kollegiengeldabgeltung um den siebenfachen Betrag der besonderen Dienstalterszulage, höchstens jedoch auf die gemäß den §§ 51 und 51a gebührende Kollegiengeldabgeltung.

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There is no information available whether or not these Salary Act-rules are applied in practice in a discriminatory way for other Union citizens.

As regards the recognition of working experience for the purpose of determining the working conditions it has to be stated that the Austrian Civil Servants Law is quite inflexible as regards specific bonifications; taking a career step does not only depend on good work but also on the existence of free posts, in some specific posts also on political compatibility (e.g. the Head of the Federal Chancellery Constitutional Service Bureau usually is member/sympathizer of the same political party as the Chancellor), a.s.o. – but that isn't an Austrian speciality. E.g., if a civil servant receives a MBA-grade at a Business School, that does not automatically increase the salary or guarantee a post on a higher level.

2. SOCIAL AND TAX ADVANTAGES

2.1 *General situation as laid down in Art. 7 (2) Regulation 1612/68*

There are no hints on discrimination in the recent literature as regards social or tax advantages. This was confirmed by labour law experts and social law experts who have been consulted by the rapporteur.

2.2 *Specific issue: the situation of jobseekers*

If the foreign jobseeker is not entitled to a foreign unemployment benefit, he/she usually is not entitled to an Austrian (financial) unemployment benefit. But the same counts for Austrians: If they are no more entitled to unemployment payments, they can apply for 'Notstandshilfe', which is only granted when there was a claim on unemployment payments before. If the Austrian wasn't entitled to an unemployment payment, he/she is not entitled to 'Notstandshilfe' afterwards. He/she has to apply for 'social welfare'-payments which are within the responsibility of the provinces. These payments do (usually) not depend on citizenship. Therefore it seems that foreign jobseekers are treated in the same way than Austrian jobseekers.

In the academic literature there was no debate about the *Ioannidis*-case, the *Collins*-case and the *Vatsouras*-case. This might be an indicator for the fact, that the problems of these cases are not relevant for Austria. Labour law experts and social law experts confirmed that these rulings aren't a specific topic for Austria.

(4) Bei der Berechnung der fünfzehnjährigen Dienstzeit gemäß Abs. 1 sind auch Zeiten heranzuziehen, die 1. in einer vergleichbaren Verwendung an einer Universität eines Staates, der oder dessen Rechtsnachfolger nunmehr Mitgliedstaat des Europäischen Wirtschaftsraumes ist oder 2. nach dem 31. Dezember 1979 in einer vergleichbaren Verwendung an einer Universität des Staates, mit dem das Assoziierungsabkommen vom 29. Dezember 1964, 1229/1964, geschlossen worden ist oder 3. nach dem 1. Juni 2002 in einer vergleichbaren Verwendung an einer Universität der Schweiz (Abkommen zwischen der Europäischen Gemeinschaft und ihren Mitgliedstaaten einerseits und der Schweizerischen Eidgenossenschaft andererseits über die Freizügigkeit, BGBl III 133/2002) zurückgelegt worden sind.

Chapter V: Other obstacles to free movement of workers

No specific cases or administrative practices have been reported in the relevant timeframe.

Chapter VI: Specific Issues

1. FRONTIER WORKERS (OTHER THAN SOCIAL SECURITY ISSUES)

As regards a residence clause there are three bilateral agreements which entitle the frontier worker to unemployment benefits in the country of residence: Austria-Germany (Federal Law Gazette 392/1979); Austria-Switzerland (Federal Law Gazette 515/1979); Austria-Liechtenstein (Federal Law Gazette 76/1982).

And there are double-tax-agreements with Germany, Czech Republic, Hungary, Slovenia and Switzerland. E.g. in the Austria-Germany-agreement you find a provision about frontier workers: Employees who work near the border and live near the border have to pay taxes in their residence state if the person returns back daily.

Frontier workers haven't been a topic in academic discussion or in the media. There are no problems reported within the last few years. Perhaps this will change, when unlimited free movement of workers is granted to the citizens of the Czech Republic, Slovakia, Hungary and Slovenia in May 2011 – but the first two months of free movement for EU-8 workers didn't cause – publically noticed – problems. As far as I was told by civil servants of employment agencies, there are no specific administrative or legal schemes available and there are no agreements promoting frontier work.

2. SPORTSMEN/SPORTSWOMEN

No new developments have taken place with regard to the rules on nationality quotas. Sports organisations do not provide detailed information on their internal rules or practices; sometimes you'll find information on the webpages of the sport organisations. There are no legal rules on federal level or Laender level.

3. THE MARITIME SECTOR

Austrian nationality is not required to become a member of the crew (on one of the few Austrian merchant ships). So there is no different treatment (based on nationality) as regards working conditions, salary, a.s.o

4. RESEARCHERS/ARTISTS

Besides immigration law, foreign EU nationals are treated equally as national researchers or artists. The Aliens Employment Act is not applicable to them (Sect. 1 § 2 Aliens Employment Act). At the Universities and other research units, the conditions do not depend on nationality; there are no reservations for Austrians or restrictions to foreign EU researchers. Cases like ECJ C-276/07, Delay, haven't been reported until now.

Researchers are entitled to temporary limited stay permits only ('stay permit – researcher' [Sect. 67 SRA]); family members have free access to the labour market (if they are entitled to stay in Austria). According to the amendment in Federal Law Gazette I 122/2009 researchers can receive a two-years-stay permit, one year longer than so far. Following that permit they can apply for an unlimited residence permit ('Niederlassungsbewilligung – unbeschränkt').

Sect. 61 SRA provides for a specific residence title 'stay permit – artist'.

5. ACCESS TO STUDY GRANTS

EEA citizens (and Third-country nationals favoured by EU Law) are treated like Austrians as regards study grants for studying in Austria (Sect. 4 § 1 Studies Grant Act; 'Studienförderungsgesetz', Federal Law Gazette 305/1992 as amended by I 135/2009). There is no residence clause.

If a student wants to go abroad for more than three months after starting the studies in Austria, he/she is entitled to a 'study abroad grant' (Sect. 53 and 54 Studies Grant Act).

And finally there is a 'mobility grant' for studying at an EEA- or Swiss university (introduced by amendment Federal Law Gazette I 47/2008); according to Sect. 56d Studies Grant Act the applicant has to show an Austrian higher education entrance qualification and he/she has to live in Austria for at least five years before starting the studies. This might be an indirect discrimination. Especially the first and the second criteria could be hard to be met by a migrant worker's child. It also could happen that the student has acquired the higher education entrance qualification in Austria but didn't live in Austria for five years before starting the studies for which the sponsorship is requested (e.g. because he/she was 'frontier pupil') or that the student lived in Austria for five years before starting the studies for which the sponsorship is requested but has not acquired the higher education entrance qualification in Austria (but e.g. as a 'frontier pupil' in Germany). Another circumstance which is only mentioned on the application form is that the amount is only disbursed on an Austrian bank account.

In May 2011 the Administrative Court (13.5.2011, 2009/10/0106) had to decide about Sect. 56d Studies Grant Act. After finishing school in Austria the applicant started to study journalism at the University of Arts in London. She argued that according to EU Law she has to be entitled to Austrian study grants; but according to Sect. 3 she has to study in Austria and the same counts for Sect. 53 and 54 (except the financed 'exchange semester'); Sect. 3, 53 and 54 are no basis for a grant for a complete study abroad. The applicant argued that the refusal (in December 2007) violates Art. 12 TEC/Art. 18 TFEU and constricts the right on free movement (Art 18 TEC/Art. 21 TFEU); these provisions are directly applicable and the case is similar to the ECJ-ruling Morgan and Bucher (C-11/06 and C-12/06) concerning a German study grant. The Administrative Court analyzed the judgment and stated that according to the ECJ a member state is not obliged to support a study in an other member state. But the member state has to avoid restricting modalities if it provides for subsidies for studies abroad. According to Sect. 3 Studies Grant Act a subsidy is for studying in Austria; and – to promote e.g. the Erasmus-programme – the subsidy will be paid for 'exchange semesters' (Sect. 53 Studies Grant Act); for this time abroad an additional subsidy is available (Sect. 54 Studies Grant Act). But to sum up, the Austrian system provided (until September 2008) subsidies only for Austrian studies; the Austrian system did not promote studies abroad in

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gerenal but only short external periods. Therefore the Administrative Court stated that the Austrian system is different from the one in the ECJ-ruling and there is no (EU Law based) need to grant subsidies for complete studies in other member states.

According to the Austrian legal system, the Administrative Court reviews the authority's decision on the basis of the law given at the time of decision. That means that the Administrative Court had to deal with the legal system of December 2007. As mentioned before, in September 2008 the Austrian study grant system was modified and a new 'mobility grant' was introduced. The Administrative Court was not obliged to check Sect. 56d Studies Grant Act; but when the question of the decision arises in another case, the Court is not able to argue that the Austrian system is totally different to the German system.

6. YOUNG WORKERS

There are no other specific aspects to be reported. Neither in the academic literature nor in the media young workers are a topic. It seems that there are no specific cases or administrative practices.

Chapter VII: Application of transitional measures

1. TRANSITIONAL MEASURES IMPOSED ON EU-8 MEMBER STATES BY EU-15 MEMBER STATES AND SITUATION IN MALTA AND CYPRUS

At the end of April 2011 the transitional period for EU-8 ended. One reason for the transitional measures was the fear that it would be interesting (and easy) for EU-8 citizens to work in Austria (e.g. as frontier worker). But the Austrian labour market was not absolutely closed for EU-8 workers. As mentioned in previous reports, Austria allowed skilled workers in 65 professions to come and work. Within the first two month of free movement for EU-8 workers in Austria, no massive influx is registered.

2. TRANSITIONAL MEASURES IMPOSED ON WORKERS FROM BULGARIA AND ROMANIA

For Romania and Bulgaria, Austria is applying the transitional measures and the transitional period was prolonged until 31 December 2013. But the Austrian labour market is not absolutely closed for Bulgarian or Romanian citizens. There is the so called ‘Fachkräfte-Bundes-höchstzahlenüberziehungsverordnung’ (an order about granting access for skilled workers, Federal Law Gazette II 350/2007 as amended by II 395/2008). This order enumerates 65 professions with a shortage of workers; these professions (e.g. bricklayer, paver, data engineer, airport staff or payroll clerk) are open for Bulgarians and Romanians. Since the list of professions is that long and includes ‘classical jobs for migrants’ (e.g. in the building sector) as well as jobs for highly educated migrants (e.g. data engineer) it seems that postponing the transitional measures is ‘only for the public’. Foreign workers will get a job if they apply in sectors with shortages; and workers without specific knowledge or skills will not find a job at all. And that does not differ for EU citizens or for Third-country nationals.

Sect. 32a Aliens Employment Act was amended by Federal Law Gazette I 25/2011 in order to focus on Bulgarian and Romanian citizens.⁸ It is worth to mention that the parlia-

⁸ Sect. 32a Aliens Employment Act reads as follows:

§ 1 Staatsangehörige der Mitgliedstaaten der Europäischen Union, die am 1. Jänner 2007 aufgrund des Vertrages über den Beitritt der Republik Bulgarien und Rumäniens zur Europäischen Union (Beitrittsvertrag von Luxemburg), Amtsblatt der Europäischen Union Nr. L 157 vom 21. Juni 2005, Seite 11, der Europäischen Union beigetreten sind, genießen keine Arbeitnehmerfreizügigkeit im Sinne des § 1 Abs. 2 lit. 1, es sei denn, sie sind Angehörige eines gemeinschaftsrechtlich aufenthaltsberechtigten Staatsangehörigen eines anderen EWR-Mitgliedstaates gemäß § 52 Abs. 1 Z 1 bis 3 NAG.

§ 2 EU-Bürger gemäß Abs. 1 haben unbeschränkten Zugang zum Arbeitsmarkt, wenn sie 1. am Tag des Beitritts oder nach dem Beitritt rechtmäßig im Bundesgebiet beschäftigt sind und ununterbrochen mindestens zwölf Monate zum Arbeitsmarkt zugelassen waren oder 2. die Voraussetzungen für einen Befreiungsschein (§ 15) erfüllen oder 3. seit fünf Jahren im Bundesgebiet dauernd niedergelassen sind und über ein regelmäßiges Einkommen aus erlaubter Erwerbstätigkeit verfügen.

§ 3 Ehegatten und eingetragene Partner von EU-Bürgern gemäß Abs. 2 und deren Verwandte in gerader absteigender Linie, die das 21. Lebensjahr noch nicht vollendet haben und darüber hinaus, sofern ihnen von diesen Unterhalt gewährt wird, haben unbeschränkten Zugang zum Arbeitsmarkt, wenn sie mit diesen einen gemeinsamen rechtmäßigen Wohnsitz im Bundesgebiet haben.

§ 4 Das Recht auf unbeschränkten Zugang zum Arbeitsmarkt gemäß Abs. 2 und 3 ist von der regionalen Geschäftsstelle des Arbeitsmarktservice zu bestätigen. Die Bestätigung ist vor Beginn der Beschäftigung einzuholen. Der Arbeitgeber hat eine Ausfertigung der Bestätigung im Betrieb zur Einsichtnahme bereitzu-

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ment took care about (some) family members: According to Sect. 32a § 9 the spouse and the unmarried minor children of skilled Bulgarian or Romanian workers have free access to the Austrian labour market. And Sect. 32a § 11 clarifies that the work permits of the EU-8 citizens expire – because they do not need them anymore.

The Administrative Court asked for a preliminary ruling concerning a Bulgarian student's access to the labour market. The ECJ (C-15/11) has to decide how to apply the Students Directive 2004/114/EC in the light of the Bulgarian accession treaty. The Administrative Court is especially interested in an interpretation of Art. 17 Directive 2004/114/EC (working students) and its compatibility with the Austrian labour market law which requires a permit for the employer in any case and stipulates some additional requirements. Inter alia it has to be answered whether the Bulgarian is a Third-country national for the purpose of the Directive; what are the consequences of the stand still-clause in the accession treaty, to what extent are the member states entitled to apply labour market needs/restrictions, a.s.o.

halten. Die Bestätigung erlischt bei Ausreise aus dem Bundesgebiet aus einem nicht nur vorübergehenden Grunde.

§ 5 Alle auf Grund einer Beschäftigungsbewilligung, einer Arbeitserlaubnis, eines Befreiungsscheines oder einer Bestätigung gemäß Abs. 4 beschäftigten und alle arbeitslos vorgemerkten EU-Bürger gemäß Abs. 1 sind auf die Bundeshöchstzahl (§ 14) anzurechnen.

§ 6 Für die Beschäftigung von EU-Bürgern gemäß Abs. 1 oder Drittstaatsangehörigen, die von einem Arbeitgeber mit Betriebssitz in der Republik Bulgarien oder in Rumänien zur vorübergehenden Erbringung von Dienstleistungen in einem Dienstleistungssektor nach Österreich entsandt werden, für den nach Nr. 13 des Übergangsarrangements zum Kapitel Freizügigkeit im Beitrittsvertrag (Liste nach Art. 23 der Beitrittsakte in den Anhängen VI und VII) Einschränkungen der Dienstleistungsfreiheit gemäß Art. 49 EGV zulässig sind, ist § 18 Abs. 1 bis 11 anzuwenden. In einem Dienstleistungssektor, in dem Einschränkungen nicht zulässig sind, ist § 18 Abs. 12 anzuwenden.

§ 7 Für die Beschäftigung von EU-Bürgern gemäß Abs. 1, die von einem Arbeitgeber mit Betriebssitz in einem nicht in Abs. 6 genannten EWR-Mitgliedstaat zur vorübergehenden Erbringung von Dienstleistungen nach Österreich entsandt werden, ist § 18 Abs. 12 anzuwenden.

§ 8 Die gesetzliche Vermutung und die Verpflichtung zur Einholung eines Feststellungsbescheides gemäß § 2 Abs. 4 gelten nicht für Gesellschafter, die Staatsangehörige der in Abs. 1 genannten Mitgliedstaaten der Europäischen Union sind. Die Firmenbuchgerichte haben jedoch die Eintragung solcher Gesellschafter in das Firmenbuch der zuständigen regionalen Geschäftsstelle des Arbeitsmarktservice zu melden, sofern sie Grund zur Annahme haben, dass die Gesellschafter Arbeitsleistungen im Sinne des § 2 Abs. 4 für die Gesellschaft erbringen. Die regionale Geschäftsstelle hat die Tätigkeit des Gesellschafters nach ihrem wahren wirtschaftlichen Gehalt zu prüfen. Die Gesellschafter haben an der Ermittlung des Sachverhaltes mitzuwirken. Stellt die regionale Geschäftsstelle fest, dass die Tätigkeit der Bewilligungspflicht nach diesem Bundesgesetz unterliegt, oder wirkt der Gesellschafter trotz schriftlicher Aufforderung nicht binnen angemessener Frist an der Ermittlung des Sachverhaltes mit, hat sie – sofern keine entsprechende Bewilligung vorliegt – die Beschäftigung zu untersagen und die zuständige Abgabenbehörde zu verständigen.

§ 9 Arbeitgebern, die EU-Bürger gemäß Abs. 1 als Fach- oder Schlüsselkräfte zu beschäftigen beabsichtigen, ist auf Antrag eine Beschäftigungsbewilligung zu erteilen, wenn die jeweiligen Zulassungskriterien gemäß Abschnitt IIa erfüllt sind. Ehegatten und minderjährige ledige Kinder solcher Schlüsselkräfte haben unbeschränkten Zugang zum Arbeitsmarkt, der von der regionalen Geschäftsstelle des Arbeitsmarktservice zu bestätigen ist.

§ 10 Bürgern der Republik Estland, der Republik Lettland, der Republik Litauen, der Republik Polen, der Slowakischen Republik, der Republik Slowenien, der Tschechischen Republik und der Republik Ungarn nach diesem Bundesgesetz erteilte Berechtigungen und Bestätigungen zur Arbeitsaufnahme verlieren mit Ablauf des 30. April 2011 ihre Gültigkeit.

Chapter VIII: Miscellaneous

1. RELATIONSHIP BETWEEN REGULATION 1408/71-883/04 AND ART 45 TFUE AND REGULATION 1612/68

According to information given by social law experts as well as to the observation of the academic literature and the newspapers and data base research, there aren't any new developments to be report.

2. RELATIONSHIP BETWEEN THE RULES OF DIRECTIVE 2004/38 AND REGULATION 1612/68 FOR FRONTIER WORKERS

No cases or rules have been reported.

3. EXISTING POLICIES, LEGISLATION AND PRACTICES OF A GENERAL NATURE THAT HAVE A CLEAR IMPACT ON FREE MOVEMENT OF EU WORKERS

3.1 Integration measures

There are no special rules or administrative measures concerning Union citizens. They are exempt from the obligatory integration measures (like integration course and language course).

3.2 Immigration policies for third-country nationals and the Union preference principle

The State's employment agencies apply the principle of Union preference: Issuing an employment permit ('Beschäftigungsbewilligung') depends on the labour market's constitution. It is possible to issue the permit (for a specific foreigner) if there is no Austrian, EEA citizen, Turkish worker available for the job (Sect. 4b § 1 Aliens Employment Act).

Since there are no (visible and effective) immigration policies for Third-country nationals in Austria, this preference principle is not contradicting them. But in April 2011, Austria created a 'Federal State Secretary for Integration' and one of his duties is to create a comprehensive integration policy. As regards 'immigration policies' he has to cooperate with the Federal Minister for Interior Affairs. At the moment there are no hints that the restrictive policy will change in the future. That's good for the preference principle (because it is out of discussion) but is it good for Austria? With amendment Federal Law Gazette I 38/2011 a new immigration system enters into force: not a strict quota system but a points-based system for immigration. We have to await the practice and the influx of migrants to judge about the new paradigm.

3.3 Return of nationals to new EU Member States

There is no information on returns of nationals to new EU member states. Since Austria did not open up its labour market to EU-8 nationals, no significant return movements can be observed.

4. NATIONAL ORGANIZATIONS OR NON-JUDICIAL BODIES TO WHICH COMPLAINTS FOR VIOLATION OF COMMUNITY LAW CAN BE LAUNCHED

There are no specific organisations or non-judicial bodies to which complaints for violation of EU Law can be launched.

5. SEMINARS, REPORTS AND ARTICLES

Within the timeframe of this report the following articles have been published:

Felten, Anwendungsbereich und Grundsätze der neuen Sozialrechtskoordinierung in Europa, wbl 2010, 445 [explains Regulation 883/2004]

Gagawzuk, EuGH-Rechtsprechung im Jahre 2010, DRdA 2011, 184 [gives an overview about ECJ case law in the area of labour law and social security law]

Peyerl, Expressabschiebungen erlaubt? juridikum 2011, 115 [deals with the French expulsion of Roma]

Schrammel/Winkler, Europäisches Arbeits- und Sozialrecht (2010) [is a book on European labour law and social (security) law]

Wittwer, Grenzüberschreitendes Arbeiten, ASoK 2010, 438 [describes social law aspects of frontier workers]