

Act Governing the Employment of Foreign Nationals (AusIBG)

Federal Act of 20 March 1975, FLG no 218, governing the employment of foreign nationals, as amended by the Federal Acts of FLG no 231/1988, FLG no 253/1989, FLG I no 450/1990, FLG no 684/1991, FLG no 475/1992, FLG no 19/1993, FLG no 463/1993, FLG no 501/1993, FLG no 502/1993 (Amendment to Safeguard Employment 1993 [*Beschäftigungssicherungsnovelle* 1993]), FLG no 314/1994 (Act Implementing Public Employment Service Legislation [*AMS-BegleitG*]), FLG no 450/1994, FLG no 257/1995, FLG no 895/1995 (Anti-Abuse Act [*Antimißbrauchsgesetz*]), FLG no 201/1996 (Structural Adjustment Act 1996 [*StruktAnpG* 1996]), FLG no 776/1996, FLG I no 78/1997 (Integration Package), FLG I no 120/1999, FLG I no 199/1999 (Austrian Constitutional Court [*VfGH*]), FLG I no 115/2001 (Austrian Constitutional Court [*VfGH*]), FLG I no 136/2001 (Second Act Governing Euro Changeover – Federal Government [*2. Euro-Umstellungsgesetz – Bund*]), FLG I no 68/2002 (Economic Recovery Act 2002 [*Konjunkturbelebungsgesetz* 2002]), FLG I no 126/2002, FLG I no 160/2002 (Austrian Constitutional Court [*VfGH*]), FLG I no 133/2003 (Growth and Business Location Act [*Wachstums- und Standortgesetz*]), FLG I no 28/2004 (EU Enlargement Adjustment Act [*EU-Erweiterungs-Anpassungsgesetz*]), FLG I no 136/2004 (Budget Implementation Act 2005 [*BBG* 2005]), FLG I no 101/2005, FLG I no 103/2005 (2005 Act Promoting Growth and Jobs [*Wachstums- und Beschäftigungsgesetz* 2005]), FLG I no 104/2005, FLG I no 157/2005, FLG I no 85/2006 (2nd EU Enlargement Adjustment Act [*2. EU-Erweiterungs-Anpassungsgesetz*]) and FLG I no 99/2006 (Anti-Fraud Act 2006 [*Betrugsbekämpfungsgesetz* 2006]), FLG I no 78/2007, FLG I no 91/2009, FLG 120/2009, FLG I no 135/2009 (Registered Partnership Act [*Eingetragene Partnerschaft-Gesetz – EPG*] and FLG I no 25/2011, FLG I no 98/2012, FLG I no 72/2013, FLG I no 113/2015 and FLG I no 66/2017.

as at: 1 October 2017

CHAPTER I

General Provisions Scope

§1. (1) This Federal Act governs the employment of foreign nationals (§2) in the federal territory.

(2) The provisions of this Federal Act shall not apply

a) to foreign nationals who have been admitted for asylum (§3 of the 2005 Asylum Act [*Asylgesetz – AsylG 2005*], Federal Law Gazette [hereinafter called FLG] I no 100/2005) or who have been granted subsidiary protection status (§8 of AsylG 2005);

(FLG I no 126/2002, article 3 item 1)

(FLG I no 101/2005, item 1)

(FLG I no 78/2007, article 1 item 1)

b) to foreign nationals regarding their scientific, educational, cultural and social work at educational establishments or at institutions of scientific, cultural or social character created on the basis of an intergovernmental cultural agreement;

c) to foreign nationals regarding their work in diplomatic missions or consular posts or in intergovernmental organisations that enjoy diplomatic privileges or in permanent representations at such organisations, or regarding their work as employees of such foreign nationals;

d) to foreign nationals regarding their pastoral work within legally recognised churches and religious communities;

e) to foreign nationals regarding their work as crew members (§4 of Ship Crew Ordinance [*Schiffsbesatzungsverordnung*], FLG II no 518/2004) of sea-going and inland waterway vessels crossing borders;

(FLG no 895/1995, article I item 1)

(FLG I no 78/2007, article 1 item 2)

f) to special senior executives (§2 (5a)), to their third-country national spouses and children (letter l), as well as to their foreign employees who have been in a direct and lawful employment relationship with the special senior executive for at least one year and whose continued employment, in compliance with applicable wage and working conditions as well as with social insurance provisions, is required to support the senior executive.

(FLG no 895/1995, article I item 1a)

(FLG no 133/2003, article I item 7)

(FLG I no 78/2007, article 1 item 3)

g) to foreign nationals regarding their work as reporters for foreign print, audio and visual media for the duration of their accreditation as foreign correspondents with the Federal Chancellery, as well as foreign nationals regarding their work necessary for the performance of these reporters' job for the duration of their notification with the Federal Chancellery;

(FLG no 231/1988, article I item 1)

h) is deleted

(FLG I no 78/1997, article I item 1)

i) to foreign nationals in public and private entities and companies regarding their scientific work in research and teaching, in the development and further-

ing of the arts, as well as in teaching the arts, and to their spouses and children;

(FLG I no 450/1990, article 1 item 1)

(FLG I no 101/2005, item 2)

(FLG I no 78/2007, article 1 item 4)

j) to foreign nationals regarding their work under European Union training and further training or research programmes;

(FLG I no 78/1997, article I item 2)

k) is deleted

(FLG I no 78/1997, article I item 1)

l) to foreign nationals who enjoy free movement under a legal act of the European Union;

(FLG I no 25/2011, article I item 1)

m) to spouses and under-age unmarried children (including adopted children and step-children) who are entitled to settle under the Austrian Settlement and Residence Act (*Niederlassungs- und Aufenthaltsgesetz – NAG*), FLG I no 100/2005.

(FLG no 475/1992, item 1)

(FLG no 895/1995, article 1 item 2)

(FLG no 201/1996, article 32 item 1)

(FLG I no 78/1997, article 1 item 3)

(FLG I no 126/2002, article 3 item 2)

(FLG I no 101/2005, item 3)

(FLG I no 25/2011, article 1 item 2)

(3) Intergovernmental agreements on the employment of foreign nationals shall not be affected by the provisions of this Federal Act.

(4) The Federal Minister of Labour, Health and Social Affairs may, upon hearing the Committee on Foreign Nationals (*Ausländerausschuss*, §22), issue ordinances to define other exemptions from the scope of this Federal Act provided that they concern groups of individuals whose employment is permitted by the general situation and development of the labour market with due regard to the vested interests of the domestic workers concerned.

(FLG I no 78/1997, article I item 5)

(5) is deleted

(FLG I no 126/2002, article 3 item 4)

(FLG I no 101/2005, item 4)

(FLG I no 157/2005, article III item 1)

(FLG I no 25/2011, article I item 3)

Definitions

§2. (1) For the purposes of this Federal Act 'foreign nationals' shall mean individuals who do not possess Austrian citizenship.

(2) 'Employment' shall mean deployment

a) in an employment relationship,

b) in an employment-assimilated relationship,

(FLG no 101/2005, item 5)

c) in a trainee relationship including work pursuant to §3 (5),

(FLG no 895/1995, article I item 3)

d) pursuant to the provisions of §18 or

e) of workers hired out within the meaning of §3 (1) and (4) of the Temporary Employment Act (*Arbeitskräfteüberlassungsgesetz – AÜG*), FLG no 196/1988, and §5a (1) of the 1984 Agricultural Labour Act (*Landarbeitsgesetz – LAG 1984*), FLG no 287.

(FLG no 450/1990, article I item 2)

(FLG I no 98/2012, article 6 item 1)

(3) 'Employers' shall be equivalent

a) in cases of an employment-assimilated relationship (para (2) letter b) to the contracting party,

(FLG I no 25/2011, article I item 4)

b) for such cases as mentioned under para (2) letter c and d to the owner of the firm the foreign national is employed with unless letter d applies, or to the organiser,

(FLG I no 78/1997, article I item 6)

c) for such cases as mentioned under para (2) letter e also to the hirer within the meaning of §3 (3) of the Temporary Employment Act and §5a (3) of the 1984 Agricultural Labour Act (*Landarbeitsgesetz – LAG 1984*)

(FLG no 450/1990, article I item 3)

(FLG I no 98/2012, article 3 item 2)

(FLG I no 66/2017, article I item 1)

d) to the foreign service provider entitled to be issued with an EU posting confirmation (*Entsendebestätigung*) subject to §18 (12).

(FLG I no 78/1997, article I item 7)

(FLG I no 78/2007, article 1 item 5)

(FLG I no 66/2017, article I item 1)

e) to the owner of any entity which employs an intra-corporate transferee (§2 (13)).

(FLG I no 66/2017, article I item 1)

(4) Assessment of whether this is employment within the meaning of para (2) shall be based on the actual economic content rather than on the outer appearance

of facts. Employment within the meaning of para (2) shall also and in particular refer to situations where

1. a partner in a partnership for achieving the joint objects of this company, or
2. a shareholder in a private company having a share of less than 25%

does work for the company which is normally done within an employment relationship unless the regional office of Austria's public employment service (AMS) (hereinafter called 'regional office of the public employment service') declares upon request within three months that an essential influence on managing the company's affairs is actually exerted by this partner or shareholder in person. Evidence for this shall be provided by the requesting party. Upon expiry of this period of time, such work may be taken up also without the necessary declaratory decision. If the application is rejected after expiry of this period of time, work already begun shall be discontinued immediately, but no later than within one week from service of the decision.

(FLG no 502/1993, article III item 1)

(FLG no 314/1994, article 11 item 1)

(FLG no 101/2005, item 6)

(5) is deleted

(FLG I no 25/2011, article 1 item 5)

(5a) 'Special senior executives' shall mean 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.

(FLG I no 133/2003, article 7 item 2)

(6) 'EEA nationals' shall mean foreign nationals who are nationals of a state party to the Agreement on the European Economic Area (EEA Agreement).

(7) 'Cross-border commuters' shall mean foreign nationals who have their residence in a neighbouring country whereto they return daily and who, for the purpose of doing paid work, stay in a political district in Austria directly bordering on this country, or stay in the statutory towns of Eisenstadt or Rust.

(8) is deleted

(FLG I no 72/2013, article 1 item 1)

(9) 'Third countries' shall mean countries that are not state parties to the EEA Agreement. Third-country nationals shall mean foreign nationals who are not EEA nationals.

(FLG I no 126/2002, article 3 item 5)

(10) is deleted

(FLG I no 101/2005, item 7)

(FLG I no 66/2017, article I item 2)

(11) Save as otherwise provided in this Federal Act, children shall be subject to the relevant age limits defined in §2 (1) item 9 and (4) of the NAG and §52 (1) item 2 of the NAG.

(FLG I no 78/2007, article 1 item 6)

(FLG I no 66/2017, article I item 3)

(12) The provisions of this Federal Act which relate to spouses shall apply, *mutatis mutandis*, to registered partners under the Registered Partnership Act (EPG), FLG I no 135/2009.

(FLG I no 135/2009, article 1 item 1)

(13) Intra-corporate transferees mean any foreign nationals who are temporarily assigned during their employment relationship from their foreign employer established outside the territory of the European Union

1. as managers who direct the host entity or a department or subdivision of the host entity and receive general supervision or guidance principally from the board of directors or shareholders or equivalent of the transferring undertaking, group of undertakings or host entity, or
2. as specialists who possess specialised knowledge essential to the host entity's areas of activity, techniques or management and who have a high level of qualification referring to a type of work or activity requiring specific technical knowledge, including adequate professional experience, or
3. as trainee employees with a university degree who are transferred for career development purposes or in order to obtain training in business techniques or methods,

to one or several entities belonging to the same undertaking or to the same group of undertakings established in the federal territory and where the transferees work accordingly. Foreign nationals who are assigned by employment agencies, temporary work agencies or any other undertakings engaged in making available labour to work under the supervision and direction of another undertaking shall not be deemed to be intra-corporate transferees.

(FLG I no 66/2017, article I item 4)

Conditions for employing foreign nationals

§3. (1) Save as otherwise provided in this Federal Act, an employer may employ a foreign national only if he or she has been granted an employment permit (*Beschäftigungsbewilligung*), or a posting permit (*Entsendebewilligung*) for this foreign national, or if he or she has been issued with a confirmation of notification (*Anzeigebestätigung*), or if the foreign national has a valid Red White Red Card (*Rot-Weiß-Rot – Karte*), an EU Blue Card, a residence permit for intra-corporate transferees ('ICT'), a residence permit for mobile intra-corporate transferees ('mobile ICT'), a residence permit for members of a family group (*Aufenthaltsbewilligung 'Familiengemeinschaft'*) with access to the labour market (§20f (4)) or a Settlement Permit – Artist (*Niederlassungsbewilligung – Künstler*) or a Red White Red Card plus (*Rot-Weiß-Rot – Karte plus*), a Residence Entitlement plus (*Aufenthaltsberechtigung plus*) or an exemption certificate (*Befreiungsschein*, §4c) or a 'family member' or 'permanent residence – EU' residence title.

- (FLG no 450/1990, article I item 4)
- (FLG no 895/1995, article I item 3a)
- (FLG I no 78/1997, article I item 8)
- (FLG I no 126/2002, article 3 item 6)
- (FLG I no 101/2005, item 4)
- (FLG I no 25/2011, article 1 item 6)
- (FLG I no 72/2013, article 1 item 2)
- (FLG I no 66/2017, article I item 5)

(2) Save as otherwise provided in this Federal Act, a foreign national may take up and do work only if an employment permit or a posting permit has been granted for him/her, or if a confirmation of notification has been issued for him/her, or if he/she has a valid Red White Red Card, an EU Blue Card, a residence permit for intra-corporate transferees ('ICT'), a residence permit for mobile intra-corporate transferees ('mobile ICT'), a residence permit for members of a family group with access to the labour market (§20f (4)) or a Settlement Permit – Artist or a Red White Red Card plus, a Residence Entitlement plus or an exemption certificate (§4c) or a 'family member' or 'permanent residence – EU' residence title.

- (FLG no 450/1990, article I item 4)
- (FLG no 895/1995, article I item 3a)
- (FLG I no 78/1997, article I item 8)
- (FLG I no 126/2002, article 3 item 6)
- (FLG I no 101/2005, item 8)
- (FLG I no 25/2011, article 1 item 6)
- (FLG I no 72/2013, article 1 item 2)
- (FLG I no 66/2017, article I item 5)

(3) If another employer enters the legal relationship pursuant to §2 (2) through transmission of the company or change of its legal form, an employment permit shall

be deemed to be given to the new employer provided that the conditions continue to be otherwise met. Also a valid Red White Red Card, EU Blue Card, residence permit for intra-corporate transferees ('ICT'), residence permit for mobile intra-corporate transferees ('mobile ICT'), residence permit for members of a family group with access to the labour market (§20f (4)) or Settlement Permit – Artist issued for employment entitles its holder to be employed with the new employer provided that the conditions continue to be otherwise met.

(FLG no 314/1994, article 11 item 1)

(FLG I no 78/1997, article I item 9)

(FLG I no 72/2013, article 1 item 2)

(FLG I no 66/2017, article I item 5)

(4) Foreign nationals who are concert or stage artists or members of such occupational groups as variety artists, film, radio and television workers or musicians may be employed without employment permit

a) for one day, or

b) for four weeks within an overall artistic production to ensure presentation of a concert, an event, a performance, an ongoing film production, a radio or television live broadcast.

Such employment shall be notified by the event organiser and/or producer on the day of work take-up to the competent regional office of the public employment service (AMS).

(FLG no 253/1989, article I item 1)

(FLG no 314/1994, article 11 item 1)

(FLG I no 126/2002, article 3 item 7)

(5) Foreign nationals

a) who are employed for up to three months within a calendar year exclusively for the purpose of upgrading and applying knowledge to acquire skills for practice without the obligation to work and without any entitlement to pay (voluntary trainees), or

b) who are employed as summer trainees or interns,

shall not require any employment permit. If foreign nationals do unskilled work, simple semi-skilled work or work on construction sites, they shall not be considered voluntary trainees within the meaning of this Federal Act. Summer traineeships or internships within the meaning of this Federal Act shall only mean jobs required of students attending some regular training or study course at an officially recognised domestic educational establishment. Employment of a foreign voluntary trainee or summer trainee or intern shall be notified by the owner of the company where the foreign national is supposed to work, not later than two weeks prior to job take-up, to the competent regional office of the public employment service (AMS) and the competent fiscal authority pursuant to the provisions of the Fiscal Administration Act (AVOG), FLG no 18/1975. The competent regional office of the public employment service shall issue a confirmation of notification (*Anzeigebestätigung*) within two weeks. Upon expiry of this period, however, such a job may be taken up even if no such confirmation has been issued by then. If after expiry of this period the AMS refuses to issue a confirmation of notification, the job already taken up shall be discontinued without delay, however not later than one week after service of refusal. Con-

firmation of notification shall be issued only if the actual economic content of the intended job corresponds beyond doubt to that of a voluntary traineeship or summer traineeship or internship.

(FLG no 201/1996, article 32 items 2 and 3)

(FLG I no 78/1997, article I item 10)

(FLG I no 68/2002, article 5 item 1)

(FLG I no 99/2006, article 8 item 1)

(6) The employer shall keep the permits or confirmations issued under this Federal Act ready for inspection at its premises, the foreign national shall keep the permits and confirmations issued under this Act and under the NAG ready for inspection at his/her workplace.

(FLG no 450/1990, article I item 5)

(FLG no 895/1995, article I item 3c)

(FLG I no 78/1997, article I item 11)

(FLG I no 25/2011, article 1 item 7)

(7) An employer may continue to employ a foreign national to whom the provisions of this Federal Act did not apply at the time of work take-up till the end of the employment relationship even after fundamental changes in the foreign national's personal circumstances underlying such non-application have occurred.

(FLG no 475/1992, item 2)

(8) Upon the request of foreign nationals who are exempted from the scope of this Federal Act pursuant to §1 (2), or pursuant to an ordinance issued under §1 (4), the regional office of the public employment service (AMS) shall issue a confirmation stating that such an exemption applies.

(FLG no 895/1995, article 1 item 4)

(FLG I no 115/2001)

(FLG I no 126/2002, article 3 item 8)

(FLG I no 101/2005, item 9)

(FLG I no 25/2011, article 1 item 8)

(9) Employment of a voluntary trainee pursuant to para (5) may be extended to up to twelve months

a) if the voluntary trainee has a training background equivalent to Austria's upper secondary school leaving examination (*Reifeprüfung*)

b) if training in Austria is to lead to the acquisition of vocational skills commensurate with this level, and

c) if employment is provided by an internationally operating enterprise, and

d) if employment is necessary to secure the enterprise's operations in Austria with a view to opening up new sales territories or business locations in the trainee's country of origin, and

e) if, prior to job take-up, an in-house training programme is submitted which details the measures necessary to achieve the objectives mentioned in letter b, the duration and the concrete location of the individual programme steps, and

f) if the enterprise furnishes proof of training-compliant deployment in the country of origin once the training programme is completed, and

- g) if the jobs and the wage and working conditions of the enterprise's other employees are not jeopardised, and
- h) if a declaration is produced on having informed the works council or staff representation of the take-on of such a voluntary trainee.

(10) The confirmation of notification pursuant to para (5) shall be revoked if the applicant has fraudulently misrepresented or failed to disclose material facts when notifying such voluntary traineeship or summer traineeship or internship, or if the foreign national does work that is not in compliance with that of a voluntary traineeship pursuant to para (5) or para (9) or with the summer traineeship or internship required by the educational establishment.

(FLG I no 78/1997, article I item 12)

CHAPTER II

Employment permit Conditions

§4. (1) An employer shall be granted an employment permit upon request for the foreign national indicated in the application if the situation and the development of the labour market permit such employment (labour market test), and if it does not conflict with important public or overall economic interests, and

1. if the foreign national has a residence title pursuant to the NAG or the 2005 Aliens Police Act (FPG 2005), FLG I no 100, which does not exclude doing a job, or if the foreign national has been admitted to asylum procedure, with admission dating back three months, and enjoys factual protection from deportation or holds a residence title pursuant to §§12 or 13 of the 2005 Asylum Act (AsylG 2005) or a residence title pursuant to §54 (1) items 2 or 3 of the 2005 Asylum Act or enjoys exceptional leave to remain in Austria (*Duldung*) pursuant to §46a of the FPG and has been exempted from the scope of this Federal Act pursuant to §1 (2) letter a,
(FLG I no 72/2013, article 1 item 3)
2. if there appears to be no doubt that the employer complies with the wage and working conditions including social insurance provisions,
3. unless there are grounds for disapproval of the foreign national as an individual, such as repeated infringements caused by doing a job without employment permit within the past twelve months,
4. unless employment, save as otherwise provided in this Federal Act, has already commenced,
5. unless the employer has repeatedly taken on foreign nationals in contravention of this Federal Act in the past twelve months prior to filing the application.
6. unless the agreement on the intended employment (§2 (2)) has come about under placement activities not permitted by the Labour Market Promotion Act (*Arbeitsmarktförderungsgesetz – AMFG*), FLG no 31/1969, of which the employer was or should have been aware of,
7. if the employer employs the foreign national in a job available in its enterprise, whereby making available such a foreign national to third parties shall not be considered employment in one's own enterprise notwithstanding the provisions of §6 (2),
8. if a declaration is produced on having informed the works council or staff representation of the intended take-on of the foreign national, and
9. unless within six months prior to, or in the course of, filing the application the employer has with regard to this or a comparable job
 - a) terminated the employment relationship of a worker aged 50 or up, or
 - b) refused to recruit a 50plus-year-old worker suited for the specific job in question,unless the employer can establish satisfactorily that such termination or refusal of recruitment was not based on the worker's age.
10. unless in the case of employment of a foreign national pursuant to §5 the employer has repeatedly provided non-standard local accommodation to foreign nationals in the past twelve months prior to filing the application, and

11. if in the case of employment of a foreign national pursuant to §5 the employer confirms that the foreign national will be provided with standard local accommodation for the intended duration of employment and, if such accommodation is provided by or through the employer, the rent is not automatically deducted from the employee's pay.

(FLG I no 66/2017, article I item 6)

(2) An employer shall be granted an employment permit upon request for the foreign apprentice indicated in the application if the situation in the apprenticeship market so permits (labour market test), and if this does not conflict with important grounds regarding the situation and development in the remaining labour market, and if the conditions of para (1) items 1 to 9 are met.

(3) Provided the employer meets the general conditions set forth in para (1) and para (2), this employer may be granted an employment permit if

1. the regional advisory board (Regionalbeirat) has unanimously recommended the issue of such an employment permit, or
2. to 4. are deleted

(FLG I no 72/2013, article 1 item 4)

5. the foreign national is to be employed under a fixed-term contract as defined in §5, or
6. the foreign national is a pupil or student (§§63 and 64 (1) of the NAG) or holder of a residence permit pursuant to §64 (4) of the NAG, or

(FLG I no 66/2017, article I item 7)

7. the foreign national is a posted employee (§18), or
8. is deleted

(FLG I no 66/2017, article I item 8)

9. the foreign national enjoys special protection under §57 of 2005 Asylum Act (AsylG 2005), or
10. a permit for cross-border temporary hire pursuant to §16 (4) of the Temporary Employment Act (AÜG) or §40a (2) of the 1984 Agricultural Labour Act (LAG) is produced for this foreign national or, provided such a permit is not required pursuant to §16a of the AÜG or §40a (6) of the 1984 LAG, the requirements of §16 (4) items 1 to 3 of the AÜG or §40a (2) items 1 to 3 of the 1984 LAG are met *mutatis mutandis*, or

(FLG I no 98/2012, article 6 item 3)

11. the foreign national is to be admitted to employment based on generally recognised rules of international law or intergovernmental agreements, or
12. the foreign national is entitled to benefits pursuant to the 1977 Unemployment Insurance Act (AIVG), FLG no 609, or

(FLG I no 72/2013, article 1 item 5)

13. the foreign national is to be employed as an artist (§14) for a period not exceeding six months, or
14. the foreign national belongs to a group of persons listed in an ordinance as defined in (4).

(FLG I no 72/2013, article 1 item 6)

(4) The Federal Minister of Labour, Social Affairs and Consumer Protection may issue an ordinance specifying that employment permits may be granted to other groups of persons whose employment is in the public or overall economic interest. The ordinance may define a certain period of validity for employment permits, a maximum limit for specific groups and – where the situation and the development of the labour market so permit – waive the labour market test in particular cases.

(FLG I no 72/2013, article 1 item 7)

(5) In case of permits for cross-border temporary hire pursuant to §16 (4) of the Temporary Employment Act (AÜG) or §40a (2) of the 1984 Agricultural Labour Act (LAG), the labour market test pursuant to para (1) and the hearing of the regional advisory board (Regionalbeirat) shall be waived.

(FLG I no 98/2012, article 6 item 3)

(FLG I no 72/2013, article 1 item 8)

(6) Regarding the employment of a partner or shareholder within the meaning of §2 (4), the provisions of para (1) item 4 shall be deemed to be met only if such employment does not jeopardise the wage and working conditions of domestic workers. They shall be deemed in jeopardy if the income of the partner or shareholder, beginning with the take-up of his/her job, is below the locally customary pay of domestic workers doing a comparable job.

(7) The labour market test pursuant to paras (1) and (2) shall not apply to

1. is deleted

(FLG I no 66/2017, article I item 9)

2. pupils and students (§§63 and 64 (1) of the NAG) as well as holders of a residence permit pursuant to §64 (4) of the NAG whose employment does not exceed 20 weekly hours,

(FLG I no 66/2017, article I item 10)

3. graduates of tertiary education (§12b item 2),

4. skilled workers regarding their employment in jobs suffering from labour shortages according to the ordinance for skilled workers (*Fachkräfteverordnung*) (§13),

5. foreign nationals enjoying special protection (para (3) item 9), and

6. registered foreign nationals employed under fixed-term contracts (§5 (7)),

(FLG no 231/1988, article I item 2)

(FLG no 450/1990, article 1 items 8 to 9, letter a)

(FLG no 19/1993, item 1)

(FLG no 502/1993, article III items 2 and 3)

(FLG no 314/1994, article 11 item 3)

(FLG no 78/1997, article 1 items 13 to 19)

(FLG I no 126/2002, article 3 items 9 to 12)

(FLG I no 133/2003, article 7 item 3)

(FLG I no 28/2004, article 1 item 1)

(FLG I no 101/2005, items 10 and 12)

(FLG I no 78/2007, article 1 items 7 and 9)

(FLG I no 120/2009, item 1)

(FLG I no 25/2011, article 1 item 9)

(FLG I no 66/2017, article I item 11)

§4a. is deleted

(FLG no 253/1989, article I item 2)

(FLG I no 72/2013, article 1 item 9)

Labour market test

§4b. (1) The situation and the development of the labour market (§4 (1)) shall permit the issue of an employment permit if, for the vacancy to be filled by the foreign national specified in the application, neither an Austrian national nor a domestic labour market-based foreign national ready and able to do the job under the conditions recognised by law is available. Among the foreign nationals available preference shall be given to those entitled to unemployment insurance benefits, to EEA nationals, Swiss nationals, Turkish workers under association agreements (§4c) and to foreign nationals having unrestricted access to the Austrian labour market (§17). The test shall be based on the job profile specified in the application for an employment permit, such profile having to be in line with in-house requirements. Proof of the training background necessary for doing the job, or of any other special skills, shall be furnished by the employer.

(FLG I no 78/1997, article I item 21)

(FLG I no 120/1999, article 4 item 1)

(FLG I no 28/2004, article 1 item 2)

(FLG I no 25/2011, article 1 item 10)

(FLG I no 72/2013, article 1 item 10)

(2) Testing pursuant to para (1) shall not be required if a conditional assurance (*Sicherungsbescheinigung*) has been issued to the employer for the foreign national specified in the application.

(FLG no 201/1996, article 32 item 6)

(FLG no 475/1992, item 2b)

(FLG no 314/1994, article 11 item 4)

(FLG I no 78/1997, article I item 22)

(FLG I no 126/2002, article 3 item 13)

(3) Where admission to employment of spouses and under-age children of foreign nationals pursuant to §18a is concerned, testing pursuant to para (1) shall be limited to the availability of nationals and EEA nationals.

(FLG I no 66/2017, article I item 12)

Turkish nationals

§4c. (1) An employment permit shall be issued or renewed *ex officio* for Turkish nationals if they meet the conditions specified in article 6 (1) subparas 1 and 2 or in article 7 subpara 1 or in article 7 last sentence or in article 9 of the EEC Turkey Association Council Decision – ACD – no 1/1980.

(2) An exemption certificate (*Befreiungsschein*) shall be issued or renewed for Turkish nationals if they meet the conditions specified in article 6 (1) subpara 3 or in article 7 subpara 2 of ACD no 1/1980. An exemption certificate entitles its holder to take up employment throughout the entire federal territory and shall be issued for five years at a time. The exemption certificate shall be revoked if the foreign national has fraudulently misrepresented material facts or has concealed such facts in his/her application.

(FLG I no 72/2013, article 1 item 11)

(3) This shall not affect the rights of Turkish nationals under other provisions of this Federal Act. Regarding competence in, and conduct of, procedures pursuant to paras (1) and (2), the provisions of this Federal Act shall apply, insofar as they do not conflict with provisions of ACD no 1/1980.

(FLG I no 78/1997, article I item 23)

Seasonal workers and seasonal harvesters

§ 5. (1) In the event of any temporary demand for additional labour which cannot be met by potential labour force available at home nor by EEA nationals, Swiss nationals or any foreign nationals registered under para (7), the Federal Minister of Labour, Social Affairs and Consumer Protection may issue ordinances defining in numbers the quotas

1. for the fixed-term admission of foreign seasonal workers to a specific sector, a specific occupational group or a specific region, or
2. for the short-term admission of foreign seasonal harvesters.

In so doing, he shall consider the general situation and development in the labour market, in particular in the segment concerned, and he may not exceed, on an annual average, the maximum number of temporarily employed foreign nationals as defined under §13 (4) item 1 of the NAG. Short-term exceedances are permitted.

(2) Prior to defining quotas pursuant to para (1), the *Länder* and the employers' and employees' stakeholder groups at *Länder* level shall be consulted.

(3) Under the quotas fixed pursuant to para (1) item 1, seasonal workers are admitted by way of employment permits (§4) for a fixed-term seasonal job. The permissible maximum duration of these employment permits shall be defined in the related ordinance, but it may not exceed a period of six months. Within a period of 12 months employment permits for, in total, no more than nine months may be issued or extended for one and the same seasonal worker.

(4) By way of derogation from para (3), employment permits for, in total, twelve months within 14 months may be issued for seasonal workers subject to transitional provisions for the free movement of workers (§32a). Seasonal workers who in the past three years already worked under quota arrangements in agriculture and forestry may again be issued with employment permits in this sector or have these employment permits extended for, in total, up to nine months.

(5) Under the quotas fixed pursuant to para (1) item 2, seasonal harvesters are admitted by way of employment permits (§4) for a short-term seasonal job of no more than six weeks.

(6) Employment permits issued or extended under the quotas fixed pursuant to paras (3)-(5) will each fill one quota space for their relevant period of validity. Once the period of validity of the employment permit expires, the quota space may be filled with a new employment permit. Seasonal workers already working under a permit within the framework of a quota arrangement may be issued with further employment permits up to the permissible maximum duration in keeping with paras (3)-(5) irrespective of whether a quota space is vacant. Seasonal workers who are already entitled to reside in the federal territory or worked at least once within the past five years as seasonal workers or seasonal harvesters under a quota arrangement pursuant to para (1) items 1 or 2 shall be prioritised in respect of permits.

(7) Employment permits for seasonal workers who worked under fixed-term contracts in the calendar years 2006-2010 in one and the same sector for at least four months each year under quotas pursuant to §5 (1) item 1 of the Federal Act as amended in FLG I no 135/2009 and had themselves registered with the regional offices of the public employment service (AMS) until 30 April 2012 for re-employment in this sector may be issued outside of quota arrangements pursuant to para (1) item 1 in keeping with para (3) and shall not be allotted to the quota regime. No labour market test shall be required for individual cases (§ 4 (7) item 6).

(8) Review of the right of residence pursuant to §4 (1) item 1 and the procedure pursuant to §11 shall be waived where the employment permit has been requested under quota arrangements pursuant to para (1) items 1 or 2 and where the seasonal worker or seasonal harvester is subject to visa requirements pursuant to §24 (1) item 3 of the Aliens' Police Act (*Fremdenpolizeigesetz – FPG*). Job take-up, however, shall only be permitted after the visa has been granted in keeping with §24 (1) item 3 of the FPG.

(9) The competent regional office of the public employment service (AMS) shall, prior to taking a decision, notify the competent local state police headquarters of any requests for employment permits for foreign nationals holding a visa C with a period of validity of several years (§24 (5) of the FPG).

(FLG I no 78/1997, article I item 24)

(FLG I no 126/2002, article 3 item 14)

(FLG I no 28/2004, article 1 item 3)

(FLG I no 101/2005, items 13 and 14)

(FLG I no 157/2005, article III items 2 and 3)

(FLG I no 78/2007, article 1 items 10 to 13)

(FLG I no 25/2011, article 1 item 11)

(FLG I no 66/2017, article I item 13)

Scope

§6. (1) An employment permit shall be issued for a specific job and shall be valid for the entire federal territory. The job shall be determined by the work done and the employer specified in the employment permit.

(FLG no 314/1994, article 11 item 5)

(FLG I no 72/2013, article 1 item 12)

(2) It shall not be required to change an employment permit if a foreign worker is physically moved to another workplace for a comparatively short period of time that does not exceed one week. If such a move lasts longer, a new employment permit shall be required.

(3) is deleted

(FLG no 314/1994, article 11 item 6)

(FLG I no 72/2013, article 1 item 13)

Period of validity

§7. (1) An employment permit shall be of fixed-term validity; it may be issued for a maximum period of one year.

(2) Regarding work in jobs within enterprises which, according to their nature, only operate in specific seasons or regularly boost operations at specific times of the year (seasonal enterprises), employment permits shall be issued only for the period required for this type of work.

(3) Employment permits issued under quota arrangements pursuant to §5 may not exceed the period of validity defined in the respective ordinance.

(FLG no 231/1988, article I item 6)

(FLG I no 126/2002, article 3 item 15)

(4) Apprentices shall be granted employment permits for the duration of their apprenticeship and for the duration of their continued deployment required by law or collective agreements.

(FLG no 450/1990, article I item 13)

(FLG I no 72/2013, article 1 item 14)

(5) This shall be without prejudice to §11 of the 1979 Maternity Protection Act (*Mutterschutzgesetz*), FLG no 221, and §7 (2) of the Paternity Leave Act (*Väter-Karenzgesetz*), FLG no 651/1989.

(FLG no 450/1990, article I item 14)

(FLG I no 126/2002, article 3 item 16)

(6) An employment permit shall expire

1. upon termination of employment of the foreign national;

2. if within six weeks after the beginning of the employment permit's validity no work is taken up.

(FLG no 684/1991, item 5)

(7) If, prior to expiry of an employment permit, an application is filed for extension of this employment permit, or for the issue of an exemption certificate, such an employment permit shall be deemed to be extended until a final decision has been taken on the application.

(FLG no 450/1990, article I item 15)

(FLG I no 72/2013, article 1 item 15)

(8) If the conditions for extending an employment permit are not met, the effects of non-extension shall become applicable at that point in time that results from the legal provisions and norms of plant-level or collective agreement-based law designed to safeguard the foreign national's rights.

(FLG no 231/1988, article I item 8)

Obligations

§8. (1) Employment permits shall be coupled with the obligation that foreign nationals not be employed under poorer wage and working conditions than those applicable to the majority of the enterprise's domestic employees who are comparable in terms of work performed and qualification.

(2) is deleted

(FLG no 314/1994, article 11 item 1)

(FLG no 101/2005, item 15)

(FLG I no 25/2011, article 1 item 12)

(3) As far as it is expedient in view of the situation and development of the labour market, or in view of important public or overall economic interests, employment permits may be coupled with further obligations, including but not limited to obligations to carry out and support measures of a labour market policy or career promoting kind.

Revocation

§9. (1) Employment permits shall be revoked if, in the application for granting such employment permits, the applicant has fraudulently misrepresented material facts or has failed to disclose such facts. In the case of employment of seasonal workers or seasonal harvesters (§5), the employment permit shall also be revoked if the accommodation provided by or through the employer, in violation of §4 (1) item 11, is not of local standard and the employer has failed to provide standard local accommodation within a period of two weeks.

(FLG no 450/1990, article I item 16)

(FLG I no 66/2017, article I item 14)

(2) An employment permit can be revoked if

a) the conditions under which it was granted (§4 (1) to (3)) have undergone substantial changes or the circumstances set forth in §4 (1) no longer apply,

(FLG I no 25/2011, article 1 item 13)

b) there are other important reasons relating to the foreign national as an individual, or

c) the obligations specified when granting such permit (§8) are not fulfilled.

(FLG no 450/1990, article I item 17)

(3) is deleted

(FLG I no 25/2011, article 1 item 12)

(4) If an employment permit is revoked, §7 (8) shall apply *mutatis mutandis*.

(FLG no 231/1988, article I item 9)

(5) Paras (1) to (4) shall apply *mutatis mutandis* if a posting permit (§18) is revoked.

(FLG no 895/1995, article I item 4a)

Strike and lockout

§10. Employment permits may not be granted for work in jobs within an enterprise affected by strike or lockout.

Conditional assurance

§11. (1) If an employer intends to recruit a foreign national who does not hold a residence title pursuant to §4 (1) item 1, a conditional assurance (*Sicherungsbescheinigung*) shall be issued to such an employer upon request, provided that all the other conditions for issuing an employment permit (§4) are met and, if this foreign national is to be admitted under quota arrangements (§12 of the NAG) provided that the allocated quota spaces (Quoten-/Kontingentplätze) are not exhausted. The admission of key workers and skilled workers (§§ 12 to 12c) and of artists employed for more than six months (§14) shall be subject to the admission procedure defined in §20d.

(FLG no 231/1988, article I item 10)

(FLG I no 126/2002, article 3 item 17)

(FLG I no 101/2005, item 16)

(FLG I no 25/2011, article 1 item 14)

(FLG I no 72/2013, article 1 item 16)

(FLG I no 66/2017, article I item 15)

(2) The conditional assurance serves as a document to be submitted to the competent diplomatic mission abroad or the competent authority defined in the NAG and shall include the name and address of the employer, the name, date of birth, nationality, private address and intended occupational activity of the foreign national as well as the intended period of validity of the employment permit. The competent regional office of the public employment service (AMS) shall inform the competent diplomatic missions or authorities on a regular basis on conditional assurances issued and include the above data.

(FLG no 450/1990, article I item 18)

(FLG I no 120/1999, article 4 item 2)

(FLG I no 101/2005, item 17)

(FLG I no 25/2011, article 1 item 14)

(3) The conditional assurance's period of validity shall be 26 weeks at most. For the purpose of defining such period of validity, account shall be taken of the expected time needed by the foreign national in question to enter the country and take up residence. If a conditional assurance has been issued for a shorter period of validity, extension up to a total period of 26 weeks shall be permissible. In justified cases extension up to a total period of 36 weeks shall be permissible.

(FLG I no 78/1997, article I item 25)

(4) A decision shall be communicated if an application is rejected or not fully accepted.

(5) A conditional assurance can be revoked if the circumstances leading to its issue undergo substantial changes.

(FLG no 450/1990, article I item 19)

(FLG I no 25/2011, article 1 item 15)

(6) is deleted

(FLG no 257/1995)

(FLG I no 126/2002, article 3 item 18)

(FLG I no 25/2011, article 1 item 16)

(FLG I no 72/2013, article 1 item 17)

**Chapters IIb, IIc and III (previous legislation) are deleted including their headings
(§§ 14 to 14g, 15, 15a and 16)**

- (FLG no 231/1988, article I item 17)
- (FLG no 450/1990, article I item 23 to 26)
- (FLG no 475/1992, item 3 to 9)
- (FLG no 19/1993, item 2)
- (FLG no 314/1994, article 11 item 1, 8 and 9)
- (FLG no 895/1995, article I item 4b to 4d)
- (FLG no 201/1996, article 32 item 7)
- (FLG I no 78/1997, article I item 28 and 30)
- [FLG I no 68/2002, article 5 item 2]
- (FLG I no 126/2002, article 3 item 19, 20, 23 and 25 to 27)
- (FLG I no 101/2005, item 25 to 31)
- (FLG I no 78/2007, article 1 item 14 and 15)
- (FLG I no 25/2011, article 1 item 6)
- (FLG I no 72/2013, article 1 item 21)

Chapter III

Admission of key workers, artists and settled foreign nationals
(FLG I no 72/2013, article 1 item 18)
Very highly qualified workers

§12. Very highly qualified foreign workers who have scored the minimum points required for the criteria listed in Annex A shall be admitted for employment as key workers if the intended employment complies with their skills and with the other criteria necessary to score the minimum number of points, and if the requirements defined in §4 (1) are met with the exception of item 1. No labour market test shall be required for individual cases.

(FLG no 450/1990, article I item 20)

(FLG I no 78/1997, article I item 26)

(FLG I no 126/2002, article 3 item 19)

(FLG I no 101/2005, items 18 to 23)

(FLG I no 25/2011, article 1 item 17)

(FLG I no 72/2013, article 1 item 19)

Skilled workers remedying skills shortages in specific occupations

§12a. Foreign nationals shall be admitted for employment as skilled workers in jobs suffering from labour shortages as defined in the ordinance for skilled workers (*Fachkräfteverordnung*, §13), if they

1. hold the relevant occupational training credentials;
2. score the necessary minimum points for the criteria listed in Annex B;
3. are paid for the intended job the minimum pay rate they are entitled to under law, ordinance or collective agreement plus a supplement as normally agreed at the enterprise in question, and

the requirements of §4 (1) are met *mutatis mutandis* with the exception of item 1. No labour market test shall be required for individual cases.

(FLG no 257/1995)

(FLG I no 78/1997, article I item 27)

(FLG I no 126/2002, article 3 item 21)

(FLG no 101/2005, article I item 24)

(FLG I no 25/2011, article 1 item 17)

Other key workers and graduates of tertiary education

§12b. Foreign nationals shall be admitted for employment as key workers, if they

1. score the necessary minimum points for the criteria listed in Annex C and receive for the intended employment a monthly gross pay of generally at least 50 per cent or, if they are aged 30 or older, a monthly gross pay of at least 60 per cent of the maximum assessment basis pursuant to §108 (3) of the General Social Insurance Act (ASVG), FLG no 189/1955, plus special bonus payments, or
2. have been enrolled in, and have successfully completed, a diploma course (Diplomstudium) at least as from the second period of study or a Bachelor's programme, a Master's programme or a (PhD) doctorate programme at a domestic university, a domestic university of applied sciences (Fachhochschule) or a domestic accredited private university, and receive for the intended employment, which must be commensurate with their level of educational attainment, a monthly gross pay of at least the locally standard rate paid to Austrian graduates for comparable jobs and professional experience, but at least 45 per cent of the maximum assessment basis pursuant to §108 (3) of the General Social Insurance Act (ASVG) plus special bonus payments,

and if the requirements of §4 (1) are met *mutatis mutandis* with the exception of item 1. No labour market test shall be required for individual cases of graduates of tertiary education as defined by item 2.

(FLG I no 25/2011, article 1 item 17)

(FLG I no 66/2017, article I item 16)

EU Blue Card

§12c. Foreign nationals shall be admitted for employment as key workers if they have a degree of at least three years' duration from a tertiary education establishment, if they receive for a job commensurate with their educational attainment level a gross annual pay which totals one and a half times the average annual gross pay in Austria last published by Statistics Austria, and if the requirements defined in §4 (1) are met with the exception of item 1.

(FLG I no 25/2011, article 1 item 17)

§12d. is deleted

(FLG I no 25/2011, article 1 item 17)

(FLG I no 72/2013, article 1 item 19a)

(FLG I no 72/2013, article 1 item 20)

Ordinance for skilled workers

§13. (1) In the event of any longer-term demand for labour which cannot be met by potentially available labour at home, the Federal Minister of Labour, Social Affairs and Consumer Protection may issue an ordinance for the subsequent calendar year identifying, in agreement with the Federal Minister of Economy, Family and Youth, occupations/job groups suffering from labour/skills shortages to which skilled foreign workers may be admitted pursuant to §12a. Jobs with labour/skills shortages are jobs where no more than 1.5 job-seekers are registered for each notified vacancy (jobless-to-vacancy ratio). Jobs with a jobless-to-vacancy ratio of up to 1.8 can be included if other objectifiable shortage indicators are identified, in particular increased in-house training activity of the companies in question, or if the affected job sector shows a rising wage trend that is above average. The vacancies reported by temporary work agencies pursuant to §3 (2) of the AÜG shall be identified separately when calculating the jobless-to-vacancy ratio.

(2) A committee to be established by the Administrative Board of Austria's public employment service (AMS) pursuant to the provisions of the Public Employment Service Act (AMSG), FLG I no 313/1994, may submit proposals by mutual agreement for jobs with labour/skills shortages as defined in para (1). If no agreement can be reached, the representatives of the two sides of industry may submit separate proposals.

(FLG no 450/1990, article I item 22)

(FLG I no 126/2002, article 3 item 22)

(FLG I no 78/2007, article I item 5)

(FLG I no 25/2011, article 1 item 17)

§13a. is deleted

(FLG no 450/1990, article I item 23)

(FLG I no 126/2002, article 3 item 23)

§13b. is deleted

(FLG no 450/1990, article I item 23)

(FLG no 895/1995, article I item 4b)

(FLG I no 78/1997, article I item 28)

(FLG I no 78/1997, article I item 28)

(FLG I no 126/2002, article 3 item 23)

Foreign artists

§14. (1) Foreign nationals whose employment is primarily defined by activities of artistic production shall be admitted for employment as artists if the requirements defined in §4 (1) are met with the exception of para (1) item 1. If a foreign national fails to meet one of these requirements, admission may be refused only if any detriment to the public interests protected by this Federal Act is disproportionately more serious than any inroads into the foreign national's freedom of art.

(2) In the light of para (1) particular consideration shall be given to the fact that refusal of admission does not result in the foreign national being prevented from reasonably producing his/her art. Such consideration shall not be decided by any judgement on the value of the artistic activity, nor by any judgement on the artistic quality of the artist.

(3) In case of reasonable doubt, the foreign national or his/her employer shall establish credibly the intended performance of an artistic activity.

(FLG no 314/1994, article 11 item 7)

(FLG I no 126/2002, article 3 item 24)

(FLG I no 25/2011, article 1 item 18)

(FLG I no 72/2013, article 1 item 22)

Settled foreign nationals

§15. (1) Foreign nationals holding a settlement permit (*Niederlassungsbewilligung*) or a settlement permit – family member (*Niederlassungsbewilligung – Angehöriger*) shall be given unrestricted access to the labour market in a change-of-purpose procedure for granting a Red White Red Card plus (§17) if

1. they have been legally settled in the federal territory for two years and are progressively integrated, or
2. they hold a valid work permit or a valid exemption certificate, or
3. they are the spouse, registered partner or unmarried under-age child (including stepchild and adoptive child) of a foreign national pursuant to item 1 or 2 and have been legally settled in the federal territory for a minimum of twelve months.

(2) Persons who have already been employed in the federal territory under a permit or whose admission to employment is expedient in view of their special social and familial base in Austria are deemed to be progressively integrated within the meaning of para (1) item 1. They include in particular reunified family members who have met the requirements of Module I of the Integration Agreement. The requirement of having been legally settled for two years can be waived in the case of victims of family violence if entry into employment is necessary to ensure an independent way of living.

(FLG no 450/1990, article 1 item 25)

(FLG I no 475/1992, items 5 to 7)

(FLG no 314/1994, article 11 items 1 and 9)

(FLG I no 126/2002, article 3 item 26)

(FLG I no 101/2005, items 28 to 30)

(FLG I no 78/2007, article 1 item 15)

(FLG I no 25/2011, article 1 item 6)

(FLG I no 72/2013, article 1 item 22)

§16. is deleted

(FLG no 231/1988, article I item 17)

(FLG no 475/1992, item 9)

(FLG no 314/1994, article 11 item 1)

(FLG I no 72/2013, article 1 item 21)

CHAPTER IIIa

Unrestricted access to the labour market

§17. Foreign nationals holding

1. a Red White Red Card plus (§41a of the NAG), or
2. a residence title 'family member' (§47 of the NAG) 'permanent residence - EU' (§45 of the NAG), or
3. a Residence Entitlement plus (§54 (1) item 1 of the AsylG 2005)

shall be entitled to employment throughout the entire federal territory.

(FLG no 231/1988, article I item 12)

(FLG I no 126/2002, article 3 item 28)

(FLG I no 101/2005, item 32)

(FLG I no 25/2011, article 1 item 19)

(FLG I no 72/2013, article 1 item 23)

CHAPTER IV

Posting of workers and cross-border temporary agency workers

(FLG I no 66/2017, article I item 17)

§18. (1) Foreign nationals employed in Austria by a foreign employer which has no place of business in the federal territory shall require an employment permit, unless otherwise specified below. If the duration of this work does not exceed six months, foreign nationals shall require a posting permit that may be issued for a period not exceeding four months.

(FLG no 895/1995, article I items 4e and f)

(2) Foreign nationals pursuant to para (1) who are employed 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, shall not require an employment permit or posting permit.

(FLG no 201/1996, article 32 item 8)

(3) Foreign nationals

1. posted for the purpose of on-the-job training for no more than six months by their foreign employer within the scope of a joint venture and on the basis of a company training programme to a business established in the federal territory, or
2. posted for no more than 50 weeks by a foreign affiliate within an internationally operating group on the basis of a qualified intra-group initial training and further training programme to the headquarters in the federal territory, or
3. posted for no more than 24 months by their internationally operating employer as qualified employees assigned to corporate management obliged to enter in-house training or further training (junior executives) and to rotate in respect of their places of employment to an entity in the federal territory belonging to the same undertaking or to the same group of undertakings

shall not require a posting permit or an employment permit. The owner of the domestic training enterprise (item 1) or of the headquarters (item 2) or of the domestic entity (item 3) shall notify the competent regional office of the public employment service (AMS) of the training measure, or of the initial training and further training measure, respectively, not later than two weeks prior to its commencement, submitting the joint venture agreement and the training programme, or the initial and further training programme, respectively, specifying targets, measures and duration of such training, or initial and further training, respectively. The regional office shall issue a confirmation of notification within two weeks. On-the-job training, or initial and further training, respectively, shall begin only upon receipt of the confirmation of notification.

(FLG I no 78/1997, article I item 31)

(FLG I no 126/2002, article 3 item 29)

(FLG I no 136/2004, article 14 item 1)

(FLG I no 66/2017, article I item 18)

(3a) Para (3) shall apply to foreign nationals assigned within their employment relationship to the federal territory as representatives of foreign bodies representing

stakeholder interests under work contracts including mandatory rotation in respect of the places of employment on the proviso that the host entity notifies the competent regional office of the public employment service (AMS) of such employment submitting the relevant work contract and the assignment letter.

(FLG I no 66/2017, article I item 19)

(4) If the duration of the employment specified in para (1) exceeds four months, an employment permit shall be required. An application for an employment permit shall be submitted by the owner of the enterprise employing the foreign national to the competent regional office of the public employment service (AMS) prior to the end of the fourth month after employment has been taken up. In the event of an employment permit being refused, employment shall be terminated not later than two weeks after service of refusal.

(FLG no 895/1995, article I item 4h)

(FLG I no 78/1997, article I item 32)

(5) Foreign nationals pursuant to para (1) employed within the framework of intergovernmental cultural agreements shall not require posting permits. The facility at which the work is performed, or the event organiser, shall notify the competent regional office of the public employment service (AMS) of the employment not later than on the day when work is taken up.

(FLG no 314/1994, article 11 item 1)

(FLG no 895/1995, article I item 4i)

(6) Foreign nationals pursuant to para (1) employed at ensemble guest performances in theatres shall not require posting permits provided that the duration of the employment does not exceed one week. The event organiser shall notify the competent regional office of the public employment service (AMS) of such employment not later than on the day when work is taken up.

(FLG no 314/1994, article 11 item 1)

(FLG no 895/1995, article I item 4i)

(7) If employment under para (6) exceeds a period of one week, the event organiser shall submit the application for a posting permit to the competent regional office of the public employment service (AMS) after having learned of this fact, but at least within one week after employment has been taken up.

(FLG no 895/1995, article I item 4i)

(8) In the event of work that cannot be performed by nationals, it shall be permissible to issue a posting permit or an employment permit for a posted foreign national without examining whether the situation and the development of the labour market permit such employment.

(FLG no 895/1995, article I item 4j)

(9) The duration of the work or employment shall be ascertained independently of the duration of the assignment of the foreign national concerned for this work or employment.

(10) The wage and working conditions pursuant to §4 (1) item 2 and §8 (1) shall be deemed fulfilled if the employment does not negatively impact on the wage and working conditions of domestic workers.

(FLG I no 72/2013, article 1 item 24)

(11) Posting permits may not be issued for work customarily performed in the federal territory by companies of the following economic activities: structural and civil engineering, building installation, other building and construction business and the leasing of construction machinery and equipment with operating staff, in accordance with the ÖNACE classification system.

(FLG no 201/1996, article 32 item 9)

(12) No employment permit or posting permit shall be required for foreign nationals posted or hired to Austria by an undertaking established in another Member State of the European Economic Area for the performance of a temporary service if

1. the foreign national is properly admitted for employment beyond his/her posting or hiring to Austria in the Member State where the enterprise is established and is duly employed with the posting company, and
2. the Austrian wage and working conditions under §3 (3)-(6), §4 (2)-(5) and §5 of the Act Combating Wage and Social Dumping (*Lohn- und Sozialdumping-Bekämpfungsgesetz – LSD-BG*), FLG no 44/2016, for hired-out workers the Austrian wage and working conditions under §10 of the Temporary Employment Act (*Arbeitskräfteüberlassungsgesetz – AÜG*), §3 (4), §4 (2) and (5) and §6 of the LSD-BG as well as the social insurance provisions are met, and
3. where hiring-out is concerned and there is no reason not to approve the hiring out of such a worker pursuant to §18 (1) of the AÜG.

The Central Coordination Agency for monitoring illegal employment under the Act Governing the Employment of Foreign Nationals and the Act Combating Wage and Social Dumping of the Federal Ministry of Finance (= Central Coordination Agency) shall report the employment of posted or hired out foreign nationals as defined in §19 (2)-(4) of the LSD-BG immediately to the competent regional office of the public employment service (AMS). The regional office of the public employment service shall, within two weeks of receipt of the report, confirm to the undertaking and to the client or hirer using the service that the requisite conditions are met (EU posting confirmation or EU hiring confirmation, respectively) or, if they are not met, ban such posting or hiring. Notwithstanding the reporting requirement under §19 (2)-(4) of the LSD-BG as well as other obligations under the AÜG, employment may commence, provided the conditions are met, even without an EU posting confirmation or an EU hiring confirmation being issued.

(FLG I no 66/2017, article I item 20)

(13) Para (12) shall apply *mutatis mutandis* to foreign intra-corporate transferees (§2 (13)) who already hold a valid intra-corporate transferee permit bearing the acronym 'ICT' from another Member State of the European Union and who are temporarily assigned for up to 90 days within a period of 180 days to one or several entities belonging to the same undertaking or to the same group of undertakings established in the federal territory and where the transferees work accordingly. Provided the conditions are met, an EU posting confirmation shall be issued. Unless the conditions are met, posting shall be prohibited and the competent authority of the Member State which has issued an intra-corporate transferee permit bearing the acronym 'ICT' shall be informed of any prohibition.

(FLG no 895/1995, article 1 item 4k)

(FLG I no 78/1997, article 1 item 33)

(FLG I no 120/1999, article 4 item 3)

(FLG I no 28/2004, article 1 item 4)

(FLG I no 101/2005, item 33)

(13) to (16) are deleted

(FLG I no 101/2005, item 34)

(FLG I no 78/2007, article 1 item 16)

(FLG I no 66/2017, article I item 21)

Foreign intra-corporate transferees

§18a. (1) Foreign nationals shall be admitted to employment as intra-corporate transferees (§2 (13))

1. if immediately before the date of transfer they have been employed
 - a) as managers or specialists for at least nine uninterrupted months, or
 - b) as trainee employees for at least six uninterrupted monthsin the same undertaking or group of undertakings, if they are employed in the federal territory in this function and demonstrably have the required professional qualification and experience or, where trainee employees are concerned, the required university degree,
2. if a work contract with the foreign employer and, where necessary, an assignment letter are submitted including evidence that the foreign national, at the end of the assignment, will be able to transfer back to an entity that belongs to the same undertaking or the same group of undertakings and is established in a third country,
3. if the Austrian wage and working conditions under §3 (3)-(6), §4 (2)-(5) and §5 of the LSD-BG as well as the social insurance provisions are met,
4. if they are employed in a work place of an entity which is not under strike or lock-out, whereby making the foreign national available to third parties, notwithstanding their potential use by clients of the host entity for the purpose of executing service contracts, shall not be deemed to be employment in the entity,
5. if for the pursuit of a regulated profession the relevant requirements are met,
6. unless the undertaking of the host entity has repeatedly employed foreign nationals in contravention of this Federal Act or §29 of the LSD-BG in the past twelve months prior to filing the application,
7. unless the host entity has been established for the primary purpose of facilitating the entry of intra-corporate transferees, and
8. if the employer's business established abroad or the host entity pursue a genuine economic activity and unless the employer's or the host entity's business is being or has been wound up under insolvency laws applicable to its place of business.

(2) Except for item 1, para (1) shall also apply to foreign intra-corporate transferees who hold a valid intra-corporate transferee permit ('ICT') from another Member State of the European Union and who are temporarily assigned to an entity belonging to the same undertaking or to the same group of undertakings established in the federal territory and where the transferees work accordingly.

(3) The Federal Minister of Labour, Social Affairs and Consumer Protection may issue ordinances defining in numbers the quotas for the employment of intra-corporate transferees. In so doing, he shall take into account the absorption capacity of the domestic labour market and the need to secure the competitiveness of domestic undertakings.

(FLG I no 66/2017, article I item 22)

CHAPTER V

Procedure Applications pursuant to Chapters II and IV

§19. (1) Notwithstanding paras (2) and (3) and §18, applications for being issued a conditional assurance or a confirmation of notification or an employment permit or a posting permit shall be filed by the employer with the regional office of the public employment service (AMS) in the area district where the envisaged place of employment is located, or, in the case of varying places of employment, with the competent regional office of the public employment service, within whose remit the place of business of the employer falls, or, in the case of posting, with the regional office of the public employment service locally or technically competent regarding the first assignment.

(FLG no 314/1994, article 11 item 1)

(FLG no 895/1995, article I item 4I)

(FLG I no 72/2013, article 1 item 25)

(2) If the foreign national is employed in the enterprise of another employer beyond the period of time specified in §6 (2), the application for the employment permit or posting permit shall be filed by this employer.

(FLG no 895/1995, article I item 4I)

(3) In the absence of an employer in the federal territory, the application under para (1) shall be filed by a person in the terms of §2 (3), if any such exists, in all other cases by the foreign national. The application shall be filed with the regional office of the public employment service (AMS) in whose area district the work and/or employment is performed.

(FLG no 314/1994, article 11 item 1)

(4) Applications for an exemption certificate shall be filed by the foreign national with the competent regional office of the public employment service (AMS), within whose remit his/her residence, or, in the absence of such, his/her habitual place of abode falls.

(FLG no 450/1990, article I item 30)

(FLG no 314/1994, article 11 item 1)

(FLG I no 72/2013, article 1 item 26)

(5) Applications for a conditional assurance shall be filed prior to the foreign national's entry into Austria, while the application for an employment permit or posting permit shall be filed prior to the employment being taken up. Applications for renewal of an employment permit or exemption certificate shall be filed prior to the expiry of the respective period of validity.

(FLG no 450/1990, article I item 30)

(FLG no 895/1995, article I item 4I)

(FLG I no 72/2013, article 1 item 27)

(6) If a conditional assurance has been issued, the conditions to be met for an employment permit to be granted shall be verified before the application for an employment permit is filed.

(7) In the event of placement via the regional office of the public employment service (AMS), granting the employment permit or issuing the exemption certificate shall be done *ex officio*, provided that the conditions are met.

(FLG no 450/1990, article I item 31)

(FLG no 314/1994, article 11 item 1)

(FLG I no 72/2013, article 1 item 28)

(8) In the case of applications for minor modifications of the contents or the renewal of a conditional assurance, employment permit or exemption certificate, verification of the conditions may be limited to those that are being modified.

(FLG no 450/1990, article I item 32)

(FLG I no 72/2013, article 1 item 29)

(9) Applications pursuant to paras (1), (2), (3), (4), (5) and (8) shall be filed in writing using the application forms available at the AMS offices.

(FLG I no 78/1997, article I item 34)

(10) The technical competence of AMS offices shall depend on the ordinance governing labour market area districts (*Arbeitsmarktsprengelverordnung*), FLG no 928/1994 as amended.

(FLG I no 126/2002, article 3 item 30)

Decision

§20. (1) Decisions on applications pursuant to §19, on revocation of conditional assurances, employment permits or posting permits or exemption certificates, as well as on prohibition of employment pursuant to §18 (12), shall be taken by the competent regional office of the public employment service (AMS) pursuant to §19 (1), (3) and (4).

(FLG no 450/1990, article I, item 33 and 684/1991, item 5)

(FLG no 314/1994, article 11 item 1)

(FLG no 895/1995, article I item 4l)

(2) Save as otherwise provided in this Federal Act, the regional advisory board (Regionalbeirat) shall be heard prior to taking decisions and issuing confirmations pursuant to §18 (12) and (13). Any comment within the scope of the hearing shall be made within one week. The regional advisory board may specify that the issuing of conditional assurances and of confirmations pursuant to §18 (12) and (13) as well as the granting of employment permits and posting permits is deemed to be endorsed in particular in the case of a specific labour market situation or of specific personal circumstances of the foreign nationals concerned. Such specification shall be permissible only if it is proposed by a member of the regional advisory board or the *Land* directorate (Landesdirektion) and does not conflict with labour market policy interests.

(FLG no 450/1990, article I, item 33 and 684/1991, item 6)

(FLG no 314/1994, article 11 item 10)

(FLG I no 78/1997, article I item 35)

(FLG I no 25/2011, article 1 item 20)

(FLG I no 66/2017, article I item 23)

(3) A copy of the decision on the employment permit or its revocation shall also be delivered to the foreign national regardless of his/her standing in the procedure (§21). The same shall apply to the confirmation of notification pursuant to §3 (5) and to the posting permit pursuant to §18. Copies of employment permits that are intended for the foreign national shall include information on the proposed pay.

(FLG no 314/1994, article 11 items 1, 4 and 10)

(4) Copies of the decisions and certificates under this Federal Act which are produced with the aid of electronic data processing equipment or in a similar way shall not require any signature or certification.

(FLG no 450/1990, article I item 34)

(FLG no 684/1991, item 7)

(FLG no 895/1995, article I item 4m)

(FLG no 201/1996, article 32 item 10)

(FLG I no 72/2013, article 1 item 30)

Duration of procedure

§20a. Decisions on employment permits and conditional assurances shall be taken within six weeks by the regional office of the public employment service (AMS).

(FLG I no 78/1997, article I item 36)

(FLG I no 72/2013, article 1 item 31)

Preliminary authorisation to take up employment

§20b. (1) If the decision on the application for an employment permit is not served to the applicant within the time limit specified in §20a, the employer shall be permitted to employ the foreign national and shall be entitled to be issued a certificate to this effect, unless this time limit is suspended by a notification of the regional office of the public employment service (AMS) to the employer due to a delay caused by the latter. This entitlement to take up employment shall expire upon service of the decision, but not earlier than four weeks after this point in time.

(FLG no 450/1990, article I item 35)

(FLG no 314/1994, article 11 item 1)

(FLG I no 72/2013, article 1 item 32)

(2) The competent regional office of the public employment service (AMS) shall issue a certificate to the employer stating that the conditions for taking up work pursuant to para (1) are met.

(FLG no 450/1990, article I item 35)

(FLG no 314/1994, article 11 items 1 and 4)

(FLG I no 72/2013, article 1 item 32)

(3) A foreign national whose employment relationship is terminated as a result of the application for an employment permit being refused shall be entitled to damages same as if he/she had rightfully quit the employment prematurely, provided that refusal was based on grounds for which the employer is at fault.

(FLG no 450/1990, article I item 35)

(4) Entitlement pursuant to para (1) shall arise only if the foreign national is legally settled in the federal territory.

(FLG I no 78/1997, article I item 37)

(FLG I no 101/2005, item 35)

(FLG I no 66/2017, article I item 24)

Job-seeker visa for very highly qualified workers

§20c. (1) Prior to issuing a job-seeker visa, the AMS's Vienna *Land* office (Landesgeschäftsstelle; central point of contact) shall review the documents submitted pursuant to §24a of the FPG and inform the competent diplomatic mission or authority of whether the applicant meets the requirements of §12 in conjunction with those of Annex A.

(FLG I no 72/2013, article 1 item 33)

Admission procedure for very highly qualified workers, skilled workers, other key workers, graduates of tertiary education and artists

§20d. (1) Very highly qualified workers, skilled workers as well as other key workers and graduates of tertiary education shall submit with the competent authority defined in the NAG their application for a Red White Red Card, key workers under §12c their application for an EU Blue Card and foreign artists their application for a Settlement Permit – Artist together with a written declaration by their employer stating that he or she will comply with the conditions of employment indicated in the application. Applications may also be filed in Austria by the employer on behalf of the foreign national. Unless the application is to be denied or rejected pursuant to §41 (3) items 1 or 2 of the NAG, the competent authority defined in the NAG shall communicate the application without delay to the competent regional office of the public employment service (AMS), within whose remit the employer's place of business falls, for reviewing the requirements for admission. The regional office of the public employment service shall hear the regional advisory board (Regionalbeirat) and confirm to the competent authority defined in the NAG within four weeks – depending on the application – in writing that the conditions for admission

1. as very highly qualified worker pursuant to §12,
2. as skilled worker pursuant to §12a,
3. as key worker pursuant to §12b item 1,
4. as key worker pursuant to §12b item 2 (graduate of tertiary education), or
5. as key worker pursuant to §12c (candidate for EU Blue Card), or
6. as artist pursuant to §14

are met. The competent authority defined in the NAG shall inform the regional office of the public employment service of the issue of the relevant residence title and include information on the period of validity. If these requirements are not met, the regional office of the public employment service shall refuse admission and communicate without delay the relevant official decision to the competent authority defined in the NAG for the latter to serve this decision to the employer and the foreign national.

(FLG I no 66/2017, article I item 25)

(2) Admission pursuant to para (1) shall apply to employment throughout the entire federal territory with the employer indicated in the application. Following commencement of employment the regional office of the public employment service (AMS) shall review without delay the foreign worker's registration with the relevant social insurance scheme. If such registration fails to comply with the criteria underlying admission, it shall notify the competent authority defined in the NAG (§28 (6) of the NAG). If the employer is changed before a Red White Red Card plus (§41a of the NAG) is issued, para (1) shall apply *mutatis mutandis*.

(3) Admission to employment in jobs within an enterprise affected by strike or lockout shall be denied.

(4) The admission of self-employed key workers shall be subject to the provisions of §24.

(FLG I no 72/2013, article 1 item 33)

Red White Red Card plus

§20e. (1) Prior to the issue of a Red White Red Card plus (§41a (1), (2) and (7), §47 (4), §56 (3) of the NAG) the competent regional office of the public employment service (AMS) where the foreign national resides or, in cases defined in items 2 or 3, the competent regional office of the public employment service where the employer's business is established shall confirm to the competent authority defined in the NAG that the foreign national

1. meets the requirements pursuant to §15, or
2. has been employed as holder of a Red White Red Card for a period of 21 months within the past 24 months according to the criteria underlying admission, or
3. has been employed as holder of an EU Blue Card for a period of 21 months within the past 24 months according to the criteria underlying admission. If item 1 applies the regional advisory board shall be heard prior to confirmation.

If item 1 applies the regional advisory board (Regionalbeirat) shall be heard prior to confirmation.

(FLG I no 66/2017, article I item 26)

(2) Periods of employment within the meaning of para (1) items 2 and 3 shall also include periods of

1. annual leave,
2. maternity allowance,
3. leave under the 1979 Maternity Protection Act (MSchG, FLG no 221), the Paternity Leave Act (VKG, FLG no 651/1989) or the 1984 Agricultural Labour Act (LAG),
4. training leave pursuant to §11 of the Act Governing Adjustments to Employment Contracts Law (AVRAG),
5. any other relatively short leave agreed with the employer, and
6. sickness governed by the Act on Continuing Payment of Wages (EFZG, FLG no 399/1974), the White-Collar Workers' Act (AngG, FLG no 1921) or §1154b of Austria's Civil Code (ABGB, Law Gazette no 946/1811).

(3) Unless these requirements are met, the competent regional office of the public employment service (AMS) shall refuse confirmation pursuant to para (1) items 1, 2 or 3 and communicate without delay the relevant official decision to the competent authority defined in the NAG for the latter to serve this decision to the foreign national.

(FLG I no 72/2013, article 1 item 33)

(FLG I no 66/2017, article I item 27)

Admission procedure for intra-corporate transferees and their family members

§20f (1) Foreign intra-corporate transferees shall submit with the competent authority defined in the NAG their application for intra-corporate transferee permits (ICT) together with a written declaration by the owner of the host entity stating that it will comply with the conditions of employment indicated in the application. Applications may also be filed in Austria by the owner of the host entity on behalf of the foreign national. Unless the application is to be denied or rejected pursuant to §58 (2) items 1 or 2 of the NAG, the competent authority defined in the NAG shall communicate the application without delay to the competent regional office of the public employment service (AMS), within whose remit the host entity's place of business falls, for reviewing the requirements for admission. The regional office of the public employment service shall confirm to the competent authority defined in the NAG within four weeks in writing that the requirements for admission as intra-corporate transferee are met as defined in §18a (1). The competent authority defined in the NAG shall inform the regional office of the public employment service of the issue of the relevant residence title and include information on the period of validity. Unless these requirements are met, the regional office of the public employment service shall refuse admission and communicate without delay the relevant official decision to the competent authority defined in the NAG for the latter to serve this decision to the host entity and the foreign national.

(2) The procedure under para (1) shall be applied to foreign intra-corporate transferees who already hold a valid intra-corporate transferee permit from another Member State of the European Union and who are temporarily assigned for more than 90 days to the federal territory and who intend to work there accordingly provided that the application for a residence permit for mobile intra-corporate transferees ('mobile ICT'), including all the necessary documents, is filed with the competent authority defined in the NAG not later than 20 days prior to the beginning of the intended employment in the federal territory or prior to expiry of the EU posting confirmation as defined in §18 (13). Where the application is belated or incomplete this time limit shall begin to run from the day on which the application, including all the necessary documents, is received by the competent authority defined in the NAG. If within this time limit, and despite submission of all documents, no decision of the regional office or of the competent authority defined in the NAG is served, employment may commence provisionally, provided the conditions are met as defined in §18a (2), even without a residence permit for mobile intra-corporate transferees ('mobile ICT') being issued.

(3) Admission pursuant to paras (1) and (2) shall apply to the approved employment as manager, specialist or trainee employee with the host entity or entities specified in the application. Any activity of the worker exercised at the sites of the host entity's clients under service contracts and within the federal territory shall be covered by the admission. Following commencement of employment the regional office of the public employment service (AMS) shall review without delay the foreign worker's registration with the relevant social insurance scheme. If such registration fails to comply with the criteria underlying admission, it shall notify the competent authority defined in the NAG (§28 (6) of the NAG).

(4) The procedure pursuant to §20d shall apply *mutatis mutandis* to applications by family members of a foreign intra-corporate transferee (§18a (1) or (2)) for residence permits for members of a 'family group' as defined in §69 (3) of the NAG provided that this residence permit is intended to provide access to the labour market to this family member. The family members specified in these applications shall be given access to the labour market with this permit if by analogy the requirements of §4 (1) save items 1 and 9 are fulfilled. The labour market test shall be conducted as defined in §4b (3). The hearing of the regional advisory board (Regionalbeirat) shall be waived.

(FLG I no 66/2017, article I item 28)

Appeal

§20g. (1) Appeals against decisions of the regional office of the public employment service (AMS) shall be processed by the Federal Administrative Court (*Bundesverwaltungsgericht*), no later than within three months of the date of their receipt, by an appeal board including two lay judges having expert knowledge in the matter, one representing the employer's side and the other the employee's.

(2) These expert lay judges and their substitutes shall have special knowledge of the labour market and of legislation on the employment of foreign nationals and shall be proposed in appropriate numbers by the Federal Chamber of Labour (BAK) and the Austrian Economic Chamber (WKO).

(3) The competent regional office of the public employment service (AMS) may repeal or change the contested decision within ten weeks of the date of receipt of the appeal or it may deny or reject the appeal (preliminary appeal decision).

(4) Appeals against the revocation of conditional assurances, employment permits, posting permits, or exemption certificates have no suspensive effect. Appeals against the revocation of employment permits may be granted suspensive effect.

(5) Otherwise the provisions of the Administrative Court's Procedural Act (VwGGV, FLG I no 33/2013) shall apply.

(6) If an appeal is lodged against any ruling or order of the Supreme Administrative Court (VwGH), the regional office of the public employment service (AMS) shall suspend the procedure until a decision is taken by the Federal Administrative Court (VwGH).

(FLG I no 72/2013, article I item 33)

(FLG I no 66/2017, article I items 28 and 29)

Standing of the foreign national in the procedure

§21. Foreign nationals shall have the standing of a party in all proceedings in which their personal circumstances are significant for the decision, as well as in such cases where there is no person within the meaning of §2 (3). In all other proceedings, foreign nationals shall have the standing of a person involved.

(FLG no 450/1990, article I item 36)

Committee on Foreign Nationals

§22. (1) In matters provided for in this Federal Act, as well as in all other matters of fundamental significance for the employment of foreign nationals including international matters of labour migration and EU migration law, the Committee on Foreign Nationals shall be heard.

(FLG I no 25/2011, article 1 item 21)

(2) The Committee on Foreign Nationals is a committee of the administrative board of the AMS that is made up of two representatives each from the Federal Chamber of Labour, the Austrian Trade Union Federation and the Federal Economic Chamber, as well as one representative each from the Federation of Austrian Industry and the Presidents' Conference of the Austrian Chambers of Agriculture.

(FLG no 314/1994, article 11 item 11)

Committees on Foreign Nationals of the *Länder* directorates

§23. (1) The Committees on Foreign Nationals of the *Länder* directorates shall, apart from the duties conferred upon them pursuant to other statutory provisions, assist in the fulfilment of the duties incumbent on the *Länder* AMS offices, inasmuch as provided in this Federal Act.

(FLG no 231/1988, article I item 22)

(FLG no 314/1994, article 11 items 4 and 13)

(2) The Committee on Foreign Nationals of the *Land* directorate (Landesdirektion) of the AMS shall include two members who are employers' representatives nominated by the Federal Economic Chamber, and two members who are employees' representatives nominated by the Chamber of Labour.

(FLG no 314/1994, article 11 item 14)

CHAPTER VI

Joint provisions

Expert opinions for self-employed key workers and founders of start-ups

§24. (1) Foreign nationals shall be admitted as self-employed key workers if their intended economic activity, in particular in respect of the related transfer of investment capital of at least €100,000 or the creation of new jobs or the safeguarding of existing jobs, is of overall economic benefit or at least of importance to any given region.

(2) Foreign nationals shall be admitted as founders of start-ups if they

1. score the necessary minimum points for the criteria listed in Annex D;
2. develop innovative products, services, processes or technologies within the framework of the start-up and launch them on the market.
3. submit a conclusive business plan for founding and operating the undertaking;
4. actually and personally exercise a significant influence on the management of the proposed business, and
5. provide evidence of capital for the business to be started totalling at least €50,000 of which at least half is equity.

(3) In respect of foreign nationals pursuant to paras (1) or (2), the competent *Land* office (Landesgeschäftsstelle) of the public employment service (AMS), within whose remit the intended place of business falls, shall prepare within three weeks in consultation with the *Land* directorate (Landesdirektion) the expert opinion required by the admission procedure under residence law pursuant to §41 of the NAG on whether the conditions of paras (1) or (2) are met.

(4) Foreign nationals as defined in para (2) shall be given unrestricted access to the labour market in a change-of-purpose procedure for granting a 'Red White Red Card plus' in keeping with §41 (5) and §41a (7a) of the NAG if in the founded business they

1. employ at least two full-time workers,
2. actually and personally exercise a significant influence on the management of the business,
3. either achieved annual sales of at least €200,000 or have been able to obtain further financing of at least €100,000, and
4. actually offer or develop an innovative product or an innovative service,

and if the competent *Land* office (Landesgeschäftsstelle) of the public employment service (AMS), within whose remit the foreign national's place of business falls, after consultation with the *Land* directorate (Landesdirektion), confirms by way of a written expert opinion to the competent authority as defined in the NAG that the foreign national in question meets these conditions.

(5) Unless the conditions defined in para (4) are met, the competent *Land* office (Landesgeschäftsstelle) of the public employment service (AMS), after consultation with the *Land* directorate (Landesdirektion), informs by way of a written expert opinion the competent authority defined in the NAG that the foreign national in question fails to meet the conditions defined in para (4).

(FLG I no 78/1997, article I item 38)

(FLG I no 126/2002, article 3 item 31)

(FLG I no 101/2005, item 36)

(FLG I no 66/2017, article I item 30)

Relationship to residence title

§25. The conditional assurance, the employment permit or posting permit and any confirmation of notification issued under this Federal Act shall not release the foreign national of his/her obligation to comply with the applicable regulations governing entry and stay of foreign nationals.

(FLG no 450/1990, article I item 37)

(FLG no 895/1995, article I item 4I)

(FLG I no 72/2013, article 1 item 34)

Monitoring, information and reporting requirements

§26. (1) Employers shall be obliged to report the number and names of foreign nationals employed by them to the *Land* offices (Landesgeschäftsstellen) and the regional offices of the public employment service (AMS) as well as to the health insurance institutions and the fiscal authorities upon such entities' request. Employers and foreign nationals shall be obliged to furnish the information required to implement this Federal Act to the authorities set forth above and the health insurance institutions as well as the Federal Administrative Court and to allow such entities to inspect the requisite records. Employers shall ensure that in the event of their absence from the premises or place of work another individual will be present and provide the requisite information to the authorities and institutions set forth above and grant them access to the requisite records.

(FLG no 450/1990, article I item 39)

(FLG no 314/1994, article 11 items 1, 4 and 15)

(FLG I no 120/1999, article 4 item 4)

(FLG I no 68/2002, article 5 item 3)

(FLG I no 103/2005, article 5 item 1)

(FLG I no 72/2013, article 1 item 35)

(2) In performing their duties, the authorities and officers of the fiscal authorities set forth in para (1) above as well as the officers of the health insurance institutions shall have the right to enter the premises, workshops and external premises as well as the social rooms used by employees and to use roads otherwise closed to the public.

(FLG no 450/1990, article I item 40)

(FLG I no 68/2002, article 5 item 4)

(FLG I no 103/2005, article 5 item 1)

(3) When entering an enterprise, the authorities and officers of the fiscal authorities set forth in para (1) above and the health insurance institutions shall notify the employer, and, in the case that the employer has work performed at a customer's place, such customer or their authorised representatives and the works council, of their presence; such notification shall not unnecessarily delay the beginning of inspection. In enterprises supervised by the mining authorities, the person holding a mining licence or a representative named by such licensee shall be notified before starting inspection. If so requested, the officers shall prove their identity by showing an official ID card. The employer, its customer or their authorised representatives and the works council shall be free to accompany the officers while they perform their official duties at the premises; if so requested by the officers, the employer, its customer or their authorised representatives shall be obliged to come along. Inspection shall if possible be carried out without interfering with plant operations.

(FLG no 450/1990, article I item 41)

(FLG I no 68/2002, article 5 item 4a)

(FLG I no 103/2005, article 5 item 1)

(4) The officers of the fiscal authorities shall be authorised within the scope of their activities to establish the identity of persons, to stop and check vehicles and other means of transport if there is cause to assume that such persons are foreign

workers who are employed or are used to render work. In the event that, due to imminent danger, there is no time to wait for law enforcement officers to intervene, such officers of the fiscal authorities shall be authorised to arrest such foreign nationals on behalf of the aliens police authority if there are grounds to assume that such foreign nationals work or wish to work on Austrian territory without having the requisite permit and that such foreign nationals are not lawfully on Austrian territory. In such activities, the officers of the fiscal authorities shall have the authority of law enforcement officers as regulated in §35 of the Administrative Penalties Act (VStG). Such foreign nationals shall be informed in an appropriate manner of their entitlements under §29 and the possibilities of enforcement, and they shall be handed over promptly to the aliens police authority or the nearest law enforcement post.

(FLG no 450/1990, article I item 41)

(FLG I no 199/1999; Constitutional Court 6 October 1999, G 249/98-15 ff.)

(FLG I no 120/1999, article 4 item 5)

(FLG I no 68/2002, article 5 item 5)

(FLG I no 101/2005, item 37)

(FLG I no 103/2005, article 5 item 1)

(FLG I no 25/2011, article I item 22)

(4a) Establishing the identity of a person shall mean checking the name, date of birth and place of residence of a person while such person is present. Such data shall be established with a degree of reliability suitable for the occasion. Individuals whose identity is to be established shall be informed thereof. Such individuals shall be obliged to contribute to the establishment of their respective identity and to acquiesce in the direct enforcement of the establishment of identity.

(FLG I no 68/2002, article 5 item 5a)

(5) The employer shall be obliged to report, within three days, to the competent regional office of the public employment service (AMS) the commencement and end of employment of foreign nationals who are subject to this Federal Act and hold no residence title 'permanent residence - EU'.

(FLG no 19/1993, item 3)

(FLG no 314/1994, article 11 item 1)

(FLG I no 126/2002, article 3 item 32)

(FLG I no 78/2007, article 1 item 17)

(FLG I no 25/2011, article 1 item 23)

(FLG I no 72/2013, article 1 item 36)

(6) A company outsourcing in full or in part the performance of a service to another company shall request the subcontracted company, prior to the commencement of employment, to prove within one week that it has obtained the authorisations required under this Federal Act for the employed foreign workers. Unless the subcontractor acts on this request in due time, the subcontracting company shall notify without delay the Central Coordination Agency (ZKO) for monitoring illegal employment of the Federal Ministry of Finance (BMF).

(FLG I no 25/2011, article 1 item 24)

Mutual assistance and notification requirement

§27. (1) All government authorities and offices, the Construction Workers' Fund for Holiday and Severance Pay, the social insurance institutions and the Federation of Austrian Social Insurance Institutions shall, within the scope of their activities, assist the fiscal authorities under the terms of the Fiscal Administration Act (AVOG), the AMS offices and the Federal Administrative Court in the fulfilment of their tasks under this Federal Act. The social insurance institutions and the Federation of Austrian Social Insurance Institutions shall be obliged to make available, by way of computer-based transmission, any data which are stored by them on insurance periods to the BMF's Central Coordination Agency for monitoring illegal employment under this Federal Act and the Act Amending Labour Contract Law (AVRAG), as well as to the AMS offices and the Federal Administrative Court and which provide an essential prerequisite for such entities to fulfil their tasks under this Federal Act.

(FLG no 231/1988, article I item 25)

(FLG no 450/1990, article I item 42)

(FLG no 314/1994, article 11 items 16 and 17)

(FLG I no 68/2002, article 5 item 7)

(FLG I no 99/2006, article 8 item 2)

(FLG I no 72/2013, article 1 item 37)

(2) The AMS offices and the fiscal authorities under the terms of the Fiscal Administration Act (AVOG) shall notify the competent authorities if, within the scope of their activities, they arrive at a reasonable suspicion that regulations under labour law, social security law, health and environment laws, tax laws or trade laws have been violated.

(FLG no 895/1995, article I item 4n)

(FLG I no 68/2002, article 5 item 8)

(FLG I no 99/2006, article 8 item 2)

(3) At the request of competent authorities and officers under this Federal Act, law enforcement officers shall assist them to ensure that they can exercise their monitoring powers within their legal scope of activities.

(FLG no 450/1990, article I item 42)

(4) The offices of the public employment service (AMS) shall inform the competent authorities responsible for performing the tasks under the NAG and FPG about any granted employment permits and additionally, in respect of foreign nationals employed under the quota regime pursuant to §5, about any termination of such employment reported by the employer (§26 (5)) as well as the relevant state police headquarters about the final revocation of any employment permit (§9 (1)).

(FLG no 475/1992, item 9b)

(FLG no 501/1993, item 3)

(FLG no 314/1994, article 11 item 18)

(FLG I no 78/1997, article 1 item 39)

(FLG I no 68/2002, article 5 item 8a)

(FLG I no 101/2005, item 38)

(FLG I no 78/2007, article 1 item 18)

(FLG I no 66/2017, article I item 31)

(5) In the event that any authority, social insurance institution, the Federation of Austrian Social Insurance Institutions or AMS office within the scope of their activities arrive at a reasonable suspicion that this Federal Act has been infringed upon, they shall be obliged to notify the competent AMS offices and the competent fiscal authority under the terms of the AVOG.

(FLG no 201/1996, article 32 item 11)

(FLG I no 68/2002, article 5 item 7)

(FLG I no 99/2006, article 8 item 2)

(6) The regional office of the public employment services (AMS) shall inform the Construction Workers' Fund for Holiday and Severance Pay about employment permits and EU posting confirmations pursuant to §18, which have been issued for the employment of foreign nationals in the construction business.

(FLG no 201/1996, article 32 item 11)

(FLG I no 68/2002, article 5 item 1)

(FLG I no 104/2005, article 3 item 1)

Data transmission

§27a. (1) The AMS offices shall be obliged to make available, free of charge, to the BMF's Central Coordination Agency for monitoring illegal employment under this Federal Act and the Act Amending Labour Contract Law (AVRAG) and to the Federal Administrative Court, by way of computer-based transmission in a format suitable for the BMF's Central Coordination Agency for monitoring illegal employment under this Federal Act and the Act Amending Labour Contract Law (AVRAG) and for the Federal Administrative Court, any personal data related to the work and employment relationship of foreign workers and their employers which may be required to handle the responsibilities under §§26, 27 and 28a of the Act Governing the Employment of Foreign Nationals (AuslBG).

(FLG I no 68/2002, article 5 item 9)

(FLG I no 72/2013, article 1 item 38)

(2) The BMF's Central Coordination Agency for monitoring illegal employment under this Federal Act and the Act Amending Labour Contract Law (AVRAG) shall be obliged to make available to the AMS offices and to the Federal Administrative Court, in a format suitable for the AMS and the Federal Administrative Court, any data which may be required to perform the tasks conferred under this Federal Act and which it has obtained within the scope of inspections or in keeping the central register of administrative offences.

(FLG I no 78/1997, article I item 40)

(FLG I no 68/2002, article 5 item 9)

(FLG I no 72/2013, article 1 item 39)

(3) The competent authority defined in the NAG shall, by the 15th day of each month, furnish to the *Land* AMS office, free of charge in a format suitable for the AMS to enable the AMS to fulfil the tasks conferred upon it pursuant to §30 (2) of the Public Employment Service Act (AMSG, FLG no 313/1994), computer-assisted information:

1. name, date of birth, gender and nationality of all foreign nationals who obtained a Red White Red Card, an EU Blue Card, a Red White Red Card plus, a Settlement Permit – Artist pursuant to §43a of the NAG, a or a 'family member' or 'permanent residence – EU' residence title or a residence card or permanent residence card for family members of an EEA citizen in the previous month, and
2. the period of validity of this residence title.

(FLG I no 126/2002, article 3 item 33)

(FLG I no 101/2005, item 39)

(FLG I no 25/2011, article 1 item 25)

(FLG I no 72/2013, article 1 item 40)

(FLG I no 66/2017, article I item 32)

Penal provisions

§28. (1) Unless the offence constitutes a punishable offence subject to the jurisdiction of courts (§28c), an individual commits an administrative offence and shall be punished by the district administrative authority

1. if he/she

a) employs, in violation of §3, a foreign national for whom neither an employment permit has been granted nor a confirmation of notification issued, or who fails to hold a Red White Red Card, an EU Blue Card, a residence permit for intra-corporate transferees ('ICT'), a residence permit for mobile intra-corporate transferees ('mobile ICT'), a residence permits for members of a family group with access to the labour market (§20f (4)) or a Settlement Permit – Artist applicable to this employment, or who fails to hold a Red White Red Card plus, a Residence Entitlement plus, an exemption certificate (§4c) or a residence title 'family member' or 'permanent residence – EU', or

(FLG no 895/1995, article I item 4q)

(FLG I no 78/1997, article I item 41)

(FLG I no 126/2002, article 3 item 34)

(FLG I no 101/2005, item 40)

(FLG I no 25/2011, article 1 item 26)

(FLG I no 66/2017, article I item 33)

b) uses, in violation of §18, work by a foreign national who is employed in Austria by a foreign employer with no place of business in the federal territory without any employment permit or posting permit being granted nor a confirmation of notification issued for this foreign national, or

(FLG no 895/1995, article I item 4r)

(FLG I no 126/2002, article 3 item 35)

c) employs, in spite of the prohibition of employment under §32a (8), a foreign national for whom neither an employment permit has been granted nor a confirmation of notification nor a free movement certificate issued,

(FLG I no 91/2009, item 1)

(FLG I no 25/2011, article 1 item 27)

by a fine of €1,000 to €10,000 in the case of unauthorised employment of not more than three foreign nationals for each such foreign national, by a fine of €2,000 to €20,000 in the case of the first and each subsequent repetition of the offence, by a fine of €2,000 to €20,000 in the case of unauthorised employment of more than three foreign nationals for each such foreign national, and by a fine of €4,000 to €50,000 for the first and each subsequent repetition of the offence;

(FLG no 895/1995, article I item 4s)

(FLG I no 136/2001, article 37 item 1 letter a)

(FLG no I 103/2005, article 5 item 2a)

2. if he/she

- a) employs, in violation of §3 (4), a foreign national without notifying the competent regional office of the public employment service (AMS) of such employment , or
(FLG no 314/1994, article 11 item 1)
(FLG no 895/1995, article I item 4t)
(FLG I no 78/1997, article I item 41)
- b) uses, in violation of §18 (5) or (6), work performed by a foreign national without notifying the competent regional office of the public employment service (AMS) of such employment in good time , or
(FLG no 314/1994, article 11 item 1)
(FLG no 895/1995, article I item 4t)
- c) fails to comply with his/her obligations under §26 (1), or
(FLG no 314/1994, article 11 item 19)
(FLG I no 120/1999, article 4 item 6)
- d) in violation of §26 (2) fails to permit the authorities and entities listed in §26 (1) access to the premises, workshops, external premises and social rooms used by the employees or fails to permit the use of private roads, or
(FLG no 314/1994, article 11 item 19)
(FLG no 895/1995, article I item 4u)
- e) impedes, in violation of §26 (3), the performance of official duties, or
f) impedes, in violation of §26 (4) or (4a), the performance of official duties
(FLG no 314/1994, article 11 item 19)
(FLG no 895/1995, article I item 4u)
(FLG I no 199/1999; Constitutional Court 6 October 1999, G 249/98-15 ff.)
(FLG I no 120/1999, article 4 item 7)
by a fine of €150 to €5,000, or in the case of letters c through f, by a fine of €2,500 to €8,000;
(FLG no 895/1995, article I item 4v)
(FLG I no 136/2001, article 37 item 1 letter b)
(FLG I no 103/2005, article 5 item 2b)

3. if he/she

- a) employs, in violation of §3 (6), a foreign national without keeping the permits or confirmations issued under this Act ready for inspection at the workplace, or
- b) fails to file the reports set forth in §26 (5),
by a fine of up to €2,000;
(FLG I no 136/2001, article 37 item 1 letter c)
(FLG I no 78/2007, article 1 item 19)

4. if he/she

- a) employs, in violation of §18 (12) or (13), a foreign national in Austria as an undertaking established in another Member State of the European Economic Area, or

b) uses, in violation of §18 (12) or (13), work by a foreign national posted, hired out or temporarily assigned under an intra-corporate transfer programme to work in Austria from an undertaking established in another Member State of the European Economic Area,

although §18 (12) items 1 or 2 and in the case of hiring out also item 3 are not met and – in the case of letter b – no EU posting confirmation or EU hiring confirmation has been issued, by a fine of €1,000 to €10,000 in the case of unauthorised employment of not more than three foreign nationals for each such foreign national, by a fine of €2,000 to €20,000 in the case of the first and each subsequent repetition of the offence, by a fine of €2,000 to €20,000 in the case of unauthorised employment of more than three foreign nationals for each such foreign national, by a fine of €4,000 to €50,000 for the first and each subsequent repetition of the offence;

(FLG I no 78/1997, article I item 42)

(FLG no 19/1993, item 4)

(FLG I no 136/2001, article 37 item 1 letter d)

(FLG I no 103/2005, article 5 item 2c)

(FLG I no 66/2017, article I item 34)

5. if he/she employs, in violation of §32a (4), without free movement certificate a foreign national who pursuant to §32a paras (2) or (3) has unrestricted access to the labour market, by a fine of up to €1,000.

(FLG I no 78/1997, article I item 42)

(FLG no 450/1990, article I item 43)

(FLG I no 136/2001, article 37 item 1 letter e)

(FLG I no 68/2002, article 5 item 10)

(FLG I no 28/2004, article 1 item 5)

(FLG I no 103/2005, article 5 item 2e)

(FLG I no 72/2013, article 1 item 41)

(2) The period of limitation (§31 (2) of the 1950 Administrative Penalties Act (VStG 1950; FLG no 172) for administrative offences as defined in para (1) shall be one year.

(FLG no 231/1988, article I item 26)

(3) The revenue from fines imposed pursuant to para (1) above shall accrue to the AMS.

(FLG no 231/1988, article I item 26)

(FLG no 314/1994, article 11 item 20)

(4) Para (1) shall not apply if the violation has been committed by an entity of a territorial authority. If a district administration authority suspects such an entity of having committed an offence, it shall report this, where a federal or *Länder* entity is concerned, to the supreme agency under whose authority the entity suspected of an offence is placed (Article 20 (1) first sentence of the Federal Constitutional Act (B-VG)), in all other cases to the supervisory agency.

(FLG no 450/1990, article I item 44)

(5) In the case of a violation pursuant to para (1) item 1, the district administrative authority shall take into consideration the unauthorised employment of a foreign national under poorer wage and working conditions than provided in the applicable legal standards for collective and plant-level agreements as aggravating circumstances in penalisation,

(6) Pursuant to para (1) item 1, a company outsourcing in full or in part the performance of a service to another company, as well as this subcontracted company, shall be fined if it

1. has with its full knowledge acquiesced in the violation of the provisions of this Federal Act on the part of the subcontractor or – in the case of further subcontracting – on the part of any other subcontractor during the performance of the contract, or
2. has failed to fulfil its obligation under §26 (6).

(FLG I no 78/1997, article I item 43)

(FLG I no 160/2002) *Note: abolished by Constitutional Court (VfGH), G 364/01 etc.

(FLG I no 25/2011, article 1 item 28)

(7) If a foreign national is found in an enterprise's workshops, workplaces or external premises which are not generally accessible to a general public, the district administrative authority shall be entitled without further evidence to assume unauthorised employment under this Federal Act, unless the employer is able to produce plausible evidence that this is not a case of unauthorised employment.

(FLG no 895/1995, article I item 5)

(8) Where the posting, cross-border temporary hire or intra-corporate transfer of workers are concerned, the administrative offence shall be deemed to have been committed in the district of the district administrative authority where the place of work (deployment) of the workers posted, hired out or transferred under an intra-corporate transfer programme is located, in case of changing places of work (deployment) where the offence is detected by public officers.

(FLG I no 113/2015, article 1 item 2)

(FLG I no 66/2017, article I item 35)

Parties to administrative penalty proceedings
and appointment of responsible officers

§28a. (1) In administrative penalty proceedings pursuant to §28 (1) items 1, 4 and 5, pursuant to §28 (1) item 2 letters c through f, the fiscal authority shall be a party to the proceedings if the offence concerns monitoring compliance with the provisions of this Federal Act by the fiscal authority, and it shall have the right to appeal against decisions and object against penalties imposed. The Federal Minister of Labour, Social Affairs and Consumer Protection and the Federal Minister of Finance shall have the right to appeal decisions of the administrative courts of the *Länder* before the Supreme Administrative Court. The administrative courts of the *Länder* shall communicate copies of such decisions without delay to the Federal Minister of Labour, Social Affairs and Consumer Protection.

(FLG no 201/1996, article 32 item 12)

(FLG I no 68/2002, article 5 item 11)

(FLG I no 103/2005, article 5 item 3)

(FLG I no 99/2006, article 8 item 3)

(FLG I no 72/2013, article 1 item 42)

(2) If the fiscal authority finds a violation which is subject to a penalty pursuant to

1. §28 (1) items 1, 4 and 5

2. §28(1) item 2 letters c to f

the fiscal authority shall file a complaint with the competent administrative penalty authority, in the case of item 2 only if the infringement concerns the monitoring of compliance with provisions of this Federal Act on the part of the fiscal authority. The complaint shall be accompanied by an application to impose a specific penalty.

(FLG I no 68/2002, article 5 item 11)

(FLG I no 103/2005, article 5 item 3)

(FLG I no 99/2006, article 8 item 3)

(FLG I no 72/2013, article 1 item 43)

(3) The appointment of responsible officers pursuant to §9 (2) and (3) of the Administrative Penalties Act (VStG) 1991, FLG no 52, as amended, to ensure compliance with this Federal Act shall become effective only after the competent fiscal authority has received a written notification of such appointment together with documentary evidence of the appointed person's consent to such appointment. This shall not apply to the appointment of responsible officers requested by the authority under §9 (2) of the VStG.

(FLG I no 68/2002, article 5 item 11)

(4) The employer shall without delay and in writing inform the competent fiscal authority of the revocation of appointment and retirement of the responsible officer under para (3).

(FLG no 895/1995, article I item 5a)

(FLG I no 68/2002, article 5 item 11)

(FLG I no 103/2005, article 5 item 3)

Central register of administrative offences

§28b. (1) Upon their request, the Federal Minister of Finance shall inform public contracting entities within two weeks whether an enforceable penalty under §28 (1) item 1 is to be assigned to the enterprise named in the request for information (tenderer, bidder, subcontractor). Such information shall specify either the number of penalties to be assigned pursuant to para (2), including the relevant data for the decisions (authority imposing the penalty, file reference number, date of decision and effectiveness, name and date of birth of the penalised individual, time at which the offence occurred, number of foreign nationals employed, penalties imposed) or the fact that no assignable penalty was found in the records.

(FLG I no 68/2002, article 5 item 12)

(FLG I no 72/2013, article 1 item 44)

(2) A penalty pursuant to §28 (1) item 1 shall be assigned to the enterprise named in the request for information if such penalty has been finally imposed on the tenderer, bidder or subcontractor directly or on a responsible body (§9 (1) of VStG) or a responsible officer (§9 (2) or (3) of VStG). The finally imposed penalty first registered shall be ignored. The second penalty shall be ignored upon expiry of one year after it has become final, any further penalty shall be ignored upon expiry of two years respectively after it has become final. Final penalties imposed for the unauthorised employment of several foreign nationals shall be counted as a single penalty if such foreign nationals were employed at the same place simultaneously or in a temporal connection.

(3) For the purpose of furnishing information pursuant to para (1) and §30 (3), and for the purpose of assessing the prerequisites for permits pursuant to §4 (1) items 4 and 5, the Federal Ministry of Finance shall keep a central register of administrative penalty proceedings pursuant to §28 (1) item 1. This register may be computer-based.

(FLG I no 68/2002, article 5 item 12)

(FLG I no 25/2011, article 1 item 29)

(4) The administrative penalty authorities and the administrative courts of the *Länder* shall without delay communicate to the Federal Ministry of Finance copies of final decisions issued by such authorities in penalty proceedings pursuant to §28 (1) item 1. They shall furthermore deliver copies of final decisions imposing a penalty pursuant to §28 (1) item 1 on responsible officers within the meaning of §9 (2) last sentence and (3) of the VStG to the enterprise to which such a penalty is assigned pursuant to para (2). The decision shall include a note to the effect that the final penalty is linked to registration in the central register of administrative offences (*Verwaltungsstrafevidenz*) of the person charged and of the enterprise to which the penalty is assigned.

(FLG I no 120/1999, article 4 item 8)

(FLG I no 68/2002, article 5 item 12)

(FLG I no 72/2013, article 1 item 45)

§28b

(5) The Federal Minister of Finance shall inform upon request any enterprises tendering for public contracts abroad whether any final penalties are assignable to them pursuant to §28 (1) item 1. Information pursuant to §30b (3) shall include the number of final penalties imposed under §28 (1) item 1 and the names of the foreign nationals involved. Any penalties deleted pursuant to §55 (1) of VStG shall not be taken into account.

(6) Para (4) shall apply *mutatis mutandis* also for penalties pursuant to §28 (6).

(FLG I no 25/2011, article 1 item 30)

Punishable acts

§28c. (1) Whoever, in violation of §3 (1), employs a larger number of foreign nationals without residence title simultaneously in the federal territory or an under-age foreign national without residence title in the federal territory shall be punished by a court with imprisonment of up to six months or a penalty of up to 360 day-fines.

(2) Whoever in violation of §3 (1)

1. employs a foreign national without residence title in particularly exploitative working conditions in the federal territory,
2. employs a foreign national without residence title in the federal territory of whom he/she knows that he/she is a victim of human trafficking (§104a of the Criminal Code [StGB]), or
3. employs a larger number of foreign national without residence title for more than one month in the federal territory

shall be punished with imprisonment of up to two years.

(3) The foreign national employed without authorisation shall not be punished as an accessory to the crime (§12 third case of the Criminal Code – StGB, FLG no 60/1974).

(4) Paras (1) and (2) shall not apply if the act is liable to prosecution which involves the same or a more severe punishment under different provisions.

(FLG I no 25/2011, article 1 item 31)

(FLG I no 72/2013, article 1 item 46)

Entitlements of the foreign national

§29. (1) Foreign nationals employed without employment permits in violation of this Federal Act shall, for the duration of their employment, have the same entitlements vis-à-vis the owner of the enterprise employing such foreign nationals as they would have under a valid work contract, and they shall be entitled to refunds of the cost of transmitting any pay to another country. Any such unauthorised employment shall be deemed to be in existence for at least three months unless proved otherwise by the employer or the foreign national in question.

(FLG I no 25/2011, article 1 item 32)

(2) If the absence of an employment permit is due to a fault on the part of the owner of the enterprise, the foreign national shall, also with regard to his/her entitlements from the termination of the employment relationship, enjoy the same position he/she would have if he/she had been employed under a valid work contract. The provisions regarding special protection against dismissal and summary dismissal shall, however, not be applied.

(3) A foreign national whose employment relationship is terminated as a result of the absence of an employment permit shall be entitled to damages same as if he/she had rightfully quit the employment prematurely, provided that the absence of an employment permit is the employer's fault. For the purpose of assessing claims for damages the provisions regarding special protection against dismissal and summary dismissal shall, however, not be applied.

(FLG no 231/1988, article I item 27)

Customer's liability

§29a. A company which outsources in full or in part the performance of a service to another company and connives in infringements committed by the company subcontracted to perform this service pursuant to §28 (1) item 1, or fails to meet its obligations under §26 (6), shall be liable under §1356 of the Civil Code (ABGB), Law Gazette no 946/1811, as deficiency guarantor for claims to remuneration of the foreign nationals deployed to render such service, remuneration to which they are entitled as a result of the work done within the framework of the agreed service, and to refunds of the costs of transmitting such remuneration to another country.

(FLG I no 25/2011, article 1 item 33)

Prohibition of employment

§30. (1) Upon application by the competent AMS's *Land* office (Landesgeschäftsstelle), within whose remit the place of business of the employer falls, upon application by the fiscal authority or by any other authority which is competent in matters of working conditions and rights of employees, the district administrative authority may prohibit, for up to one year, the employer from employing foreign nationals if a final penalty has been inflicted on such an employer pursuant to §28 (1) item 1 at least three times within the past two years previous to the submission of the application. Before the prohibition is imposed, the relevant employers' and employees' statutory stakeholder groups shall be heard. The fiscal authority shall be a party to the prohibition proceedings and shall have the right to appeal against decisions. The Federal Minister of Labour, Social Affairs and Consumer Protection shall have the right to file complaints with the Supreme Administrative Court against decisions of the administrative courts of the Länder. The competent authorities shall communicate copies of such decisions without delay to the Federal Minister of Labour, Social Affairs and Consumer Protection.

(FLG I no 68/2002, article 5 item 13)

(FLG I no 103/2005, article 5 item 3)

(FLG I no 72/2013, article 1 item 47)

(2) Any ongoing employment of foreign nationals permitted under this Federal Act at the time of prohibition and the commencement of employment by foreign nationals issued a valid exemption certificate shall not be affected by a prohibition.

(3) The data regarding final penalties pursuant to §28 (1) item 1 imposed on the employer and stored in the central register of administrative offences (§28b) which are relevant for the prohibition shall be made available to the district administrative authorities.

(FLG no 314/1994, article 11 item 22)

Institution of proceedings to withdraw a trade licence

§30a. The fiscal authority may request withdrawal of the trade licence for reasons of repeated unauthorised employment of foreign nationals. The fiscal authority shall be a party to the proceedings and shall have the right to appeal against decisions. The Federal Minister of Labour, Social Affairs and Consumer Protection shall have the right to file complaints with the Supreme Administrative Court against decisions of the administrative courts of the *Länder*. The competent authorities shall communicate copies of such decisions without delay to the Federal Minister of Labour, Social Affairs and Consumer Protection.

(FLG no 895/1995, article I item 7)

(FLG I no 68/2002, article 5 item 14)

(FLG I no 103/2005, article 5 item 3)

(FLG I no 72/2013, article 1 item 48)

Exclusion and repayment of public aid

§30b. (1) A company may be excluded for up to three years from federal aid programmes, including European Union funds administered by the federal government, if such aid exceeds €5,000 and final penalties for the unauthorised employment of more than three foreign nationals have been imposed repeatedly on the company at the time of submission of the application. In addition, it shall repay to the entity which originally granted the funds any such funds claimed in the past six months within three months from the day the repeated penalty becomes final.

(2) Exclusion from aid programmes and repayment under para (1) shall not apply if the company produces plausible evidence that it has taken tangible technical, organisational or staff measures suited to prevent any repetition of such a punishable act. Suitable measures shall include

1. the introduction of top-quality reporting and monitoring systems,
2. the involvement of an internal audit body for ensuring regular monitoring of compliance with the relevant provisions,
3. the introduction of an internal liability and damages regime for ensuring compliance with the relevant provisions.

(3) The entity deciding about a funding application under para (1) shall seek information from the central register of administrative offences (§28b (5)) prior to accepting such an application.

(FLG I no 25/2011, article 1 item 34)

CHAPTER VII including heading is deleted

(FLG no 231/1988, article I item 28)

(FLG I no 78/2007, article 1 item 21)

(FLG no 201/1996, article 32 item 13)

(FLG I no 72/2013, article 1 item 49)

CHAPTER VIII

Transitional provisions

§32. (1) Non-crediting of employment periods pursuant to the second sentence of §14a (1) shall not apply to employment relationships commenced before 1 June 1996.

(2) The declaratory decisions issued by the AMS in direct application of ACD no 1/1980 shall become invalid as of 1 January 1999. Until such date they shall be added to the maximum numbers of this Federal Act. Any employment relationships entered into on the basis of a declaratory decision prior to 1 January 1999 shall not be affected.

(3) Non-crediting of employment periods as an artist pursuant to §14a (1) item 5 shall not apply to employment relationships entered into prior to 1 January 1998.

(FLG no 201/1996, article 32 item 4)

(FLG I no 78/1997, article I item 44)

(4) The Federal Minister of Economics and Labour shall make available, in a computer-usable format, to the Federal Minister of Finance the data, decisions and other activities kept on file under §28b as amended prior to the Federal Act of FLG I no. 68/2002 for the purpose of providing information pursuant to §28b (1) and §30 (3) and for the purpose of assessing the permit requirements pursuant to §4 (3) items 11 and 12 no later than on the date on which this Federal Act enters into force.

(FLG I no 68/2002, article 5 item 14a)

(5) Simultaneously with the transfer of responsibilities under this Federal Act to the Federal Minister of Finance, the posts scheduled for handling such responsibilities shall be transferred from the civil servants roster of the Federal Minister of Economics and Labour to the civil servants roster of the Federal Minister of Finance. Employees who exercise, exclusively or for the most part, responsibilities which will come under the remit of the Federal Ministry of Finance as of 1 July 2002 shall be transferred to the civil servants roster of the Federal Ministry of Finance. The Federal Minister of Economics and Labour shall, upon hearing the competent central committee, determine by a decision which civil servants of the Federal Ministry of Economics and Labour (central management and labour inspectorates) are charged solely or mostly with responsibilities which will come under remit of the Federal Ministry of Finance as of 1 July 2002. For contract staff an employer's statement shall be issued in lieu of a decision.

(FLG I no 68/2002, article 5 item 14a)

(6) Exemption certificates issued under this Federal Act prior to 1 January 2003 shall remain valid until expiry of their respective validity.

(7) Ordinances issued prior to 1 January 2003 under §9 Aliens Act (FrG) shall continue to be valid as ordinances pursuant to §5.

(8) Employment permits issued prior to 1 January 2003 pursuant to §9 of FrG shall be equivalent to employment permits issued under §5.

(FLG I no 126/2002, article 3 item 36)

(9) §1 (2) letter I and §18 (12) to (16) shall apply as of 1 June 2004 *mutatis mutandis* also to nationals of the Swiss Confederation and to employers having their place of business in the Swiss Confederation.

(FLG I no 28/2004, article 1 item 6)

(10) Ordinances issued under §12a (2) prior to entry into force of the Federal Act, FLG I no 25/2011, shall continue to be valid as ordinances pursuant to §14 (3).

(FLG I no 25/2011, article 1 item 35)

(11) Any work permits and exemption certificates issued prior to the entry into force of the Federal Act of FLG I no 72/2013 shall remain valid until the relevant expiry date.

(11a) An application for employment permits shall be submitted to the competent regional office of the public employment service (AMS) for foreign nationals hired out to Austria from an employer established in the Republic of Croatia. The foreign nationals shall be admitted for employment if the conditions of §4 paras (1) and (3) item 1 are met.

(FLG I no 66/2017, article I item 36)

(12) Ordinances issued under §14 (3) prior to the entry into force of the Federal Act of FLG I no 72/2013 shall remain valid as ordinances pursuant to §4 (4).

(FLG I no 72/2013, article 1 item 50)

Transitional provisions concerning EU enlargement

§32a. (1) Nationals of Member States of the European Union which acceded to the European Union on 1 January 2007 under the Treaty concerning the Accession of the Republic Bulgaria and Romania to the European Union (Accession Treaty of Luxembourg), Official Journal of the European Union no L 157 of 21 June 2005, page 11, shall not enjoy free movement of workers as defined in §1 (2) letter I, unless they are family members of a national of another EEA Member State entitled to stay under Community law pursuant to §52 (1) items 1 to 3 of the NAG.

(2) EU citizens pursuant to para (1) shall have unrestricted access to the labour market if

1. they are lawfully employed in the federal territory on the day of accession or after accession and have been admitted to the labour market for an uninterrupted period of at least twelve months, or
2. they meet the requirements of §15 *mutatis mutandis*, or
3. they have been permanently settled in the federal territory for five years and earn a regular living from authorised economic activity.

(FLG I no 72/2013, article 1 item 51)

(3) Family members and registered partners of EU citizens pursuant to para (2) and their relatives in direct line of descent who have not yet completed their 21st year and thereafter, provided they receive maintenance, shall have unrestricted access to the labour market if they legally reside with this EU citizen in a joint household in the federal territory.

(4) The right to unrestricted access to the labour market pursuant to paras (2) and (3) shall be confirmed by the regional office of the public employment service (AMS). Confirmation shall be requested prior to commencement of employment. The employer must keep a copy of the confirmation ready for inspection at its premises. The confirmation shall expire upon departure from the federal territory on grounds that are not merely temporary.

(5) is deleted

(FLG I no 72/2013, article 1 item 52)

(6) §18 (1) to (11) shall be applied to the employment of EU citizens under para (1) or third-country nationals posted to Austria by an employer established in the Republic Bulgaria or in Romania for the temporary provision of services in a services sector where restrictions on the freedom to provide services under Article 49 EC are permissible under paragraph 13 of the transitional arrangements for the chapter regulating freedoms in the Accession Treaty (List referred to in Article 23 of the Act of Accession in Annexes VI and VII). §18 (12) shall be applied in a services sector where restrictions are not permissible.

(7) §18 (12) shall be applied to the employment of EU citizens pursuant to para (1) who are posted to Austria for the temporary provision of services by an employer established in an EEA member state not listed in para (6).

(8) Legal assessment and the obligation to request a declaratory decision pursuant to §2 (4) shall not apply to partners or shareholders who are nationals of the European Union Member States listed in para (1). The courts responsible for entries

into the companies register shall, however, report any registration of such partners or shareholders in the companies register to the competent regional office of the public employment service (AMS), provided there is reason to assume that the partners or shareholders perform work for the company as defined by §2 (4). The regional office of the public employment service shall review the activity of the partner or shareholder as to its actual economic content. The partners or shareholders shall cooperate in identifying the facts. If the regional office of the public employment service determines that the activity is subject to authorisation pursuant to this Federal Act, or if the partner or shareholder, despite a written request to do so, fails to cooperate in the identification of facts within an appropriate period of time, it shall prohibit such employment – unless an appropriate authorisation has been issued – and report the case to the competent fiscal authority.

(9) Employers intending to employ EU citizens pursuant to para (1) as skilled or key workers or artists shall be given an employment permit upon application if the admission requirements of Chapter III are met. Spouses and under-age unmarried children of skilled and key workers shall have unrestricted access to the labour market, such access being subject to confirmation by the regional office of the public employment service (AMS).

(FLG I no 72/2013, article 1 item 53)

(10) Any authorisations and confirmations awarded to citizens of the Republic of Estonia, the Republic of Latvia, the Republic of Lithuania, the Republic of Poland, the Slovak Republic, the Republic of Slovenia, the Czech Republic and the Republic of Hungary for taking up jobs shall become invalid after 30 April 2011.

(FLG I no 28/2004, article 1 item 7)

(FLG I no 101/2005, items 42 and 43)

(FLG I no 85/2006, item 1)

(FLG I no 91/2009, item 2)

(FLG I no 25/2011, article 1 item 36)

(11) Based on the Treaty concerning the accession of the Republic of Croatia to the European Union, OJ No L 112, 24.04.12, p. 10, paras (1) to (9) shall, as from Croatia's accession to the EU, apply *mutatis mutandis* to nationals of the Republic of Croatia and to employers having their place of business in the Republic of Croatia. Croatian nationals who, up until accession, were entitled to employment throughout the entire federal territory under §17, shall receive confirmation of unrestricted labour market access without further review. Paras (3) and (4) shall apply provided that the family members mentioned there are to receive confirmation of unrestricted labour market access within the first two years of accession only if they legally resided in a joint household on the day of accession or, if they entered Austria later, for eighteen or more months with the Croatian national who already has unrestricted access to the labour market. This period is abolished if, until accession, the Croatian national held a Red White Red Card, a Red White Red Card plus, an EU Blue Card or a residence title 'permanent residence – EU'.

(12) As from 1 January 2014, paras (1) through (9) shall no longer apply to nationals of the Republics of Bulgaria and Romania and to employers having their place of business in these Member States. Any permits or confirmations of employment issued to them under this Federal Act shall cease to be valid after 31 December 2013.

§32a

(FLG I no 72/2013, article 1 item 54)

Final provisions
Revocation of legislation

§33. Upon entry into force of this Federal Act, the ordinance on foreign employees of 23 January 1933, German Imperial Law Gazette I S 26 and the associated provisions for its implementation as well as the provision of §258 of the Act on the Placement of Employees and Unemployment Insurance of 16 July 1927, German Imperial Law Gazette I S 187 shall expire.

References

§33a. Where this Federal Act refers to provisions of other Federal Acts the latter shall be applied as currently amended.

(FLG I no 120/1999, article 4 item 9)

Gender equality

§33b. Where this Federal Act uses only the male designation in referring to natural persons, such designation shall apply equally to women and men. Whenever the designation refers to a specific natural person, the gender-specific form shall be used.

(FLG I no 126/2002, article 3 item 37)

Effective dates

§34. (1) §32 (1) shall enter into force on 1 August 1990; the remaining provisions shall enter into force on 1 October 1990.

(FLG no 450/1990, article I item 49)

(2) Ordinances and decisions based on this Federal Act may be issued as of the day next following its promulgation; however, they shall become effective only on the date specified in para (1).

(FLG no 450/1990, article I item 49)

(3) §27 (4) as amended by the Federal Act of FLG no 501/1993 shall enter into force on 1 July 1993.

(4) §4 (3) item 7, §26 (5), §28 (1) item 4 letter c shall expire after 31 December 1992.

(FLG no 684/1991, item 10)

(5) §1 (2) letter l, §3 (7), §14 (1) and (3), §15 (1), (3) and (4), §15a (3) and §16 (1) as amended by the Federal Act of FLG no 475/1992 shall enter into force jointly with the Agreement on the European Economic Area.

(FLG no 475/1992, item 10)

(6) §4 (3) item 7, §4b, §20b (4), §27 (4) and §31a as amended by the Federal Act of FLG no 475/1992 shall enter into force on 1 July 1993.

(FLG no 475/1992, item 10)

(7) §4 (3) item 15, §14d (1), §26 (5) and §28 (1) item 4 letter c as amended by the Federal Act of FLG no 19/1993 shall enter into force on 1 January 1993.

(FLG no 19/1993, item 5)

§34 (8) is deleted

(FLG no 502/1993, article III item 4)

(9) §28b as amended by FLG no 463/1993 shall enter into force on 1 July 1993.

(FLG no 463/1993, article II item 2)

(10) §1 (2) letter m as amended by the Federal Act of FLG no 501/1993 shall enter into force jointly with the EEA Agreement.

(FLG no 501/1993, item 7)

(11) §2 (4) and §4 (10) as amended by the Federal Act of FLG no 502/1993 shall enter into force on 1 August 1993.

(FLG no 502/1993, article III item 5)

(12) §4 (3) item 16 as amended by the Federal Act of FLG no 502/1993 shall enter into force on 1 August 1993 and shall be applied to circumstances occurring after 1 August 1993.

(FLG no 502/1993, article III item 6)

(13) §§2 (4), 3 (3), (4) and (5), 4 (6) item 1 and (9), 4b (2) item 2, 5 (3), 6 (1) and (3), 8 (2), 14 (2), 14d (1) and (2), 14f (3), 15 (4), 16 (3), 18 (3), (4), (5), (6) and (7), 19 (1), (3), (4) and (7), 20, 20a, 20b, 22, 23, 26 (1) and (5), 27, 28 (1) item 2 and (3),

28a, 30 and 30a as amended by the Federal Act of FLG no 314/1994 shall enter into force on 1 July 1994. Until a relevant ordinance by the Federal Minister of Labour and Social Affairs pursuant to §74 (1) of the Public Employment Service Act (*Arbeitsmarktservicegesetz*) of FLG no 313/1994 has entered into force, the responsibilities and competences of the labour inspectorates and the Federal Minister of Labour and Social Affairs pursuant to §§28a, 30 and 30a shall be incumbent upon the respective *Länder* AMS offices and the responsibilities and competences of the labour inspectorates pursuant to §§26, 27 and 28 shall be incumbent upon the respective regional office of the public employment services (AMS).

(FLG no 314/1994, article 112 item 24)

(14) §18 (14) as amended by the Federal Act of FLG no 450/1994 shall enter into force on 1 July 1994.

(FLG no 450/1994, article X item 2)

(15) §1 (2) letters e and l, §14a (2) and (3), §27 (2) and (5), §27a, §28 (1) item 1 last half-sentence, §28 (1) item 2 letters d and f, §28 (1) item 2 last half-sentence, §28 (5) to (7), §28a and §28b as well as §30a as amended by the Federal Act of FLG no 895/1995 shall enter into force on 1 January 1996.

(16) §1 (2) letter f, §2 (1) letter c, §3 (1), (2), (5), (6) and (8), §9 (5), §13b (2), §18 (1) and (3) to (8) as well as (11) to (14), §19 (1), (2) and (5), §20 (1) and (6), §25, §28 (1) item 1 letters a and b as well as §28 (1) item 2 letters a and b as amended by the Federal Act of FLG no 895/1995 shall enter into force on 1 June 1996.

(FLG no 895/1995, article I item 8)

(17) §1 (2) letter l, §3 (5), §4 (6) item 4 and (11), §4b (2), §14a (1), §18 (2) and (11), §20 (5), §27 (5), §28a (1), §31a and §32 as amended by the Federal Act of FLG no 201/1996 shall enter into force on 2 June 1996.

(FLG no 201/1996, article 32 item 15)

(18) §28b as amended by FLG no 776/1996 shall enter into force on 1 January 1997.

(FLG no 776/1996, article II item 2)

(19) §1 (2) and (4), §2 (3) letters b, c and d, §3 (1), (2), (3), (5), (6), (9) and (10), §4 (3), (4), (5), (6) and (11), §4b (1), (3) and (4), §4c, §5, §11 (3), §12, §12a (3), §13b (1) and (2), §14a (1) items 3, 4 and 5, §18 (3), (4) and (12) to (16), §19 (9), §20 (2), §20a, §20b (4), §24, §27 (4), §27a (2), §28 (1) items 1, 2, 4 and 5 as well as (6), §32 and §35 as amended by the Federal Act of FLG I no 78/1997 shall enter into force on 1 January 1998.

(FLG I no 78/1997, article I item 45)

(20) §§4b (1) item 9, 11 (2), 18 (13) item 2, 26 (1) and (4), 28 (1) item 2 letters c and f and 28b as amended by the Federal Act of FLG I no 120/1999 shall enter into force on 1 January 2000 and shall be applied to circumstances occurring after 31 December 1999.

(FLG I no 120/1999, article 4 item 10)

(21) §28 (1) as amended by the Federal Act of FLG I no 136/2001 shall enter into force on 1 January 2002.

(FLG I no 136/2001, article 37 item 2)

(22) §§3 (5), 14c, 26 (1) to (4a), 27 (1), (2), (4) and (5) including the heading, 27a, 28 (1), 28a (1) through (4), 28b (1), (3) and (4), 30 (1), 30a, 32 (4) and (5) as well as §35 as amended by the Federal Act of FLG I no 68/2002 shall enter into force on 1 July 2002.

(FLG I no 68/2002, article 5 item 15)

(23) §§1 (2) letters a, l and m and (5), 2 (5) through (9), 3 (1), (2), (4) and (8), 4 (3) and (5) through (8), 4b, 5, 7 (3) and (5), 11 (1) and (6), 12, 12a (3), 13, 13a, 13b, 14, 14a (1) items 3 and 4, 15, 15a, 17, 18, 19 (10), 24, 26 (5), 27a (3), 28 (1), 32 (6) through (8), 33b and 35 item 5 as well as the chapter headings of II a, II b, II c and III a as amended by the Federal Act of FLG I no 126/2002 shall enter into force on 1 January 2003 and shall apply to circumstances occurring after 31 December 2002.

(FLG I no 126/2002, article 3 item 39)

(24) §§1 (2) letter f, 2 (5a) and 4 (6) item 4a as amended by FLG I no 133/2003 shall enter into force on 1 January 2004 and shall apply to circumstances occurring after 31 December 2003.

(FLG no I 133/2003, article 7 item 4)

(25) §§4 (3) item 7, 4b, 5 (3), 18 (12), 28 (1) and 32a as amended by the Federal Act of FLG I no 28/2004 shall enter into force on 1 May 2004 and shall apply to circumstances occurring after 30 April 2004.

(26) §32 (9) as amended by the Federal Act of FLG I no 28/2004 shall enter into force on 1 June 2004.

(FLG no I 28/2004, article 1 item 8)

(27) §18 (3) as amended by the Federal Act of FLG I no 136/2004 shall enter into force on 1 January 2005 and shall apply to circumstances occurring after 31 December 2004.

(FLG no I 136/2004, article 14 item 2)

(28) §§1 (2) letters a, i, l and m and (5), 2 (2) letter b, 4 and 10, 3 (1), (2) and (8), 4 (3) item 7, (6) item 4a and (8), 5 (1), (1a) and (5a), 8 (2), 11 (1) and (2), 12 (3), (4), (5), (6), (8), (9) and (10), 12a (3), 14a (1) and (1a), 14e (1) item 2, 15 (1), (4) and (6), 15a, 17, 18 (12) to (16), 20b (4), 24, 26 (4), 27 (4), 27a (3), 28 (1) item 1 letter a and item 5 letters a and b and 32a (1), (6) and (7) as amended by the Federal Act of FLG I no 101/2005 shall enter into force on 1 January 2006.

(FLG I no 101/2005, item 44)

(29) §27 (6) as amended by the Federal Act of FLG I no 104/2005 shall enter into force on 1 September 2005.

(FLG I no 104/2005, article 3 item 2)

(30) §26, §28, §28a, §30, §30a and §35 as amended by the Federal Act of FLG I no 103/2005 shall enter into force on 1 January 2006.

(FLG I no 103/2005, article V item 4)

(31) §1 (5) and §5 (1), (1a) and (5a) as amended by the Federal Act of FLG I no 157/2005 shall enter into force on 1 January 2006.

(FLG I no 157/2005, article III item 4)

(32) §32a (10) as amended by the Federal Act of FLG I no 85/2006 shall enter into force concurrently with the coming into effect of the accession of the Republic of

Bulgaria, or the accession of Romania, respectively, to the European Union based on the EU Treaty of Accession of 25 April 2005 (OJ no L 157 of 21 June 2005).

(FLG I no 85/2006, item 2)

(33) §28a (1) and (2) item 1 as amended by the Federal Act of FLG I no 99/2006 shall enter into force on 1 January 2007.

(FLG I no 99/2006, article 8 item 4)

(FLG I no 78/2007, article 1 item 22)

(34) §§1 (2) letters a,e,f and l, 2 (3) letter d and (11), 4 (3) item 7 and (8), 5 (3), (3a), (4) and (5), 13 (2), 15 (3), 18 (12), 26 (5), 27 (4), 28 (1) item 5 and §31 as amended by the federal Act of FLG I no 78/2007 shall enter into force on 1 January 2008 and shall apply to circumstances occurring after 31 December 2007. §§4 (3) item 15, 14d and 28 (1) item 3 shall expire after 31 December 2007.

(FLG I no 78/2007, article 1 item 22)

(35) §§28 (1) item 1 letters c and d, 32a (7a) and 35 items 5 and 6 as amended by the Federal Act of FLG I no 91/2009 shall enter into force on 1 September 2009 and shall apply to circumstances occurring after 31 August 2009.

(FLG I no 91/2009, item 3)

(36) §4 (3) item 7 as amended by the Federal Act of FLG I no 120/2009 shall enter into force on 1 January 2010.

(FLG I no 120/2009, item 2)

(37) §2 (12) as amended by the Federal Act of FLG I no 135/2009 shall enter into force on 1 January 2010.

(FLG I no 135/2009, article 10 item 2)

(FLG I no 25/2011, article 1 item 37)

(38) §§1 (2) letters l and m, 2 (3) letter a, 3 (1), (2), (6) and (8), 4, 4b (1), 9 (2) letter a, 11 (1), (2), (5) and 6, 15 (6), 17, 20 (2), 22 (1), 26 (4) to (6), 27a (3), 28 (1) item 1 letters a and d and (6), 28b (3), (5) and (6), 28c heading included, 29 (1), 29a heading included, 30b heading included and 35 as well as Chapter IIa heading included and Annexes A, B and C as amended by the Federal Act of FLG I no 25/2011 shall enter into force on 1 July 2011. §§5 heading included, 32 (10) and 32a as well as Chapter IIb as amended by the Federal Act of FLG I no 25/2011 shall enter into force on 1 May 2011. §§1 (5), 2 (5), 8 (2) and 9 (3) as amended by the Federal Act of FLG I no 135/2009 shall expire on 30 June 2011.

(39) Ordinances pursuant to §13 as amended by the Federal Act of FLG I no 25/2011 may not be promulgated prior to 1 January 2012 and may not enter into force prior to 1 May 2012. Notwithstanding §13 (1) occupations suffering from labour shortages may also be defined for the calendar year 2012 with the first ordinance issued.

(40) Registration of foreign nationals under fixed-term contracts pursuant to §4 (1) as amended by the Federal Act of FLG I no 25/2011 shall be admissible already on the day following promulgation of this Federal Act.

(FLG I no 25/2011, article 1 item 37)

(41) §2 (2) letter e and (3) letter c and §4 (3) item 10 and (5) as amended by the Federal Act of FLG I no 98/2012 shall enter into force on 1 January 2013.

(FLG I no 98/2012, article 6 item 4)

(42) §3 paras (1) to (3), §4 (1) item 1, (3) items 9 through 14 and paras (4) and (5), §4b, §4c (2), §6 (1), §7 paras (4) and (7), §11 (1), §12, §14 including heading, §15 including heading, §17, §18 para 10, 19 paras 1, 4, 5, 7 and 8 including heading, §20 including heading, §20a, §20b paras 1 and 2, §20c including heading, §20d including heading, §20e including heading, §20f including heading, §25, §26 paras 1 and 5, §27a paras 1 to 3, §28 para 1, §28a paras 1 and 2, §28b paras 1 and 4, §28c, §30 para 1, §30a, §32 paras 11 and 12, §32a paras 2, 5 and 9 and 35 items 1 and 2 as well as Chapter III including heading as amended by the Federal Act of FLG I no 72/2013 shall enter into force on 1 January 2014. §2 (8), §4 (3) items 2, 3 and 4, §4a including heading, §6 (3) and Chapters IIb, IIc, III and VII including heading as amended by the Federal Act of FLG I no 98/2012 as well as §12d including heading as amended by the Federal Act of FLG I no 72/2013 shall cease to be in force after 31 December 2013.

(43) Any ordinance under §4 (4) as amended by this Federal Act may be issued on the day following promulgation of the Federal Act of FLG I no 72/2013; however, it may become operative no earlier than 1 January 2014.

(FLG I no 72/2013, article I item 55)

(44) §2 (3), (11) and (13), §3 (1), (2) and (3), §4 (1), (3) item 6 and (7) item 2 and item 6, §4b (3), §5 including heading, §9 (1), §11 (1), Annex B, §12b item 2, heading of §18, §18 (3), (3a), (12) and (13), §18a including heading, §20 (2), §20b (4), §20d (1), §20e (1) and (3), §20f including heading, §20g, §24 including heading as well as Annex D, §27 (4), §27a (3) item 1, §28 (1) and (8), §32a (11a) and §35 item 1 as amended in FLG I no 66/2017 shall enter into force on 1 October 2017 and shall apply to circumstances occurring after 30 September 2017. §2 (10) and §4 (3) item 8, (7) item 1 and the heading of Chapter IV shall cease to be in force after 30 September 2017. Any ordinances under §5 (1) may already be issued on the day following promulgation of this Federal Act; however, they may become operative no earlier than 1 October 2017.

(FLG I no 66/2017, article I item 37)

Enforcement

§35. This Federal Act shall be enforced by:

1. the Federal Chancellor with regard to §1 (2) letter g and with regard to §20f in so far as the Federal Administrative Court is concerned;
(FLG I no 72/2013, article 1 item 56)
2. the Federal Minister of the Interior with regard to §20d and §20e in so far as any NAG authorities are concerned and with regard to §27 (3) and §27a (3);
(FLG I no 72/2013, article 1 item 57)
3. the Federal Minister of Finance with regard to §§3, 26, 27, 27a, 28a, 28b, 30, 30a and 30b in so far as fiscal authorities or their officers are concerned;
4. the Federal Minister of Justice with regard to §§28c and 29a and 32a (8) in so far as courts responsible for entries into the companies register are concerned;
5. the Federal Minister of Labour, Social Affairs and Consumer Protection with regard to all other provisions.
(FLG no 450/1990, article I item 50)
(FLG I no 78/1997, article I item 46)
(FLG I no 68/2002, article 5 item 16)
(FLG I no 126/2002, article 3 item 38)
(FLG I no 103/2005, article 5 item 5)
(FLG I no 91/2009, item 4)
(FLG I no 25/2011, article 1 item 38)
(FLG I no 66/2017, article I item 38)

Admission criteria for very highly qualified workers pursuant to §12

Criteria	Points
Special qualifications and/or skills	creditable points – maximum: 40
Graduation from a tertiary education establishment having completed a study course of at least four years.	20
- In mathematics, information science, natural sciences and technology (MINT subjects).	30
- with post-doctoral degree (habilitation) or equivalent qualification (e.g. PhD)	40
Last year's gross annual salary earned in a managerial position of a listed company or of a company whose activities or sphere of business have been assessed positively by the competent foreign trade office:	
€50 000 to 60 000	20
€60 000 to 70 000	25
More than €70 000	30
Activity in research or innovation (patent applications, publications)	20
Awards (holder of recognised awards)	20
Professional experience (commensurate with educational background or in managerial position)	creditable points – maximum: 20
Professional experience (per year)	2
six months of professional experience in Austria	10
Knowledge of languages	creditable points – maximum: 10
Knowledge of German or English for elementary use of language at simplest level	5
for elementary use of language at a more proficient level	10
Age	creditable points – maximum: 20
up to 35 years	20
up to 40 years	15
up to 45 years	10
Studied in Austria	creditable points – maximum: 10
Second period of study or half of the required ECTS credits	5
Full diploma or Bachelor's and Master's degree	10
Total of maximum creditable points:	100
Required minimum number of points:	70

Admission criteria for skilled workers remedying skills shortages in specific occupations pursuant to §12a

Criteria	Points
Qualification	creditable points – maximum: 30
Training completed in the relevant occupation that suffers from skills shortages	20
General educational and training background to qualify for tertiary education courses as defined by §64 (1) of the 2002 University Act (<i>Universitätsgesetz 2002</i>), FLG I no 120	25
Graduation from a tertiary education establishment having completed a study course of at least three years.	30
Professional experience commensurate with training background	creditable points – maximum: 20
Professional experience (per year)	2
Professional experience in Austria (per year)	4
Language skills: German	creditable points – maximum: 15
Knowledge of German for elementary use of language at simplest level	5
Knowledge of German for elementary use of language at a more proficient level	10
Knowledge of German for independent use of language	15
Language skills: English	creditable points – maximum: 10
Knowledge of English for elementary use of language at a more proficient level	5
Knowledge of English for independent use of language	10
Age	creditable points – maximum: 15
up to 30 years	15
up to 40 years	10
Total of maximum creditable points:	90
Required minimum number of points:	55

(FLG I no 66/2017, article I item 39)

Admission criteria for other key workers pursuant to §12b item 1

Criteria	Points
Qualification	creditable points – maximum: 30
Vocational training credentials or special knowledge or skills for intended job	20
General educational and training background to qualify for tertiary education courses as defined by §64 (1) of the 2002 University Act (Universitätsgesetz 2002), FLG I no 120	25
Graduation from a tertiary education establishment having completed a study course of at least three years.	30
Professional experience commensurate with training background	creditable points – maximum: 10
Professional experience (per year)	2
Professional experience in Austria (per year)	4
Knowledge of languages	creditable points – maximum: 15
knowledge of German for elementary use of language at simplest level, or knowledge of English for independent use of language	10
knowledge of German for elementary use of language at a more proficient level, or knowledge of English for independent use of language at a more proficient level	15
Age	creditable points – maximum: 20
up to 30 years	20
up to 40 years	15
Total of maximum creditable points:	75
additional points for sports pros and sports pro coaches	20
Required minimum number of points:	50

Admission criteria for founders of start-ups pursuant to §24 (2)

Criteria	Points
Qualification	creditable points – maximum: 30
Vocational training credentials or special knowledge or skills for intended activity	20
Degree of at least three years' duration from a tertiary education establishment	20
Diploma, Bachelor's, Master's or Doctorate degree from an Austrian educational establishment or vocational training completed in Austria	30
Professional experience	creditable points – maximum: 10
Professional experience (per year)	2
Language skills	creditable points – maximum: 15
Knowledge of German for elementary use of language at a more proficient level	5
Knowledge of German for independent use of language or for independent use at a more proficient level	10
Knowledge of English for independent use of language at a more proficient level	10
Knowledge of German for proficient use of language	15
Additional points	creditable points – maximum: 30
Additional proven capital of at least €50,000	10
Admitted to a start-up centre or funded by a start-up support entity in Austria	10
Age: up to 35 years	10
Total of maximum creditable points:	85
Required minimum number of points:	50

(FLG I no 66/2017, article I item 40)

ANNEX

Ordinances issued under the Act Governing the Employment of Foreign Nationals

Ordinance of the Federal Minister of Labour and Social Affairs on exemptions from the scope of the Act Governing the Employment of Foreign Nationals (*Ausländerbeschäftigungsverordnung – AuslBVO*)

FLG no 609/1990 as amended by FLG no 729/1993, FLG no 666/1994, FLG II no 124/2001, FLG II no 469/2003, FLG no II 54/2006, FLG II no 405/2006, FLG II no 198/2007, FLG II no 291/2008, FLG II no 69/2011, FLG II no 123/2011, FLG II no 253/2012, FLG II no 254/2013, FLG II no 367/2014, FLG II no 178/2016, FLG II no 89/2017 and FLG II no 257/2017

Under §1 (4) of the Act Governing the Employment of Foreign Nationals, FLG no 218/1975, last amended by the Federal Act of FLG I no 72/2013, the following ordinance is issued:

§1. The following groups shall be exempted from the Act Governing the Employment of Foreign Nationals:

1. foreign staff of the European Centre for Social Welfare Policy and Research established under a Convention between the United Nations and the Austrian Federal Government (FLG no 31/1982) regarding their scientific, educational, cultural and social activities within this centre;

(FLG no 609/1990)

2. foreign teaching staff regarding their educational activity including care of pre-school level children from age three at the Vienna International School, the American International School in Vienna, the Danube International School, the Graz International and Bilingual School, the Linz International School Auhof, **Anton-Bruckner-International School**, the American International School Salzburg and the Vienna Elementary School;

(FLG no 609/1990, 666/1994 and FLG II no 469/2003)

(FLG II no 291/2008)

(FLG II no 178/2016)

(FLG II no 257/2017)

3. foreign nationals regarding their activity as exchange teachers and language assistants at educational establishments and universities under intergovernmental agreements and exchange programmes;

(FLG no 729/1993 and FLG II no 469/2003)

4. foreign nationals regarding their activity under intergovernmental agreements on air transport;

(FLG no 609/1990)

5. foreign students or graduates under mutual exchange programmes provided that the exchange is handled by associations of which either an Austrian tertiary institution is a member or which operate in cooperation with an Austrian tertiary institution;

(FLG no 609/1990)

6. foreign nationals who are subject to the transitional arrangements on the free movement of workers within the EU (§32a of AuslBG) concerning nursing and

- care of persons in private households if the person to be nursed, his/her relatives or a domestic nursing and care institution are the employers, if the person to be nursed receives long-term care benefits under the Long-Term Care Benefit Act (*Bundespflegegeldgesetz – BPGG*), FLG no 110/1993, or a similar benefit of the same level, and the employment relationship is subject to full social insurance pursuant to §4 (1) item 1 of the General Social Insurance Act (*Allgemeines Sozialversicherungsgesetz – ASVG*), FLG no 189/1955;
- (FLG II no 469/2003)
- (FLG II no 54/2006)
- (FLG II no 405/2006)
- (FLG II no 291/2008)
- (FLG II no 253/2012)
7. foreign nationals regarding their teaching or research activity at establishments providing study courses of applied sciences as defined by the Federal Act on Courses at Universities of Applied Sciences (*Bundesgesetz über Fachhochschul-Studiengänge*), FLG no 340/1993;
- (FLG no 666/1994)
8. foreign nationals regarding their special military activity at an entity of the Federal Ministry of Defence;
- (FLG no 666/1994)
9. foreign nationals regarding their scientific or educational activity or within the framework of their training at the Diplomatic Academy and Federal Security Academy (SIK) (§10a of SPG);
- (FLG no 666/1994 and FLG II no 469/2003)
10. foreign nationals aged between 18 and 28 years regarding their employment for no more than twelve months as au-pairs who have been notified by the host family two weeks prior to commencement of work to the competent regional office of the public employment service (AMS) and for whom the AMS has issued a confirmation of notification. Such confirmation shall be issued within two weeks for a period of validity of six months and may be renewed for another six months if the au-pair has not been employed without authorisation, was employed as au-pair for no more than one year within the past five years, and if such employment continues to be that of an au-pair employment relationship in terms of extent and economic content of work, and in particular if evidence of the acquisition of German language skills is provided;
- (FLG II no 124/2001)
- (FLG II no 54/2006)
11. foreign nationals who are subject to the transitional arrangements on the free movement of workers within the EU (§32a of AuslBG) regarding their work as distributors of publicity materials and distributors of daily newspapers and periodicals provided that their employment is subject to full social insurance pursuant to §4 (1) item 1 of the ASVG;
12. foreign nationals regarding their work as employees of the International Federation for Information Processing (IFIP), the Institute of Chinese Culture – Taipei Economic and Cultural Office, the International Biathlon Union (IBU), the International Council for Game and Wildlife Conservation (CIC), the International Organisation of Supreme Audit Institutions (INTOSAI), the Interna-

tional Press Institute (IPI) as well as the Renewable Energy and Energy Efficiency Partnership (REEEP), the International Peace Institute (IPI), the World Institute for Nuclear Security (WINS), the Vienna Centre for Disarmament and Non-Proliferation (VCDNP) and the Vienna Economic Forum (VEF);

(FLG II no 198/2007)

(FLG II no 69/2011)

(FLG II no 178/2016)

13. spouses, registered partners, and unmarried children (up to their 21st birthday) of members of diplomatic or consular missions (including the permanent representations at intergovernmental organisations) of Argentina, Australia, Canada, India, Israel, South Africa, and the United States of America in the Republic of Austria, and who live with these members in a joint household in the federal territory, provided that the family members of members of Austrian diplomatic or consular missions (including the permanent representations at intergovernmental organisations) in Argentina, Australia, Canada, India, Israel, South Africa, and the United States of America may take up employment under the same conditions in these countries as well – based on reciprocity; no age limit applies to children with disabilities;

(FLG II no 123/2011)

(FLG II no 254/2013)

(FLG II no 178/2016)

14. nationals of **Australia, Chile, Israel, Japan, Canada the Republic of Korea and New Zealand** who have completed their 18th year and are under 31 years of age concerning their employment during a six-month holiday stay in the federal territory provided that Austrian nationals may take up employment in these states under the same conditions based on reciprocity;

(FLG II no 69/2011)

(FLG II no 253/2012)

(FLG II no 367/2014)

(FLG II no 178/2016)

(FLG II no 257/2017)

15. nationals of the People's Republic of China who are verifiably trained speciality chefs in the higher-end catering business for employment as speciality chefs in higher-end catering for a period of no more than three years provided that Austrian citizens may take up employment in the People's Republic of China under the same conditions based on reciprocity;

(FLG II no 178/2016)

(FLG II no 89/2017)

16. foreign nationals having been admitted to asylum procedures for at least three months in respect of rendering simple household-typical services in private households pursuant to §1 (1) of the Household Service Cheque Act (Dienstleistungsscheckgesetz – DLSG), FLG I no 45/2005;

(FLG II no 89/2017)

§2. (1) This ordinance shall enter into force on 1 October 1990.

(FLG no 609/1990)

(2) §1 items 4, 7 and 8 as amended by the ordinance of FLG no 729/1993 shall enter into force on 1 November 1993.

(FLG no 729/1993)

(3) §1 item 12 as amended by the ordinance of FLG II no 124/2001 shall enter into force on 1 April 2001.

(FLG II no 124/2001)

(4) §1 item 6 as amended by the ordinance of FLG II no 405/2006 shall enter into force on 1 November 2006.

(FLG II no 405/2006)

(5) §1 item 14 as amended by the ordinance of FLG II no 367/2014 shall enter into force on 1 January 2015.

(FLG II no 367/2014)

(6) §1 items 2, 12, 13, 14 and 15 as amended by the ordinance of FLG II no 178/2016 shall enter into force on 15 July 2016.

(FLG II no 178/2016)

(7) §1 items 15 and 16 as amended by the ordinance of FLG II no 89/2017 shall enter into force on 1 April 2017.

(FLG II no 89/2017)

The modifications under FLG II no 469/2003 (§1 items 2, 3, 6 and 9) entered into force on 11 October 2003.

Ordinance of the Federal Minister of Economics and Labour under which the total number of salaried and unemployed foreign nationals is exceeded (*Bundeshöchstzahlenüberziehungsverordnung – BHZÜV*)

FLG no 278/1995 as amended by FLG II no 256/1997, FLG II no 249/2003,

FLG II no 352/2004, FLG II no 55/2006 and FLG II no 206/2011

Under §14 (3) of the Act Governing the Employment of Foreign Nationals (AuslBG), FLG no 218/1975, last amended by the Federal Act of FLG I no 25/2011, the following ordinance is issued:

§1. In exceedance of the total number of salaried and unemployed foreign nationals (federal maximum) pursuant to §14 (1) of the AuslBG conditional assurances and employment permits may be issued for

1. foreign nationals whose employment appears to be expedient in view of his/her progressing integration;
2. foreign nationals who are entitled to stay temporarily in the federal territory under an ordinance pursuant to §76 of the Settlement and Residence Act (*Niederlassungs- und Aufenthaltsgesetz – NAG*), FLG I no 100/2005 (displaced persons);
3. foreign nationals who hold a residence title 'permanent residence - EU' of another Member State or are already legitimately settled in the federal territory and meet the conditions for being employed as skilled workers or key workers, as well as their spouses, registered partners and under-age unmarried children (including step-children and adopted children);
4. foreign nationals enjoying exemption from visa requirements and freedom of settlement (new EU citizens) regarding employment in health care and nursing for which they receive a monthly gross pay of at least 40 per cent of the maximum assessment basis as defined in §108 (3) of the General Social Insurance Act (ASVG) plus special bonus payments;
5. foreign nationals to be employed under a fixed-term contract (§5 of AuslBG);
6. foreign nationals subject to a permit for cross-border temporary hire pursuant to §16 (4) of the Temporary Employment Act (AÜG), FLG no 196/1988;
7. foreign nationals meeting the requirements of §18 of the AuslBG for their employment;
8. is deleted
9. rotational workers (§2 (2) of AuslBG);
10. foreign nationals settled in the federal territory who, because of a physical attack directed against them or their under-age child, because of a threatened physical attack, or because of their spouse's behaviour which greatly impairs their psychological health, can no longer be reasonably expected to go on living with this spouse, and who for these reasons
 - a) have filed a complaint with the security authority, or
 - b) have obtained an injunction pursuant to §§382b or 382e of the Distraint Act (*Exekutionsordnung – EO*), Imperial Law Gazette no 79/1896, or a court order to move to separate housing pursuant to §92 (3) of the Civil Code

(*Allgemeines Bürgerliches Gesetzbuch* – ABGB), Law Gazette no 946/1811, or

c) had their marriage divorced, or

d) have sought help from a doctor, a hospital, an intervention centre, a women's refuge, the youth welfare office or youth welfare centre or a child protection centre, and where these entities have reported or otherwise confirmed this suspicion;

11. foreign nationals enjoying special protection under §69a of the NAG;

12. settled foreign youths;

13. foreign nationals who are the spouses or unmarried under-age children (including step-children and adopted children) of a permanently and legally settled and employed foreign national.

§2. Issuing conditional assurances and employment permits pursuant to §1 shall be permissible only as long as the exceeded federal maximum remains below 8 per cent of the Austrian potential labour supply. Calculation of the degree of exhaustion and exceedance of the maximum federal number shall be based on the statistics published every month by the AMS on the labour market and on foreign workers subject to permits.

§3. (1) §1 items 1, 2, 5 and 8 to 11 as amended by the ordinance of FLG II no 256/1997 shall enter into force on 1 January 1998.

(2) §1 items 3, 5, 10 and 11, as well as §2, as amended by the ordinance of FLG II no 206/2011 shall enter into force on 1 July 2011.

(3) §1 item 8 as amended by the ordinance of FLG II no 55/2006 shall expire on 30 June 2011.

§1 item 4 as amended by FLG II 352/2004 entered into force on 11 September 2004.

Ordinance of the Federal Minister of Economics and Labour under which the ordinance on exceeding the federal maximum for the employment of foreign skilled workers is exceeded (*Fachkräfte-BHZÜV* 2008)

FLG no 350/2007 as amended by FLG II no 224/2008 and FLG II no 395/2008

Under §12a (2) of the Act Governing the Employment of Foreign Nationals (AuslBG), FLG no 218/1975, last amended by the Federal Act of FLG I no 78/2007, the following ordinance is issued:

§1. Employment permits exceeding the federal maximum (§12a (1) of AuslBG) may be issued for skilled workers who are subject to the transitional arrangements on the free movement of workers within the EU (§32a of AuslBG) if they have vocational training credentials commensurate with the requested job in one of the following occupations:

- Bricklayers
- Stucco workers
- Carpenters
- Concrete workers
- Paving workers
- Civil engineering workers
- Roof tilers
- Floor and wall tilers
- Glaziers
- Building plumbers
- Ventilation plumbers
- Joiners
- Cabinet makers
- Varnishers
- Blacksmiths
- Ornamental ironworkers
- Building locksmiths
- Machine or engine fitters
- Locksmiths
- Farm equipment technicians
- Construction equipment technicians
- Tool and die makers
- Turners
- Millers
- Plumbers/fitters: gas, water and heating installations

Welders
Motor mechanics
Electric fitters/plumbers
Construction equipment and crane operators
Service station workers
Structural technicians with medium-level qualifications
Structural technicians with higher-level qualifications
Mechanical engineers with medium-level qualifications
Mechanical engineers with higher-level qualifications
Electrical power engineers with medium-level qualifications
Electrical power engineers with higher-level qualifications
Heating technicians with medium-level qualifications
Heating technicians with higher-level qualifications
Technical sales engineers
Data technicians with medium-level qualifications
Data technicians with higher-level qualifications
Service technicians with medium-level qualifications
Service technicians with higher-level qualifications
Engine drivers
Airport workers and dispatchers
Vehicle assembly workers
Opticians
Tyre fitters
Butchers
Restaurant cooks

(FLG II no 350/2007)

Stone dressers and cutters
Tar workers
Screed and floor layers
Farm machinery production workers
Joiners and cabinet makers
Plastics processing workers
Insurance brokers and agents
Mechanical technicians
Electric technicians
Heating technicians
Development and process technicians
Project and service technicians
Material testers
Cost estimators

Payroll accountants
(FLG II no 224/2008)

Insulators

Coffee and other food production workers
(FLG II no 395/2008)

§2. (1) This ordinance shall enter into force on 1 January 2008.

(FLG II no 350/2007)

(2) §1 as amended by the ordinance of FLG II no 224/2008 shall enter into force on 1 July 2008.

(FLG II no 224/2008)

(3) §1 as amended by the ordinance of FLG II no 395/2008 shall enter into force on 1 December 2008.

(FLG II no 395/2008)