

MIRREM

Measuring Irregular Migration

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Austria Country Brief on Irregular Migration Policy Context

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THE MIRREM PROJECT

MIRREM examines estimates and statistical indicators on the irregular migrant population in Europe as well as related policies, including the regularisation of migrants in irregular situations.

MIRREM analyses policies defining migrant irregularity, stakeholders' data needs and usage, and assesses existing estimates and statistical indicators on irregular migration in the countries under study and at the EU level. Using several coordinated pilots, the project develops new and innovative methods for measuring irregular migration and explores if and how these instruments can be applied in other socio-economic or institutional contexts. Based on a broad mapping of regularisation practices in the EU as well as detailed case studies, MIRREM will develop 'regularisation scenarios' to better understand conditions under which regularisation should be considered as a policy option. Together with expert groups that will be set up on irregular migration data and regularisation, respectively, the project will synthesise findings into a Handbook on data on irregular migration and a Handbook on pathways out of irregularity. The project's research covers 20 countries, including 12 EU countries and the United Kingdom. This Deliverable of 15 country briefs is developed as part of Work Package 3 Politics: Understanding Legal and Policy Contexts.

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Irregular migration; policy measures; pathways into and out of irregularity

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Austria

This Brief provides an abridged overview of the national policy landscape on irregular migration in the country, based on a more extensive policy analysis. It also provides an overview of the main types of migrant irregularity that emerge and the pathways into and out of irregularity, including regularisations as relevant. Annexed to this Deliverable is also an overview of the mapped legal and policy frameworks.

1.1 POLICY PRIORITIES

- **Controlling irregular migration, in particular via the Balkan region and on the Eastern Mediterranean route**

In Austria, there has been a strong emphasis on preventing all migration movements outside of existing legal pathways into Austria. This has been implemented on the one hand through externalisation efforts, such as cooperation on cross-border policing of irregular migrants, advocating for hotspots at the EU external borders and strengthening cooperation with states along the so-called “Balkan route” through “security partnerships” for enhanced migration control (Biffl, 2017, p. 155; Ministry of Interior, 2022). Important events for the realisation of these efforts include the “Western Balkans Conference” (2016), the Vienna Declaration to fight “illegal migration along the eastern Mediterranean routes” (2020), the launch of the Joint Coordination Platform (2020), and the related Prague Declaration on political guidelines for the Joint Coordination Platform on effectively combating irregular migration along the Eastern Mediterranean route (2021).

- **Voluntary and forced return**

Discussions regarding return are closely related to the asylum system, rejected asylum seekers and access to social welfare and support services (such as access to basic welfare support, free language and integration courses, legal consulting, etc) (Stiller & Humer, 2020). Measures include the expansion of assisted voluntary return programmes, cooperation with countries of origin of asylum seekers with low recognition rates, information campaigns, reintegration support and bilateral agreements on voluntary and forced return. Through the establishment of the governmental Federal Agency for Reception and Support Services (BBU), legal and return counselling has been standardised and harmonised.

- **Pre-emptive prevention of irregular migration in countries of origin**

In recent years, Austria has strengthened efforts to prevent irregular migration through bilateral agreements with the countries of origin of asylum seekers with low chances for a positive asylum decision, as well as through the implementation of measures such as counselling, information dissemination, and campaigns in the countries of origin, especially addressing the practices of migrant smugglers, the restrictive nature of Austria's Aliens Law, as well as dangers related to (irregular) migration

1.2 OVERVIEW OF THE AUSTRIAN POLICY FRAMEWORK

See Annex 1 for an overview of the legal and policy frameworks mapped for this country.

1.2.1 Policy implementation measures

- **Voluntary return and forced removals**

Measures include the expansion of assisted return programmes, cooperation with countries of origin of asylum seekers with little chances for a positive asylum decision, information campaigns, re-integration support and bilateral agreements on voluntary and forced return (Stiller & Humer, 2020). Forced removals are implemented if persons, whose application for international protection or another residence title was rejected, have received a return decision and don't leave the country voluntarily. Forced removals may also occur if a person has irregularly crossed the border, is irregularly residing in Austria (e.g. overstayers) and/or has breached the residence requirements and therefore, lost the residence permit, or if he/she or a family member, if dependent on the visa of this family member, have lost the residence permit.

- **Entry and residence ban**

The imposition of an entry ban is more strictly regulated for third-country nationals than for EEA nationals, Swiss nationals or their third-country national family members. In the case of third-country nationals, an entry and residence ban can be imposed for an administrative fine of at least €1,000. An administrative fine for irregular residence can amount to between €500 and €2,500 (in the case of first offence) and thus already justifies issuing an entry and residence ban. Even if the number of administrative penalties in the case of unlawful entry or residence is identical for all groups, the consequences may differ significantly. Whether and, if so, to what extent, entry and residence bans of third-country nationals are justified by administrative penalties cannot be assessed due to lack of data.

- **Toleration (“Duldung”) and Residence permits for exceptional circumstances**

The residence permits for a) special protection, b) reasons of Article 8 ECHR and c) particularly exceptional cases are the Austrian instruments of regularisation.

Toleration is not a right to stay and tolerated persons usually do not have labour market access (if they had none before the toleration status was granted), but if a person has been tolerated for more than one year, he/she can apply for the special protection residence permit, which is valid for maximum one year and can be extended. The other two residence permits mentioned are likewise valid for one year but cannot be extended (Hinterberger, 2023).

- **Return centres, mandatory return counselling, residence requirement and area restriction, detention pending deportation, exclusion from social benefits**

Persons who have received a return decision are excluded in most provinces from basic care (“Grundversorgung”). If a person does not leave voluntarily, fails to comply with the duty to cooperate, or is unable to provide proof of such cooperation, he/she can be obliged to take up accommodation in one of the federal accommodation centres (residence requirement) and may be subject to a territorial restriction. Persons who have received a return decision must participate in return counselling. If there is suspicion that a person issued with a return decision may abscond, detention pending deportation can be imposed.

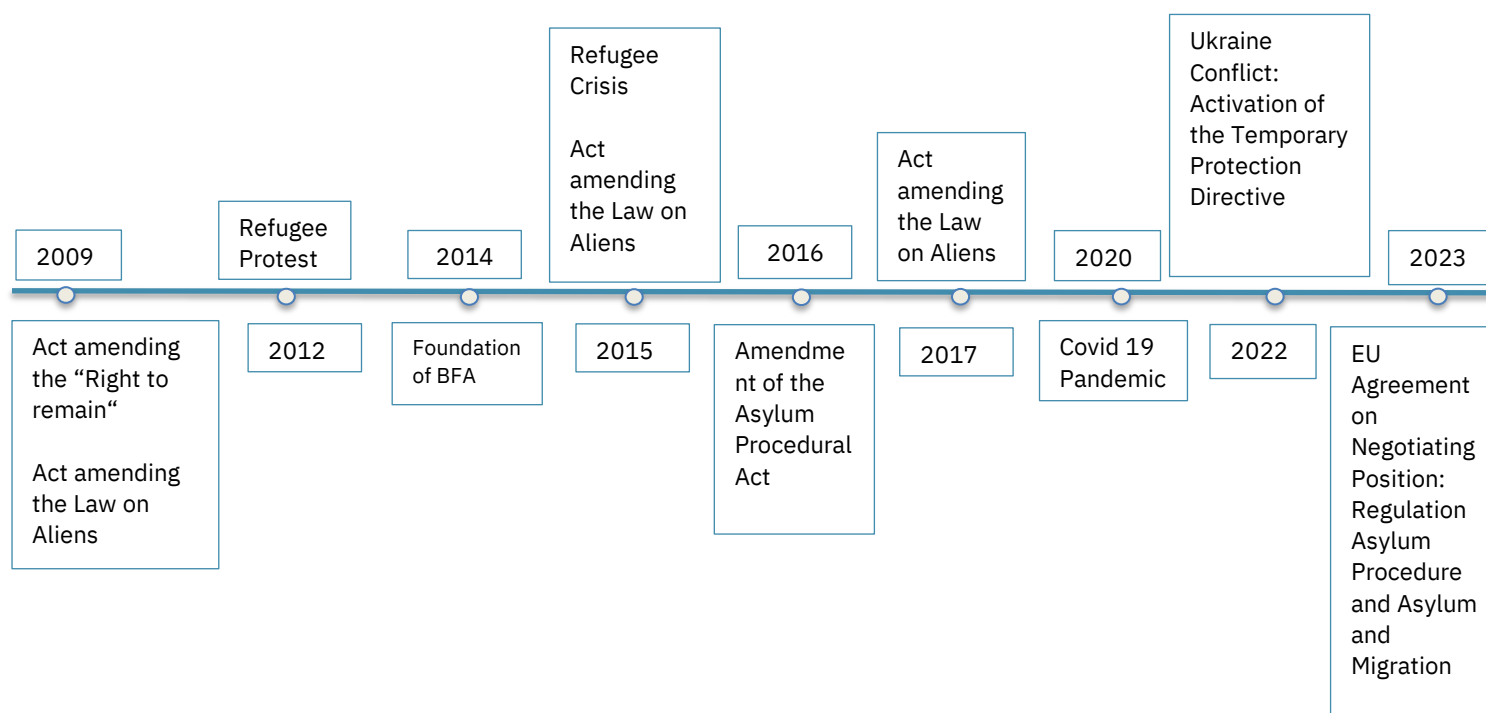
- **Penalties in case of unlawful stay**

Stiff penalties apply to individuals staying unlawfully in Austria. Foreign nationals who are themselves held responsible for their failure to comply with an obligation to leave Austrian territory without delay, such as when a return decision issued against them becomes both final and enforceable, commit an administrative offence punishable by a fine of up to €15,000.

- **Penalties in case of unlawful border crossing**

A person who has entered Austrian territory unlawfully (without the mandatory travel documents and visa), commits an administrative offence and can be punished by a fine of €100 to €1,000 or by imprisonment for up to two weeks. A person who has previously been legally punished for illegal entry is liable to a fine of €1,000 to €5,000 or to imprisonment for up to three weeks.

1.2.2 Policy evolution: Main turning points



1.2.3 Policy impact

- **Impact of post-2015 reforms: Increase of precarious residence situations**

The idea of **temporary asylum** ("Asyl auf Zeit") was brought to the political stage in 2016 (Amendment of the Asylum Procedural Act (BFA-Verfahrensgesetzes)). Recent critiques have highlighted: a) the possible negative impacts for asylum seekers and the host society, connected to increased legal uncertainty and instability of asylum status and hence irregularity; b) potential difficulties that refugees may face in integrating into society, because a time-limited status could hinder refugees' ability to find employment and housing; c) the significant bureaucratic burden that results from the legislation considering the effectiveness of individualised examination in case of numerous withdrawal proceedings (Knapp, 2016).

The **2017 Aliens Law Amendment Act** is particularly significant in terms of its impact on the living conditions of irregular migrants and migrants with precarious residence status, especially as related to return centres, mandatory return counselling and area restrictions. If, despite a legally binding return decision, voluntary return does not take place and these persons are not tolerated, a residence requirement (accommodation in centres of the federal government and an area restriction) can be implemented. Furthermore, in case of non-compliance and non-legal residence, administrative fines may be imposed.

- **Increase of withdrawal rate for subsidiary protection and asylum**

Overall, it is apparent that after the introduction of temporary asylum (“Asyl auf Zeit”) in 2016, the number of withdrawal decisions did increase significantly. For both subsidiary protection and asylum, the withdrawal rate increased between 2015 and 2018, with a jump in 2018, and levelling off in 2020. However, in 2020, around 80% of the withdrawal decisions were appealed and annulled by courts (Diakonie, 2020).

- **Impact of regularisation options**

With the "Bleiberechtsnovelle" (BGBl I 29/2009), the provisions on the right to stay on humanitarian grounds were fundamentally changed, which made it possible to apply for a residence permit to maintain private and family life in accordance with Art 8 ECHR and for “exceptional circumstances”. However, the relatively low numbers using these regularisation provisions (applications as well as provisions ex officio) reveal a restrictive application of regularisation possibilities of the Federal Office for Immigration and Asylum, as well as low awareness of this option among migrants.

- **Fluidity between regular and irregular work and residence**

Developments of labour market access and labour market policies in general have likely had a significant effect on migrants with a precarious or irregularised status, since they are mostly unable to access social benefits, and thus have to secure their livelihood through other accessible means (Homberger & Güntner, 2022). In the Austrian case, a state of flux between regularity and irregularity in regard to residence can be triggered by the fact that a range of residence permits in Austria do not grant access to the labour market (Stern, 2017).

- **Externalisation of migration policy and international cooperation**

In recent years, Austrian authorities widened and deepened their cooperation with other countries, especially in the Western Balkans, to disrupt migratory routes under the heading of “anti-smuggling” and “security”-incentives. One impact of these efforts can be observed at the institutional level, where new thematic alliances between mostly interior ministers, EU delegates, and agencies such as Frontex were formed under the heading of “security partnerships”, established through memoranda of understanding (“Vienna Declaration” and “Prague Declaration”) and the foundation of the Joint Coordination Platform in 2021. With regard to the Austrian policy priority of forced and voluntary return, several bilateral agreements linked to readmission have been concluded with third-countries in 2023.

- **Impact on integration of counselling services into BBU**

In 2020, counselling services for migrants were taken out of the hands of some larger NGOs and integrated into a government institution (the BBU), which is subordinate to the Ministry of Interior. A wide range of (I)NGOs raised concerns regarding the independence of the BBU and bundling these services in a government agency. The decoupling of support and counselling services from NGOs could therefore cause migrants with irregular status or negative experiences with state institutions to avoid contact (Asylkoordination, 2020; Fritsche et al., 2019). In addition, travel costs incurred for return and legal advice can be a further obstacle.

- **Policy impacts on gender-specific irregularity**

Gender-specific aspects of migration also entail gender-specific residence precariousness: Family reunification is an important means of residence for migrating women in particular, but it is characterised by dependence on the residence rights of the (male) partner. The three-year waiting period before (mostly male) beneficiaries¹ of subsidiary protection can apply for family reunification (beneficiaries of asylum do not have this waiting period), combined with the required proof of adequate housing, health insurance, and sufficient income, increase the risk that women choose an irregular entry route, such as with the support of migrant smugglers.

1.2.4 Policy challenges in addressing migrant irregularity

- **Covid-19 restrictions**

Policies related to the COVID-19 pandemic aimed at reducing mobility, including transnational mobility, in a number of ways. This entailed border restrictions and enhanced border control and hence likely influenced geographical (irregular) migration flows, including inflows, onward movements and return. The pandemic also posed severe challenges to carrying out (forced) returns, particularly in 2020, due to flight cancellations, border closures, COVID-19-related entry regulations and strict quarantine regulations. The pandemic also had an impact on the employment of third-country nationals in various labour market sectors, such as seasonal and harvest work, as well as the care sector (Scherndl, 2021).

- **Gender equitable implementation of regularisation**

The severely limited flexibility of the conditions of application for residence permits for exceptional circumstances contrasts with the very different biographical constellations and legal circumstances that apply to irregular migrants in practice. An important facet of these circumstances is gender-specific exclusionary effects. Requirements for regularisation opportunities are strongly linked to performance-based integration evidence, such as income generation and language acquisition. Women in particular, some of whom have (multiple) care responsibilities, are often unable to provide this evidence, which makes it more difficult for them to access pathways out of irregularity.

- **Harmonised implementation of access to basic social care in the provinces**

When it comes to accessing social assistance by migrants in an irregular situation, dynamics in the multi-level-governance of these services pose a challenge for the implementation of services, including for non-removed persons. Provinces transpose the national law (“Basic Care Agreement”) very differently in terms of including/excluding non-removed persons from access to basic care, even though they are an explicit target group of this legal provision. Moving the place of residence

¹ For more information, see the data on the granting of subsidiary protection (asylum statistics) from the Federal Ministry of the Interior at <https://www.bmi.gv.at/301/Statistiken/>.

often does not improve the situation, as only the province in which they are initially registered is responsible for providing basic social care.

- **Implementation of toleration (“Duldung”) and residence permits for exceptional circumstances**

This restrictive implementation practice also includes the very low number of toleration cards issued to irregular migrants deemed non-deportable. Based on the known figures on toleration and residence permits for exceptional circumstances, these residence permits represent only a small number of cases. Data on the toleration status are not publicly available, but according to parliamentary inquiries approximately 200 to 300 cards are issued per year.

- **Standardisation of bureaucratic processes and increased transparency**

The fact that often only the suspension of removal is granted de facto poses a challenge for a coherent implementation and access to basic care. In those cases, migrants don’t receive a written confirmation of the suspension, which they might need in order to be entitled to basic social assistance (FRA - European Union Agency for Fundamental Rights, 2011), depending on the way the basic care provision is implemented in the respective province.

Table 1: Relevant Austrian institutions

Sr. No.	Institution/ Department	Responsibilities	Web link
1.	Federal Ministry of Interior (BMI – Bundesministerium für Inneres)	The BMI is responsible, among other things, for security, state borders, the organisation of the service operations of the Federal Police, citizenship, and disaster management. Furthermore, the BMI is responsible for organising and conducting elections, referendums and referendum petitions, and organises internal administration in the provinces (Bundesländer).	Link (AT)
2.	Federal Office for Immigration and Asylum (BFA- Bundesamt für Fremdenwesen und Asyl) / Federal Ministry of Interior	The BFA has nationwide jurisdiction and is directly subordinate to the Ministry of Interior. The main tasks of the BFA include conducting first-instance asylum and Aliens Law proceedings – except for criminal proceedings and visa matters – as well as issuing residence permits for exceptional circumstances. The BFA enforces the Asylum Act (2005, AsylG), the 7 th (deportation and toleration), 8 th (measures terminating residence) and 11 th (Austrian documents for foreigners) main section of the Aliens Police Act (2005) and the Federal Basic Care Provision Act.	Link (AT)
3.	Federal Criminal Police Office (BK -	The Federal Criminal Police Office is subordinate to the Directorate General for Public Security in the	Link (AT)

	Bundeskriminalamt) / Federal Ministry of Interior	Ministry of Interior and began operational activities in 2003. The BK supports all provincial criminal investigation offices and subordinate police departments by providing assistance and support services, as well as analysis and evaluation of results. In the context of irregular migration, particular emphasis should be placed on the fields of combating human trafficking, smuggling and organised crime, and international police cooperation.	
4.	Federal Agency for Reception and Support Services (BBU - Bundesagentur für Betreuungs- und Unterstützungsleistungen) / Federal Ministry of Interior	The agency was created in 2019 (Act establishing the Agency) and became operational as of 1 July 2020. Areas of responsibility include: basic care, return counselling and assistance, legal advice and legal representation, human rights monitoring, interpretation and translation services. The BBU is a state agency. In the BMI organisation chart, the BBU is assigned to Directorate General V (Migration and International Affairs)/ Directorate V/B (Integrated Border Management, Foreign Nationals Police, Asylum and Return).	Link (AT) and Link (AT)
4.	Joint Coordination Platform (JCP) (Koordinationszentrum für Migration) / Federal Ministry of Interior	The Joint Coordination Platform (JCP) started its activities on 1 January 2021 and is directly assigned to the Federal Ministry of Interior/ Directorate General V (Migration and International Affairs). The platform is a joint initiative of Austria and interested EU member states and partners. It operates on a permanent basis. The tasks of the JCP include among others the monitoring and analysis as well as strategy and coordination of activities in the Western Balkan region and along the Eastern Mediterranean route; funding and financing programmes; as well as anti-trafficking measures.	Link (AT) and Link (AT)
5.	Finance Police (Finanzpolizei) / Federal Ministry of Finance	Regulatory tasks include, among others, the detection of illegal employment of foreigners and of violations of the provisions of the Wage and Social Dumping Prevention Act (LSD-DB); and of social fraud. These tasks are particularly important with regard to irregular migrants in irregular work situations.	Link (AT)
6.	Federal Ministry of Labour and Economy (BMAW - Bundesministerium	The tasks of the BMAW include, among others, the transmission of labour market policy targets to the Labour Market Service (Arbeitsmarktservice (AMS), which is responsible for implementation; labour law and compliance with labour law provisions, national	Link (AT)

	Arbeit und Wirtschaft)	and international market strategies, tourism and, in connection with the aforementioned points, the Employment of Foreign Workers (Act).	
7.	Aliens Police (Fremdenpolizei) / Federal Ministry of Interior	As defined in the Aliens Police Act § 2 the Aliens Police is responsible for 1) preventing the unlawful entry of foreigners; 2) supervising the stay of foreigners in the federal territory; 3) deporting foreigners back and transporting them through; and 4) preventing and stopping criminal acts under this federal law. The areas of focus of the Aliens Police in the provinces (Bundesländer) can vary, e.g. the Aliens Police Department in Vienna is also the coordination centre for air and land deportations, especially charter deportations.	Link (AT) and Link (AT) and Link (AT)
8.	Federal Administrative Court Austria (Bundesverwaltungsgericht Österreich)	The Federal Administrative Court decides on appeals against decisions of the Federal Office for Immigration and Asylum concerning applications for international protection, Austria's responsibility for conducting the asylum procedure (including as related to Dublin procedures), granting residence permits for humanitarian reasons, decisions on the termination of the stay of foreigners in Austria, organising their departure, imposing detention pending deportation; as well as on complaints about measures and delays, and against the refusal of a visa.	Link (AT)

1.3 THE SPECTRUM OF MIGRANT IRREGULARITY IN AUSTRIA: CATEGORIES AND PATHWAYS INTO/OUT OF IRREGULARITY

Table 2: Categories of migrant irregularity in Austria

Most relevant categories of migrants in an irregular situation	Description (who does this category apply to, what conditions may lead to this category, and what are the implications of being in such a situation)
Overstayers (third-country nationals)	Third-country nationals who lawfully entered Austria (with the travel documents and visas (if needed) required) but stayed beyond the time limits or conditions of the entry permission or the visa-free stay or the determined duration of stay. Unlawful residence is an administrative offence. Penalties: a fine of unlawful residence: €500 up to €2,500 or imprisonment for up to two weeks.

	In case of an already existing conviction of an illegal stay, fines from €2,500 to €7,500 or imprisonment for up to four weeks; deportation; entry ban.
Rejected asylum seekers and persons who have applied for subsidiary protection	A person covered by a 1 st instance decision rejecting an application for international protection, including decisions considering applications as inadmissible or as unfounded and decisions under priority and accelerated procedures, taken by administrative or judicial bodies during the reference period. A complaint can be filed with the Federal Administrative Court within 14 days. The BFA can issue a return decision, which must be complied with within 2 weeks. If there is no voluntary return, a deportation can be implemented and an entry ban may be issued.
Persons who have crossed the Austrian border unlawfully and have not applied for international protection	A person who has not entered Austrian territory lawfully (without the mandatory travel documents and visa) commits an administrative offence. Penalties: a fine of €100 to €1,000 or imprisonment for up to two weeks. A person who has already been legally punished for illegal entry is liable to a fine of €1,000 to €5,000 or to imprisonment for up to three weeks; deportation; entry ban. Any foreigner who does not reside lawfully in the territory of Austria (without a valid visa or residence permit) commits an administrative offence. Penalties: fine of €500 up to €2,500 or imprisonment for up to two weeks. In case of an already existing conviction for an illegal stay, fines range from €2,500 to €7,500 or imprisonment for up to four weeks; deportation; entry ban.
Tolerated persons	Persons concerned have received a return decision but cannot return due to legal or practical obstacles beyond their control (e.g., if the responsible embassy refuses to issue the required travel or identity documents). Even if toleration status is granted, a person remains an irregular resident and the return decision remains in force. If the conditions for toleration cease to apply, the toleration status is withdrawn.
Children born to irregularly residing parents, or whose parent(s) have a residence permit but have not met the administrative requirements.	Children born in Austria who do not possess Austrian citizenship stay legally in Austria for the first six months after birth, provided that the mother or another foreigner who is responsible for child care and upbringing of the child is legally resident in Austria. This applies for as long as the person concerned remains lawfully resident. If the father has the sole right to the care and upbringing of the child, his legal residence is a prerequisite for the child's legal residence during the first six months of life. If the mother and/ or father of a child born in Austria stay irregularly or have not met the necessary administrative steps within the first six months after birth, the child is also irregularly resident.

Migrants issued with a return decision who do not leave the country in the mandatory time.	Migrants who have received a final return decision and do not comply with the obligation to leave the country within the mandatory time. Administrative offence. Penalties: fine of up to €15,000 or imprisonment up to six weeks; deportation; entry ban.
Third-country nationals with entry or residence ban.	Third-country nationals, who have entered or remained in Austria despite a ban on entry or residence. Administrative offence. Penalties: a fine ranging from €5,000 to €15,000 or to imprisonment for up to six weeks; deportation.
Most relevant categories of migrants with a reasonable claim to a provisional status	Conditions (e.g. who does this category apply to, under what conditions, who is exempted, implications)
Asylum seekers	The Austrian Asylum Law defines an individual as an asylum seeker from the moment of lodging an application for international protection until the final conclusion, discontinuation or the procedure deemed no longer relevant.
Witnesses or victims of human trafficking	Victims and witnesses of human trafficking can apply for the special protection residence permit. The residence permit is valid for max. one year and can be extended. Persons concerned can access the labour market with an employment permit, no labour market screening required.
Victims of cross-border prostitution trafficking	Victims of transnational prostitution trafficking can apply for the residence permit special protection. The residence permit is valid for maximum one year and can be extended. Persons concerned can access the labour market with an employment permit, no labour market screening required.
Victims of domestic violence.	Victims of domestic violence can apply for the special protection residence permit. The residence permit is valid for maximum one year and can be extended. Persons concerned can access the labour market with an employment permit, no labour market screening required.
Tolerated third-country nationals who are subject to the non-refoulement principle or cannot return for factual and / or practical obstacles.	Tolerated persons are still irregularly resident in Austria and do not have access to the labour market if they did not have access to the labour market prior the toleration status was granted (e.g., if a person has lost his/her residence permit due to delinquency, but cannot return). If a person has been tolerated for more than one year he/she can apply for the special protection residence permit. This residence permit is valid for max. one year and can be extended. Holders of such a residence permit can access the labour market with an employment permit, no labour market screening required.
Third-country nationals and EU-citizens with	Persons eligible can apply for a residence permit for reasons of Article 8 ECHR: Art 8 of the ECHR involves weighing the private and/or family interests of the person in remaining in Austria against the interests of

<p>residence claims based on private and family interests (Art 8 ECHR)</p>	<p>Austria in removing the person from the country. The type, duration and lawfulness of the residence, the actual existence of a family life, the worthiness of protection of the private life, the degree of integration, the ties to the home country and the criminal record are taken into account. Persons concerned are eligible for the standard residence permit: access to the labour market with an employment permit, labour market screening required and the residence permit plus with unrestricted labour market access.</p>
<p>Third-country nationals with residence claims based on the duration of residence and degree of integration</p>	<p>Persons eligible can apply for a ‘residence permit in particularly exceptional cases’: The prerequisite for issuance is the proof of five years of continuous residence in Austria (at least three years of the total duration of residence must have been legal), the legal right to accommodation, sufficient health insurance and regular income. Furthermore, the integration degree is considered,. Persons concerned are eligible for the standard residence permit: access to the labour market with an employment permit, labour market screening required; and the residence permit plus with unrestricted labour market access.</p>
<p>EU citizens from another EU MS without residence rights</p>	<p>Conditions (e.g. who does this category apply to, under what conditions, who is exempted, implications)</p>
<p>Overstayer (EU citizens who don’t fulfil the requirements for a stay exceeding the three months visa-free time).</p>	<p>EU citizens are entitled to a visa-free stay in Austria for three months but must fulfil various requirements for the extension of the stay, such as self-employment or employment in Austria; availability of sufficient means of subsistence and health insurance coverage for themselves and family members; or the main purpose of the stay is (vocational) training. Furthermore EU citizens and their family members might lose the right of residence if there is a threat for reasons of public order or security, or the evidence of the registration certificate or the residence cards for dependents is not provided). If persons concerned remain in Austria without a valid registration certificate, their stay becomes irregular.</p> <p>Penalties: administrative offence, fine from €500 up to €2,500 or imprisonment for up to two weeks. In case of an already existing conviction for an illegal stay, fines amount from €2,500 to €7,500 or imprisonment for up to four weeks; deportation.</p>
<p>EU citizens who are subject to a residence ban but have not left, or who have re-entered, the country.</p>	<p>The conditions for a residence ban according to § 67 of the Aliens Police Act apply to EEA nationals, Swiss nationals or third-country national family members. A residence ban is issued if, due to their personal conduct, public order or safety is endangered. The personal conduct must constitute a real, present and substantial danger affecting a fundamental interest of society. Criminal convictions alone cannot justify these measures. In principle, a residence ban can be issued for a maximum of 10 years; an unlimited residence ban is only possible under special conditions. Administrative offence.</p>

	Penalties: fine of €5,000 to €15,000 or imprisonment for up to six weeks.
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1.3.1 Pathways into and out of irregularity

- **Irregular border crossing, irregular resident persons and overstayers**

A third-country national is considered to have entered Austria illegally if he/she enters Austria without the required visa and travel documents. If no application for international protection is filed after entry, he/she is an irregular resident. EU citizens are eligible to a three month visa-free stay, afterwards they have to meet some requirements (such as sufficient means of subsistence, health insurance) that are necessary for the issuance of a “certificate of registration”.

- **Loss of status**

Reasons for the loss of residence status might be non-renewal of a residence permit for not meeting the residence requirements anymore; or breaching conditions of residence, e.g., due to criminal convictions, loss of income and health insurance, sham marriage, divorce from a person entitled to residence, irregular employment or longer breaks in residence, e.g. the residence permit "Permanent Residence - EU" expires automatically if a third-country national consistently stays away from the EEA territory for more than twelve consecutive months. In addition, temporary asylum status can expire and not be renewed if conditions in the country of origin have changed.

- **Legalisation of the status**

The formal instruments for regularisation are the residence permits for exceptional circumstances, which, moreover, do not constitute a norm, but are only granted in special cases on the basis of case-by-case assessments (BFA, 2023). The numbers of formally regularised persons by residence permits for exceptional circumstances varies since 2020 between about 2,500 and 3,200. Furthermore, regularisation or legalisation of the status can also take place through entitlement by marriage to a national or an EU citizen, or as a consequence of EU accession of the irregular migrant’s country of origin.

- **Voluntary return**

Migrants can generally participate in return programmes regardless of how long they have been regular or irregularly staying in the country. The measures for the support of voluntary return are based on a 4-pillar model, consisting of information tools, return counselling, return assistance and reintegration offers (Ministry of Interior, 2022). However, in the case of an irregular stay, the financial means of support can be reduced significantly.

- **Forced removals**

A forced removal is only possible by official order of the Federal Office for Immigration and Asylum (BFA) if there is an enforceable return decision, an order for removal, a deportation order or an entry/residence ban. Deportations are carried out

on behalf of the BFA, the provincial police directorates are responsible for enforcement. Forced removals can be carried out by land or air, in cooperation with other EU member states and, since 2022, with the support of Frontex.

1.3.2 Regularisation

- [2009, Residence permit for reasons of Article 8 ECHR](#)

Eligibility criteria:

- private and/or family interests of the person in remaining in Austria prevail over interests of Austria in removing the person from the country.

Further criteria to be considered:

- type, duration and lawfulness of the residence
- existence of a family life and private life
- degree of integration
- ties to the home country
- (no) criminal record

- [2009, Residence permit in particularly exceptional cases](#)

Eligibility criteria:

- proof of five years of continuous residence in Austria (at least three years of the total duration of residence must have been legal)
- degree of integration, in particular the self-sustaining capacity, education, vocational training, employment, German language skills

Further criteria to be considered:

- legal entitlement to accommodation according to local standards
- sufficient health insurance
- regular income

- [2009, Residence permit special protection](#)

Eligibility criteria:

- witnesses or victims of human trafficking
- victims of transnational prostitution trafficking
- victims of domestic violence
- persons whose stay in Austria has been tolerated for more than one year because they are subject to the ban on refoulement or cannot be deported for reasons for which they are not responsible

- [2009, Standard residence permit](#)

Eligibility criteria:

- Requirements correspond to the residence permit for reasons of Article 8 ECHR or the residence permit for particularly exceptional cases

- [2009, Residence permit plus](#)

Eligibility criteria:

- Requirements correspond to the residence permit for reasons of Article 8 ECHR or the residence permit for particularly exceptional cases
 - successful completion of module 1 of the integration agreement or
 - lawful gainful employment (above the marginal earnings threshold).
- [2009, toleration \(“Duldung”\)](#)
Eligibility criteria:
 - Persons whose return or forced removal is not possible for legal or practical reasons beyond their control (i.e., if the responsible embassy refuses to issue the required travel or identity documents).

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ANNEX 1: Policy and Legal Frameworks

Laws and policies on migrant irregularity

Sr. No.	Title of policy/law	Year	Description	Weblink to source
1	Aliens Act (“Fremdenrecht”)	1997	Merging of the Aliens Act and the Residence Act in the Aliens Act 1997. The Aliens Act 1997 facilitated to grant a residence permit for humanitarian reasons.	Link (DE)
2	Basic Care Agreement (“Grundversorgungsvereinbarung”)	2004	Agreement between the Federal Government and the provinces on joint measures for temporary basic care for foreigners in need of assistance and protection (incl. asylum seekers, persons entitled to asylum, displaced persons and other persons non-deportable for legal or factual reasons) with the goal of a nationwide standardisation of the guarantee of temporary basic care. Basic care should be uniform throughout the country, implemented in partnership, avoid regional overburdening and create legal certainty for the persons concerned.	Link (DE)

3	Aliens Law Package (“Fremdenrechtspaket”)	2005	Repeal of the Aliens Act and replacement by the Aliens Police Law, the Asylum Act and the Settlement and Residence Act. Standardisation and systematisation of the ‘residence permits for humanitarian reasons’ (“Aufenthaltstitel aus humanitären Gründen”) in the Settlement and Residence Act (NAG - Niederlassungs- und Aufenthaltsgesetz). Conditions and requirements for legal residence and lawful departure and definitions of unlawful entry and residence, as well as related administrative penalties for third country nationals, are specified in §31 and §120 of the Aliens Police Act (2005).	Link (DE)
4	Home Care Act (“Hausbetreuungsgesetz”)	2007	The Home Care Act represents one of Austria's largest regularisation initiatives. It enabled 24-hour caregivers to transition to a regularised independent or dependent employment relationship in 24-hour care, mainly affecting persons from Central and Eastern Europe.	Link (DE)
5	Amendment to the “Right to Remain” (“Bleiberechtsreform”)	2009	Reform of the “residence permits for humanitarian reasons” including a right of application. Introduction of the “right to remain” and the “special protection residence permit”. Regularisation of certain groups: “old case regulation”.	Link (DE)
6	Act amending the Law on Aliens (“Fremdenrechtsänderungsgesetz”)	2009	The legal instrument of toleration was created. If the return of a person seems inadmissible or impossible, he or she can receive a tolerated status and ID card. Tolerated persons remain irregular. The ID card is valid for one year; if the obstacles to return still exist, the tolerated status can be extended.	Link (DE)

7	Aliens' Authorities Restructuring Act (amendments 2013 and 2014) (FNG – Fremdenbehörden - neustrukturierung s-gesetz")	2012	Federal Act enacting the Federal Office for Immigration and Asylum (BFA – Bundesamt für Fremdenwesen und Asyl) Establishment Act and the BFA Procedures Act and amending the Asylum Act 2005, the Aliens Police Act 2005, the Settlement and Residence Act, the Citizenship Act 1985, the Basic Care Act and the Introductory Act to the Administrative Procedures Acts 2008.	Link (DE)
8	Act amending the Law on Aliens ("Fremdenrechts-änderungsgesetz")	2015	Reform of toleration: When issuing a return decision, the admissibility of the return decision must be assessed by the authorities with regard to a possible refoulement violation. Identifiable obstacles to return must be taken into account when issuing a return decision.	Link (DE)
9	Act amending the Law on Aliens ("Fremdenrechts-änderungsgesetz")	2017	Persons, who have received a return decision and don't leave voluntarily / or fail to comply with their duty to cooperate / or are unable to provide proof of such cooperation can be obliged to take up accommodation in one of the federal quarters (residence requirement) and may be imposed a territorial restriction. Establishment of administrative penalties in case of non-compliance with residence requirement and with following a return decision.	Link (DE)
10	Fundamental Act on Social Assistance ("Sozialhilfe-Grundsatzgesetz")	2019	Foreign nationals who received a return decision and are obliged to leave the country are excluded from the access to social assistance benefits.	Link (DE)

Laws and policies indirectly impacting migrant irregularity

Sr. No.	Title of policy/law	Year	Description: How it relates to migrant irregularity	Weblink to source
1	Amendment to the “Employment of Foreign Workers Act” (“Ausländerbeschäftigungs-gesetz”) within the framework of the “Growth and Employment Act” (“Wachstums- und Beschäftigungsgesetz 2005”)	2005	Significant increase of the maximum penalties for illegal employment to make illegal employment unattractive. Involvement of the tax offices and their bodies in measures against illegal employment.	Link (DE)
2	Amendment to the “Employment of Foreign Workers Act” (“Ausländerbeschäftigungs-gesetz”)	2007	Implementation of equal rights of beneficiaries of subsidiary protection and beneficiaries of asylum in terms of free access to the labor market.	Link (DE)

3	2 nd Amendment to the “Employment of Foreign Workers Act” (“Ausländerbeschäftigungs-gesetz”)	2009	The following persons may be granted access to the labor market through an employment permit: a) foreigners who have a right of residence under the Settlement and Residence Act or the Aliens Police Act that does not preclude employment; b) asylum seekers who have been admitted to the asylum procedure for three months and have de facto protection against deportation; c) asylum seekers who have filed a subsequent application after a rejected decision and have de facto protection against deportation; d) tolerated persons (pursuant to Section 46a FPG) who have lost protection status (asylum or subsidiary protection) and thus already had access to the labor market.	Link (DE)
4	Implementation of the EU Sanctions Directive (2009/52/EC) in the “Employment of Foreign Workers Act” (“Ausländerbeschäftigungs-gesetz”)	2011	Newly regulated and penalised are: the illegal employment of irregularly resident third-country nationals and migrant minors without residence permit; the employment of foreigners under particularly exploitative working conditions; the use of labor obtained under force and exploitation of trafficked persons; the employment of a larger number of foreigners without the right of residence for longer than one month (Bundesministerium Arbeit und Wirtschaft, 2022).	Link (DE)
5	Amendment of the Asylum Procedural Act (BFA-Verfahrensgesetzes)	2016	Specifications and amendments on regulations on counselling of asylum seekers and on the duration of the right to remain (“Asyl auf Zeit”). All persons who have applied for asylum after November 2015 don´t receive permanent settlement rights anymore. Furthermore, the amendment implemented a three-year waiting period before beneficiaries of	Link (DE)

			subsidiary protection may apply for family reunification.	
6	Amendment to the “Employment of Foreign Workers Act”	2017	Asylum seekers admitted to the asylum procedure for three months are entitled to perform typical household services in private households without an employment, with payment via the service voucher (Bundesministerium Arbeit und Wirtschaft, 2022).	Link (DE)
7	Amendment to the “Employment of Foreign Workers Act” (“Ausländerbeschäftigungs-gesetz”) and the “General Social Security Act” (“Allgemeines Sozialversicherungsgesetz”)	2017	Implementation of the requirements of the EU Seasonal Directive (2014), which, were already largely in line with the Austrian seasonal model. Its objectives are to contribute to seasonal migration management and to ensure decent working and living conditions for seasonal workers (Humer & Spiegelfeld, 2020).	Link (DE)
8	Integration Year Act (IJG – “Integrationsjahr-gesetz”) and legal anchoring of the Integration Year Act within the framework of the Labor Market Integration Act (“Arbeitsmarkt-integrations-gesetz”).	2017	This federal law addresses persons entitled to asylum and subsidiary protection and asylum seekers with a high likelihood of recognition. It includes measures promoting the acquisition of German language skills and qualifications required for labor market integration, to increase the chances of sustainable employment in the regular labor market (Bundesministerium Arbeit und Wirtschaft, 2022).	Link (DE)

9	Annulment by the Constitutional Court of the Bartenstein Decree (BMWA, 2004) and the Decree of Beate Hartinger-Klein (BMAK, 2018)	2021	With the repeal of the Bartenstein (2004) and Hartinger-Klein (2018) decrees concerning the restrictions of employment permits for asylum seekers only to temporary employment in seasonal work or harvesting assistance, asylum seekers may have unrestricted access to the labor market after three months, but under the condition of a labor market test and an employment permit to be obtained by the employer.	Link (DE)
10	Activation of the "Temporary Protection Directive". Federal Government Ordinance on a Temporary Right of Residence for People Displaced from the Ukraine ("Verordnung der Bundesregierung über ein vorübergehendes Aufenthaltsrecht für aus der Ukraine Vertriebene	2022	The legal framework for temporary protection is laid down in the Asylum Act (Section 62 and the Displaced Persons Ordinance). The target groups are Ukrainian citizens residing in Ukraine before 24 February 2022, beneficiaries of international protection recognised in Ukraine and family members of these two groups. Beneficiaries of temporary protection have access to the Austrian labor market and basic care.	n/a

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