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Austria: Trends and 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 eight 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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Sarah Micheuz joined GRAF ISOLA in 2021 as an associate in the employment law department of GRAF ISOLA. She supports and advises national and international

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Past Developments in Austrian Immigration Law: An Overview

In order to address the increasing growth in the shortage of skilled workers and to facilitate access to the Austrian labour market for third-country nationals, the Austrian legislature saw an urgent need for action. Accordingly, certain provisions in the Act Governing the Employment of Foreign Nationals (*Ausländerbeschäftigungsgesetz – AuslBG*) and the Settlement and Residence Act (*Niederlassungs- und Aufenthaltsgesetz – NAG*) were subject to a significant adjustment in October 2022.

The main changes included the following measures.

- Changes to the minimum salary for certain key workers/graduates and the allocation of points for qualifications, work experience and language skills.
- Employment permit for project staff.
- Inclusion of regular staff in the Red-White-Red Card scheme.
- Facilitating the change of employer and improving the mobility of EU Blue Card holders.
- Establishment of the Austrian Business Agency (ABA) – Unit “Work in Austria”.

These adjustments are discussed in more detail in the following paragraphs.

New Regulations Simplify the Acquisition of the Red-White-Red Card

Reduction of the minimum wage for obtaining the Red-White-Red Card for “other key workers” and “graduates”

Before the reform entered into force, there was a notable distinction in the Red-White-Red Card for “other key workers” with regard to minimum wages. Employees under the age of 30 and

those over 30 had to fulfil different minimum wages. However, the amendment of the applicable provisions has changed this distinction. The reform has removed the age limit for the minimum wage for employees, which means that applicants for the Red-White-Red Card for “other key workers” must now earn a monthly minimum gross wage of EUR3,030 (as of 2024) regardless of their age. The monthly minimum gross wage is reviewed and adjusted annually to reflect current economic conditions.

Furthermore, the requirements for applying for the Red-White-Red Card for “graduates” of an Austrian university have also been adjusted. Previously, a minimum monthly gross salary was required. This regulation has now been modified in favour of graduates. Graduates must now receive a minimum gross salary that is comparable to the salary that Austrian graduates in similar positions can expect. This change is aimed at offering highly qualified graduates a realistic and fair opportunity to gain a foothold in Austria and make their contribution to the country’s economy.

Adaptation of the points awarded for qualifications, professional experience and language skills

For some forms of the Red-White-Red Card, a certain minimum number of points must be achieved:

- 70 points – Red-White-Red Card for “very highly qualified workers”;
- 55 points – Red-White-Red Card for “other key workers”;
- 55 points – Red-White-Red Card for “skilled workers in shortage occupations”; and
- 50 points – Red-White-Red Card for “start-up founders”.

Points are awarded in particular for education, qualifications, work experience and language skills. Certain adjustments have been made to make it easier to achieve the respective minimum number of points. For work experience (per half-year) one point is granted instead of the previous two points per year. Third-country nationals who apply for the Red-White-Red Card for “other key workers” or the Red-White-Red Card for “skilled workers in shortage occupations” may receive additional points for English language skills, when English is the predominant language of the respective company. When applying for a Red-White-Red Card for “other key workers”, the work experience no longer has to be appropriate to the training. For “skilled workers in shortage occupations”, a standardised 30 points are awarded for proof of vocational training, regardless of whether the occupation applied for requires completion at a vocational school or a degree. Furthermore, skilled workers over the age of 40 (until the age of 50) also receive five points.

Irrespective of the major amendment in October 2022, the AuslbG was amended on 21 April 2023, to the effect that applicants who have knowledge of French, Spanish, Bosnian, Croatian or Serbian at level B1 will be awarded an additional five points.

Diplomas or course certificates are usually required as proof of language skills, and these must be no more than five years old (instead of the previous one year).

Implementation of the Red-White-Red Card for “regular workers” in tourism, agriculture and forestry

The amendment introduced a new type of the Red-White-Red Card for long-term regular workers from third countries. The following require-

ments must be met in order to obtain this specific residence title:

- employment as a registered regular worker in the same economic sector for at least seven months in each of the previous two calendar years;
- proof of German language skills at level A1 (whereby there was a legal change with regard to the language level on 21 April 2023, in that A2 is no longer required);
- the employer offers the prospect of a permanent employment contract; and
- the general requirements for proper employment, such as compliance with the applicable wage and working conditions, and social security regulations, are met, whereby the labour market test is waived in individual cases. (The labour market test (*Ersatzkraftverfahren*) is carried out by the Austrian Public Employment Service AMS. If this test shows that there is no equally qualified employee registered as a job seeker for the specific job in question, the residence title will be granted provided that all other requirements are fulfilled. The labour market test is carried out, for example, when applying for the Red-White-Red Card for “other key workers” or the EU Blue Card.)

Employment permit for project staff

Highly qualified workers from third countries who are to be brought to Austria for the purpose of carrying out temporary projects are granted a work permit for a maximum of six months. This work permit is intended, in particular, for IT specialists.

In this context, it should be noted that depending on the length of stay, either a visa C (stay up to 90 days) or a visa D (stay from 91 days to

six months) is required for a legal residence in Austria.

Brief Overview of the Statutory Easement in Connection with the EU Blue Card

An essential requirement for obtaining an EU Blue Card is that the applicant has successfully completed a university degree programme with a minimum duration of three years. The amendment has created an exception in this context. For a job as a key worker in information and communication technology, proof of at least three years of relevant professional experience is sufficient if it is comparable to a university degree with a minimum of three years of study and was acquired within the last seven years prior to submitting the application for an EU Blue Card.

Reduction of the gross annual salary

The salary threshold has been lowered from the previous 1.5 times the average gross annual salary of a full-time employee to one times the average gross annual salary of a full-time employee (2024: EUR47,855 including special payments).

EU Blue Card from another EU member state

For foreign nationals who hold a valid EU Blue Card from another member state of the European Union, no posting permit (*Entsendebewilligung*) or employment permit (*Beschäftigungsbewilligung*) is required to carry out a business activity in Austria for a period of 90 days within a period of 180 days if the activity is directly related to the business interests of their employer based in the other member state. Business activities include participation in internal or external business meetings, conferences or seminars, negotiations on business deals, sales or marketing activities, exploration of business opportunities or participation in training courses.

Change of employer

In addition, holders of an EU Blue Card now have the advantage that they can change their employer quite easily after 12 months of employment. The employer can be changed without the AMS carrying out a new labour market test and the new employment may be taken up immediately, even before a decision has been made on the application for the new EU Blue Card. If the employee has not yet been employed 12 months by the original employer, the new employment may only be taken up after 30 days from the date of application. After this 30-days period, the holder of the EU Blue Card is permitted to start working for the new company, even if the procedure for issuing the new EU Blue Card has not yet been completed.

Job search

If the holder of the EU Blue Card no longer fulfils the requirements for the EU Blue Card, they must be granted a period of at least six months within which they are entitled to look for a new job in Austria.

Waiver of the labour market test

If the applicant for the EU Blue Card is a holder of a Red-White-Red Card for “very highly qualified workers”, “other key workers” or “graduates”, the labour market test is not required if the employment is continued with the same employer.

Further modifications

Simultaneous application for residence titles for family members

Before the change in October 2022, the respective employer could submit an application for a new employee to the competent residence authority in Austria, while family members of the applicant had to submit their applications abroad. In order to simplify the process for

the applicant's entire family, the law has been amended. Employers now have the option of submitting an application for the employee's family members in Austria at the same time. If the family members are not prepared to submit their applications at the same time, the old regulation continues to apply.

Employment of foreign artists

Foreign nationals working as concert or stage artists or in related professions such as artists, film makers, radio or television producers or musicians may be employed for up to eight weeks (instead of previous four weeks) as part of an overall artistic production. This employment is for the purpose of securing a concert, an event, a performance, an ongoing film production or a live radio or television programme and does not require a separate employment permit.

Pursuing a self-employed activity

Foreigners who have been issued an "EU Blue Card", a "Red-White-Red Card", or a "Settlement Permit – Artist" are also authorised to pursue self-employment if this is subordinate to the foreigner's employment and all legal requirements for its pursuit are met.

Reduction of the share capital in case of applying for 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.

Implementation of the Austrian Business Agency (ABA) – Unit "Work in Austria"

The ABA – Unit "Work in Austria" serves as a platform for counselling and assistance with the admission of skilled and key workers, particularly in the context of the Red-White-Red Card procedure. Companies and applicants are to be supported and assisted with multilingual and digitally supported information and advice when submitting applications.

Easier access to work for displaced Ukrainians

All Ukrainians with a "Displaced Persons Identity Card" (*Vertriebenenausweis*) have had free access to the Austrian labour market since 21 April 2023. An employment permit is no longer required to take up employment. The main aim of this measure is to speed up the labour market integration of those displaced persons who wish to remain in the Austrian labour market.

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