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Austria: Trends & Developments

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Trends and Developments

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GRAF ISOLA Rechtsanwälte was founded in 1994 and is one of the leading independent Austrian commercial law firms with offices in Vienna and Graz. The full-service firm advises in all fields of Austrian and European business law with a client base from all sectors of domestic and foreign industry and public authorities. It has 25 qualified lawyers including seven partners – most are recognised experts in their field and have years of international experience. The firm is internationally known for its hard-

work approach and efficient and creative way of handling complex cases. GRAF ISOLA has an extensive network with international leading law firms across the globe on a best friends' philosophy. The firm regularly advises clients in respect to residence and work permits for Austria. Thanks to the highest level of professional competence and communication skills, procedures can be handled quickly and practically always positively, even in the difficult environment of the Viennese residence authorities.

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Amendments Facilitate Employment of Workers From Third Countries in Austria

The growing shortage of skilled workers has become a major challenge for companies and industries not only in Austria, but in general throughout the European Union (EU) in the past few years. On the one hand, the cause of this gap is due to factors such as low birth rates, ageing populations, and the increasing demand for specialised skills. On the other hand, especially in Austria, the rather long residence procedures and so far, rather onerous requirements for residence titles for third-country nationals are a possible further reason for shortage of skilled workers. The problem is particularly noticeable in sectors such as – eg, healthcare, engineering, information technology, as well as hotel and catering industry, leading to concerns about the long-term economic outlook for the regions. These shortages are expected to persist over the next few years, posing significant challenges for the industries’ growth and competitiveness. Therefore, policymakers and companies are looking for new strategies to attract as well as retain skilled workers and address this exigent issue.

For this reason, Austria enacted a legal reform of the Act Governing the Employment of Foreign Nationals (*Ausländerbeschäftigungsgesetz* – AuslBG) and the Settlement and Residence Act (*Niederlassungs- und Aufenthaltsgesetz* – NAG), which entered into force on 1 October 2022. The amendments also transposed – exceptionally early – Directive (EU) 2021/1883 on the conditions of entry and residence of third-country nationals for the purposes of highly qualified employment and repealing Directive 2009/50/EC (“EU Blue Card Directive”) (the deadline for transposition would have been 18 November 2023).

The aim of the reform is to simplify the procedure for recruiting skilled personnel from third countries (ie, EU/EEA or Swiss citizens) and ease the admission criteria in order to make a significant contribution – in addition to the qualification and promotion of the domestic workforce – to solving the increasing shortage of skilled and key workers through qualified labour migration.

The main legal changes are discussed below.

Statutory easement for obtaining the Red-White-Red Card

There are seven different categories of Red-White-Red Cards, namely “very highly qualified workers”, “skilled workers in shortage occupations”, “other key workers”, “self-employed key workers”, “start-up founders”, “graduates” and “regular workers in in tourism, agriculture and forestry”.

Changes in the minimum wage for “other key workers” and “graduates”

Until the amendment came into force, the Red-White-Red Card for “other key workers” differentiated between under 30-years-old and over 30-years-old workers in terms of minimum salaries. The reform lapsed the higher minimum salary for workers above 30 years, which means that regardless of age, applicants for the Red-White-Red Card for “other key workers” must earn a minimum gross monthly salary of EUR2,925 (2023). The minimum salary increases every year.

To apply for the Red-White-Red Card for “graduates” of an Austrian university, it was so far a prerequisite to earn a minimum monthly gross salary. This requirement has been adjusted in the way that graduates must get paid the locally customary gross minimum salary which com-

parable Austrian graduates (junior employees) would earn.

Adjustment of the points system

Some subcategories of the Red-White-Red Card (for “very highly qualified workers”; “other key workers”, “skilled workers in shortage occupations” and “start-up founders”) are based on a points system. To obtain a Red-White-Red Card, the applicant has to achieve a certain number of minimum points (70 points for “very highly qualified workers”; 55 for “other key workers”; 55 points for “skilled workers in shortage occupations” and 50 points for “start-up founders”) on the basis of determined criteria (eg, for education/qualification, professional experience, age, language skills).

In order to make it easier to achieve the minimum number of points, the following adjustments have been made:

- applicants receive one point for each half-year of work experience (instead of previously two points per year);
- “other key workers” and “skilled workers for shortage occupations” receive additional points for English language skills, if English is predominantly spoken at the respective employer (eg, English as group language of Austrian subsidiary of a multinational company) and the applicant can furnish a respective language certificate;
- “other key workers” are awarded points for work experience regardless of whether the completed professional training or qualification corresponds to the employment sought; and
- “skilled workers for shortage occupations” are treated as follows:
 - (a) uniform award of points in the case of completed training or education (regard-

less of university or non-university education, as was the case before the amendment) in the respective shortage occupation; and

- (b) workers aged over 40 but under 50 years at the time of application now also receive points (five points) for their seniority (previously, one could only receive points until the age of 30 (15 points) and 40 (ten points), respectively).

Proof of language skills (Red-White-Red Card)

Any language diplomas and course certificates submitted as proof of German or English language skills must not be older than five years (instead of the previous one-year requirement) in order to receive points within the respective points system.

Permanent Labour Market Access for Regular Workers (Red-White-Red Card as “Regular Worker”)

Workers who have been employed for two years as registered regular workers in the fields of tourism, agriculture and forestry for at least seven months per year and who can proof German language skills at A2-level may apply for the Red-White-Red Card as a “regular worker”. This new sub-category of the Red-White-Red Card scheme does not require a minimum salary, nor is a labour market test carried out by the Austrian Public Employment Service (*Arbeitsmarktservice* – AMS).

In some categories of the Red-White-Red Card and the EU Blue Card, a labour market test must be carried out by the regionally competent Employment Agency (AMS). If such test shows that there is no equally qualified worker registered as a job seeker for the specific job in question, the residence title will be granted

provided all the other requirements are fulfilled. Otherwise, the application will be denied. It is therefore of paramount importance to provide a very specific job description when filing the application so that the risk of a negative labour market test can be minimised.

Employment Permits for Specialists Within the Framework of Six-Month Projects

Particularly qualified workers from third countries (specialists) who are to be temporarily employed in addition to regular staff to carry out temporary projects, especially in the IT sector, without the intention of immigration, can be granted the necessary employment permits for a maximum duration of six months.

Statutory Easements Regarding the EU Blue Card

Professionals in the sector of information and communications technology

One of the requirements for obtaining the so-called “EU Blue Card” is evidence of a university degree or a degree from another tertiary educational institution with a minimum duration of three years. An exception has now been made for certain skilled workers in the field of information and communications technology. Accordingly, they may obtain an “EU Blue Card” without an academic degree if they can provide evidence of at least three years of professional experience comparable to the level of a university degree, under the condition that such experience was acquired during the seven years preceding the application.

Gross annual salary

The salary threshold of previous 1.5 times average gross annual salary of full-time employees (2022: EUR66,593 including special payments) has now been lowered to the average gross

annual salary of full-time employees (2023: EUR45,595 including special payments).

Holders of an “EU Blue Card” of another Member State

Third-country nationals holding a valid “EU Blue Card” of another Member State do not require a posting permit or employment permit to perform a specific business activity (such as attending internal or external business meetings, conferences or seminars; negotiating business deals, sales or marketing activities; exploring business opportunities, or participating in trainings) in Austria for a period of 90 days within any 180-day-period.

Procedural simplification in case of change of employer

A “EU Blue Card” is issued for a 24-month period. Previously the employee was bound to the initial employer for 21 months during the 24-month period. The law has been changed to allow the holder of a Blue Card EU to change employer after 12 months of employment without the need for a new labour market to be carried out by the AMS. The “EU Blue Card” holder can start working for the new employer, even if the modification application for the new “EU Blue Card” has not yet been completed.

If the “EU Blue Card” holder has not yet been employed for 12 months with the initial employer, they still can switch to a new employer, however, there is a 30-day waiting period from filing the modification application. After 30 days, the “EU Blue Card” holder can start working at the new company even if the procedure of the new “EU Blue Card” has not yet been finalised.

In case the “EU Blue Card” holder no longer meets the requirements for the “EU Blue Card”, they shall be granted a period of six months

within which they are entitled to seek new employment in Austria.

Lodging an application for a “EU Blue Card”, a “Red-White-Red Card” in Austria

Until now, foreigners and their family members who wanted to apply for a residence title “EU Blue Card” or a residence title “Red-White-Red Card” for the first time had to apply abroad, unless the application for the applicant was submitted by the employer. Now, foreigners and their family members can apply for these residence titles in Austria, provided they have entered the country legally and are staying legally.

Additional waiver of the labour market test in the following cases

If the applicant is a holder of a Red-White-Red Card as a “very highly qualified worker”, “other key worker” or “graduate”, and they wish to switch to the “EU Blue Card”, the labour market test does not apply, if the employment is continued with the same employer.

Other Changes

Joint application for family members

Until the amendment came into force, the employer could submit an application for a new employee to the competent residence authority only. Family members of the applicant had to file their applications abroad. To facilitate the procedure for the entire family of the applicant, the law has been adapted to allow employers to also simultaneously submit an application for the employee’s family members in Austria (key word being “simultaneously” – if the family members are not ready to file their applications the old rule applies).

Employment of foreigners for artistic productions

Foreign nationals who are concert or stage artists, band members, film, radio or television workers, or musicians, may be employed without an employment permit for eight weeks (instead of the previous four weeks) as part of an overall artistic production to secure a concert, an event, a performance, an ongoing film production, a radio or television live programme.

Self-employed secondary employment

Foreigners who have been issued an “EU Blue Card”, a “Red-White-Red Card” or a “Settlement Permit – Artists” are entitled to pursue self-employed professional activities, if such activities are subordinate to the foreigner’s main employment.

Reduction of the share capital in case of a Red-White-Red Card for “start-up founders”

In order to facilitate the acquisition of the Red-White-Red Card for “start-up founders”, the amount of the share capital to be contributed was reduced from EUR50,000 to EUR30,000.

New service point: Austrian Business Agency (ABA) – Unit “Work in Austria”

The ABA – Unit “Work in Austria” is a platform for advice and assistance in the admission of specialists and key personnel. Companies and applicants are provided with multilingual and digitally supported information and advice in the submission of application for a residence title such as the “Red-White-Red Card” or “EU Blue Card”.

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