



Danube University Krems

Department for Migration and Globalisation

EMN FOCUSSED STUDY 2014

Admitting third country nationals for business purposes

Gudrun Biffl, Isabella Skrivanek

March 2016

Study commissioned by EMN, the European Migration Network.



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ISBN: 978-3-902505-87-3

Recommended citation:

Biffli, Gudrun, Skrivanek, Isabella (2016) EMN FOCUSSED STUDY 2014. Admitting third country nationals for business purposes. Study commissioned by the European Migration Network. Monograph Series Migration and Globalisation, Krems (Edition Donau-Universität Krems).

Abstract: Austria is a latecomer as far as the promotion of the inflow of foreign business people is concerned. While Austria has a long history of migration, going back to the early 1960s, the focus has always been on satisfying immediate labour demand. This study describes the transformation of migration regulations and the recent emergence of policies to promote the inflow of foreign business people to Austria.

Table of contents

1	Introduction: Purpose and methodology	5
2	Austrian policy stance towards business migration	5
2.1	Changing geo-political situation: Migration versus trade policy	6
3	Business related migration	8
4	Foreign direct investment and business migration	11
4.1	Bilateral Investment Treaties (BIT)	12
5	Legislative framework: Immigrant investors and business owners	13
5.1	Promotion and management of business migration for settlement.....	17
6	Changing focus of migration policy in Austria	20
6.1	From the 'guest worker' model to points based immigration.....	20
6.2	Points based immigration: the Red-White-Red Card	21
6.3	Experience with the RWR-Card.....	22
6.4	Temporary labour migration.....	25
6.5	Inflow of third country migrants by type of residence permit.....	26
7	Temporary business migrants.....	28
7.1	Business visitors for establishment purposes.....	29
7.2	Intra-Corporate Transferees	29
7.3	Posted Workers.....	31
8	Focus of research on business migration in Austria	38
9	Concluding remarks	40
9.1	Immigrant investors and business owners	40
9.2	Temporary movement of natural persons for cross-border service provision ..	41
9.3	Gaps in data availability	42
9.4	Open questions on migration policy reform.....	43
10	References	45

List of figures

Figure 1: Migration and trade developments 1961-2013 (Foreign workers in % of total employment; imports/exports in % of GDP)	7
Figure 2: Total self-employment rate compared to self-employment rate of foreign born (20-64 year olds): 2009	9
Figure 3: Gap in the self-employment rate of foreign born (EU-27 and third countries) relative to total self-employment rate in percentage points (20-64 year olds): 2009	10
Figure 4: Self-employment rate by region of origin 2001 and 2013.....	11
Figure 5: Composition of RWR-card holders by age and sex in Austria, end of June 2013	24
Figure 6: Total number of posted third country plus EU-12 workers by source region	34
Figure 7: Number of posted workers in liberalised services by source region.....	34
Figure 8: Number of posted workers in services protected from competition from third countries and EU member states under transition regulations.....	35
Figure 9: Source countries of posted workers from the EU/EEA in Austria	36
Figure 10: Destination countries of Austrian posted workers in the EU/EEA.....	37

List of tables

Table 1: Number of permits for business migrants per year, 2009-2013.....	17
Table 2: Annual inflows of settlers and temporary residents of third countries.....	28
Table 3: Sum of temporary residence permits granted to citizens of third countries (Non-EU) by residence status and gender.....	30
Table 4: Relative importance of economic sectors (ranking) for ethnic businesses by country of origin.....	39

1 Introduction: Purpose and methodology

This study looks at the conditions and policies in place in Austria which regulate the admission of third country migrants for business purposes, based on the understanding that properly managed business migration can be an important contributory factor to economic growth. Specifically, it addresses three broad areas: a) the admission of non-EU investors who are not yet present/resident in any Member State b) the admission of non-EU business owners who are not yet present/resident in any Member State and c) the admission of other third country nationals who travel to the EU for business reasons (“other business persons”). While the first two categories address third country nationals who are admitted for long stay (settler permits), the last one includes also those travelling under Schengen short-stay rules.

The focus of the study is on the Austrian policy stance towards business migrants and the preferred instruments to shape and regulate their inflow. Accordingly, the study explores the legislative framework and policies in place regulating the settlement of immigrant business investors and/or business owners. In addition, it looks into the arrangements around short-term residence for business purposes. The focus here is on cross-border service provision by intra-corporate transferees, business visitors, independent professionals and contractual service providers (posted workers). The analysis comprised a desk research based on relevant literature, legislation and case law, migration statistics (permits), policy documents, newspaper articles and internet resources. In view of the scarce research situation on business migration in Austria, the desk research was complemented by interviews of stakeholders and follow-up telephone calls for further clarification. The aim of the study is not only to analyse the current situation and policy towards business migrants but also to identify gaps in research, data and institutional ramifications which may represent barriers to business migration, thereby not allowing to reap the full potential benefits from business migration.

2 Austrian policy stance towards business migration

The focus of Austrian migration policy since its early beginnings in the 1960s has always been on regulating labour market access of foreign workers in order to protect the domestic workforce from undue competition while at the same time channelling foreign workers into jobs where labour scarcities prevailed. Accordingly, self-employed business activities have not been a priority of migration policy. The topic surfaced mainly as an issue of presumed misuse, in particular in cases of so-called bogus self-employment. As a consequence, there is little research on this topic in Austria and the data base is limited to very specific cases of business related migration to Austria.

Not even the changing geopolitical environment flowing from the democratisation of Central and Eastern European Countries (CEECs) on the one hand and Austrian membership to the EU on the other changed that policy stance.

2.1 Changing geo-political situation: Migration versus trade policy

In Austria the international economic and political environment has changed at the end of the 1980s as a result of the opening up of the neighbouring Central and Eastern European Countries (CEEC) to international trade and again in the mid-1990s in the wake of the integration of Austria into the EU. Both factors increased competition suddenly and significantly, the former in labour intensive export industries — in particular consumer goods production — the latter in quasi-public sector services. Austria's membership of the EU hastened deregulation of former sheltered public and quasi-public sector services (telecom, banking and insurance, postal services). Employment growth slowed down as a result. However, industrial restructuring was necessary in order to increase productivity and thus regain the former international competitive position.

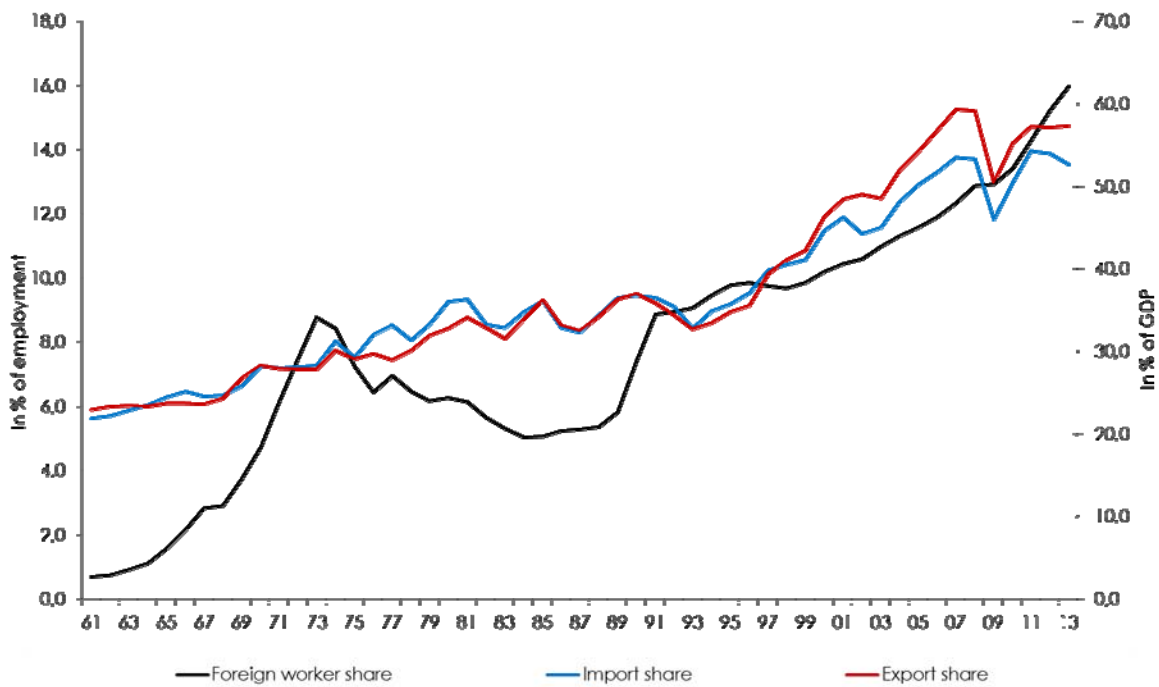
The change in the competitive position of Austria's export industries and the opening up of sheltered services to competition did not only give rise to unemployment but boosted also international trade (measured in terms of exports/imports as a percentage of GDP) and labour migration (measured as a percentage of total employment). (Figure 1) Increased trade was largely the result of a widening of the economic space, opening up opportunities for regional specialisation of industrial production in a value added chain. (Pfaffermayr et al 2001) This process of industrial restructuring was linked with a policy reorientation towards increased FDI (inward and outward foreign direct investment). At the same time migration as a policy instrument was moving backstage. This policy stance reflects the traditional priority of trade over labour mobility in Austrian economic growth and development policy. (Stankovsky 1983, Stankovsky – Url 1999, Wolfmayr et al 2006) Migration was always to serve the competitiveness of Austrian export industries rather than becoming a driver of economic growth in its own right. (Biffl 2004)

The promotion of international trade (Exportförderung) at the expense of labour mobility may stem from a general view that commodity trade is in the main a win-win situation, while migration gives rise to increased inequalities and results in winners and losers. This view is reflected in the fact that Austria imposed restrictions on labour mobility while at the same time removing barriers to the free flow of goods and services across borders as early as 1991 (Europe agreement). This may be a contributory factor to the rising number of irregular migrants who endeavoured to improve their economic situation by migrating even if it meant working in the informal sector. (Ghosh 1999, Biffl – Altenburg 2012) It was not until free movement of labour came into effect for citizens of the new EU member states (EU-12) that many former irregular migrants were 'regularised'.

Admitting third country nationals for business purposes

The policy preference of trade over migration took some time to reduce migrant inflows as migration had a head start in the late 1980s and early 1990s in the wake of the fall of the Iron Curtain and the civil war in Yugoslavia. Inflows subsided after the implementation of new migration legislation in 1992 and international trade gained momentum from the mid-1990s onwards. Imports and exports rose, reaching some 48% of GDP in the year 2001 compared to 37% in the year 1990, and 35% 1980. Today (2013) the share of exports in GDP amounts to 57%, of imports 53%. The increase in the volume of trade (exports and imports) from the mid-1990s onwards resulted from increased internationalisation. It stemmed, to a large extent, from more inter- and intra-industry trade resulting from closer economic integration with the EU and with CEECs. In contrast, migration only gained momentum as free mobility of labour with the EU gave a boost to labour mobility. The migration policy reform in 1992, which brought an end to the so-called 'guest worker' model and introduced immigration controls modelled after the US-immigration model, meant that migration from third countries lost some of its former dynamics. (Biffi 2014)

Figure 1: Migration and trade developments 1961-2013 (Foreign workers in % of total employment; imports/exports in % of GDP)



Source: OECD, World Bank, Eurostat, Austrian Labour Market Service, BaliWeb.

Accordingly, Austria is a latecomer as far as the promotion of the inflow of foreign business people is concerned.

3 Business related migration

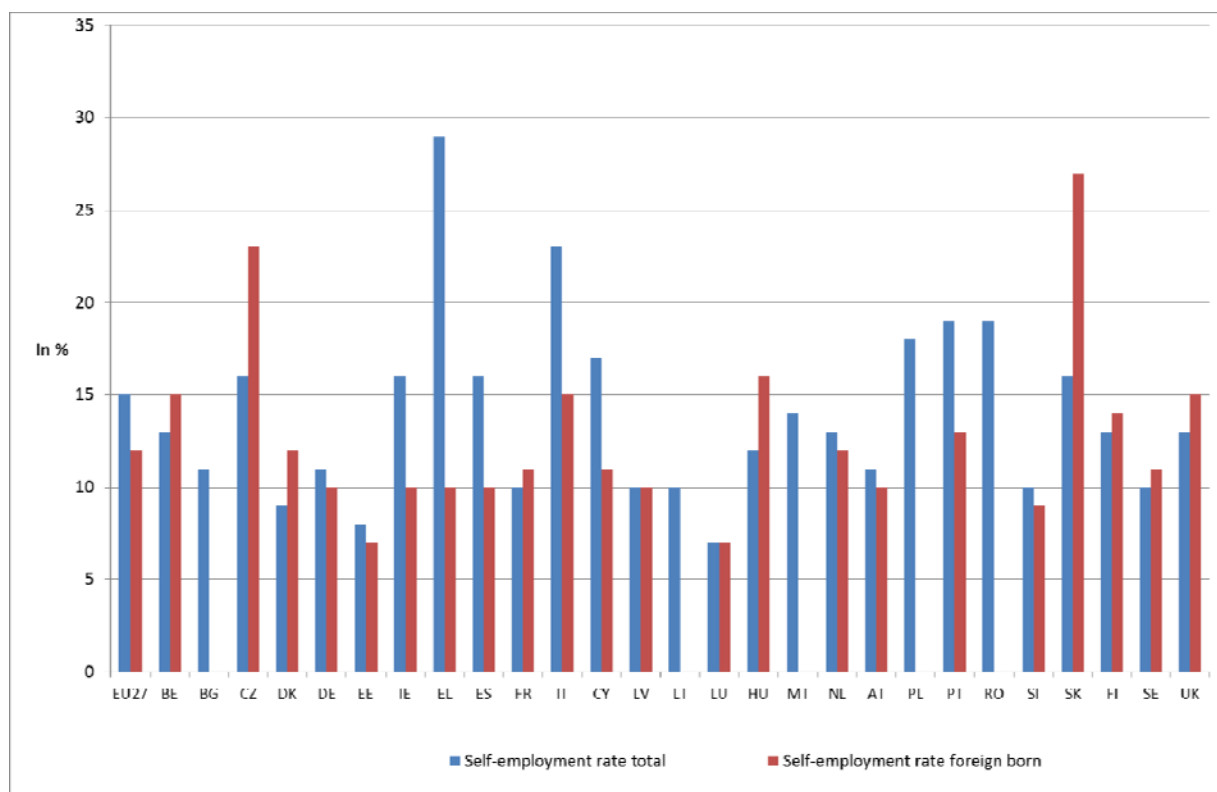
While Austria has a long history of migration, going back to the early 1960s, the focus has always been on satisfying immediate labour demand, i.e. of reducing general and specific labour scarcities of domestic enterprises via migration. (Biffl 2011) It was not until the settlement of 'guest workers' and their families that self-employment of foreigners set in. This was a slow process and gained momentum only in the 1990s. Accordingly, there are no comprehensive statistics on ethnic entrepreneurs in Austria until the census of 2001. Then, out of the 516,800 employed migrants (foreign born) 36,100 or 7% were self-employed, largely in the non-agricultural sector, compared to 11% of the host population. As some 3% of the Austrians were self-employed farmers, the share of self-employment of migrants in the non-agricultural sector was about as high as for natives¹. Research into the reasons for the take-up of self-employment suggests that the deterioration of employment opportunities of migrant workers resident in Austria became a motivating force to start up a business. Accordingly, the composition of self-employed foreigners by skills, educational attainment level and source region conformed to the one of the 'guest workers'. The new self-employed tended to find niches for themselves. (Biffl 2007) They were inclined to set up business in services, in particular cleaning, restaurants, food production and retail trade as well as in manufacturing, above all in clothing, leather ware, shoes and textile production and repairs.²

Since then the share of self-employment in total employment remained fairly stable in Austria, amounting to 11% in 2009 (20-64 year olds). The proportion was only slightly lower for foreign born with 10%. Accordingly, migrants were increasingly working on their own account. It were above all EU-27 citizens who came to set up a business in Austria (self-employment rate of 14% compared to 7% of third country foreign born). In EU comparison (Eurostat 2011), the share of self-employment in total employment in Austria is somewhat below the EU-27 average (15%). But there are large differences in the share of self-employment in total employment across the EU, spanning from a low of 7% in Luxembourg to a high of 29% in Greece. (Figure 2, Figure 3)

¹ Specific regulations ensure that farmland cannot be acquired by non-farmers thereby protecting farmers against undue competition and price rises of farmland.

² A similar structure can be observed in Germany (Constant – Zimmermann 2004, Blume et al 2003).

Figure 2: Total self-employment rate compared to self-employment rate of foreign born (20-64 year olds): 2009



Source: Eurostat (2011), LFS.

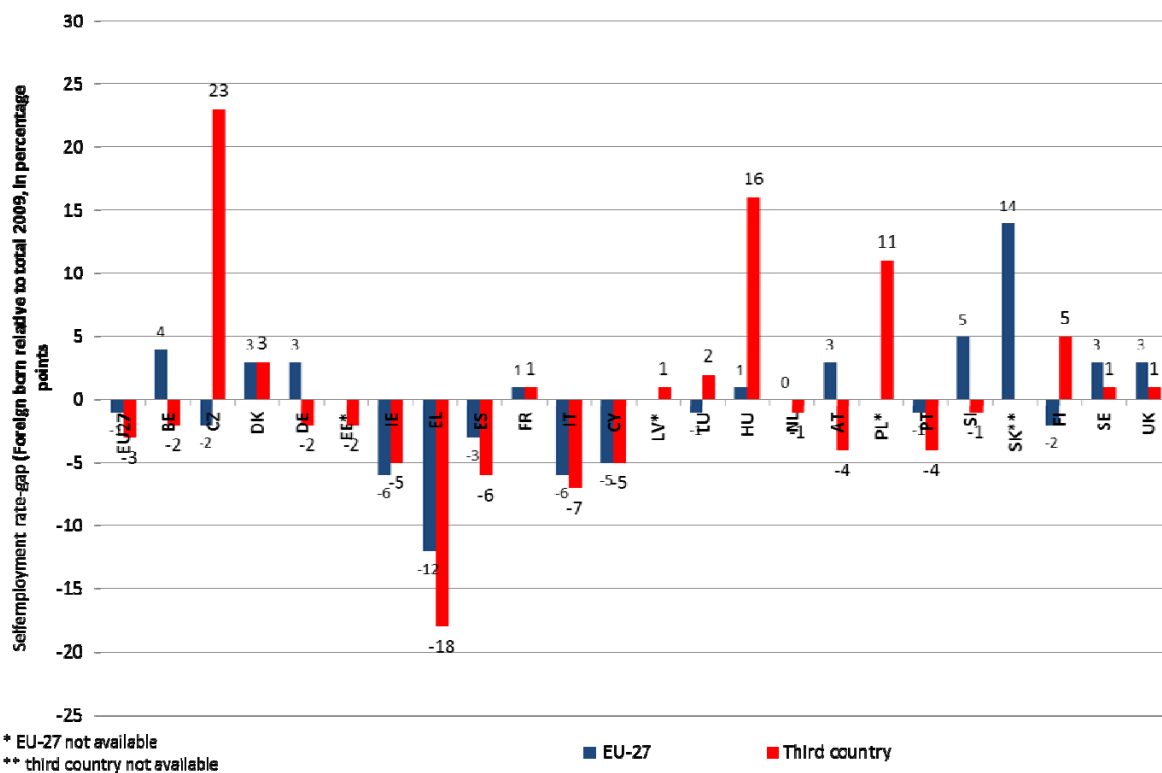
While some EU member states exhibit hardly any differences in the degree of self-employment of natives and migrants, e.g. Luxembourg and Latvia, others tend to have large discrepancies, in particular Southern European countries and some Central and Eastern European countries, indicating different roles of migrants and natives in the local labour market and the economy at large.

In Austria the composition of self-employment by source country has changed significantly between 2001 and today. While the composition of the migrant entrepreneurs by country of origin conformed more or less to the one of migrant wage and salary workers in 2001, this was no longer the case in 2009 and even less so in 2013. With EU enlargement and the imposition of transition regulations for migrants from EU-8 countries (until 2011) and from EU-2 countries (until 2013), access to wage and salary employment was difficult. Only highly skilled workers and persons in designated shortage occupations (Mangelberufe) could enter wage and salary employment. But the option to set up a business in Austria remained, leading to a substantial inflow of self-employed workers from the new EU member states. Between 2004 and 2008, some 18,000 persons from the new EU member states established themselves as independent contractors/self-employed, largely self-employed homecare

Admitting third country nationals for business purposes

service providers and to a lesser extent building services and consulting. In addition, posted workers entered to provide services on a temporary basis.

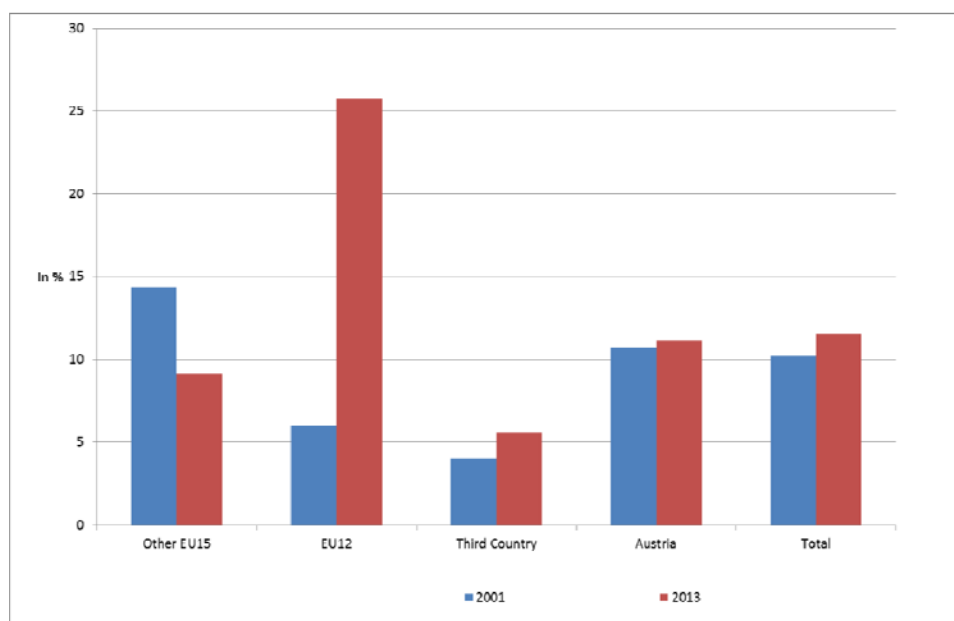
Figure 3: Gap in the self-employment rate of foreign born (EU-27 and third countries) relative to total self-employment rate in percentage points (20-64 year olds): 2009



Source: Eurostat (2011), LFS.

In 2013, 13.3% of the foreign workforce of 642,300, i.e. 85,500, were self-employed, clearly more than in total employment (11.5%). The differences between the various nationalities were pronounced. While the self-employment rate of third country citizens, largely persons from Turkey and former Yugoslavia (excluding Slovenia and Croatia), was fairly low with 5.5% (14,900), 42.5% of all workers from the EU-2 were working as self-employed (21,200). Also citizens from the EU-10 member states worked to a large extent as self-employed, namely 36,000 or 21% of total EU-10 employment. Much smaller are the numbers of self-employed from Switzerland and EFTA countries, their share in total employment is, however, also quite high with 16.2% (500 persons). It can be taken from Figure 4 that the role of foreign business people has increased significantly over the last decade, flowing from globalisation but above all from EU enlargement. In consequence, the diversity of their professional skills and occupations has increased. (see also Alteneider-Wagner-Pinter 2013)

Figure 4: Self-employment rate by region of origin 2001 and 2013



Source: Statistics Austria: census 2001, BaliWeb: 2013.

4 Foreign direct investment and business migration

Foreign direct investment as a potential driving force of economic and employment growth has only moved up the policy agenda in the 1990s, in recognition of the economic opportunities flowing from increased EU integration. (Mayer – Bellak 2010) Today, the degree of economic interdependence in foreign direct investment in Austria is above average in international comparison. The world stock of FDI, measured in % of global GDP, amounted to some 32% in 2012. In Austria the respective value was 52% of GDP for active FDI (Austrian FDI abroad, i.e. outward FDI) and 41% for passive FDI (FDI in Austria, i.e. inward FDI), respectively. This is less than in the EU on average: the EU average was 61% (active) and 49% (passive) in 2011. The difference to the 1990s is significant such that one can say that the policy change was effective, implying even a change in paradigm: For the 1990s, the Austrian National Bank had calculated 2.8% of GDP (active) and 6.4% of GDP (passive) FDI for Austria, which was well below the EU-average of 10% then. (Austrian National Bank 2002, 2014)

Despite the strong increase in investment flows in Austria over the last 20 years, the regional focus of inward and outward FDI remains on EU member states and on East and South-Eastern European countries. Due to the Parent Subsidiary Directive of the EU, almost all income earned by Austrian foreign affiliates located largely in old and new EU member states is tax exempt in Austria. This implies that income earned abroad is not penalized

compared to income earned in Austria and thus it does not influence the location choice abroad – as long as it is within the EU.

The number of non-resident direct investors in Austria amounted to somewhat more than 3,000 by the end of 2000, almost evenly divided up between EU-15 (largely Germany) and EU-12, contributing to the employment of 251,100 workers in Austria. Outward FDI involved a similar number of direct investors or enterprises abroad, again almost evenly divided amongst EU-15 and EU-12 countries, involving some 250,000 jobs abroad. (Austrian National Bank 2002) By the beginning of 2013, the balance in terms of the value of FDI has shifted towards active FDI at the detriment of passive FDI: the number of active Austrian FDI investors abroad amounted to 1,361, representing a value of 158.6 billion euros; in exchange, 3,069 foreigners (passive FDI) invested in Austria, holding shares of more than 100,000 euros in 2,768 Austrian companies, representing a value of 124.6 billion euros. (Austrian National Bank 2014). The number of jobs affected by passive FDI in Austria was unchanged versus 2000 while active FDI affected 784,700 employees abroad. (Austrian National Bank 2014)

The most important foreign investors in Austria are Germany, Switzerland, the United States and Italy. This ranking has not changed since 2008. Those “big four” comprise 63% of foreign participations with 59% of total FDI value and 69% of the related employment. The Netherlands, France, the United Kingdom and recently also Russia are further important countries of origin for FDI in Austria, however at lower levels. (Austrian National Bank 2014)

4.1 Bilateral Investment Treaties (BIT)

In recognition of the important role of FDI, including foreign business investors in Austria, the Austrian Government has chosen to create a network of bilateral investment treaties (BITs) to promote FDI. Austria has BITs (Agreements for the Promotion and Protection of Investment) with 62 countries, i.e., Albania, Algeria, Argentina, Armenia, Azerbaijan, Bangladesh, Belarus, Belize, Bolivia, Bosnia-Herzegovina, Bulgaria, Cape Verde, Chile, China, Croatia, Cuba, Egypt, Estonia, Ethiopia, Georgia, Guatemala, Hong Kong, India, Iran, Jordan, Kazakhstan, Kosovo, Kuwait, Latvia, Lebanon, Libya, Lithuania, Macedonia, Malaysia, Malta, Morocco, Mexico, Moldova, Mongolia, Namibia, Oman, Paraguay, Philippines, Poland, Romania, Russia, Saudi Arabia, Slovakia, Slovenia, South Africa, South Korea, Tajikistan, Tunisia, Turkey, Ukraine, Uzbekistan, United Arab Emirates, Vietnam, Yemen and Yugoslavia. The majority of the BITs were signed in the 1990s or later, only four of those in place were signed in the 1980s (with China 1986, Malaysia 1987, Poland 1989, and Hungary 1989). (Federal Ministry of Science, Research and Economy 2014a)

In addition, double taxation treaties (DTTs) have been concluded guaranteeing favourable tax treatment of the profits from FDI. Furthermore, the long-established network of trade

delegates (Handelsdelegierte) of the Austrian Chamber of Commerce is increasingly helping Austrian firms to establish activities abroad and facilitate migration to Austria.

5 Legislative framework: Immigrant investors and business owners

While business migration within the European Economic Area (EEA) is promoted by the ‘four freedoms’ of the internal market: free movement of capital, labour, goods and services, special regulations apply to third country citizens. In the investment context the focus is on immigrant investors and entrepreneurs / business owners.

As mentioned above, the number of self-employed migrants has risen significantly since the 1990s, largely from other EU member states but also increasingly from third countries. This is not the result of an explicit policy to promote third country business migration but rather the result of the individual motivation of third country migrants to conduct business in Austria. Accordingly, there is no explicit definition of “immigrant investors” in the Austrian legislation. But BITs tend to include regulations promoting business migration, in particular immigrant investment. The definition of investment is as follows:

Every kind of asset in the territory of one Contracting Party, owned or controlled, directly or indirectly, by an investor of the other Contracting Party. Investments are understood to have specific characteristics such as the commitment of capital or other resources, or the expectation of gain or profit, or the assumption of risk, and include enterprises (e.g. a corporation, partnership, joint venture or any other association, as well as a trust, a sole proprietorship, or a branch located in the territory of a Contracting party and carrying out substantive business there), shares, stocks and other forms of equity participation in an enterprise and rights derived there from bonds, debentures, loans and other forms of debt instruments and rights derived there from any right or claim to money or performance whether conferred by law or contract, including turnkey, construction, management or revenue-sharing contracts, and concessions, licences, authorisations or permits to undertake an economic activity; intellectual property rights and intangible assets having an economic value, including industrial property rights, copyright, trademarks, trade dresses; patents, geographical indications, industrial designs and technical processes, trade secrets, trade names, know-how and goodwill; any other tangible or intangible, movable or immovable property, or any related property rights, such as leases, mortgages, liens, pledges or usufructs. (Federal Ministry of Science, Research and Economy 2014b)

Settlement permits may be issued to immigrant investors and business owners, except in the case of business investors who do not apply for residence in Austria but feature only in National Bank figures or as temporary residents. In the present EMN study the definitions of business migrants in that context are:

Admitting third country nationals for business purposes

- Immigrant investor: “third country national meeting the criteria set by a Member State and admitted on a long-stay visa to a Member State for the purpose of making a (substantial) financial investment either in financial products or in a business but without involving in the day to day operations or in the management of business.” (EMN 2014, 7)
- Immigrant business owner: “third-country national meeting the criteria set by a Member State and admitted on a long-stay visa to the Member State to i) set up a business and be involved in its management; ii) take over the running of a business or businesses and be involved in its management; iii) or for self-employment.” (EMN 2014, 7)

In the Austrian legislation these definitions are only partly reflected. Two legal categories of Austrian settlement permits to third country migrants can be subsumed under these definitions: the settlement permit excluding gainful employment³ and the Red-White-Red-card (RWR-card) for self-employed key workers⁴. (Federal Ministry of Labour and Social Affairs/Federal Ministry of the Interior 2014a, 2014b) The respective applicants may be granted a settlement permit on the basis of one or the other following criterion:

- In case of settlement excluding gainful employment the applicant has to prove a regular monthly income.
- In case of the RWR-card for self-employed key workers the self-employed occupation carried out in Austria has to bring about macro-economic benefits that go beyond the personal operational benefit. One such criterion for macro-economic benefits is a “sustained transfer of investment capital to Austria”.

Accordingly, financially independent individuals and their family members, who can prove a regular monthly income, e.g. Austrian or foreign pensions, profits from enterprises abroad, income from assets, savings or company shares, equalling twice the amount of the standard rates of the General Social Insurance Act (ASVG) may apply for a settlement permit excluding gainful employment. In 2014, the threshold was 1,715.46 euros for singles, 2,572.06 euros for couples, and 264.68 euros extra for each child.

The eligibility criteria for a “RWR-card for self-employed key workers” encompass both, immigrant investors and immigrant business owners. Third country nationals can apply for this category of RWR-card if

- the intended occupation involves a sustained transfer of investment capital to Austria,
- the intended occupation creates new jobs or secures existing jobs in Austria,

³ Legal basis: § 44 Settlement and Residence Act/Niederlassungs- und Aufenthaltsgesetz – NAG.

⁴ Legal basis: § 24 Foreign Worker Law /Ausländerbeschäftigungsgesetz – AuslBG, § 41 (2) Z 4 Settlement and Residence Act/Niederlassungs- und Aufenthaltsgesetz – NAG.

Admitting third country nationals for business purposes

- the settlement of the key worker involves the transfer of know-how and the introduction of new technologies, respectively,
- the key worker's company is of considerable significance for the entire region. (Federal Ministry of Labour and Social Affairs/Federal Ministry of the Interior 2014b)

In contrast to the RWR-card categories for salaried employment, there is no point system in place for the so-called self-employed key workers under the RWR-card scheme. The major criterion is that their self-employed activities generate:

“overall economic benefit ..., especially with regard to the associated transfer of investment capital and/or the creation and securing of jobs” (§ 24 Foreign Worker Law - AuslBG).

The assessment of the macroeconomic benefits is carried out by the Regional Public Employment Service (PES). There are no additional criteria than those mentioned above (transfer of investment capital, job creation, know-how transfer, regional importance) upon which a RWR-card as self-employed key worker may be issued to a third country citizen. The only documents to be submitted when applying are: “documents which allow an analysis and evaluation of the market and competitive situation and the headquarter location, including a detailed description and the objectives of the intended professional undertaking”. (Federal Ministry of Labour and Social Affairs/Federal Ministry of the Interior 2014b)

It is up to the PES to establish if the qualifications and competences needed for the proposed self-employed activity are given. The PES assesses whether the suggested activity is a self-employed activity or not. It is helpful if the applicant can prove experience in running a business or if he/she had a prosperous business in the country of origin. This can be part of the documentation when applying for the RWR-card, together with a business plan, such that the PES may establish the conformity with legal requirements.

The general practice is that a potential investor turns to the first point of contact, the Austrian Business Agency (ABA)⁵, i.e. the national investment promotion company, to enquire about the requirements to obtain the right to establish a business in Austria. The ABA may help to draw up an analysis of the expected macroeconomic benefits of the intended investment/business in Austria. The applicants of an RWR-card for self-employed key workers can enclose this document in their application to the PES. Evaluations of the outcome of proceedings are not publicly available.

In case of wanting to establish a business which is regulated, evidence of the qualification necessary for the self-employed professional activity has to be verified by the relevant trade authority which grants the licence (Gewerbeberechtigung). In addition, evidence of sufficient

⁵ The ABA is a federal agency which reports directly to the Austrian Ministry of Science, Research and Economy. (www.investinaustria.at)

Admitting third country nationals for business purposes

capital has to be provided. In the preamble of the amendment to the Foreign Worker Law a minimum of 100,000 euros is mentioned. (BGBl. I Nr. 126/2002) Practitioners observe that the minimum can differ between the provinces, i.e. the requirements set by the provincial PES (AMS-Landesgeschäftsstelle). The requirements also depend on the legal form of the business, e.g. the minimum charter capital for a limited liability company (Gesellschaft mit beschränkter Haftung, GmbH) amounts to 35,000 euros. An Austrian bank account is required for the establishment of a business in Austria. Background checks are carried out by banks in case of doubts as to the origins of the money.

With the amendment to the regulations on the establishment of a business (Gewerbeordnung) in 2002, access of third country migrants to self-employment has been changed. The amendment had a positive effect on third country migrants wanting to establish a liberalised trade (Freies Gewerbe). From then on the only requirement has been a valid residence permit which grants the right to establish a business in the category of liberalised trades. This is in contrast to regulated trades where specific skills or competences have to be proven to become eligible to carry out a business. As a consequence, the number of licenses granted to third country citizens in liberalised trades increased substantially. In contrast, access to work in a regulated profession, e.g. as a medical doctor, or in a regulated trade continues to be difficult as the certificate or proof of competence may be difficult to obtain in case of the acquisition of these skills in a third country. (Biffel – Pfeffer – Skrivanek 2012)

According to the Austrian Business Agency (ABA) professional consulting services were given to 228 companies, which located their business operations in Austria in 2013. The total investment volume amounted 347.8 million euros. Flowing from these investments, 1,479 new jobs were created, according to ABA. Since its establishment in 1982, ABA had concluded projects attracting total investments of 6.9 billion euros, creating more than 47,100 new jobs. The numbers reflect total investment, i.e. from EU and non-EU countries, and refer to both target groups, immigrant investors and immigrant business owners.

As far as data are concerned, no data exist on business migration flowing from BIT and the numbers of settlement permits for business migrants as defined above are quite small: In the case of valid settlement permits for third country migrants which do not allow gainful employment 1,349 were registered at the end of 2013. The annual inflow amounted to some 250 persons in 2013. The number of such new permits is capped by a yearly quota; in 2013 it was set at 275. The number of valid settlement permits for highly skilled third country self-employed amounted to 787 persons in 2013; in the course of the year 2013 26 Red-White-Red Cards were issued for self-employed key workers. (Federal Ministry of the Interior 2014b) There is no information available on the basis of which criterion the persons were admitted (sustained transfer of investment capital, creation of new jobs or securing jobs,

Admitting third country nationals for business purposes

transfer of know-how/introduction of new technologies, or key worker's company has considerable significance for the region).

The acceptance rate of applications for self-employment is very low, amounting to 13% in 2010 and 11% in 2011. (Biffel/Bock-Schappelwein 2013) Accordingly, the enquiry into the reasons for the low acceptance rate was an issue in the research undertaking. The interviews with persons involved suggested that certain law firms specialise on helping potential business clients with the proceedings, suggesting that business migrants with poor means may face difficulties obtaining a settlement permit to establish a business in Austria.

Table 1 indicates the number of permits issued between 2009 and 2013. There has not been any significant change in numbers since the introduction of the RWR-card for self-employed key workers. In fact, this RWR category is a continuation of the previous model of settlement permits for self-employed key workers and continues to be marginal compared to other permit categories.

Table 1: Number of permits for business migrants per year, 2009-2013

Yearly issued permits by category	2009	2010	2011	2012	2013
Settlement permit – gainful employment excepted ⁶	206	188	248	225	250
RWR-card for self-employed key workers	23	26	24 ⁷	13	23
Residence permits for self-employed workers	8	9	19	14	8
Status change to RWR-card for self-employed key workers	5	2	3 ⁸	2	3

Source: Fremdenstatistik 2009, 2010, Niederlassungs- und Aufenthaltsstatistik 2011-13, Federal Ministry of the Interior, http://www.bmi.gv.at/cms/BMI_Niederlassung/statistiken/

5.1 Promotion and management of business migration for settlement

Various political actors and institutions are involved in the promotion and management of business migration as defined above, namely: the Federal Ministry for Science, Research and Economy, the Federal Ministry of the Interior, the Federal Ministry of Labour and Social Affairs, the Federal Ministry for Europe, Integration and Foreign Affairs, as well as the Austrian Business Chamber, the Federation of Austrian Industries and the Austrian Business Agency. Furthermore, some Austrian provinces have their own agency, such as the Vienna Business Agency.

⁶ This number includes all titles issued, i.e. persons that could prove “adequate means of subsistence”.

⁷ The Red-White-Red card was implemented 1 July 2011 and replaced the settlement permit for self-employed key workers. In 2011, 10 settlement permits for self-employed key workers (Niederlassungsbewilligung für selbständige Schlüsselkraft) and 14 Red-White-Red cards were issued.

⁸ 2 changes to settlement permit for self-employed key workers, 1 change to Red-White-Red card for self-employed key workers.

Admitting third country nationals for business purposes

The Austrian Business Agency is the national investment promotion agency; it is the first point of contact for foreign companies aiming to establish their own business in Austria. It is owned and operated by the Republic of Austria and reports directly to the Austrian Ministry for Science, Research and Economy. ABA actively promotes business migration via:

- Regular activities in third country markets, specific events for potential business owners/investors with information on Austria as a business location in the framework of, e.g. Economic forums (Wirtschaftsforum), economic missions of Austrian stakeholders (visits of Ministers abroad accompanied by business missions)
- ABA Webpage (www.investinaustria.at), available in German, English, French, Italian, Chinese, Japanese, Russian,
- Cooperation with consultants in third countries that approach potential investors/business persons interested in establishing a company in Austria.
- Cooperation with actors that could spread information about Austria as a business location (tax consultants, lawyers),
- Brochures,
- special offices, e.g. ABA office in China.

Once a potential business migrant wants to settle in Austria, procedures are quick and efficient in case of a RWR-card. In principle, processing should not take longer than 8 weeks. This concerns the screening of the application by the local residence authority and the assessment of the macro-economic benefits by the Public Employment Service. If applicants are required to obtain visa, they have to submit their application at the Austrian representation (embassy/consulate) abroad. If the application is complete, it takes a maximum of two weeks until the application reaches the domestic residence authority, i.e. the diplomatic courier leaves every two weeks. If the application is accepted, the Austrian representation informs the applicant accordingly. The applicant then has to apply for a visa in order to pick up the RWR-card at the relevant residence authority in Austria. Applications for a settlement permit without the right to work have to be submitted to the Austrian representation abroad, unless the applicant is entitled to visa-free entry. Hence, the same submission procedures apply as in the case of an RWR-card. The processing of the application differs, however. Processing may take up to 6 months. (Federal Ministry of Labour and Social Affairs/Federal Ministry of the Interior 2014a)

An additional motivation to set up a business in Austria may flow from preferential treatment when applying for Austrian citizenship, as Austrian citizenship may be awarded to individuals for “outstanding achievements that are in the interest of the Republic of Austria” (außerordentliche Leistungen im besonderen Interesse der Republik)⁹. In such cases no minimum period of residence in Austria is required. Between 2002 and 2011, between 17

⁹ Laid down in § 10 (6) Austrian Citizenship Law/Staatsbürgerschaftsgesetz – StbG.

Admitting third country nationals for business purposes

and 39 persons annually were granted citizenships on the basis of „outstanding achievements“ (Statistics Austria/Statistics of naturalisations). Due to attempted misuse no naturalisations were granted on that basis in 2012 and 2013. A politician was found guilty of passive corruption. He indicated to a Russian businessman that he had the option of Austrian citizenship in exchange for investment in Carinthia (the citizenship was to be “part of the game”). The politician also claimed that in case of investment “the usual 5 to 10 percent” should go to sponsoring his political party. (Der Standard 2012, Die Presse 2011) In response to a public outcry and legal proceedings, the criteria on the basis of which a fast track to Austrian citizenship can be granted have been redrafted in 2014. Apart from specific criteria, the cases have to be made publicly available. The criteria set up for this “fast track” to Austrian citizenship are the following (Federal Ministry of the Interior 2014a):

- Owner of a company or senior position with substantial influence in the company, board member is not sufficient.
- High economic performance of the company.
- Creation and protection of employment in the Austrian labour market to a relevant degree, especially in economically weaker regions in Austria.
- Substantial investment or projects of the company already implemented, a simple flow of capital is not sufficient.
- Reputation of the company abroad.
- Promotion of Austria’s bi- or multilateral external relations in this economic sector.

The legal framework of migration and the gist of migration policy are not conducive to business migration. While the focus of migration policy is on persons and their residence status, investment and trade policy focus on monetary flows with no recognition of a potential need of regulation of periods of residence in Austria. In the case of business migration we are at the interface of two different regulatory mechanisms, labour market regulation versus trade regulation. The linkage of business migration with investment and trade is indicative of different institutional prerogatives not easily captured in residence and labour market data, in particular if temporary stays as opposed to settlement are at stake. Accordingly, little is known about the numbers of third country migrants. Thus, the contribution of this type of migration to economic growth is difficult to capture.

More recent migration policy developments, namely the introduction of a point system, may help pave the way for more transparency also in the specific case of business migration. We therefore provide a quick overview of migration policy and paradigmatic changes followed by specific cases of temporary business migrants who may work either under a migration regime (intra-company transfers) or under a trade regime (posted work).

6 Changing focus of migration policy in Austria

6.1 From the 'guest worker' model to points based immigration

After the Second World War, Austria embarked upon the reconstruction of its economy. It took some 15 years for Austria to recover and regain economic growth, longer than in neighbouring Germany. The Austrian economic development was hampered by large refugee inflows from Central and Eastern European countries on the one hand and substantial emigration of Austrians to overseas countries on the other (Horvath—Neyer 1996). In the early 1960s labour became increasingly scarce as many skilled Austrians migrated to Germany, Switzerland and other European countries in the wake of social security agreements, attracted by higher wages. Accordingly, Austria chose the temporary foreign worker model already established in Germany to attract migrant workers from abroad.

Austria had signed bilateral labour recruitment treaties with Spain and Italy (1962), Turkey (1964) and Yugoslavia (1966). As a consequence of Austrian wage levels being significantly lower than in countries like Germany, Switzerland and France, it was not possible to attract sufficient numbers of foreign workers from Spain or Italy. Accordingly, Austria established recruitment centres in Yugoslavia (Belgrade) and became a partner in the German recruitment centres in Turkey. These organisational arrangements reduced migration costs for the potential migrants, thereby promoting the inflow of migrant workers. Accordingly, migrants came above all from Yugoslavia, followed by Turkey. The share of foreign workers in total employment rose fast in the 1960s until 1973 (with a peak of 8.7% foreign workers), when the economic recession put a break on foreign worker recruitment. In contrast to Germany, Austria continued to run recruitment centres until the late 1980s. (Biffl 1984) In spite of that the number and share of foreign workers in total employment declined in the wake of economic restructuring, rising female labour supply and the baby-boom generation entering the labour market. (Figure 1) It was not until the end of the 1980s that a new wave of immigration took place as a result of a combination of push and pull factors mentioned above. The massive inflow of foreign labour triggered a switch from the 'guest worker' model, which had come to an end as family reunion and settlement had set in, to an immigration model.

This switch implied a change in paradigm from labour demand driven immigration to supply driven immigration. As the policy change was not accompanied by adequate investment in education and training of the resident population, the mismatch between skill needs and skills supplied increased. Thus, while in the past migrants contributed to employment stability of natives by ensuring the competitiveness of exports, this was less the case since the 1990s. The oversupply of migrant labour did not feature in high unemployment rates but rather in increased self-employment outside the core economy at lower wages. Peripheral

migrant workers drifted in and out of employment while a core of highly skilled migrants continued to retain stable jobs and high wages.

This became more and more a feature of the Austrian labour market and continues to be true until today. As a result, the quota for low-skilled workers was abandoned in the beginning of the 2000s. As skill mismatch and labour scarcities surfaced increasingly in the second half of the 2000s, migration policy was reformed. The adaptation of the migration model in favour of inflows of skilled labour was part of the government programme 2008-2013. (Bundeskanzleramt 2008) In October 2010 the social partners agreed on the reform of migration policy, by introducing the so called 'Rot-Weiß-Rot-Karte' (Red White Red Card – RWR-card). The implementation in July 2011 required amendments to the Foreign Worker Law (AuslBG) and the Settlement and Residence Law (NAG 2005). This decision was backed up by research on the expected impact of this migration policy reform on economic and employment growth. (Biffl et al 2010)

6.2 Points based immigration: the Red-White-Red Card

Until July 2011, the inflow of highly skilled migrants of third country origin had been regulated by quotas. With the reform of migration policy procedures in 2011, the quota system was abandoned and replaced by a point based system, largely modelled after the Canadian supply driven point system. However, even before 2011, several categories of third country citizens could enter outside a quota regulation, namely:

- persons working for foreign media with sufficient income,
- artists with sufficient income,
- wage and salary earners who may access the labour market without labour market testing (specific groups of persons defined in the foreign worker law),
- third country partners or dependents (minors) of Austrians and citizens of the EEA.

The point system, referred to as "Rot-Weiß-Rot-Karte", widens the scope for third country workers to access the Austrian labour market. The point system differentiates between four types of skills, namely highly skilled persons, persons with scarce occupational skills, persons with other (medium to higher) skills and third country graduates of Austrian universities. Highly skilled third country citizens wanting to work in Austria have to obtain at least 70 points out of 100 possible points. Points are given in four domains: for educational qualifications and honorary recognition of competences, for occupational experience, for language skills and for age. An additional advantage in terms of points offers successful university graduation at master level or above in Austria. In the area of scarce occupational skills and other skills 50 points out of a maximum of 75 have to be reached.

Admitting third country nationals for business purposes

With the preferential treatment given to third country graduates from Austrian universities a common practice of traditional immigration countries was adopted. Accordingly, third country university graduates may remain in Austria for job search for six months. The job has to be adequate, i.e. the job content has to be related to the Master-level qualification and the monthly salary has to surpass a threshold of 2,039 euros (gross salary, 14 times a year).

The RWR-card is issued for one year for a particular employer (employer nomination) and can be transferred to an RWR-plus card after one year of residence and ten months of work in Austria. A major distinguishing feature of the two cards is that the RWR-card is issued for work with a particular employer while the RWR-plus card allows free choice of employer across Austria. Family members of RWR-card holders get an RWR-plus Card, allowing them to work in Austria. In addition to the RWR-card a Blue card can be obtained, requiring university education and income surpassing 1.5 times the Austrian average gross annual wages of full-time employees.

In addition, third country citizens who do not yet have an employer who nominates them may turn to the Austrian embassy/Consulate for a job search visa. The Austrian embassy issues the visa if the required points are achieved. The Public Employment Service (PES) informs the Embassy and is the gatekeeper for immigration of potential third country job seekers. The required forms can be downloaded from the website of the Ministry of the Interior, the Ministry of Europe, Integration and Foreign Affairs as well as a special website for potential third country immigrants (www.migration.gv.at).

Conversely, the major criterion for a RWR-card for “self-employed key workers” is, as already described in section 5, the generation of macro-economic benefits. Holders of an RWR-card for self-employed key workers are not allowed to take up salaried employment. If they want to and meet the requirements, they can apply to switch (Zweckänderung) to one of the RWR-card categories for (highly) skilled workers, as described above. While holders of an RWR-card for a salaried employment (highly skilled persons, persons with scarce occupational skills, persons with other medium to higher skills and third country graduates of Austrian universities) can apply for an RWR-plus Card after one year, holders of an RWR-card for self-employed key workers can obtain a settlement permit. It entitles them to pursue a self-employed activity for twelve months.

6.3 Experience with the RWR-Card

Until the most recent reform of the Foreign Worker Law in 2013 the access of third country citizens to the labour market was capped by a quota (Bundeshöchstzahl für bewilligungspflichtige Beschäftigung). The latter was set by the Ministry for Labour meaning that the sum of employed and unemployed third country foreigners, who work on the basis of a work permit, does not exceed 8% of the total dependent labour supply (§14 AuslBG). In some special cases a work permit could be granted by the governor beyond this quota up to

Admitting third country nationals for business purposes

a limit of 9% of total labour supply (wage and salary earners plus registered unemployed). This regulation has been abandoned in the amendment of the Foreign Worker law in 2013, as it has lost meaning with the introduction of the RWR-card which basically offers unlimited access to the labour market for skilled third country migrants (no cap).

The point system brought about major changes. While third country 'key workers' did not have to prove university education until mid-2011 but instead a certain minimum income, thereby effectively excluding young third country university graduates with low earning power, this is no longer the case. It is also no longer necessary to prove prior work. In 2010, the numbers of third country employees allowed to settle as key workers with fairly high income amounted to some 600 persons (sum over the year); in addition their partners and dependent children settled, adding 420 settlement permits. Thus a sum of some 1,000 'key workers' plus family members entered in 2010.

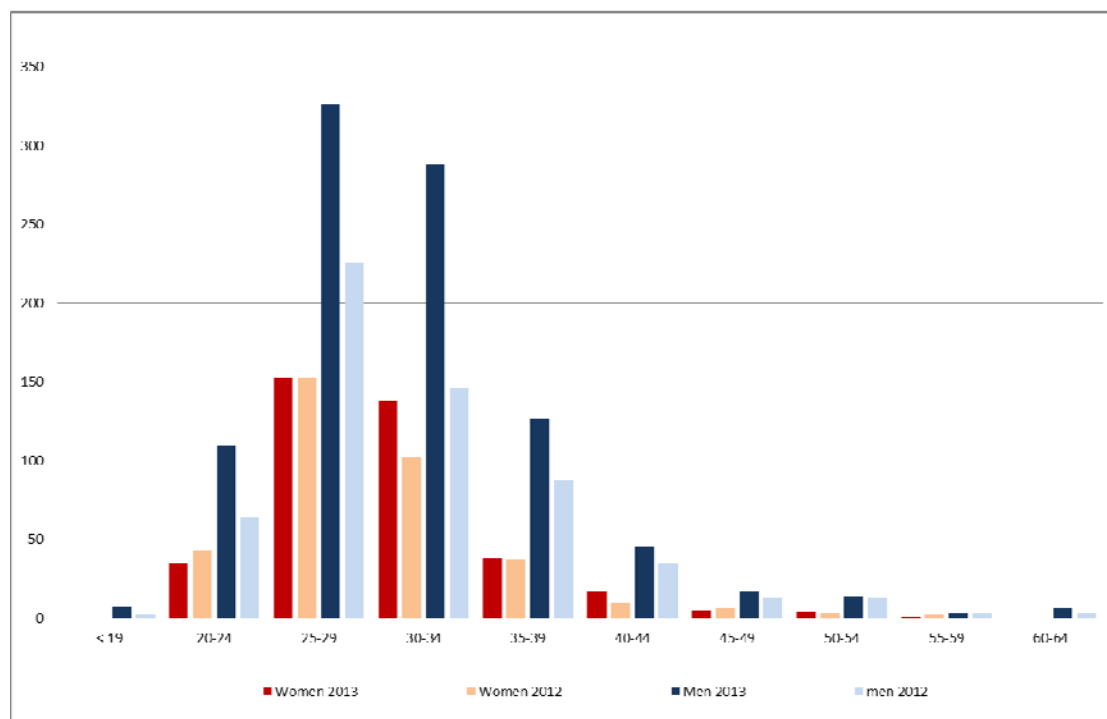
In 2011, the year of transition from the old to the new system, the first pillar of the point system was introduced, namely the RWR-card for skilled and highly skilled migrants and the transfer of resident titles to the RWR-card plus. Compared to 2010 the numbers rose slightly to some 1,200 – adding key workers (plus family members) and RWR-card holders. In 2013, the second full year of the new system, 1,177 RWR-cards were issued. This goes to show that the new system promoted inflows but did not lead to substantial increases of skilled third country worker inflows as was hoped for by industry. Research into the reasons for the limited dynamics indicated that the administrative procedures were more tedious than in the former skilled worker model; this understanding led to a reform of the law in 2013, allowing the employer in Austria to apply for the card (as was the former regulation for key skills migrants), thereby reducing waiting periods and costs to the potential migrant. The amendment of the application procedures in April 2013 did not immediately raise the inflow of skilled workers. The slow uptake may also be due to the weakening of economic growth. In any rate, the inflow of skilled third country migrants in 2013 only slightly surpassed the 1,100 inflows of 2012 with a total of 1,177. It is above all the inflow of female RWR-card holders which slows down. Consequently, the share of men rose from 62.5% in June 2012 to 71% in June 2013.

Of the 1,536 valid RWR-cards registered with the Ministry of the Interior at the end of July 2013, 942 or 61% were skilled workers (949) and 92 or 6% were highly skilled wage and salary earners. Further, 173 or 11% of all RWR-cards issued went to third country graduates of Austrian universities. A fairly small number were self-employed (29 or 2%). In mid-2012 the second pillar, namely skilled workers in listed occupations (Mangelberufe), was opened. In July 2013 300 or 20% of the cards accrued to skilled workers in listed occupations, i.e. those judged to exhibit labour scarcities. It can be taken from Figure 5 that 39% of women and 35% of men are in the age group 25-29 and a further 35% (women) and 31% (men) between 30 and 35. Amongst older RWR-card holders men dominate while there is hardly

Admitting third country nationals for business purposes

any gender difference amongst youth. The marked increase in RWR-cards between June 2012 and 2013 (+385, + 41%) accrued solely to young and middle-aged men.

Figure 5: Composition of RWR-card holders by age and sex in Austria, end of June 2013



Source: PES.

The occupations of RWR-card holders are varied: 19% are managers in leading positions, around one third are engineers, 7% are scientists/researchers or artists, some 4% are active in sports. 20% are skilled workers in the industrial sector (particularly in the building occupations), 6% are in services, particularly in tourism (largely cooks) and in commerce. The majority of the RWR-card holders are concentrated on Vienna (40% of all cards) – just as the average of foreign citizens (40%) – and in contrast to the native population of whom only 18% reside in the capital Vienna. The focus of the RWR-cards is on regions with strong managerial and administrative centres, important innovative industrial production sites and research centres. 43% of the cards were issued to persons from former Yugoslavia, particularly from Bosnia-Herzegovina, Serbia and Croatia. Further 21% went to citizens from CEECs, particularly from Russia and Ukraine. In addition some 15% went to persons who originated from Central and East Asia, somewhat less from the Near East. But also citizens from Canada and the USA are amongst the RWR-card holders (around 7%), followed by South-Asia (83). Only few come from Middle- and South America (33), Africa (31) and Australia (16).

While the inflows of third country migrants via the RWR-card were rather subdued, this was not the case for the RWR-card-plus. Their numbers rose to 78,000 by the end of 2013. This

must not come as a surprise as it is a residence title not only accessible to family members of RWR-card holders but also to persons who have been key-skill workers (789), researchers (219), blue card holders and their family members, as well as persons on humanitarian grounds (1,047 in July 2013), largely former recipients of subsidiary protection.

6.4 Temporary labour migration

Labour migration of temporary workers is highly controlled in Austria. In case of transitory seasonal demands for workers the Federal Ministry of Labour and Social Affairs may admit temporary workers, based on an annual cap regulated by decree for third country citizens as well as persons from Bulgaria, Romania (until 2013) and Croatia. Seasonal workers tend to be admitted in tourism as well as agriculture and forestry. The work permit is limited to six months but can be extended by a further six months if this is foreseen in the regulation, after twelve months the seasonal worker is not allowed to apply for a further permit for two months in order to prohibit settlement via this channel. For a work permit to be granted labour market testing is required, i.e. the potential employers have to prove that they are unable to fill that seasonal post by domestic labour, unless the person is a 'core-seasonal worker'. Core seasonal workers have to prove that they have been working for up to four months in the last five years as seasonal workers in tourism or agriculture/forestry. They may be employed without going through the quota proceedings but they continue to need a seasonal work permit. More than 60% of the 'core seasonal workers' (Stamm-Saisonniers) are from the Ukraine and Kosovo; 80% of them tend to come regularly to the same employer in Austria. The annual quotas (Kontingente) are set by the Minister of Labour. In 2013, the quota in agriculture and forestry was set at 6,535 (4,275 in agriculture & forestry and 2,260 for harvesting) and in tourism (at 1,780 in the winter season and at 1,275 for the summer season). The quotas have been reduced in 2012 and 2013 due to the opening of the seasonal labour market for the EU-8 citizens (end of transition regulations). In 2014 the quotas have been reduced again as Bulgaria and Romania received free mobility of labour rights, therefore seasonal work permits are no longer required. (Biffl – Skrivanek 2014)

Seasonal work is one way for asylum seekers to access the labour market as wage/salary earners in private industries. Since July 2012 asylum seekers under the age of 18 may take up apprenticeship education and thus part-time work with an employer; in March 2013 the age limit has been extended to 25 years of age, thus allowing also young adults to work (plus education/training) as an apprentice.

Another way to find work as an asylum seeker is to become self-employed in special occupations not covered by trade law, e.g. as journalists, artists, sports and language trainers. Asylum seekers may also take up work in charitable and non-profit institutions as well as community services for a reduced hourly wage so that their earnings are not

deducted from their welfare benefits. They may earn 110 euros per month in addition to their benefits; in case they earn more their welfare receipts are reduced by the surplus.

6.5 Inflow of third country migrants by type of residence permit

Over the year 2013 a total of 26,500 residence permits was issued to newcomers from third countries, somewhat less than in 2012 (-1,900 or 6.8%) and even less than in 2011, the year the point system was introduced - the RWR-card. The decline was due to reduced numbers of settlers. Still, of all inflows of third country migrants 17,900 or 68 percent were settlers. The number of temporary resident permits granted to third country citizens remained fairly stable with 8,600 permits.

Of the 17,900 new settler permits in 2013, about one fifth (3,900) was issued on the basis of a quota. It concerns family members of third country citizens, who belong to a settler category for which quotas continue to apply. Thus, 78 percent of the new third country settlers are either family members of Austrian or EEA-citizens, or are holders of a RWR-card, i.e. labour migrants, third country graduates of Austrian universities or settlers on humanitarian grounds. (Table 2)

Settler permits can also be acquired by having a temporary permit transformed or the status of a settler visa without access to work transferred into one with access to work. In the course of 2013, 3,900 uncapped transformations were granted and 282 settler permits within a capped permit group. Of the uncapped group 55% went to men, of the capped one 41%.

The capped categories of first settlers are in sum 3,900 cases in 2013 and may include third country citizens, who come for work, their family members and persons on private means with no wish to engage in gainful employment. The figures have almost halved since 2005 (6,300).

Settlement permits entitle third country citizens to settle in Austria, but not everybody intends to settle, while others want to transform their settlement category into another title with more rights, e.g. free access to the labour market. In 2013 some 4,200 residence titles were transferred into a settlement title with free access to work. The majority of acquired titles are uncapped, largely family members who acquire the right to work anywhere in Austria. Adding extensions and transformations into the picture of settlement permits, Austria issued a total of some 136,100 settlement permits in 2013.

In the event of a legal stay beyond five years, settlers may opt for obtaining a settlement certificate, which is available since 2003, modelled after the American 'green card'. Prolongations of settlement permits are becoming more frequent as the duration of stay gets longer and integration proceeds. In addition, large numbers of prolongations go to third

Admitting third country nationals for business purposes

country citizens who have permanent residence rights in another EU member states. They may access the labour market in Austria without any limitations. Their numbers amounted to 25,700 in 2006 and increased to 26,800 in 2010. From mid-2011 onwards third country migrants may also opt for a RWR-card or a RWR-plus card or a Blue card. This option is increasingly being taken up.

In addition to settlement permits, the Federal Ministry of the Interior issues temporary residence permits to persons who have obtained the right to enter for study, for temporary work and business purposes including services mobility (GATS Mode 4) or on humanitarian grounds. In the course of 2013, all in all 8,600 temporary residence permits were issued for the first time – about as many as in 2012, and 16,500 were extended – slightly more than in 2012.

As to the first issues of temporary resident permits: Of the total of 8,600 issued to third country citizens in 2013, the majority are students and their family members (4,900 or 57%), followed by persons working in Austria temporarily (and their family members), and one percent could stay on humanitarian grounds, many of them asylum seekers who receive temporary protection status (54 in total).

Temporary residence may also be granted on the basis of regulations not in the authority of the Ministry of the Interior. The major groups concerned are temporary workers who are granted an employment permit for seasonal work by the Federal Ministry of Labour and Social Affairs as well as cross-border workers. These temporary work contracts have a ceiling (in 2013: 4,275 in agriculture and forestry plus harvesters (2,260); in tourism winter-season 3,240 and summer-season 1,275). In these cases the residence in Austria is an integral part of the work contract and does not need processing by the Ministry of the Interior. Consequently, they are not included in the third country citizenship residence register but only show up in social security based employment counts, the employment contract being registered with the PES.

In toto the number of seasonal work permits issued to foreign workers on the basis of a seasonal quota (Saisonkontingente) amounted to 24,400 (18,500 in agriculture & forestry including harvesting, 5,900 in tourism). Given the temporary character of this work the annual average of seasonal foreign workers (on the basis of stocks at the end of the month) amounted to 5,300 in 2013.

All temporary residents registered in the alien register of the Ministry of the Interior exceed a stay of 6 months; the major groups are students, employees on training and work experience schemes, sports and entertainment schemes etc. The temporary residence status may be extended. The total number of extensions is almost double the number of first issues, namely 16,500 in 2013.

Admitting third country nationals for business purposes

Table 2: Annual inflows of settlers and temporary residents of third countries

Residence Permits issued in the course of the Year 2009-2013					
Annual Sum by end of December	2009	2010	2011	2012	2013
First issue settler	14.347	16.150	20.466	19.939	17.902
First Issue temporary resident	5.532	6.238	7.517	8.484	8.583
	19.879	22.388	27.983	28.423	26.485
<i>Men</i>					
First issue settler	6.566	7.965	10.139	10.065	8.869
of which within quota regulation	1.809	1.970	1.907	1.582	1.558
outside quota	4.757	5.995	8.232	8.483	7.311
Prolongation of settlement	53.643	52.331	59.212	54.185	55.894
Transfer of title to settler (no quota)	1.181	1.357	1.668	2.946	2.138
Transfer of title to settler (quota)	286	250	901	157	116
First issue temporary resident	2.550	2.889	3.561	4.049	4.172
Prolongation of temporary stay	7.899	7.602	7.478	7.795	8.151
Transfer of title to temp.res.	188	229	246	259	295
Total	72.125	72.394	80.390	79.456	79.635
<i>Women</i>					
First issue settler	7.781	8.185	10.327	9.874	9.033
of which within quota regulation	2.601	2.419	2.498	2.214	2.316
outside quota	5.180	5.766	7.829	7.660	6.717
Prolongation of settlement	61.096	60.501	65.510	59.175	58.154
Transfer of title to settler (no quota)	1.129	567	1.719	2.740	1.744
Transfer of title to settler (quota)	251	261	927	184	166
First issue temporary resident	2.982	3.349	3.956	4.435	4.411
Prolongation of temporary stay	7.841	7.664	7.534	7.973	8.299
Transfer of other resident title	402	479	511	536	537
Total	81.080	80.527	87.327	84.917	82.344
<i>Total</i>					
First issue settler	14.347	16.150	20.466	19.939	17.902
of which within quota regulation	4.410	4.389	4.405	3.796	3.874
outside quota	9.937	11.761	16.061	16.143	14.028
Prolongation of settlement	114.739	112.832	124.722	113.360	114.048
Transfer of title to settler (no quota)	2.310	1.924	3.387	5.686	3.882
Transfer of title to settler (quota)	537	511	1.828	341	282
First issue temporary resident	5.532	6.238	7.517	8.484	8.583
Prolongation of temporary stay	15.740	15.266	15.012	15.768	16.450
Transfer of title	590	708	757	795	832
Total	153.205	152.921	167.717	164.373	161.979

Source: Ministry of the Interior.

7 Temporary business migrants

The Federal Ministry of the Interior issues temporary residence permits to persons who have obtained the right to enter for temporary work and business purposes including services

mobility (GATS Mode 4). Temporary secondment for occupational or training purposes of a third country national who, at the time of application for an intra-corporate transferee permit, resides outside the territory of Austria, from an undertaking established outside the territory of Austria, and to which the third- country national is bound by a work contract prior to and during the transfer, to an entity belonging to the undertaking or to the same group of undertakings which is established in Austria, may obtain this permit.

7.1 Business visitors for establishment purposes

There is no explicit category of business visitors for establishment purposes (BVEP) in the Austrian migration policy set up. BVEP could be admitted as:

- Seconded employees: Foreign nationals employed in Austria by a foreign employer who has no registered office in Austria and whose employees are working in Austria exclusively in connection with short-term work, for which, due to its nature, domestic labour is not used, such as business negotiations, visits to fairs, conferences and the like (§ 18 Foreign worker law – AuslBG).
- Special senior executives “foreign nationals who occupy executive positions at board or management levels in internationally active groups or companies, or who are internationally recognised researchers, and whose employment serves to open up or improve sustainable economic relations or to create or secure qualified jobs in the federal territory, and who receive a monthly gross pay of generally at least 120 per cent of the maximum assessment basis pursuant to §108 (3) of the General Social Insurance Act (ASVG) plus special bonus payments.” (§ 2 (5a) AuslBG). They are not subject to the AuslBG (§ 1 (2) f).
- If the foreign company has already a subsidiary in Austria and a further branch should be established the BVEP could be admitted as a “rotational worker” (Rotationsarbeitskraft).

7.2 Intra-Corporate Transferees

Intra-corporate transferees are referred to in the Austrian legislation as “rotational workers” (§ 2 (10) AuslBG). They are a strictly defined group of highly skilled workers from third countries whose work contract with their internationally operating employer designates them either

- as senior executives having been assigned to leading management functions with own terms of reference and responsibility, or
- as qualified employees assigned to corporate management and obliged to enter in-house training or further training (junior executives), or
- as representatives of foreign bodies representing stakeholder interests

Admitting third country nationals for business purposes

and who are transferred (“Rotation“) within the enterprise to a specific place of assignment.

The admission process for rotational workers is rather complex. In a first step the employer has to apply for a “conditional assurance” (Sicherungsbescheinigung) at the local PES. There the application is checked. If the requirements are met, the PES issues a conditional assurance. Then the employer forwards it to the prospective rotational worker. For rotations that last more than six months, the prospective worker has to apply for a residence permit via the Austrian representation abroad. This has to be done within the validity period of the conditional assurance, which usually is 26 weeks (maximum 36 weeks).

Table 3: Sum of temporary residence permits granted to citizens of third countries (Non-EU) by residence status and gender

(January 1 to end of December)	2010			2013		
	Male	Female	Total	Male	Female	Total
<i>First temporary residence permits</i>	2.889	3.349	6.238	4.172	4.411	8.583
Employed persons on basis of GATS (mode 4)	72	32	104	104	5	109
Special protection/humanitarian	13	34	47	36	18	54
Family member of researcher	24	44	68	32	69	101
Family member of intercompany transfers	27	88	115	56	108	164
Family member of special employment -artist,scientists etc)	106	148	254	77	151	228
Family member of students	66	96	162	142	155	297
Family member of scientist/artist	12	31	43	17	43	60
Researcher	127	82	209	144	89	233
Artist (on the basis of work contract)	28	12	40	24	24	48
Artist (self-employed)	20	8	28	23	9	32
Intercompany transfers	135	22	157	96	48	144
Pupil	254	379	633	399	522	921
Self-employed	6	3	9	3	5	8
Special cases of salaried employees	470	1.065	1.535	576	1031	1.607
Social worker		1	1	3	6	9
Students of higher education	1.529	1.304	2.833	2440	2128	4.568
<i>Extensions of temporary residence permits</i>	7.602	7.664	15.266	8.151	8.299	16.450
Employed persons on basis of GATS (mode 4)	36	41	77	54	18	72
Special protection/humanitarian	15	8	23	24	21	45
Family member of researcher	19	50	69	29	46	75
Family member of intercompany transfers	60	127	187	92	182	274
Family member of special employment -artist,scientists etc)	332	577	909	219	367	586
Family member of students	158	237	395	189	265	454
Family member of scientist/artist	31	54	85	52	90	142
Researcher	138	64	202	101	58	159
Artist (on the basis of work contract)	120	87	207	96	76	172
Artist (self-employed)	116	72	188	109	82	191
Intercompany transfers	131	37	168	169	46	215
Pupil	422	769	1.191	513	858	1.371
Self-employed	15	4	19	21	6	27
Special cases of salaried employees	1.053	671	1.724	894	533	1.427
Students of higher education	4.956	4.866	9.822	5589	5651	11.240
<i>Transfer of Title to temporary residence</i>				295	537	832
Sum of all temporary residence permits	10.491	11.013	21.504	12.618	13.247	25.865

Source: Ministry of the Interior

Admitting third country nationals for business purposes

The Austrian representation forwards the application for a residence to the respective residence authority in Austria (the diplomatic courier leaves every two weeks). The latter checks whether the requirements for the issuance of a residence permit are met. If yes, it informs the Austrian representation, which then issues a visa to the applicant such that he or she can pick up the residence permit at the respective residence authority in Austria. Then the worker has to forward the residence permit to the employer who submits it to the local Public Employment Service together with the application for an employment permit. After the PES has issued the employment permit, the rotational worker can take up employment in Austria. In practice, the rotational worker tends to reside in Austria after having picked up the residence permit at the domestic residence authority, i.e. there are “costs” for the business migrant while waiting for the PES to issue the employment permit.

It can be taken from Table 3 that the annual inflow and the extension of intercompany transfers is quite small with 379 permits issued in the course of 2013. If one includes the family members accompanying the ICT (438), their numbers rise to 817. In addition, 181 temporary residence permits were issued to third country migrants working as posted workers (Mode 4 services mobility). This is by no means a full account of the extent of temporary business migration as only stays beyond 6 months are captured in the alien register.

7.3 Posted Workers

Posted work, i.e. services mobility Mode 4, is a relatively new phenomenon in the Austrian labour market. Posting workers is one of the four ways through which services can be supplied internationally under the General Agreement on Trade in Services (GATS). “It covers the supply of a service by a service supplier of one Member of the Agreement, through the presence of natural persons of a Member in the territory of another Member, and covers the temporary movement of natural persons for the purpose of supplying a service.” (EMN 2014)

The distinction between temporary migration and posted work, i.e. a special case of trade in services, is somewhat blurred as can be exemplified by temporary work in harvesting. In the case of migrant workers who are employed directly by the local farmer, national immigration regulations apply, while in the case of services provision by a posted worker from a foreign leasing firm/labour contractor, GATS rules apply. The ILO considers posted workers as migrants who are covered by the Migrant Worker Conventions 97 and 143; this group of temporary migrants is accorded the right to equal treatment on the labour market comparable to local workers.

GATS rules apply to trade in services, including services provided by self-employed independent contractors and posted workers. Thus, posted workers may work alongside local workers thereby having similar economic and social impact on local workers as

migrants. Data on the value of trade in services by modes of supply are not available. According to estimates of the World Trade Organisation, Mode 4, i.e. posted workers, is judged to amount to 1% to 3% of the value of global services trade and to a similar share in employment. All modes of services trade are expanding, e.g. IT-services (mode 1), tourism (mode 2), global production networks of multinationals and FDI-related services (mode 3), and key personnel (Mode 4).

Opening up to freer trade and confronting national labour institutions and legislation with the logic of trade through the promotion of services mobility (Mode 4) means ensuring unimpeded competition between the EU member states. In theory, under the assumption of perfect competition and constant returns to scale, such a course should lead to economic benefits and higher living standards for all. In practice, the outcome for most countries may not be so simple, and the economic and social effects are a matter of controversy. Given the complexity of employment relationships involved in services mobility involving cross-border movement of persons, it is hard to establish the exact numbers of foreign persons and working hours involved. However, Austria, a country with comparatively good data on migration and cross-border service provision, has a reasonable basis for assessing the effect of services mobility on the labour market. Austria is a small open economy which owes much of its prosperity to its openness to international trade and migration.

7.3.1 Posted workers from third countries and EU member states under transition regulations

Given a long border with new EU-member states, Austria imposed transition agreements on the new EU-10 member states (2004) and EU-2 member states (2007), involving regulations on labour migration (labour market testing) and on posted work (for certain occupations and industries). The first curtailed free mobility of labour, the second free mobility of services. The Austrian PES has been monitoring the inflow of service providers since 1997. It differentiates between liberalised services, which may enter freely – in this case the service provision is only documented / registered (Entsendebestätigung), and controlled services for which certain restrictions prevail (Entsendebewilligung). In the latter case it is in the national interest to protect the domestic service providers from competition. Accordingly, an authorisation has to be requested which in effect has to state that the national interests are not jeopardised by the specific service provision (complementarity to national services).

The services sheltered from competition from international border service providers are gardening, certain services in the stone, metal and construction industry, security and cleaning services, home care services and social work. In spite of the restrictions on services mobility and labour market testing, both, the number of service providers and of migrants, continued to increase after 2004. The number of migrants (wage and salary earners) from the new EU-12 member states increased between 2003 and 2010 by some 40,000, i.e., by

Admitting third country nationals for business purposes

more than 70%, to 89,000. When the transition regulations ended for EU-10 member states in 2011, the inflow received a real boost, reaching an employment level of workers from EU-12 of 143,000 (+54,000 or 61% within just one year). Their share amongst the workers with non-Austrian citizenship increased from 15% in 2003 to 27% in 2012 and their share in the total workforce reached 4.1%.

As far as service provision is concerned, the total number of service providers excluding intracompany transfers (*Entsendebestätigung* and *Entsendebewilligung*) increased from 3,070 in the year 2000 to 5,300 in 2012, i.e. by 2,200 or 72%. This number represents 0.2% of the Austrian salaried workforce. As the service providers work for a maximum of half a year in Austria, the proportion of the volume of labour is even smaller. It can be taken from Figure 6 that the number of posted workers has been increasing significantly between 2003 and 2004, largely from the new EU member states. The numbers declined in the wake of the economic recession 2008/2009 but picked up again in 2010 to the level of 2004, losing momentum thereafter.

In view of restrictions on cross-border service provision in certain occupations, many persons from the new EU member states set up a business as independent contractors/self-employed, largely self-employed homecare service providers and to a lesser extent certain building services. In addition, the number of cross-border service providers from the EU-12 increased substantially after enlargement, both in the liberalised occupations and the ones protected from competition; the former increased from 79 in 2003 to 2,600 in 2004. Their numbers peaked in 2010, the year before the end of transition regulations at 4,800 and halved thereafter as unfettered free services mobility came into effect. Cross-border service provision by third country citizens was less dynamic but reached a high of 2,800 in 2012. The most important third country source of service providers in 2012 was Bosnia-Herzegovina (1,600 posted workers), followed by Croatia, Macedonia and Serbia. The largest number of posted workers is found in the construction sector, followed by manufacturing and the entertainment sector.

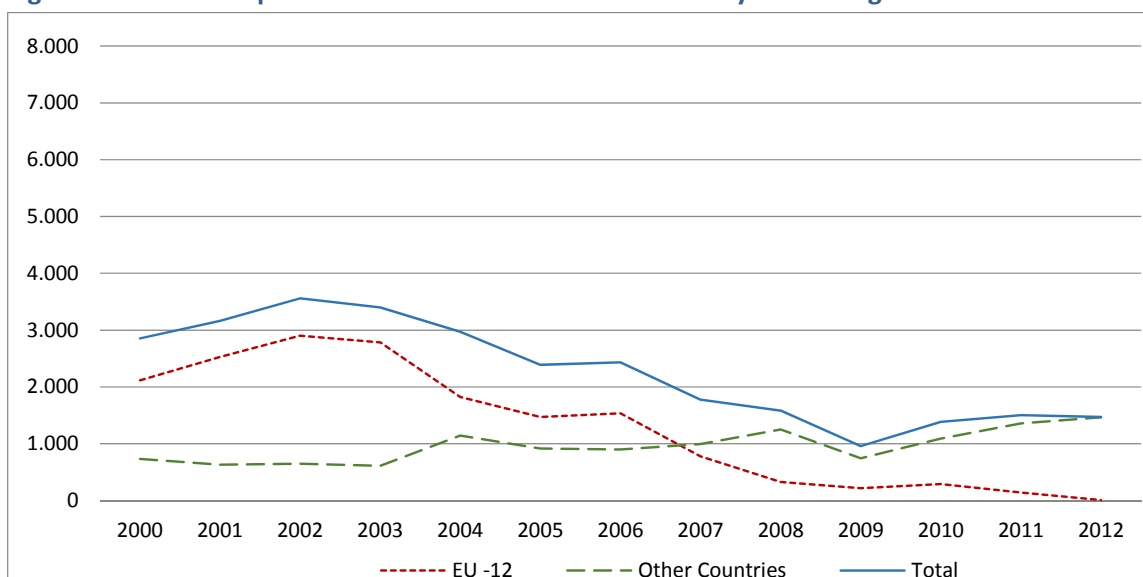
Admitting third country nationals for business purposes

Figure 6: Total number of posted third country plus EU-12 workers by source region



Source: PES.

Figure 7: Number of posted workers in liberalised services by source region



Source: PES.

The number of service providers in the protected occupations increased from 2,900 in the year 2000 to a peak of 3,600 in 2002, largely affecting EU-12 countries, and declined thereafter. With the end of transition regulations and the lifting of barriers to services mobility of EU-12 citizens the total numbers declined to 1,500 in 2012. The major third country source countries are, as in the case of liberalised services, Croatia, Bosnia-Herzegovina and Serbia, followed by Russia and India. The major industries in which posted workers are providing their services in protected occupations are business-oriented services, the building industry, manufacturing and arts, sports and entertainment.

Figure 8: Number of posted workers in services protected from competition from third countries and EU member states under transition regulations



Source: PES.

7.3.2 Prospects for posted work in Austria

While the total number of posted workers from third countries and EU-12 member states during transition regulations is comparatively small, this is not the case for posted workers who enjoy free mobility within the EU. The prospects for posted work in a more global context in case of unfettered services mobility can therefore be taken from experiences in the EU.

Article 12 of Regulation (EC) No 883/2004 provides the legal basis for posting workers across EU member states. Its aim is to facilitate the freedom to provide services for the benefit of employers who post workers to Member States other than that in which they are established, as well as the freedom of workers to move to other Member States, e.g., transport workers. Specific regulations pertain to the posting of workers to another Member State for a temporary period and where a person is working in two or more Member States and certain categories of workers such as civil servants. The rules for determining which Member State's legislation is to apply are set out in Articles 11 – 16 of Regulation 883/2004 and the related implementing provisions are set out in Articles 14 - 21 of Regulation 987/2009.

According to Eurostat/OECD¹⁰ data on posted workers, the total number of posted workers in Austria from another EU member states or EEA/EFTA country rose from 37,400 in 2008 to

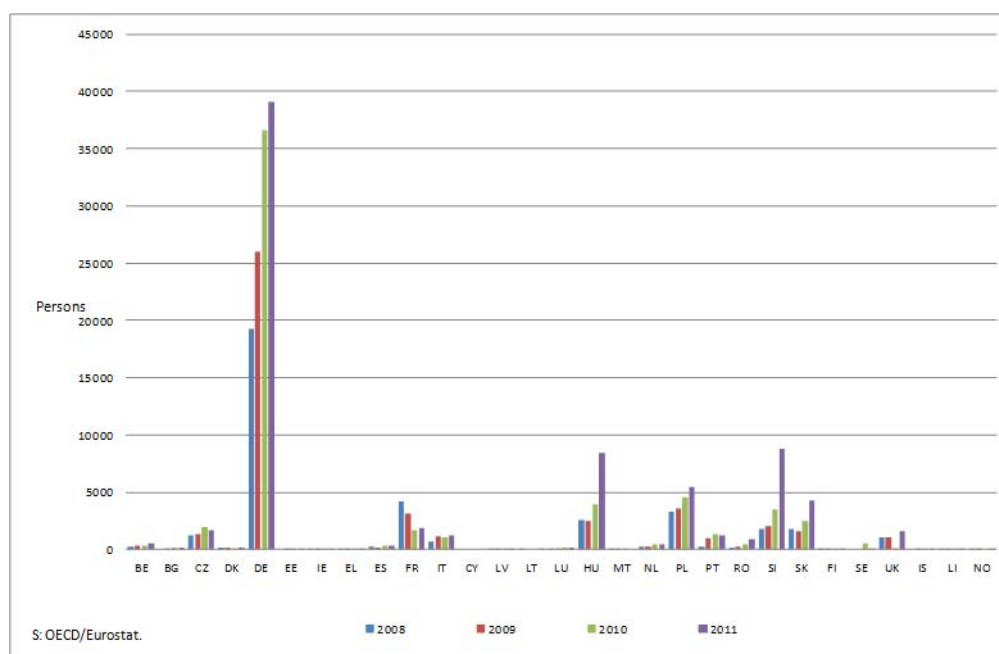
¹⁰ The only available data source at EU-level containing information directly related to the number of postings is the administrative data based on E101 social security forms. (European Commission 2011)

Admitting third country nationals for business purposes

76,300 in 2011, i.e., it more than doubled over a span of three years. The proportion of posted workers relative to the total salaried Austrian workforce amounted to 1.4% in 2011. This is a somewhat higher share than on average in the EU-27, where 1.5 million posted workers were registered in 2011 – in relation to the total workforce this is somewhat less than 1%. The major source countries of posted workers in Austria are Germany, providing 51% of all posted workers in 2011, followed by Slovenia, Hungary, Poland and Slovakia.

Austria is also a sending country of posted workers. The number of Austrian workers who are posted to another EU/EEA country is also on the rise, from 16,200 in 2008 to 28,800 in 2011. The major destination countries are the major trading partners of Austria, namely Germany, Italy and the Netherlands. In 2011, the number of Austrian posted workers to another EU/EEA state was about a third of the number of workers posted to Austria.

Figure 9: Source countries of posted workers from the EU/EEA in Austria



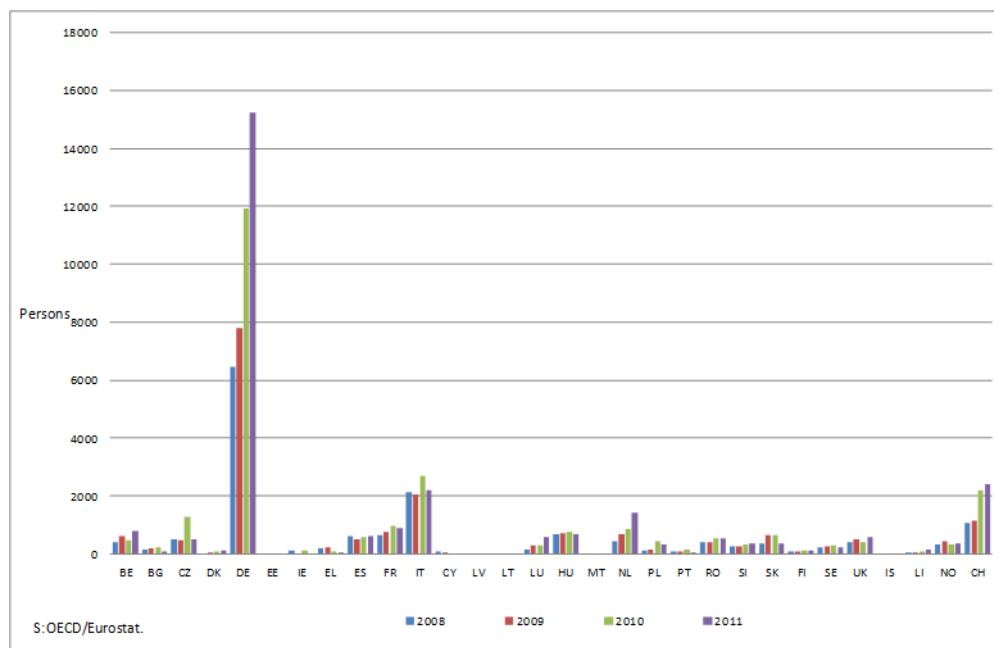
Given the increasing role of services in employment creation, the numbers of posted workers relative to migrant workers may increase quickly. In view of strict wage regulations and control of working conditions in the case of migrants and the limited controls and controllability of wage and working conditions of posted workers, the posting of workers may actually take precedence over immigration as a strategy of companies to satisfy their labour demands in a flexible way.

The use of posted workers represents yet another facet of the diversification of employment forms, with core workers (insiders) being increasingly complemented by temporary workers (outsiders), who are either employed in leasing firms registered in Austria and working for various companies in Austria or in an enterprise registered in a foreign country but carrying out a specific task/service in Austria, i.e. posted workers.

Admitting third country nationals for business purposes

Given EU-policy to promote unrestricted movement of services, i.e. short-term labour migration regulated by the Services Directive, thereby enforcing Article 28 EC ensuring the entitlement of employers to free movement of goods and services, we may expect a further rise in the latter form of diversification of work.

Figure 10: Destination countries of Austrian posted workers in the EU/EEA



While the economic benefits from free trade in commodities as one of the four 'fundamental freedoms' are not questioned, the impact of posted work – as distinct from immigration, on labour markets and the welfare system is less clear. In the case of Mode 4 temporary migration/services mobility, it is argued by some (Winters et al 2003) that the economic advantages are more straightforward and similar to the trade in goods and therefore less costly than permanent immigration. In the former, goods come into the country, in the latter, services. According to WTO (2004), the main advantage is derived from the temporary character of posted work, thus avoiding additional costs in terms of infrastructure and social and cultural integration associated with permanent immigration. This judgement is based on the assumption that posted workers, as a special case of temporary migrants, will return to their country of origin. Assuming this will happen, the question remains to what extent the preference of institutions like WTO to services mobility is the result of an underestimation or neglect of the social costs of trade, in particular the impact on working conditions given widely differing wage and employment conditions across EU member states. In addition, the use of service providers rather than native or immigrant labour may impact on education and career choices of local youth, raising issues of long term competitiveness. This is argued by Teitelbaum (2003) who sees the shift of US students away from science doctorates to MBAs and Law degrees as a result of the rising number of

foreign-born science students, who have depressed the wages for post-doctoral researchers in science.

8 Focus of research on business migration in Austria

The research in Austria on business migrants tends to follow two different themes: one is on the attractiveness of Austria as a business location and the competitiveness of foreign-owned and domestic enterprises, the other is on ethnic entrepreneurship, i.e. resident immigrants that open up a business in Austria.

Falk (2003) and Falk – Falk (2004) studied differences in innovation intensity between foreign-owned and domestic firms. Friesenbichler - Url (2013) focused on location factors and investment potential of risk capital in Austria. They find that the risk capital market is underdeveloped in Austria; in addition to country-specific features of the financial and innovation system, key determinants for risk capital investment are sector-specific regulations, the underlying industrial structures and firm dynamics.

Falk (2012) investigated the determinants of bilateral greenfield FDI projects (business services, design, development and testing activities, headquarters activities, and R&D services) and flows in knowledge intensive business services from OECD and BRIC countries to the EU countries for the period 2003-2010. For Austria, he found that greenfield investments in headquarter functions remain stable whereas greenfield investments in R&D and related activities declined during the sample period. The results showed that wage costs, tertiary education, corporate taxes, sharing a common border and language all play a significant role in determining bilateral greenfield FDI projects in the knowledge intensive services. However, the impact of corporate taxation and labour costs differs widely across the functions; they do not play a role for greenfield investments in R&D and development, design and testing services.

The studies available on ethnic entrepreneurship focus on how to promote entrepreneurship of immigrants and ethnic business start-ups. Haberfellner (2000) investigated the activities of ethnic businesses in Vienna. The term ethnic business refers to the economic activity of an ethnic minority without necessarily involving migration. Haberfellner states that until 2000 there was very little research on self-employed immigrants in Austria and the focus was on migrant workers. (see also Haberfellner 2007, Schmid et al 2006)

A recent analysis for Vienna, conducted by Alteneider – Wagner-Pinter (2013), finds that the most important source countries of ethnic entrepreneurs are Romania, Poland and Slovakia; roughly speaking six out of ten self-employed immigrant workers in Vienna come from EU member states. The most important economic sectors are the foods service activities

Admitting third country nationals for business purposes

(Gastronomie), sales (Handel) and construction (Bau). Highly skilled migrants tend to set up a business in the services sector, particularly in scientific and technical services.

Table 4: Relative importance of economic sectors (ranking) for ethnic businesses by country of origin

Source country	1st position	2nd position	3rd position
Slovakia	Accommodation and foods service activities	Health and social services	Private households
Poland	Construction	Whole sale and retail trade (Handel)	Accommodation and foods service activities
Former Yugoslavia	Construction	Whole sale and retail trade (Handel)	Transportation and storage
Romania	Construction	Accommodation and foods service activities	Whole sale and retail trade (Handel)
Turkey	Whole sale and retail trade (Handel)	Construction	Accommodation and foods service activities
Germany	Professional Services	Whole sale and retail trade (Handel)	Information and Communication
Bulgaria	Accommodation and foods service activities	Whole sale and retail trade (Handel)	Transportation and storage
Hungary	Whole sale and retail trade (Handel)	Accommodation and foods service activities	Construction
Other EU countries	Whole sale and retail trade (Handel)	Professional Services	Accommodation and foods service activities

Source: Altenender – Wagner-Pinter 2013, p. 5, English translation by the authors.

Cross-border service provision (posting workers) is addressed in a separate section in the Annual SOPEMI Report on Labour Migration in Austria, the OECD's reporting system on migration, since 2010 (reporting period 2009-10). There the focus of analysis is on the evolution of posted workers from new EU-member states during the time of transition regulations. Biffl – Skrivanek (2014) analysed the evolution of seasonal and posted work in Austria. They concluded that both involve challenges for industrial relations. There remain unresolved legal questions (European Commission 2011) and the easy access to seasonal work, in particular in harvesting, exacerbates the problem of clandestine work.

Raza (2008) conducted a pre-assessment of the consequences of liberalising the temporary movement of natural persons (Mode 4) from the viewpoint of a workers' representative. He pointed out: "In Austria, self-employed are not subject to the regulations of the Foreign Worker Law (AuslBG) unless they are proven to be 'fake' self-employed. The emergence of fake self-employment is the main issue in this regard. Experiences – again largely in the German construction industry – have shown that sending companies from third countries (e.g. Turkey) turn their employees into company partners or sub-contractors for the duration of their stay and work abroad. This means they are formally self-employed entrepreneurs and are (or at least appear to be) no longer subject to the regulations of the Foreign Worker Law. In this case, the relevant immigration authorities are confronted with the problem of

having to control and find evidence of fake self-employment each time a natural person enters the country for business purposes. Realistically speaking, authorities will face severe capacity constraints if wanting to effectively implement a monitoring system.”

Riesenfelder – Wetzel (2013) analysed indications of bogus self-employment in the Austrian construction sector. In 69 % of the controlled cases several indications for bogus self-employment were found. The authors also analysed social security data with respect to status changes from dependent employment to self-employment. They found little variation in the number of status changes over the last couple of years. However, income levels declined after having changed the status to self-employment; their income levels fell below the average level of the industry.

9 Concluding remarks

The admission of third country business persons involves with labour market regulation and trade regulation two different regulatory mechanisms. Thereby the gist of migration policy and the legal framework of migration do not support business migration. Migration policy focuses on persons and their residence status, while investment and trade policy rely on monetary flows neglecting potential needs for the regulation of periods of residence in Austria. The analysis has shown that there are important gaps in the regulatory system and in data availability. They represent a deterrent to strategic business migration policy development.

9.1 Immigrant investors and business owners

The Red-White-Red card (RWR-card) for self-employed key workers is the category in Austrian migration law which regulates the entry of third country business owners and business investors. Since the implementation of the Red-White-Red card system in July 2011 the numbers remained small, ranging from 13 to 24 RWR-cards for self-employed key workers.

The basis upon which business owners and investors may be admitted is the generation of macroeconomic benefits. There is no data on the number of applications, the type of investment and business plans and the macro-economic benefits to be reaped. The PES undertakes a case-by-case assessment. In the amendment of the Foreign Worker Law of 2001, the criteria for granting a settlement permit on that basis have been established, namely a minimum investment sum of 100,000 euros or the creation of at least one additional job apart from one's own. According to the Austrian Business Agency (ABA) the trend is towards the establishment of small companies. The average number of jobs created was 11.8 in 2012 (according to ABA statistics). There is also trend towards the establishment of firms in the services sector, which, compared to manufacturing, usually does not involve

large investments (e.g. in machines). Trading companies are amongst those that do not involve substantial investments nor job creation. Usually it is the charter capital for a limited liability company, which is used for office infrastructure and rent. In a first step a sales manager and maybe also a secretary are employed, i.e. a trading company is a first hub in a new market. The transfer of know-how or the introduction of new technologies is listed among the criteria for the assessment of macroeconomic benefit. In practice it is often difficult to prove the compliance to these criteria. A newly established small company is rarely of significant economic importance for an entire region, and start-ups with innovative potential are not taken into account in the law.

ABA observes an increased trend towards establishments from emerging economies, mainly from Russia and CIS-countries, also from Brasil, Asia and from former Yugoslavia and Turkey. Also establishments from the USA and Canada fall in the category of third countries. According to ABA, Austria has a very good reputation in these countries as a business location. Usually innovative companies that evolved as regional players start internationalisation activities. Therefore it would, according to ABA, need some marketing to bring about a decisive momentum to business migration, i.e. to promote the Austrian business location accordingly. This is supported by the fact that headquarters of Western companies tend to shut down their activities with the rising maturity of Eastern European markets.

ABA suggests a change of the criteria for the definition of macroeconomic benefits or a residence permit for “start-ups” to better reflect the current trends and to become a competitive player in the field of business investments and establishments.

9.2 Temporary movement of natural persons for cross-border service provision

The major distinguishing factor between immigration and trade in its impact on the labour market is that the latter acts directly on labour demand, in particular on the industrial composition, while migration affects the size and composition of labour supply and thus the productive potential. While migration tends to raise the labour supply at the lower and upper end of the skill spectrum, where transferability of skills is relatively high, services mobility Mode 4 has the potential to cut into the medium skill segment. This is what we tend to see in the majority of cross-border service provision in Austria. Moreover, migration and commodity imports are inevitably linked with higher relative wages in the industries/occupations of the destination countries, as Samuelson (2004) and Andersen – Sorensen (2005) point out.

The import of commodities, most probably produced at relatively lower cost in the source countries, is congruent with the import of services remunerated at relatively lower pay in the four modes of services. What may distinguish migration from services mobility, apart from skills composition, is its different impact on public revenues as a result of different

taxation regimes. While migrants are paying social security contributions which are levied on labour (employer and employee contributions) and income tax, posted workers are employed in their country of origin, thus not paying into the social security funds of the service receiving country. Public revenues from posted workers accrue only from taxation of the imported service (value added tax). So far, the revenues from taxation of imported services accrue to the source country of the posted worker.

A further important factor to be taken into account is that the different bases of the two tax systems, the value added tax which focuses on the final product and the tax of the factor of production, labour, may have a different effect on the productive potential of the economy and the funding of the welfare state – apart from a different impact on tax revenues due to a differing potential for tax evasions. While the value added tax system is fairly harmonised across the EU, this is not the case for labour taxation (income tax and social security contributions), explaining part of the differences in wages between EU member states. In the case of Austria, labour taxation is the major source of funding of the social security system (health, unemployment, retirement). By encouraging the movement of posted workers in place of migrant workers, employment growth may be negatively affected thereby jeopardising the quality of social services provision. Accordingly, a rising number of posted workers at the cost of employment growth in Austria may raise concerns about the sustainability of the funding system of social services and promote a shift away from employment based taxes to services taxation.

In this context, the most contentious issue will be the imposition of wage parity between local workers and foreign service providers following the argument of Chanda (2001) that wage parity “negates the very basis of cross-country labour flows which stems from endowment-based cost differentials between countries.” To deal with the problem, Chanda argues that the country of service provision could levy a tax on the service provider who is undercutting local wages, the proceeds of the tax being directed to a compensation fund to finance the retraining of local workers who may be adversely affected by the services provision.

9.3 Gaps in data availability

Migration data in Austria is based on residence and/or work permits which capture periods of stay beyond six months. Stays of less than 6 months may also involve business activities but go unnoticed as the issue of C (travel) and D (residence) visa by purpose is not documented. Neither the Ministry of the Interior nor the Ministry of Foreign Affairs have an overview of the numbers of short-term stays for business purposes. This source of information could be an important complement to investment treaties and provide insight into the role of temporary stay for business purposes and conferences as distinct from pure tourism. This means that visa statistics should be made available, i.e. the number of

applications by category (business, studies, sports, conferences, tourism, etc.), by the characteristics of the applicants (sex, age, nationality, education or profession), refusal rates by category and by characteristics of the applicants. The same applies to the residence and settlement permit statistics. In addition, data on the transition from one type of permit to another should be provided, i.e. outflows from one category and inflows into the other, to capture the mobility between categories. While the number of permits issued by category is available, there is no information on the number of applications and refusals by category and with respect to characteristics of the applicants. This data would be decisive for evidence-based policy making.

9.4 Open questions on migration policy reform

An analysis of the potential impact of an increased inflow of RWR-card holders and a forecast of the uptake (Biffl et al 2010) suggested that the annual inflow could increase from 1,000 in 2011 to 8,000 in 2030. It was suggested that the uptake could be slow, depending on the management system of skilled worker migration, hoping to reach an annual inflow of 5,000 by 2015, and a further increase to 8,000 annually between 2020 and 2030, largely due to pull factors resulting from increasing skilled labour shortages. A major pillar supporting the forecast assumptions were third country graduates from Austrian universities. International experiences with the uptake of residence in the country of graduation are varied, depending on both, the source and the host country. On average, the proportion of stayers in Europe tends to be between 20% and 30%. The situation in Austria is at the lower end of the spectrum with some 16% of third country graduates remaining in Austria in 2013. (Wolfeil 2012)

The experience with the RWR-card so far is that the number of inflows increased versus the former key-skill quota regulation but not to the extent expected. This may be due to a variety of factors, one being that the transition from an employer nomination scheme to a point system was half-hearted, expecting the applicant to have an employer in Austria before arriving from abroad. The uptake of Job-Search Visa (for 6 months job search in Austria) by highly skilled third country migrants – regulated in §24a of the Alien Police Act 2005 – has been very sluggish as the potential migrant bears substantial migration and search costs. It is above all the administrative procedures, in particular the processing of the applications, which are tedious and prohibitively expensive for persons living far away from Austrian embassies. Accordingly the chamber of commerce finds the fault in an inefficient management system of the ‘new’ migration policy. An additional barrier to entry may be restrictive licensing regulations in certain occupations, in particular health and legal professions. (Biffl – Pfeffer – Skrivanek 2012)

While the development of a government website to render the criteria of the new migration policy more transparent (www.migration.gv.at) is an important step in promoting inflows, it

can only be a first step. A comparison with the German website indicates that Austria is quite dry about immigration, not really showing enthusiasm about newcomers and appreciation of their potential contributions. Austria is also not engaging employers to the same extent as Germany in the recruitment efforts of skilled international migrants. The marketing aspects as well as the management of recruitment of international skilled migrants are not yet receiving the attention they deserve to attract migrants. Thus, the first steps are taken with the reform of migration policy thinking, the next steps will have to follow suit.

One aspect will have to be the development of an immigration profile of Austria, which could motivate EU as well as third country migrants to work in Austria or to establish a business in Austria. Should it not be known that Austria is a country with strong corporatist organisational structures with institutionalised mechanism of policy coordination and conflict management? These structures ensure macro-economic flexibility and adaptability to external shocks, one factor for the stable Austrian economic development. (Calmfors—Driffill 1988; Biffi 2000). This system is, however, also responsible for large segments of the labour market being protected from external inflows, e.g. a large number of regulated professions (Chamber system of professions/occupations), pronounced seniority rules for careers in the public sector as well as large enterprises in private industry. These regulations make it hard for skilled migrants to enter at intermediate career levels, be they foreigners or Austrians wanting to return from abroad and hoping to get their foreign experience taken into account. This is why it is hard for university graduates with work experience abroad to find adequate employment and pay in Austria while it is comparatively easy for persons in the medium skill segment (Fachkräfte). A further aspect to be known before migrating to Austria is that the low unemployment rate has its counterpart in a pronounced wage differentiation by age, occupation, gender, educational attainment level and firm size.

Another aspect to be informed about is that Austria has a generous welfare system. This is one reason why Austria is more reluctant than countries with a residual welfare model and a neo-liberal governance model (USA, Australia, United Kingdom) to bring in immigrants. Also the small proportion of university graduates in total employment is a factor distinguishing Austria from other immigration countries. To understand why this is the case might help explain why so few foreign university graduates stay in Austria after finishing their studies, that is EU students as well as third country students.

All these factors have to be taken into account when designing an immigration policy as they will play a major role in the profile of the migrants attracted to come to Austria and their period of stay.

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Admitting third country nationals for business purposes

[Annex 1](#) Statistics from Member States will be used in the Synthesis Report to contextualise the statistics provided in this annex.

Table 1: Statistics on immigrant investors and immigrant business owners

Indicators	2009	2010	2011	2012	2013	Source / further information
Statistics on immigrant investors						
Number of visa applications (national D-type visas)	n.a.*	n.a.*	n.a.*	n.a.*	n.a.*	
Number of visa issued (national D-type visas)	n.a.*	n.a.*	n.a.*	n.a.*	n.a.*	
Number of visa refused (national D-type visas)	n.a.*	n.a.*	n.a.*	n.a.*	n.a.*	
Number of applications for residence permits (perhaps an estimate e.g. admissions)	n.a.	n.a.	n.a.	n.a.	n.a.	Ministry for Interior
Number of residence permits issued (perhaps an estimate e.g. admissions) Settlement permit – gainful employment excepted (“Quotenpflichtige Erst-NB ausgenommen Erwerbstätigkeit”) ¹¹ Red-White-Red card for self-employed key workers: see business owners	206	188	248	225	250	Fremdenstatistik 2009, 2010, Niederlassungs- und Aufenthaltstatistik 2011-13 of the Ministry for Interior, http://www.bmi.gv.at/cms/BMI_Niederlassung/statistiken/
Number of residence permits refused / withdrawn (perhaps an estimate e.g. admissions)	n.a.	n.a.	n.a.	n.a.	n.a.	Ministry for Interior
Average age of migrant investors who were granted residence permits (and national D-type visas?)	n.a.	n.a.	n.a.	n.a.	n.a.	Ministry for Interior
Statistics on immigrant business owners						
Number of visa applications (national D-type visas)	n.a.*	n.a.*	n.a.*	n.a.*	n.a.*	
Number of visa issued (national D-type visas)	n.a.*	n.a.*	n.a.*	n.a.*	n.a.*	
Number of visa refused (national D-type visas)	n.a.*	n.a.*	n.a.*	n.a.*	n.a.*	
Number of applications for residence permit	n.a.	n.a.	n.a.	n.a.	n.a.	Ministry for Interior
Number of residence permits issued Red-White-Red card self-employed key worker (Rot-Weiß-Rot - Karte (§ 41/2/4) selbständige Schlüsselkraft) and before 1 July 2011: settlement permit for self-employed key workers	23	26	24 ¹²	13	23	Fremdenstatistik 2009, 2010, Niederlassungs- und Aufenthaltstatistik 2011-13 of the Ministry for Interior, http://www.bmi.gv.at/cms/BMI_Niederlassung/statistiken/
Number of residence permits refused / withdrawn (perhaps an estimate e.g. admissions)	n.a.	n.a.	n.a.	n.a.	n.a.	
Number of residence permits reflecting a change of status into business owner (specifying, if possible, from which category – i.e. student, family member, beneficiary of international protection, etc.) Change to Red-White-Red card self-employed key worker	5	2	3 ¹³	2	3	Ministry for Interior
Average age of immigrant business owners	n.a.	n.a.	n.a.	n.a.	n.a.	Ministry for Interior

¹¹ This number includes all titles issued, i.e. persons that could prove “adequate means of subsistence”.

¹² 10 settlement permits for self-employed key workers (“Niederlassungsbewilligung Schlüsselkraft (nur Selbständige)”) and 14 Red-White-Red cards were issued. The Red-White-Red cards came into force by 1 July 2011.

¹³ 2 changes to settlement permit for self-employed key workers, 1 change to Red-White-Red card for self-employed key workers.

Admitting third country nationals for business purposes

Table 1: Statistics on immigrant investors and immigrant business owners (cont.)

Indicators	2009	2010	2011	2012	2013	Source / further information
Statistics on other business persons corresponding to Annex 2 (EU Mode 4 categories) and other business persons as recognised by Member States						
Number of third country nationals admitted under EU Mode 4 categories or equivalent categories indicated in Q22.						
Number of visa applications (national D-type visas)	n.a.*	n.a.*	n.a.*	n.a.*	n.a.*	
Number of visa issued (national D-type visas)	n.a.*	n.a.*	n.a.*	n.a.*	n.a.*	
Number of visa refused (national D-type visas)	n.a.*	n.a.*	n.a.*	n.a.*	n.a.*	
Number of visa applications (Schengen C-type visas)	n.a.*	n.a.*	n.a.*	n.a.*	n.a.*	
Number of visa issued (Schengen C-type visas)	n.a.*	n.a.*	n.a.*	n.a.*	n.a.*	
Number of visa refused (Schengen C-type visas)	n.a.*	n.a.*	n.a.*	n.a.*	n.a.*	
Residence permits issued for: Seconded Employees/posted workers ("Betriebsentsandter")	107	104	75	76	109	Fremdenstatistik 2009, 2010, Niederlassungs- und Aufenthaltstatistik 2011-13 of the Ministry for Interior, http://www.bmi.gv.at/cms/BMI/Niederlassung/statistiken/
Residence permits issued for: Rotational Workers	84	157	203	156	144	
Residence permits issued for: Self-employed workers	8	9	19	14	8	
Seconded Employees/posted workers ("Betriebsentsandte")						Obtained from PES Austria/Statistics Department
Employment permits issued to third country nationals	1,429	1,692	803	440	790**	
Posting permits (Entsendebewilligung) issued to third country nationals	960	1,386	1,502	1,473	1,176**	
EU Posting confirmation (EU Entsendebestätigung) issued to third country nationals	4,578	5,764	3,677	3,796	4,932**	
Employment permits issued to rotational workers	78	240	447	436	453	Obtained from PES Austria/Statistics Department

* The available visa statistics include only the total number of visas issued. There is a field asking for the purpose of the trip ("business"). However, this information is not processed by the Ministry for Europe, Integration and Foreign Affairs.¹⁴

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including

Croatia.

¹⁴ Information obtained from the Ministry for Interior (2014-13-11) and Ministry for Europe, Integration and Foreign Affairs (2014-14-11).

Admitting third country nationals for business purposes

Table 2: indications of the average length of time needed for each of the following indicators

The table below is not intended as having detailed, 'hard' statistics on the average length of time taken, but rather as approximate indications. In case you concrete statistics or data are available however, please provide them separately.

- Please indicate with 'X' the (approximate) average length of time needed for each of the indicators.

Average length of time expected (in days)	A few days	From a few days to a week	Up to two weeks	Up to a month	More than a month
Average time expected between lodging an application and the final decision for a visa application of an <u>immigrant investor (national D-type visa)</u>			x		
Average time expected between lodging an application and the final decision for a visa application of an <u>immigrant business owner (national D-type visa)</u>			x		
Average time expected for registering a business (from application to establishment)					x
If possible to change status: the average time expected for third country nationals already present in the Member State to change their status into <u>immigrant investor</u> , i.e. in the Austrian case settlement permit gainful employment excepted (from family reasons, study reasons, asylum, etc.)					x
If possible to change status: the average time expected for third country nationals already present in the Member State to change their status into <u>immigrant business owner</u> (from family reasons, study reasons, asylum, etc.)					x

Please indicate if statistics are available on businesses established by immigrant business owners and by Business Visitors for Establishment Purposes (BVEP): (such as total number of businesses established by third country nationals; number of FTEs created by migrant investors and business owners; number of survived / closed businesses; share of businesses per size (share of 1; 2-10, 11-19, 20-49, 50+ employees). If possible, EMN NCPs are asked to indicate whether data refer to newly admitted business owners or they include also those third country nationals already living in their Member States

Number of business established available (ABA), investment volume, number of created jobs

- Please indicate if statistics are available on the economic effects of immigrant investments or businesses (such as the share of migrant investments out of total annual national investments; number of FTEs created/supported as a result of investments by third country nationals; the tax contribution to the national revenue systems of immigrant business owners and investors; the increased economic ties / trade volumes with specific third countries as a result of immigrant business owners and investors).