Chapter 2

Migrants' Access to Social Protection in Austria

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2.1 Overview of the National Social Security System and Main Migration Features in Austria

2.1.1 Main Characteristics of the National Social Security System

The Austrian social security system covers a broad range of social risks, most of them via a compulsory social insurance system. A recent reform has reduced the number of involved institutions and reallocated responsibilities as of January first, 2020 (Table 2.1).

These organisations are responsible for the areas related to health and invalidity, pensions, and some family benefits. Other family benefits are governed by specific national acts, such as one for the protection of mothers (*Mutterschutzgesetz* MSchG), and are financed from general taxes. Unemployment benefits are mostly financed via payroll contributions and managed by the Public Employment Service Austria (*Arbeitsmarktservice* AMS).¹ Guaranteed minimum resources are currently funded, regulated and organized by the nine federal states. Regional differences in regulations are minimised by the federal legislator (*Sozialhilfe-Grundsatzgesetz*),

¹AMS (2018). Unemployment insurance (UI). <http://www.ams.at/en/public-employment-service-austria-ams/unemployment-insurance>. Accessed 16 April 2018.

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Table 2.1 Austrian Social Security Institutions and Main Governing Acts (as of 01.01.2020)

Unemployment	Accident	Health	Pension	Poverty
Public employment service Austria (AMS) Act: AIVG	Umbrella Association of Austrian Social Security Organisations			<i>Bundesländer</i> governments Act: Separate in each <i>Bundesland</i> , based on national legal guidelines
	Austrian workers' compensation funds (AUVA) Act: ASVG	Austrian health insurance (ÖGK) Act: ASVG	Pension insurance institution (PVA) Act: ASVG	
	Insurance institution for civil servants, railways and mining industry (BVAEB) Act: B-KUVG			
	Social security institution for self-employed persons (SVS) Act: SVS-G			

Source: Own elaboration

limiting, among other things, the amount of benefits per month and person.² However, in December 2019, parts of this legislation were revoked by the Constitutional Court.

Health insurance coverage for around 80% of the overall population is provided by the Austrian Health Funds (*Österreichische Gesundheitskasse* ÖGK) and regulated by the general act on social insurance (*Allgemeines Sozialversicherungsgesetz*, ASVG).³

The Austrian social insurance system is governed by the following characteristics:

- Principle of insurance: Insurance is the prerequisite for drawing most benefits. Many cash benefits are income-related due to income-dependent contributions. The insurance is compulsory for persons who are either employees or self-employed and covers also their dependants.
- Principle of solidarity: Persons with higher income – who therefore pay higher social insurance contributions and taxes – help to fund benefits for persons with lower income.
- Income-related insurance contributions provide the funding basis for almost all services, in several areas complemented by state support. A non-contributory allowance can top up pensions to avoid poverty, and certain family benefits are (co-)funded by taxes. Long-term care and social assistance are the only major areas funded exclusively from taxes.

²Verfassungsgerichtshof. (2019). Sozialhilfe-Grundsatzgesetz: Höchstsatzsystem für Kinder und Arbeitsqualifizierungsbonus verfassungswidrig. https://www.vfgh.gv.at/medien/VfGH_zu_Sozialhilfe-Grundsatzgesetz__Hoechstsatzsysteme.de.php. Accessed 19 March 2020.

³Before 2020, coverage of ÖGK had been split into nine *Bundesländer* schemes, SVS into farmers *versus* all other self-employed persons, and BVAEB into civil servants *versus* mining and railways.

These characteristics highlight the central role that the employment status has in the Austrian welfare system. The entitlement to most social benefits is derived from employment, not from the citizenship status. Regarding health insurance, for instance, the sector of employment defines which insurance organization is responsible for coverage (private sector, public sector and self-employed persons are covered under separate schemes). The crucial point for access to the Austrian social security system is thus the entry into legal employment. As soon as this is achieved, nationality is an irrelevant factor for accessing most benefits. Also, the right to draw tax-funded benefits depends mostly on residence, not citizenship. Having the centre of one's life in Austria is a key element in this regard, and the reason why non-Austrians are required to have residence permits in order to access these benefits. Austrian nationals have no right to draw social assistance or family benefits unless usually living in Austria.

Legal employment is possible without further conditions only for specific groups of individuals: persons from European Union (EU) / European Economic Area (EEA) countries (but not Croatia) or Switzerland; foreigners with a so-called Red-White-Red-Card plus (*Rot-Weiß-Rot-Karte plus*), and holders of a residence permit as family members or a permanent residence permit as EU citizen. For other foreign residents, employers can apply for an employment permission (*Beschäftigungsbewilligung*) for a specifically described job position. Such permissions are mostly granted for students, Croatians, farm helpers, seasonal workers and workers on rota. Permissions are granted by the regional AMS, given that the prospective employer fulfils further conditions.

The Red-White-Red Card was introduced in 2011 for prospective long-term migrants from third countries. Applications are evaluated by the AMS. As the introduction of the Red-White-Red Card focused on achieving "high quality immigration", four schemes were created: "very highly qualified workers", "skilled workers in shortage occupations", "other key workers", and "start-up founders". After 2 years of employment in Austria, foreigners can apply for a Red-White-Red Card.

2.1.2 Migration History and Key Policy Developments

During the nineteenth and early twentieth centuries, when the Habsburg Empire exceeded the territory of today's Republic of Austria, migration flowed mostly from east to west, to the primary urban and industrial centers. Although the monarchy was also an important country of emigrants bound mainly for Germany, Switzerland, Italy, and increasingly, the Americas, immigration usually outstripped emigration. This still can be observed in the numerous family names originating in countries of the former Habsburg Empire. During and after World War II, many German-speaking residents from Austria's neighbour countries to the East were integrated into the Austrian population, with the exception of Jewish people. The accession of former members of the Habsburg Empire to the European Union again tightened the bonds between these countries and Austria.

As of October 2016, of Austria's 8,8 million inhabitants, more than 1,6 million (18.8%) were not born in Austria, with 45.5% of them (751,000 persons) coming from EU/EEA/Switzerland, and another 35.1% from other parts of Europe. According to the *Statistik Austria* (2017)⁴ data, persons born in Germany form the largest group (224,000 persons accounting for 2.5% of the overall population), followed by those born in Bosnia and Herzegovina (165,000), Turkey (160,000) and Serbia (136,000). Syria and Afghanistan together contributed only half as many foreign-born residents for Austria as Bosnia and Herzegovina or Turkey, but over a very concentrated period of time. For instance, during 2015–2017, of about 156,000 asylum applications filed in Austria, Syrians and Afghans comprised the largest shares (26% each). Since the end of 2015, the climate towards immigrants (especially foreign-born individuals with a (presumed) Muslim background) has become much more critical, if not hostile. The 2017 parliamentary elections resulted in a coalition of the conservative party (ÖVP) and the far right-wing party (FPÖ), with especially the latter promising a strict anti-immigration regime. The salience of migration during the electoral campaigns needs to be seen in context of the large foreign influx to Austria: in 2015, with 88,300 new asylum applications, Austria was the fourth largest receiver of asylum seekers in the EU (Buber-Ennsner et al. 2018), but ranks only 15th in a comparison of overall population size across the EU. After the break-up of the coalition in spring 2019, another election and the formation of a new coalition between ÖVP and the Green Party, anti-migrant sentiments have cooled only to some extent.

In 2016, roughly 25,600 non-EU/EEA/Swiss citizens were granted a first residence permit in Austria, and about 42,300 persons applied for asylum. About 1200 persons were granted a Red-White-Red Card or a Blue Card EU and thus fulfil the conditions for one of the categories of key workers. Family reunification resulted in 14,200 non-EU/EEA/Swiss citizens coming to Austria, and about 7400 students, *Au-Pairs*, researchers and clerical persons were granted a first residence permit. Seasonal work accounted for 3200 workers on average (*Statistik Austria* 2017).

For several years, there was public concern regarding immigration into low paid employment, often also including over-qualification of the employees. In 2014, 23.5% of foreign-born persons working in Austria stated that they felt overqualified in their job, compared to 8.8% of workers born in Austria. Within the group of foreign-born workers, over-qualification was less severe (but still higher than for Austrian-born persons) among those born in other EU15 countries, Turkey, and persons with more than 20 years of residence in Austria (Pesendorfer 2015). The issue of over-qualification was addressed by cooperation between the Ministry of Labour and Social Affairs and the Secretary of State of Integration. This cooperation aimed at providing information and guidance to migrants in the process of having foreign credentials accredited and validated. Following international examples, a minimum income requirement for family reunification was introduced in the Act on Residence

⁴Statistik Austria. (2017). *Migration und Integration. Zahlen. Daten. Indikatoren*. https://www.oew.ac.at/fileadmin/kommissionen/KMI/Dokumente/Migration_und_Integration._Zahlen_Daten_Indikatoren/migration_und_integration_2017.pdf. Accessed 7 May 2018.

and Settlement (*Niederlassungs- und Aufenthaltsgesetz* – NAG 2005), as family-related reasons (41.6% in 2014) rank even higher than work-related reasons (31.5%) as major reason for immigration to Austria (Pesendorfer 2015:16). It reduced the immigration of low-skilled persons from third countries who want to join their partners in Austria who themselves are receiving welfare benefits like long-term unemployment benefits or social assistance (Biffl 2017:163).

The current migration discussion focusses on immigration only, even though Austria has been a country with large numbers of emigrants for many decades. During the nineteenth and the early twentieth century, most notably during World War II, many persons emigrated voluntarily or were forced to do so. Also, during the first years after World War II, not all persons displaced from Eastern Europe remained in Austria, but many moved on, mostly overseas.

Currently, no exact information is available on the number of Austrian citizens living abroad. The Ministry of Foreign Affairs estimates that in July 2018, 583,700 Austrian nationals lived abroad, 437,400 of whom in Europe. The main countries of destination are Germany (261,000 persons), Switzerland (65,000), the United States (US, 36,000) and Australia and United Kingdom (UK, 25,000 each).⁵ These numbers might rise during the next years. Between 2008 and 2017, on average, 22,000 Austrians emigrated per year, while on average, 15,500 Austrians returned to Austria.⁶ In the public discussion, current emigration from Austria concentrates on brain drain, often related to the medical profession.

2.2 Migration and Social Protection in Austria

Coverage of social insurance in Austria is quite high as more than 99% of all (legal) inhabitants have health insurance. This is due to a combination of factors including compulsory insurance against several social risks (unemployment, incapacity to work due to illness or accident, pension) for most types of paid work, comprehensive possibilities to cover economically dependent family members, possibility for some persons to continue coverage on a voluntary basis, and compulsory coverage with health insurance for pensioners and most unemployed persons. Compulsory insurance coverage is linked to current or former legal employment exceeding certain thresholds and access to legal employment is restricted for non-EU/EEA/Swiss citizens. Tax-financed benefits usually require a residence permit, which again depends on legal employment or other types of regular income, and it is required that the recipient's usual place of residence has been in Austria, regardless of his/her nationality.

⁵http://www.statistik.at/web_de/statistiken/menschen_und_gesellschaft/bevoelkerung/internationale_uebersich/036450.html. Accessed 26 March 2019.

⁶Statistik Austria. (2018). *Wanderungsstatistik*. https://www.statistik.at/web_de/statistiken/menschen_und_gesellschaft/bevoelkerung/wanderungen/wanderungen_mit_dem_ausland_aussen-wanderungen/index.html. Accessed 26 March 2019.

2.2.1 Unemployment

The Austrian unemployment insurance scheme consists of two consecutive systems of unemployment benefit (*Arbeitslosengeld*) and unemployment assistance (*Notstandshilfe*⁷), with exhaustion of the former being an eligibility criterion for the latter. Eligibility for benefits requires a minimum number of contributions: for first time applicants, 12 months within the last 2 years; for persons who already received benefits from the scheme, seven contribution months during the last year, with lower requirements for persons younger than 25 years⁸. Employees earning more than 438,05 EUR/month (2018; *Geringfügigkeitsgrenze*⁹) are due to compulsory full insurance (i.e. all four insurance pillars: work accidents, unemployment, health and pension). Self-employed persons can voluntarily choose to join the unemployment insurance scheme¹⁰.

Unemployment benefits generally yield 55% of the recipient's last earned income and are usually granted for up to 20 weeks (extended to 52 weeks depending on age and prior insurance or to 4 years in exceptional cases). Unemployment assistance yields 92% of the last unemployment benefit or 95% if the benefit is below the threshold for equalisation allowance and is granted for 52 weeks. It can be applied for again as long as unemployment persists. Both payment schemes are tied to registration at the AMS and the jobseeker's ability and willingness to work, which are expressed by preparedness to accept AMS job offers. Lack of cooperation can be sanctioned with temporary revocation of the payments. Unemployment assistance is means-tested and since July 2018, only the applicant's own income is taken into account.

The access to unemployment benefits is not conditioned by applicants' nationality, hence EU and non-EU foreigners can claim these benefits under the same conditions as national residents. Austrians residing abroad are not entitled to claim unemployment benefits from Austria, independently of their country of residence. While receiving unemployment benefits, travel to any other country is allowed for job search, training abroad or family affairs and restricted to a maximum of 3 months.

As explained, legal employment in Austria implies legal residence and holding a working permit. EU citizens have advantages in gaining a residence and working permit due to their right of unrestricted free movement for job search. The period of

⁷Help.gv.at. (2018a). *Notstandshilfe – Ruhen*. <https://www.help.gv.at/Portal.Node/hlpd/public/content/361/Seite.3610021.html>. Accessed 16 April 2018.

⁸Kammer für Arbeiter und Angestellte für Wien (2017). *Arbeitslos – Was nun?*. https://media.arbeiterkammer.at/wien/PDF/Publikationen/ArbeitundRecht/Arbeitslos_was_nun_2017.pdf. Accessed 13 Apr 2018.

⁹Help.gv.at. (2018d). *Begriffslexikon – Geringfügigkeitsgrenze*. <https://www.help.gv.at/Portal.Node/hlpd/public/content/99/Seite.990119.html>. Accessed 9 May 2018.

¹⁰WGKK. (2018). *Arbeitslosenversicherungsbeitrag bei geringem Einkommen*. <https://www.wgkk.at/portal27/wgkkdgportal/content?contentid=10007.724681&viewmode=content&portal:componentId=gtndd7d8efd-b0a7-42fe-937c-b7f99005e756>. Accessed 13 April 2018.

prior contribution in EU/EEA and Switzerland are also taken into account when accessing unemployment benefits in Austria: as long as a person has contributed for a sufficient number of months into any unemployment insurance scheme in these countries, it suffices to have been employed for at least 1 day in Austria to obtain Austrian unemployment benefits. The totalisation of periods of contribution to foreign social security systems is also provided in the bilateral agreements with non-EU countries, such as Serbia, Turkey and Bosnia and Herzegovina.¹¹ Apart from these cases, however, the Austrian unemployment insurance scheme treats nationals and (EU and non-EU) foreigners equally.

2.2.2 Health Care

In the private sector, employers deduct 3.87% of the employee's gross wage, add their employer's contribution of 3.78%, and transfer the corresponding sum to the institution responsible for coverage. Coverage continues during unemployment and retirement. While residing in Austria, in the same household and not covered via their own contributions, dependents can also be covered free of charge.

When first covered by a sickness fund (usually at birth), a so-called e-Card is issued, stating the individual's name and social security number. To claim health care services in kind, one needs only the e-Card and some ID document. The benefits are usually provided free of charge or for a small co-payment. Coverage for health care starts on the first day of employment, independently of the prior residence and employment status.

Coverage for work accidents in the private sector is organized in a specialised insurance organisation, *Allgemeine Unfallversicherungsanstalt* (AUVA). Coverage of accident insurance is compulsory also for employment below the minimum threshold applicable to other branches of insurance.

If one's working capacity has been permanently reduced by at least 50%, one can apply for disability pension. The form for the formal application contains detailed questions regarding the tasks fulfilled in all jobs held during the last 15 years. Proof of employment and wage should be already available at the insurer due to the compulsory and/or voluntary pension insurance. Eligibility for disability pension requires 60 contribution months if the applicant is younger than 50 years. Austrians receiving disability pension can move abroad and still draw the Austrian pension.

Health care benefits and disability benefits are earned via payment of contributions. Cash benefits for incapacity to work are related to the contribution base and there is no means-testing. The definition of covered health benefits in kind is very broad. Breadth and depth of coverage do not differ between persons with higher and lower contributions. This holds for all health-related benefits discussed above.

¹¹ AIVG; AMS (2018a); BGBl. (2000, Turkey), (2001, Bosnia and Herzegovina), (2002, Serbia); [Help.gv.at](https://www.help.gv.at) (2018d); NAG § 8, 9, 51.

Achieving legal employment is thus the most important obstacle for health care coverage of foreigners willing to work in Austria and their dependents. Furthermore, NAG §11(2) 3 states that the permission to reside in Austria can only be granted if the person is fully covered by a health insurance scheme that provides services in Austria. Consequently, lack of health insurance is not much of a problem for legal residents in Austria, but rather can be a barrier to achieve legal residence status.

2.2.3 Pensions

Austria grants two types of old-age pensions: contributory and non-contributory. The general principle of the Austrian retirement scheme is to maintain the standard of living. While all private employees are covered by the ASVG through one insurer (*Pensionsversicherungsanstalt* – PVA), there are separate laws and insurers for other employment groups (Table 2.1). Pensions are financed in the pay-as-you-go logic from contributions between the same minimum and maximum thresholds as in health insurance. Employers subtract 10.25% of gross income as employee's contribution, add 12.55% as employer's contribution, and transmit the sum to PVA. In addition to payroll contributions, ASVG specifies certain Government contributions, e.g. for persons with defined care obligations for small children or relatives with severe care needs, and for persons doing their military service. The Government is financing the *Ausgleichszulage* (non-contributory allowance for pensions below a specified income threshold), according to the revenue equalization act (*Finanzausgleichsgesetz* 2017 §2). When the pension insurance's income from contributions does not cover the total pension expenditure, the Government is legally obliged to cover the difference (*Ausfallshaftung des Bundes*).

Currently, the standard retirement age is 65 years for men and 60 years for women. Between 2024 and 2033, the standard retirement age of women will gradually be lifted to the same level as that for men. Retiring before the standard retirement age has been possible for – and frequently done by – persons with many contributory years but results in financial reductions of the pension. Individuals who work even after reaching the standard retirement age achieve a bonus. The minimum number of insurance years for being granted a pension is 15 years, and some non-contributory periods are recognized for the calculation of insurance months¹².

Individual pension accounts have been introduced in 2014. All earnings with compulsory pension insurance are taken into account for calculating the pension

¹² This includes: (1) periods when receiving unemployment benefit, payment for sick leave or from accident insurance; a maximum of 24 months per dependent child. These periods are credited for all EU/EEA/CH nationals fulfilling the necessary requirements. (2) For Austrian nationals only, times of being soldier, prisoner, in hospital care or disabled, all related to WW II, or temporarily emigrated due to NAZI prosecution up to 1945, and times of military service are recognised. (ASVG § 227, 228). For a defined number of secondary and tertiary education years, contribution months can be bought.

and contribution months to foreign pension schemes are also considered. If the qualifying period is reached with Austrian months alone, then calculation is as if also contribution months in EU/EEA/Switzerland had been worked in Austria, unless inclusion of foreign months is beneficial for the pensioner. If foreign months are counted to reach the qualifying period, payments are reduced in proportion of the foreign to the Austrian months. For third-country nationals, only Austrian months and contributions are used to calculate the pension. In general, Austria pays pension only for contributions into Austrian pension funds, but requires that foreign contributions are mentioned when applying for pension benefits. Benefits from foreign insurers are paid directly from abroad to the beneficiary. Receiving the pension abroad in case of permanently moving to a foreign country is possible under the same conditions as for resident nationals.

The non-contributory pension (*Ausgleichszulage*, equalization allowance) is intended to prevent poverty in old age. Each pension application includes the check whether the pension income is below a certain threshold, which depends on household composition. All income from property, assets or pensions from Austria or abroad have to be reported.¹³ Eligibility for the allowance requires that the centre of living and usual place of residence is in Austria (both for citizens and non-citizens), and that an Austrian/EU/EEA/Swiss pension is received. It is not possible to export this allowance to other countries. In cases of doubt, the insurer can request documentation for the usual place of living. Furthermore, NAG § 11 states that no residence permit can be granted if the residence might become a financial burden for the municipality. Such a burden is assumed if the income is below the eligibility thresholds. The law states explicitly that benefits conditional upon residence in Austria – like *Ausgleichszulage* – cannot be included in the calculation of the necessary income.

2.2.4 Family Benefits

There are several types of family-related benefits in Austria. Regarding maternity benefits, women are not permitted to work during 8 weeks before the calculated birthday of their child until 8 weeks after the child's actual birth.¹⁴ Employed women receive a cash benefit (*Wochengeld*) that amounts to the average earnings of the last 3 months and is financed from a special fund regulated by the Family Burden Balancing Act (*Familienlastenausgleichsgesetz* 1967). *Wochengeld* is due even if there is only 1 month of employment at the cut-off date for the benefit or if the mother has been employed for at least 3 months at conception, but is not employed at 8 weeks before the calculated birth, unless it was her who terminated the employment.¹⁵ Access to *Wochengeld* does not depend on the place of residence or the

¹³ ASVG § 296 (1).

¹⁴ MSchG 1979.

¹⁵ ASVG § 162.

mother's nationality. Hence, EU and non-EU foreign residents can access maternity benefits in Austria under exactly the same conditions as those applied for resident nationals. The benefit is exportable and can be accessed by nationals residing abroad if they fulfil the necessary employment conditions.

For fathers of newborn children, Austria provides the legal concept of "family time" (*Familienzeit*) consisting of 1 month of unpaid leave after childbirth or the entry of a foster/adopted child into the family.¹⁶ In many industries, a father's possibility to consume *Familienzeit* depends on the employer's good will. Further requirements for *Familienzeit* are: residence and centre of life in Austria in the same household with the child and the other parent; eligibility for child benefits; at least 182 days of employment with compulsory health and pension insurance in Austria, and intention to return to the same workplace after family time. The child's country of birth is irrelevant, as long as both parents and child have a common legal residence during the *Familienzeit*, and the father has been working (implying a working permit) in Austria. Even employment in other EU/EEA countries, Switzerland or countries with bilateral agreements is not sufficient for eligibility.¹⁷ Furthermore, since residence has to be in Austria, export of the benefit is not possible.

As for parental benefits, employed mothers have a right to paid leave until the day before the child's second birthday, which however can be shared with the father. The duration can be further extended if a part-time absence from work is chosen instead of full-time, and certain income thresholds of the parent on leave are not exceeded. If both parents take leave, they can achieve a total of 1063 days after birth, of which between 91 and 212 days have to be consumed by the other partner. As for cash benefits, parents can choose between two basic schemes: a flat-rate scheme for mothers without own income, and an income-dependent scheme in which benefits cannot be received for longer than 1 year after birth. In both schemes, the centre of living of parents and child must remain in Austria and they must live in the same household. EU and non-EU foreigners residing in Austria have the same access to parental benefits as national citizens.

Families with children usually receive family support (*Familienbeihilfe*¹⁸), independently of the employment status and prior contributions. *Familienbeihilfe* is granted until the child's 18th birthday (or the 25th birthday under certain circumstances). During receipt, the child's own taxable income must not exceed 10,000€/year. While Austrian citizenship is not an eligibility requirement for parent or child,

¹⁶ Help.gv.at. (2018). *Familienzeitbonus für Väter bei Geburten ab 1. März 2017*. <https://www.help.gv.at/Portal.Node/hlpd/public/content/8/Seite.080623.html>. Accessed 2 May 2018.

¹⁷ In a court case regarding a similar scheme, namely income-dependent parental benefits, the Austrian High Court decided that the non-consideration of employment time in other EU-countries represents a violation of EU-law. This might imply that also in the case of the family time bonus there actually exists a claim for fathers having worked abroad. However, such a legal decision has not been made yet. (OGH (2015). *Einkommensabhängiges Kinderbetreuungsgeld auch für Grenzgänger*. <http://www.ogh.gv.at/entscheidungen/entscheidungen-ogh/einkommensabhaengiges-kinderbetreuungsgeld-auch-fuer-grenzgaenger/>. Accessed 9 May 2018).

¹⁸ Help.gv.at. (2018). *Familienbeihilfe – Beantragung*. <https://www.help.gv.at/Portal.Node/hlpd/public/content/8/Seite.080711.html>. Accessed 30 April 2018.

legal residence in Austria is. If parents live in separate households, the benefit is granted to the person in whose household the child is living or to the person bearing the main economic burden of caring for the child. This implies that recipient(s) can receive family support even if the child physically lives in the EU/EEA/Switzerland, as long as the main financier of the child's livelihood resides in Austria. However, eligibility ceases if the child moves to a third country.

A claim for a similar foreign benefit eliminates eligibility for Austrian family support, but adjustment payments are possible. Due to the EU Regulation 883/2004, cross-border commuters and EU/EEA/Swiss citizens in general have access to Austrian family benefits if the main source of family income is in Austria¹⁹. Austrian citizens living and working abroad are not eligible for Austrian family support.

In January 2018, the Austrian Parliament decided to apply an index to *Familienbeihilfe* paid for children residing in a different EU/EEA country or in Switzerland, thus making the level dependent on the cost of living in the country of residence. This indexation has come into force on 1st of January 2019, triggering large dispute in Austria and Brussels regarding its compatibility with the EU Regulation 883/2004. On 24th of January 2019, the European Commission has opened an infringement procedure against Austria.²⁰ Apart from cases regulated by EU law, the only country with an existing bilateral agreement regulating access to family support is Israel: persons employed in Israel but residing in Austria have access to Austrian family benefits.²¹

2.2.5 *Guaranteed Minimum Resources*

Guaranteed minimum resources (*Sozialhilfe*, before 2020: *Bedarfsorientierte Mindestsicherung*²²) is a welfare benefit scheme that represents a safety net of the last resort. It is applicable to persons who are not eligible to unemployment benefits or whose income from these benefits is below the household-specific equalization allowance. It is subject to state (*Bundesländer*) legislation, introducing some extent of variation across states. However, the intention to achieve more geographical equity led to a reform on the federal level in April 2019, which defined maximum

¹⁹WKO (2018). *Kinderbetreuungsgeld und Familienbeihilfe für EU/EWR- und Schweizer Bürger*. <https://www.wko.at/service/arbeitsrecht-sozialrecht/Kinderbetreuungsgeld-und-Familienbeihilfe-fuer-EU-Buerger.html>. Accessed 30 Apr 2018.

²⁰European Commission. (2019). Indexation of family benefits: Commission opens infringement procedure against Austria. http://europa.eu/rapid/press-release_IP-19-463_en.htm. Accessed 6 March 2019.

²¹BGBI. (1975); FLAG § 2–5, 8; NAG § 8, 9; WKO (2018).

²²AMS (2018). *Bedarfsorientierte Mindestsicherung*. <http://www.ams.at/service-arbeitsuchende/bedarfsorientierte-mindestsicherung>. Accessed 23 April 2018.

See also: Oesterreich.gv.at (2020). *Allgemeines zur Sozialhilfe/Mindestsicherung*, <https://www.oesterreich.gv.at/themen/soziales/armut/3/2/Seite.1693914.html>. Accessed 19 March 2020.

benefit rates for adults depending on household composition. Provisions regarding regressive additional benefits for families with children and minimum language requirements for eligibility have been revoked by the Constitutional Court on 12th of December 2019.

Several groups of persons are eligible to guaranteed minimum resources: Austrian citizens, persons entitled to asylum or subsidiary protection (but not in all *Bundesländer*), EU citizens residing in Austria for employment purposes, holders of a permanent residence permit and persons deriving their entitlement from their relationship to another entitled person (e.g. spouse, civil partner). 'EU citizens residing in Austria for employment purposes' refers to the legal concept of employment property (*Erwerbstätigeneigenschaft*). This means one is either currently (self-) employed, temporarily not employable due to sickness or accident, or involuntarily unemployed after at least 1 month of employment and registered at AMS. Immigration to Austria with the purpose to receive guaranteed minimum resources is explicitly prohibited by law.²³

To be granted guaranteed minimum resources, a person must be unable to earn his/her living, willing to accept job offers and take existing measures to escape from the economic hardship. Persons in retirement age, carers for (terminally) ill relatives and non-academic students are exempt from the obligation to accept job offers. There is no direct requirement regarding the duration of residence in Austria for foreign citizens. However, the concept of employment property indirectly demands a minimum employment time of 1 month in Austria and a permanent residence requires prior residence of at least 5 years. Some federal states have additional requirements for foreigners, such as willingness to integrate into the Austrian society (i.e. participation in language and orientation courses in Lower Austria²⁴) or different residence requirements (residence permit for more than 4 months in Carinthia²⁵). The benefit level depends on the recipient's household composition. For the evaluation of the applicant's economic situation, all household members' income and wealth, in Austria and abroad, are taken into account. The benefit can only be granted if all wealth (save some small amount of approximately 5000 €) is spent. The receipt of guaranteed minimum resources is restricted to 12 months at most, but can be applied for again.

The take-up of guaranteed minimum resources yields no sanctions affecting renewal of the residence permits or naturalisation for foreign citizens. However, being unemployed and/or unable to meet basic material standards for living *per se* can affect these rights. Moreover, export of the benefit is not possible, regardless of the new country of residence.²⁶

²³ E.g. for Vienna, WMG §5 (2).

²⁴ See NÖ MSG.

²⁵ <https://www.klagenfurt.at/leben-in-klagenfurt/soziales/finanzielle-hilfen/mindestsicherung.html>

²⁶ NAG § 8, 9, 51, e.g. for Vienna also WMG.

2.2.6 *Bilateral Social Security Agreements*

Austria signed bilateral agreements on social security with several countries, including Serbia, Turkey and Bosnia and Herzegovina (the three most common origin countries of non-EU citizens residing in Austria) and the US, Canada and Australia (the three most common non-EU destination countries of Austrian nationals²⁷). The three latter agreements are restricted to the consideration of pension insurance time only, thus insured times of (self-) employment in one country can be considered for the evaluation of pension claims in the other. The agreements with the three former countries additionally contain extensive regulations regarding the unemployment insurance time (except for Turkey), health and accident insurance for citizens/residents of the other country²⁸. In all these agreements, regulations on the Austrian equalisation allowance are not included, and equalisation allowance is not portable.²⁹

2.2.7 *Obstacles and Sanctions*

Eligibility for social security benefits in Austria does not generally depend on the applicant's nationality. On the one hand, this means that Austrians residing abroad have no basic claim on benefits just because they are Austrians. On the other hand, foreigners are not automatically excluded from access or eligible to reduced benefits only. Generally, eligibility for tax-financed benefits is tied to legal residence (and sometimes, economic activity) within Austria, and in case of insurance benefits, contribution time to an Austrian insurance system. Residence, of course, implies a valid residence permit, due to either normal immigration (employment situation in Austria), long-term residence, or eligibility to asylum or subsidiary protection. EU citizens have an advantage compared to third-country nationals due to unrestricted free movement and the legal concept of "employment property", which under some conditions, allows staying in another EU country after losing the job.

Consistent with this underlying idea of equal treatment of citizens and legal residents is the fact that there are no sanction mechanisms within the social security system that affect nationals in a different way from foreign residents. Non-cooperation with authorities (e.g. rejecting job offers from AMS while receiving unemployment benefits) can cause a temporary suspension of benefit payments, but there are – at least officially – no sanctions in place that reduce, for example, the

²⁷ Statista. (2018). *Anzahl der Ausländer in Österreich nach den zehn wichtigsten Staatsangehörigkeiten am 1. Januar 2018*. <https://de.statista.com/statistik/daten/studie/293019/umfrage/auslaender-in-oesterreich-nach-staatsangehoerigkeit/>. Accessed 18 April 2018.

²⁸ Bundesministerium für Arbeit, Soziales, Gesundheit und Konsumentenschutz (BMASGK). (2018). *Zwischenstaatliche Beziehungen Österreichs im Bereich der sozialen Sicherheit auf einen Blick*. https://www.sozialministerium.at/cms/site/attachments/0/9/1/CH3434/CMS1470041431373/abkommensuebersicht_1-3-18.pdf. Accessed 20 April 2018.

²⁹ BMASGK (2018), BGBl. (1987, 1991), BGBl III (2000, 2001, 2002, 2017).

chance of family reunification or naturalisation. Unemployment benefit and assistance are designed with the intention to assist people on their way back to a financially self-sufficient life – therefore, there are no sanctions affecting the life after receipt of those benefits in any way. Yet, the lack of legal employment itself will often represent an obstacle to the renewal of a residence permit.

After the sudden break-up of the ÖVP-FPÖ coalition in spring 2019 and subsequent elections leading to an ÖVP-Green Government in January 2020, several planned reforms of the Austrian social system – which would have disadvantaged immigrants over nationals – seem to have been put on hold for now. The abolishment of unemployment assistance is less likely to be pursued in the current coalition, and core reforms of the former Government regarding guaranteed minimum resources have been overturned by the Constitutional Court. However, some of the legislative changes are still in effect and the symbolism and rhetoric, which were employed when promoting these policies, have left their marks on the public discourse. The then introduced photo on e-Cards, for instance, was advertised in social media using a story where clearly foreign-born persons were hindered from fraud by this photo ID. The indexation of *Familienbeihilfe* was often discussed in the context of migrant workers from Turkey and their children back home, neglecting the fact that third-country nationals would get these benefits only for children living in Austria.

2.3 Conclusions

In the Austrian welfare system, insurance benefits depend on legal employment, and access to legal employment is restricted for immigrants. Tax-financed benefits usually require a residence permit, and first issuance and extensions of residence permits for non-EU/EEA/Swiss citizens are subject to the restriction that the person will not become a financial burden for the municipality. Having proof of sufficient income and of comprehensive health insurance are thus legal prerequisites for being granted a residence permit. Only after long residence in the country, Austrian laws allow to grant a permanent residence permit. In a comparison of countries from the Organisation for Economic Cooperation and Development (OECD) over the period 1980–2010, this combination of characteristics made Austria stand out as persistently very restrictive when it comes to letting immigrants participate in the welfare state generosity (Römer 2017).

In Austria, the public discussion on migration focuses on the burden that immigration – especially, but not exclusively, from third countries – might pose for the welfare system. In the 2017 national elections, parties promising a stricter regime regarding immigration and more restrictive social and welfare benefits for non-Austrians achieved the majority, while the more immigration-friendly parties lost. Observers expect a relatively swift implementation of policies regarding immigration restrictions (Bodlos and Plescia 2018). The ÖVP-FPÖ coalition Government, although not in power anymore since spring 2019, induced some sustaining changes.

For example, child benefits, which used to be granted at the same level for children living in Austria or other EU countries, are now adjusted to the living costs in the country where the children reside. The European Commission repudiates the consistency of such a differentiated child support with current EU law and has opened an infringement procedure against Austria in January 2019.

Guaranteed minimum resources, regulated differently in the nine *Bundesländer*, have been amended with a national regulation for common standards by the former Government. While this legislation is still in effect, the Constitutional Court overturned two provisions (language requirements for eligibility and regressive maximum rates for families with children) which would have disproportionately disadvantaged immigrants. An announced reform of unemployment assistance, which might have led to its abolishment, is now less likely with the new ÖVP-Green coalition. A large difference between both existing schemes is the inclusion of wealth into the means-testing for eligibility for guaranteed minimum resources. Regarding unemployment assistance, means-testing is independent from wealth, as the benefit is an insurance benefit earned via former contributions. Foreigners receiving unemployment assistance thus have an income independent from a municipality's budget, in contrast to persons receiving guaranteed minimum resources.

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References

- Biffl, G. (2017). *Migration and labour integration in Austria. SOPEMI report on labour migration Austria 2015–2016. Report of the Austrian SOPEMI correspondent to the OECD*. Monograph Series Migration and Globalisation, Krems. Edition Donau-Universität Krems.
- Bodlos, A., & Plescia, C. (2018). The 2017 Austrian snap election: A shift rightward. *West European Politics*, 41(6), 1354–1363. <https://doi.org/10.1080/01402382.2018.1429057>.
- Buber-Ennsner, I., Goujon, A., Kohlenberger, J., & Rengs, B. (2018). Multi-layered roles of religion among refugees arriving in Austria around 2015. *Religions*, 9(5), 154. <https://doi.org/10.3390/rel9050154>.
- Pesendorfer, K. (2015). *Arbeitsmarktsituation von Migrantinnen und Migranten 2014. Ergebnisse des Ad-hoc-Moduls der Arbeitskräfteerhebung 2014*. Presentation. Accessed 15 Mar 2019.
- Römer, F. (2017). Generous to all or ‘insiders only’? The relation between welfare state generosity and immigrant welfare rights. *Journal of European Social Policy*, 27(2), 173–196.

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