WP4
PERCEPTION AND IMPACT OF PRE-ENTRY PROGRAMMES FOR NEWCOMERS IN AUSTRIA

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About the Project

While integration policies as such are not new, and in some countries date back to the 1980s and beyond, there have been important shifts in the debates on integration and in related re-configurations of integration policymaking in the past decade or so. One of the main recent trends is the linkage of integration policy with admission policy and the related focus on recent immigrants. A second trend is the increasing use of obligatory integration measures and integration conditions in admission policy, and third, integration policymaking is increasingly influenced by European developments, both through vertical (more or less binding regulations, directives etc.) and through horizontal processes (policy learning between states) of policy convergence.

An increasing number of EU Member States have, in fact, adopted integration related measures as part of their admission policy, while the impact of such measures on integration processes of immigrants is far less clear. In addition, Member States’ policies follow different, partly contradictory logics, in integration policy shifts by conceptualising (1) integration as rights based inclusion, (2) as a prerequisite for admission residence rights, with rights interpreted as conditional, and (3) integration as commitment to values and certain cultural traits of the host society.

The objective of PROSINT is to evaluate the impact of admission related integration policies on the integration of newcomers, to analyse the different logics underlying integration policymaking and to investigate the main target groups of compulsory and voluntary integration measures.

The project investigated different aspects of these questions along five distinct workpackages. These analysed (1) the European policy framework on migrant integration (WP1), (2) the different national policy frameworks for the integration of newcomers in the 9 countries covered by the research (WP2), the admission-integration nexus at the local level in studied in 13 localities across the 9 countries covered by the research (WP3), the perception and impacts of mandatory pre-arrival measures in four of the nine countries covered (WP4) and a methodologically oriented study of the impact of admission related integration measures (WP5).

The countries covered by the project were Austria, the Czech Republic, Germany, Italy, the Netherlands, Spain, Sweden, Switzerland and the United Kingdom. Apart from individual cases project reports generally cover the period until end of 2010.

For more information about the project visit [http://research.icmpd.org/1429.html](http://research.icmpd.org/1429.html).
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Disclaimer

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I  Introduction

This report describes the introduction of pre-entry integration measures in Austria. The report has been prepared within the framework of work package 4 of the PROSINT project, covering altogether four of the nine countries included in the Prosint study (AT, DE, NL, UK).\(^1\) The general evolution of policies in the interface between migration and integration policies are described in a separate set of reports (work package 2: national policy frames on the integration of newcomers), covering all countries included in the PROSINT study.\(^2\) The country reports prepared under WP4 followed a common template elaborated by the work package coordinator\(^3\) and were designed for the purpose of the comparative report. Although country reports can also be read as standalone documents, the reports were not designed as such, but essentially as input for the comparative analysis. The research for this report was finalised in April 2011, i.e. just before the major amendments of the Settlement and Residence Act (Niederlassungs- und Aufenthaltsgesetz – NAG) passed Parliament and well before the entry into force of the new regulations (July 2011). While the report was subsequently revised to reflect the adoption of the amendment and its entry into force, the main timeframe covered by the report remains the period up to the adoption of the law. It is up to future research to undertake an evaluation of the implementation of the amendment.

The report is structured into five major sections. In the remainder of section I, the research design and the methodology used by this report is described. Section II analyses the evolution of pre-entry policies, policy objectives and political theory underlying proposed measures, and their main target groups. Finally, the last part of section II analyses the concrete measures adopted and their legal consequences. Section III investigates the social and political background of pre-entry measures through an analysis of media debates and an assessment of the influence of the EU and other European countries on the development of the pre-entry policies.\(^4\) Section IV (pre-entry measures in practice) has been left out in the Austrian case, as it is still too early to evaluate the practical implementation of pre-entry language requirements. Section V (perceived impacts of pre-entry tests) describes the expected impacts of pre-entry measures on immigration and integration by selected experts. Again, it is too early to evaluate the actual impact of implemented measures and the perception of impacts by relevant stakeholders.

I.1  Methodology

This report is based on the analysis of policy documents, a review of the existing literature on the subject, expert interviews, and an analysis of media discourses.\(^5\) In terms of research design, this report follows standard approaches to public policy

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\(^1\) The comparative report on this work package (Scholten et al. 2011) is forthcoming at [http://research.icmpd.org/1428.html](http://research.icmpd.org/1428.html).

\(^2\) AT, CH, CZ, DE, ES, IT, NL, SE, UK.

\(^3\) Han Entzinger & Peter Scholten, Erasmus University Rotterdam.

\(^4\) Court rulings in general often have an important impact of policy evolution. Given the recency of pre-entry measures in Austria however, it will still take some time until the first cases concerning pre-entry measures reach Austria's higher courts.

\(^5\) For a list of newspaper articles consulted see the bibliography. For a more detailed description of the methodology used for the media analysis see Hollomey & Wöger (2011).
analysis. These typically interpret the policy process as a cycle, which involves a succession of several stages: problem definition, agenda-setting, policy formulation, decision making, policy evaluation and implementation (See for an overview Parsons 1995: 77ff). Given the recency of explicit pre-entry measures in the Austrian context, this report will investigate only the first three stages of the policy cycle. Methodologically, policy analysis typically requires a mixed-method approach, whereby information is gathered through a variety of methods and from different sources and is then triangulated in order to make informed statements on the policy process. Epistemologically, this is based on an understanding that the policy process – as in fact all social reality – can never be wholly understood in all its complexity, nor that there is any single privileged actor or type of information that would allow us to come to such a comprehensive, authoritative understanding. Rather, policy research can only approximate a comprehensive understanding, and can do so only by combining different types of information and methods. This approach clearly distinguishes public policy analysis from a legal analysis, which typically uses legislation, explanatory notes to legislative proposals as well as case law as an authoritative framework of both information on and interpretation of public policies. A second major rationale for combining different methods and sources are the practical limitations in mapping all relevant actors in a policy process and gathering their views on policymaking. Complex policy fields such as integration and migration policy typically involve a multitude of actors and are usually negotiated over a long period of time within different formats. Finally, key actors’ perspectives on the policy process are themselves not neutral, nor free from contradictions. Combining different sources, notably policy documents, explanatory notes to legislative proposals, selected interviews with political actors and media debates to some extent allows to overcome the difficulties to account for the policymaking process, but it also implies that to an important extent the design of policy analysis is based on theoretical assumptions and plausibility considerations how different pieces of information link together.
Integration policies have never been completely separate from immigration policies. Indeed, immigration policies constitute one of the main opportunity structures shaping immigrants’ incorporation into receiving society well beyond the initial settlement and thus in a sense have always been a central element of integration policy making, even in the absence of an overt linkage or in the absence of any explicit integration policy. Similarly, pre-admission policies – understood in the generic sense of conditions to be fulfilled by prospective immigrants or their sponsors before entry – have always been an important element of migration policies ever since the emergence of modern migration policies in the second half of the 19th century, notably by defining categories of migrants eligible to take up residence and work in the country of immigration and by defining certain conditions to be fulfilled before being granted entry and residence. In the Austrian context, however, it was not before the mid-1990s that immigration was explicitly linked to integration.

The slogan ‘Integration before new immigration’ which was coined in the mid-1990s subsequently became the main motto of policies at the interface between integration and migration. Initially, the focus remained very much on restricting immigration, which was seen as supporting both public acceptance of migrants and their integration. In addition, however, integration had already become an important consideration in the implementation of family reunification policies following the 1993 Residence Act, with income and housing requirements being the main criteria to assess the integration capabilities of applicants for family reunification.

By the time of the National Action Plan on Integration (NAPI), adopted in 2010, the understanding of integration had considerably evolved, although the material situation of prospective immigrants remained a key consideration, notably in immigration law. The NAPI thus sees integration mainly as an individual achievement by migrants, expressed through learning the language, economic self-sufficiency, accepting the norms and values of Austrian society, and the ‘willingness to integrate’. The Austrian state in turn has to create conditions, in which this integration process can take place.

Minimum income requirements have been one of the main mechanisms to regulate new immigration to Austria. The underlying link to integration is the assumption that economic self-sufficiency is a precondition to integrate in Austrian society and

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6 Migration policies in the modern sense, i.e. policies explicitly aimed at regulating immigration of prospective immigrants and linked to elaborate screening and application procedures as well as criteria for admission were first pioneered by the US and certain parts of the British Empire (See McKeown 2008). Interestingly, some of these states, notably certain colonies within the British Empire foresaw language tests (not necessarily in English) to assess the adaptability of immigrants to the country of immigration, for example in the crown colony of Natal in South Africa (then directed at Indian migrants).

7 See Kraler 2011: 44, 49.

8 In addition, however, authorities charged to implement the Residence Act sometimes also drew on cultural arguments in arguing that family members seeking family reunion were not likely to integrate, although such decisions were usually suspended by the Administrative Court (Verwaltungsgerichtshof). See Kraler (2010: 75f); for a detailed case study on the implementation of the Residence Act in Vienna see Jawhari (2000).

9 See National Action Plan on Integration, Ministry of Interior (2010), pp. 8-9
On the basis of this principle, permanent immigration for the purpose of taking up employment was essentially restricted to highly skilled migration in the alien law reform 2002. While also qualitative criteria were used for the definition of so-called ‘key personnel’, reaching a certain minimum income threshold effectively served as the main criterion to qualify as ‘key personnel. Subsequently, also income requirements for other migrants were put on a new footing, notably for sponsors. Before the adoption of the Settlement and Residence Act 2005 (Niederlassungs- und Aufenthaltsgesetz – NAG), the level of social assistance as defined by provincial social assistance legislation served as a yardstick to calculate income requirements of sponsors of family members, which also meant that income requirements differed greatly between the provinces, reflecting differences in the level of social assistance foreseen by provincial legislation. The NAG introduced the so-called equalisation supplement reference rate (Ausgleichszulagenrichtsatz) – an annually adjusted rate defining a minimum level of pensions below which pensioners would receive supplemental benefits – as the new yardstick for calculating minimum income requirements for sponsors. The main impetus of this amendment was the harmonisation of the level of income required from sponsors between all nine Länder.

Another major integration condition is language. In 2003, the Integration Agreement (IA) introduced the requirement to learn German at a basic level in order to enable migrants to participate in social, economic and cultural life in Austria. Fulfilling the IA has become a precondition to obtain long-term residence. This principle applies to migrants from third countries, while there are special provisions for highly skilled workers and some exemptions (for example for minors, persons whose mental or physical health does not allow them to learn a foreign language; third country nationals who are a family member of an EEA citizen entitled to the right of free movement). As of July 2011, third country nationals who want to settle permanently and are not highly skilled generally have to prove basic German skills already before immigration (see for details and exemptions of the regulation below). As already mentioned above, language is considered key to facilitate participation in social and economic life in Austria.

In 2010 and 2011, two major revisions to the main pieces of legislation regulating residence and work of foreigners in Austria, the Settlement and Residence Act (Niederlassungs- und Aufenthaltsgesetz - NAG) and the Aliens Employment Act (Ausländerbeschäftigungsgesetz - AuslBG), were discussed and adopted. One of the main changes the legislative proposal foresaw in regard to integration was to oblige third-country nationals to learn German on a basic level already before immigration. Moreover, the amendments of the Settlement and Residence Act and the Aliens Employment Act, coming into effect in July 2011, substantially reorganise the system of residence titles and partly overturn the principle ‘integration before new immigration’ by allowing for demand-oriented immigration of foreign workers in a more flexible manner.

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10 See National Action Plan on Integration, Ministry of Interior (2010), pp. 8-9
11 The concept „permanent immigration“ is used by the OECD to denote all inflows that may lead to permanent legal residence in a country. In the Austrian context, this essentially refers to third-country nationals issues a settlement permit (Niederlassungserlaubnis).
manner than before. The law foresees that foreign workers can apply for a residence permit ‘Red-White-Red – Card’ on the basis of a points-based system. The qualifications and skills of potential immigrants shall be identified on the basis of a credit system, similar to systems of immigration in Canada or Australia, or the Blue Card of the EU (the latter also being introduced by the very same amendment). Immigration for the purpose of work was thus facilitated also for certain demanded professions who could hitherto not fulfil the income requirements under the regulation for key personnel.

II.1 Policy objectives and policy theory

According to the government program of the coalition of Social Democrats (SPÖ) and the Austrian Peoples Party (ÖVP) of 2008 ‘responsible immigration policy has to be guided by the interests of Austria’. In addition, the program considers the quota system defining the maximum annual intake immigrants to be out-dated and no longer adequate to meet the demands of the Austrian labour market and society. In the same year, the Federation of Austrian Industries in collaboration with the Austrian Chamber of Commerce presented a discussion paper highlighting inter alia the gap between the required number of highly-qualified workers and the available supply of these persons in Austria. In summer 2010, a proposal by the Minister of Foreign Affairs and chairman of the Austrian Workers’ and Employees’ Association (ÖAAB), Michael Spindelegger, to introduce a more flexible labour immigration scheme newly fuelled discussions on the desirability of creating a framework to attract skilled foreign workers. Also the Minister of Interior explained that the current immigration system would not prevent persons from immigrating whose qualifications were not needed by the Austrian labour market. Consequently, a commission including the Austrian social partners and the Federation of Austrian Industries was established in order to identify relevant immigration selection criteria.

In December 2010, the Minister of Interior, together with the Minister for Economics and the Minister of Labour, Social Affairs and Consumer Protection presented a draft legislation to change the Settlement and Residence Act of 2005, the Asylum Law of 2005 and the Citizenship Law of 1985. The amendment entered into force in July 2011 and contains the introduction of the RWR-Card, which partly replaces the former quota system applied to labour migration. The aim of the amendment was to ‘strengthen Austria as a business location’ through fostering targeted immigration, which is generally associated with the immigration of (highly) skilled persons. Although the term ‘intelligent immigration’ did no more appear in the final draft of the amendment it shows the rationale of having an immigration policy that is strongly oriented towards domestic labour market needs. Moreover, skilled migration is associated with having a

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15 WKO/IOM/IV (2008)
16 Mayer, Stefanie/Spång, Mikael (2009), p.59
17 Union of the largest Austrian economic interest associations, the Chamber of Labour, Chamber of Commerce, Chamber of Agriculture and Austrian Trade Unions Association.
18 The explanation report to the draft law amendment of Settlement and Residence Act included the word 'intelligent' immigration – this was deleted in the government bill, available at: http://www.parlament.gv.at/PAKT/VHG/XXIV/ME/ME_00251/index.shtml (31.3.2011), p.1
positive impact on the capability of immigrants to integrate after arrival as well as on security-related aspects.\textsuperscript{19}

This directly leads to the second relevant innovation introduced by the 2011 law amendment: the requirement to prove German language skills on a basic level before immigration. The Austrian government considers language acquisition a ‘core element’ on the pathway to successful integration.\textsuperscript{20} This is reflected in the IA, which is hitherto the only federally coordinated integration program, that requires all resident third country nationals (with some exemptions) to learn German at a basic level. Introduced in 2003, the target group of the agreement was extended in 2005, and the required language levels were raised in 2011. Moreover, the National Action Plan on Integration (NAPI) announced in 2010 that integration measures for new immigrants will be further developed and already foresaw the introduction of a pre-entry language requirement for third country nationals.\textsuperscript{21} The requirement to prove basic German skills already before immigration entered into force in July 2011. The changes in the draft law were titled ‘Integration through language acquisition’. Pre-entry language tests are regarded as an important first step towards post-arrival ‘successful integration’, and thus a ‘valuable contribution to the integration of third country nationals in Austria’, as the legislative proposal for the amendment states. Acquiring language skills already before immigration shall enable TCN to participate in the new society as soon as they arrive, and to invest all their capabilities and qualifications into Austrian society and the labour market in future.\textsuperscript{22}

\section*{II.2 Target groups}

The target group of the pre-entry language tests are all adult third country nationals who wish to settle permanently in Austria and are not highly skilled. Thus, the regulation mainly targets non-EU-family members of third country nationals and of Austrian citizens. Under-age minors and persons whose mental and/or physical condition does not allow for passing the tests and who produce a confirmation by a medical officer are exempted from the pre-entry tests.\textsuperscript{23} Highly skilled migrants (future holders of the Red-White-Red Card) who immigrate for the purpose of work are considered to show ‘a noticeably lower integration need’,\textsuperscript{24} and are thus not required to prove basic language skills before admission. Also dependants of highly-skilled third country nationals (holding a residence title ‘Red-White-Red Card’ or ‘Blue Card EU’) are exempted from the regulation.\textsuperscript{25} Upon application, the authority can waive the requirement of the pre-entry language test in the case of unaccompanied minors and if the private and family life of an applicant who already resides in Austria is at risk.\textsuperscript{26}

\begin{flushleft}
\textsuperscript{19} Ibid., p.3 \\
\textsuperscript{20} Ibid., p. 4 \\
\textsuperscript{21} Ministry of Interior (2010), p. 15 \\
\textsuperscript{22} Explanation report to the draft law amendment of Settlement and Residence Act, available at: \url{http://www.parlament.gv.at/PAKT/VHG/XXIV/ME/ME_00251/index.shtml} (31.3.2011), p.4 \\
\textsuperscript{23} NAG §21a (4) 1 and 2 \\
\textsuperscript{24} Ministry of Interior (2010), p. 15 \\
\textsuperscript{25} NAG §21a (4) 3 \\
\textsuperscript{26} NAG §21a (5)
\end{flushleft}
II.3 Pre-entry integration measures and legal consequences

II.3.1 Proof of German language skills before immigration

Article 21a of the amended Settlement and Residence Act (NAG; in force since July 2011) foresees that all third country nationals who are not highly skilled or family members of very high skilled workers and who intend to stay permanently in Austria have to prove that they have acquired basic German language skills already before immigration. The requirement is fulfilled, if a) the applicant shows a diploma or a certification at the level A1 obtained by a language institute certified by the Ministry of the Interior or the Ministry of European and International Affairs, or b) the applicant has met the requirements of Module 1 or Module 2 of the IA.\(^{27}\) Moreover, the language diploma must not be older than one year. Financial support for the course participation or the costs for the exam is not foreseen. The Ministry of Interior by decree stipulates which institutes are entitled to offer certificates, which are acknowledged as proof of basic German language skills under this requirement.\(^{28}\)

Similar to the IA, the following groups of persons are exempted from pre-entry language tests:

- Minors (at the time of the application)
- Persons whose mental or physical health does not allow them to learn a foreign language (certification by medical authority required)
- Family members of very highly skilled migrants (holders of a Red-White-Red – Card according to Art. 41 para 1 NAG and of a Blue Card EU).

The pre-entry tests require immigrants to proof German language skills ‘at a very elementary level’.\(^{29}\) The tests, similar to the German case, require skills in listening comprehension, as well as reading and writing skills.\(^{30}\) With regard to pre-entry language tests in general, international language experts have pointed to difficulties these requirements may pose especially for family migrants who are illiterate or literate in another alphabet.\(^{31}\)

II.4 Pre-entry conditions

II.4.1 Income requirements

To be granted a residence permit in Austria, immigrants generally have to prove that they earn a sufficient income to sustain their own livelihood (in the year 2011 a single person needs € 793.40 per month), have health insurance coverage and accommodation, and she/he does not pose a threat to public order and security. Most importantly, the principle of economic self-sufficiency has been anchored in the Austrian immigration regulations already after World War II\(^{32}\) and has endured to be an immigration control

\(^{27}\)§21a (3) NAG; see also WP2 report

\(^{28}\)§21a (6) NAG

\(^{29}\)Draft amendment to the NAG 2011, article 21a (1)


\(^{31}\)Critique on potential exclusionary effects of pre-entry language tests have also been voiced by experts in other countries, such as the Dutch Advisory committee on Aliens Affairs (ACVZ 2010) for example (see also Triarii 2009).

\(^{32}\)Davy/Gächter (1993), p. 163
mechanism ever since. Following this, destitution, for example as a result of losing one’s job, may in some cases result in losing the residence permit and ultimately in deportation. It has to be mentioned in this regard, that the private and family life according to Article 8 of the European Convention on Human Rights (ECHR) is taken into account on a case-by-case basis. Additionally it may be pointed out, that – dependent of the kind of residence permit – the lack of sufficient financial means can be substituted by a declaration of liability. The calculation of the income requirement underwent some changes, in particular in 2005 and 2009 (see below), with the effect that the income level was elevated.

In 2002, labour immigration was mainly limited to highly skilled migrants (and temporary seasonal workers) by defining a minimum wage requirement for so-called ‘key personnel’. The income requirement was initially set at €2016 gross per month, defined at the level of 60 per cent of the upper income threshold used for the calculations of social security contributions. Following an amendment to the aliens’ legislation in 2005, the minimum wage required for key personnel was raised to €2,250 in 2006, except for some specifically needed professions such as nurses. In 2011, the required amount amounted to €2,520 per month. As of July 2011, the regulations on key personnel were broadened and integrated in the new labour immigration system based on the Red-White-Red Card (amendment of the Settlement and Residence Act and the Aliens Employment Act). For “key personnel” the new “Red White Red Card” will be applicable. It depends on the type of “Red White Red Card” whether there is a minimum wage requirement (for example in the case of key personnel who are graduates of universities and colleges of higher education in Austria, there is a minimum monthly gross salary of € 1,890) foreseen or not).

The New Settlement and Residence Act of 2005 (in force since 1st January 2006) also included a change to the immigration conditions. The law introduced new income target rates. Since 2005, immigrants have to have a monthly net income which is above the legally defined compensatory allowance (Ausgleichszulage), instead of the levels of social benefits used before. In 2011 these amounted to about €793 for a single person and to €1,189 for a couple. In practice this means that a person would have to have a steady income and a full time job throughout the year. It has to be mentioned in this regard, that – dependent on the kind of residence permit – the lack of sufficient financial means can be substituted by a declaration of liability.

In 2009, another amendment to the NAG defined that regular expenses, such as rent or loans payments have to be deducted from the income. The legislator therewith reacted on a ruling by the Higher Administrative Court (2008/22/0711 of 3rd April 2009), which ruled that the previous administrative practice to deduct regular expenses from the required income was unlawful. As a result of the following amendment to the NAG, the factual levels of the income requirement increased.

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33 The respective article in the law is §11(2), sent. 4 NAG: A residence title may only be issued to a foreigner if ‘the residence of a foreigner would not lead to a financial burden for a local authority’ ("der Aufenthalt des Fremden zu keiner finanziellen Belastung einer Gebietskörperschaft führen könnte").
34 Kraler/ Sohler (2007), p. 11
35 See: http://www.help.gv.at/Content.Node/12/Seite.120300.html#Voraussetzungen (17.3.2011)
39 Eberwein/ Jessner (2010), p.63
II.4.2 Points-based immigration: Red-White-Red – Card and Blue Card EU

In 2011, the Settlement and Residence Act (NAG) and the Aliens Employment Act (Ausländerbeschäftigungsgesetz) were amended on the basis of which labour immigration to Austria was reorganised. ‘The quota system’, which defined maximum annual numbers of foreign workers who could immigrate, was replaced by a ‘criteria-based system’ that allows for a more flexible and demand-oriented immigration of skilled workers from third countries, so announced by the Minister of the Interior, who together with the Austrian social partners took the lead in preparing the amendment.  

Third country nationals may apply for a Red-White-Red – Card. Apart from fulfilling the general admission criteria, they have to reach at least 50 points out of 100 to immigrate as a skilled worker, and 70 to immigrate as a highly-skilled worker. The evaluated criteria are qualification, work experience, German or English language skills, and age. The Austrian Labour Market Service will be the responsible authority to evaluate the applications on the basis of these criteria.

Three main categories of skilled workers can apply for a Red-White-Red – Card:

1) Specifically high-skilled persons, i.e. persons with a completed university degree such as doctors or managers are allowed to immigrate to Austria without presenting a concrete job offer. They will then need to find a job in Austria within six months after immigration.

2) Skilled workers with key qualifications in understaffed professions (e.g. nurses, tillers; the professions shall be defined by decree flexibly according to the needs of the Austrian labour market) have to present a concrete job offer and an income that is in accordance with the legal regulations (envisaged at 1,786 EUR gross per month).

3) Other key workers (jobs which cannot be covered by domestic job seekers) have to produce a concrete job offer and a monthly income of at least 2,100 Euro (gross), key employees over the age of 30 of at least 2,520 Euro (gross). This largely corresponds to the old regulation on key workers (see above).

Persons who have completed a university degree at an Austrian university may also apply for a RWR – Card, if they earn at least 1.890 EUR per month (gross).

All categories of skilled workers will be exempted from the duty to prove basic German skills before immigration, but German skills will bring additional points for the RWR – Card. To obtain a work permit that allows unlimited access to the labour market, holders of the card will however be obliged to fulfil the IA and acquire German skills at A2 level within two years after immigration.

Family members of category 2 and 3 workers have to prove basic German skills before immigration, unless they are themselves highly skilled, while only family members of

40 Fekter in Der Standard, 10.12.2010
43 The basis of the calculations is the value of the upper income threshold used for the calculations of social security contributions (ASVG Höchstbeitragsgrundsätze) of 2011. Value one corresponds to 50% of the ASVG, value 2 to 60% of the ASVG.
44 Holders of a RWR Card according to Art. 41 para 1 and 2 NAG (as amended in 2011).
the 'specifically highly skilled' workers are exempted. All family members will receive unlimited access to the labour market immediately after immigration.

Moreover, the legal amendment introduces the Blue Card EU and so implements the Council Directive on the conditions of entry and residence of third country nationals for the purposes of highly qualified employment.

Age for spouses in the case of family reunification

An amendment to the aliens law in 2009 elevated - in accordance with directive 2003/86/EC on the right to family reunification - the age for spouses from third countries in the case of family reunification to 21 years of age.

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45 §21a (4), sentence 3 of the draft amendment to the NAG 2011. See also: Der Standard, 10.12.2010.
III Social and political background of pre-entry tests

III.1 Political and public discourse

III.1.1 Methodology

The PROSINT project also aimed at analysing the way the above described policy shifts were ‘framed’ in public discourses. Frame Analysis is a well-established methodology in social sciences (see Gamson & Modigliani 1987; Snow and Benford 1992; D'Angelo and Kuyper 2010) that allows identifying the larger normative schemes in which social and political problems are publicly debated. The aim of the PROSINT frame analysis therefore was to look at the problem definition, construction of target groups, proposed solution (causalties), and underlying normative perspectives (see Scholten 2011) as presented by various actors in public and political debates with regard to integration-based admissions policies in the 9 countries studied.

For the media analysis in Austria we analysed the media discussions around the introduction of the Red-White-Red Card and the introduction of pre-entry tests starting from summer 2010 to February 2011. Two Austrian newspapers, der Standard and the Kronenzeitung were selected for analysis, which have a different scope in terms of numbers and audience (see for more details the WP2 report).

In a next step, all articles which contained certain keywords in the selected time period were collected. Based on these articles, we identified the key actors and their claims-making. Finally, it is important to note that a frame analysis does not present facts, but the way facts are presented to the wider public by key stakeholders. Its aim therefore is to go beyond the level of legal regulations and policy measures and identify the arguments that have lead to a certain policy change and/or have helped in sustaining it.

III.1.2 The media debates

In the following, the public discussions around the introduction of pre-entry language tests, as well as the Red-White-Red – Card will be summarised. The dominant actor in these debates was the MoI under the former Minister Maria Fekter (ÖVP), who was the main responsible for integration and immigration affairs in Austria. Its coalition partner, the Social Democrats (SPÖ), but rather occupied a contradictory role. For example, the highest SPÖ officials did not proactively promote the establishment of an independent integration department – a claim they had followed over the past years as opposition party. But also other actors publicly voiced their positions in the course of these debates, in particular business and employees’ representatives, the Ministry of Economics and the Ministry of Social Affairs, who were also involved in drafting the points-based immigration system (RWR Card). Experts and NGOs provided statements and inputs assessing the foreseen legal amendments. Anton Pelinka, a policy expert, criticised that the government would not allow for a real discourse on the foreseen changes involving all kinds of societal actors. Similarly, the president of the Caritas

47 See Der Standard, 28.08.2010.
48 Pelinka in Der Standard, 22.2.2011
Austria Franz Küberl highlighted that immigration policy making has developed its own dynamics and, yet at the same time detached from real concerns of the population.\footnote{Küberl in Der Standard, 9.2.2011}

The guiding principle in all the discussions was that ‘responsible immigration policies have to be guided by Austrian interests’.\footnote{Fekter in Der Standard, 10.12.2010} This principle was reiterated by government as well as business representatives.\footnote{See for example representative of the Chamber of Commerce in Kronenzeitung, 12.11.2010} ‘Austrian interests’ are mainly associated with the labour market situation, but also with issues of national security, such as maintaining the national identity and preventing ‘parallel societies’.

In the course of the debates the separation between skilled and unskilled immigrants was reinforced, which corresponds to the concepts of ‘wanted’ and ‘unwanted immigration’ (erwünschte vs. unerwünschte Zuwanderung). For skilled migrants, a new paradigm seems to apply: Austria wants to choose from the ‘best ones’, a view that is supported by the MoI, but also by the opposition party BZÖ (Bündnis Zukunft Österreich) for example.\footnote{Der Standard, 14.10.2010, Kronenzeitung 26.07.2010} Also the Minister of Economics, Mr. Mitterlehner, argued that in the course of family reunification too many unskilled persons who do not benefit the economy would immigrate to Austria.\footnote{Der Standard, 15.11.2010; Mitterlehner in Der Standard, 28.07.2010} The MoI took the view that little German skills, a low qualification profile of immigrants together with high unemployment rates aggravate integration into the labour market and society. A lack of integration would constitute a ‘burden’ for the majority society and reinforce exclusionary identities.\footnote{Fekter, Der Standard, 11.08.2010 and 6.12.2010} The underlying understanding of integration, which is also reflected in the official documents like the NAPI, emphasizes the duty of migrants to contribute to integration.

Following the NAPI, different groups of persons show different integration requirements, ‘determined by factors such as origin, gender, social status, cultural or religious background of migrants, as well as belonging to a generation.’\footnote{Ministry of Interior (2010), pp. 8-9} Family migrants, associated with unskilled immigrants from rural areas and/or Muslim countries, are thus considered as most problematic immigrant group. Already too many unskilled persons immigrate to Austria, the Ministry of Interior explained.\footnote{Mayer, Stefanie/Spång, Mikael (2009), p.59} Migrant women in particular were portrayed by media and politics as largely uneducated and oppressed by traditional gender norms. Government representatives argued that the duty to learn German before immigration would promote the emancipation of migrant women and help them to find social networks also outside of their homes once they arrive in Austria.\footnote{See for example Fekter in Der Standard, 11.8.2010 and 6.12.2010}

Consequently, the obligation to pass a German language exam before immigration is seen as a way to facilitate and accelerate integration into the society of residence. The obligation to learn basic German before immigration is legitimized by government representatives by saying that German skills are a necessary precondition to participate in the labour market and in social life.\footnote{Darabos, Fekter in Der Standard, 23.3.2011} The Austrian Freedom Party (FPÖ) fuelled fears by saying that immigrants with a different culture and low education are ‘the unemployed of the future’,\footnote{Kronenzeitung, 28.07.2010} and suggested to withdraw the residence permits of all
those who are ‘not willing to integrate’, without exactly defining whom this might include. By contrast, the Greens Party suggested to introduce support and orientation programmes for immigrants before coming to Austria and to offer voluntary support measures after arrival.

The argument that German skills are a necessary precondition to participate in economic and social life in Austria is generally accepted by all stakeholders. However, it can be argued that for jobs in very high skilled or very low skilled segments of the labour market, German skills are not the main criteria for getting a job or not. With regard to highly skilled persons, the exemption from the pre-entry language requirement reflects this argument. Experts and NGOs criticised the focus on language as sole precondition for integration, while other integration-relevant areas – also defined in the NAPI – and scientifically acknowledged integration indicators such as residence security or discrimination would not be equally addressed.

The main reactions to the pre-entry language requirement can be aligned along two lines, which were voiced from positions with very different political influence: 1) concerns about the adverse effect of the requirement on the economy, and 2) concerns relating to the respect for the right to family life. Business representatives strongly lobbied for exempting family members of highly-skilled persons from the obligation to learn German before immigration, as this represents a considerable immigration barrier and consequently, highly skilled persons would rather migrate to other countries than Austria. The president of the Federation of Austrian Industries stated that ‘restrictions for family reunification for family members of key workers are not indeed helpful for the economy’, and such ‘barriers’ would hopefully be eradicated with the introduction of the RWR – Card. Experts (e.g. linguists, legal experts, migration experts) and NGOs voiced more general concerns in regard to the pre-entry language obligation. The requirement was criticised for excluding certain groups of persons on the basis of their origin and social background to fully benefit from the right to family reunification. Due to a lack of infrastructure in the countries of origin and of financial support for the courses, as well as politically unstable conditions, the pre-entry measure would present a major obstacle for family migrants who come from peripheral regions and who are socially and economically disadvantaged. According to experts the measure would affect women in particular, as they are disproportionally often disadvantaged with regard to education and employment. Ultimately, concerns were raised that the requirement to learn German before immigration would restrict the right to family reunion and violate the human right to family life. In this regard, it has to be mentioned however, that the authorities may waive the language requirement when the private and family life of applicants is at risk (see section II.2 and II.3). The anticipated effects on the integration of those already living in Austria, as seen by various experts and NGOs, were

60 Vilimsky in *Der Standard*, 06.12.2009
61 Alev Korun in *Der Standard*, 28.07.2010
62 See Riesenfelder/ Schelepa/ Wetzel (2011)
64 Veit Sorger in *Kronenzeitung*, 20.11.2010
predominantly negative, suggesting that many families will be deprived of an intact and functioning family life.\textsuperscript{67} By contrast to the German language requirement before immigration, reference to integration could hardly be found in the discussions on the RWR – Card. As already shown above, the integration of highly-skilled persons is per se perceived as unproblematic, because by definition they have to be employed at the time of arrival,\textsuperscript{68} and so already fulfil the requirement of economic self-sufficiency. Moreover, it is assumed that higher skilled persons come from countries with similar educational but also similar cultural systems.\textsuperscript{69} The issues discussed rather focused on the question whether the recruitment of new immigrants benefits the Austrian labour market with regard to immigrants who already reside in the country. Employers’ and employees’ representatives occupied different standpoints in this regard. Employers’ representations (Federation of Austrian Industries, Austrian Federal Economic Chamber) were in favour of a more flexible, points-based system for skilled immigration. In their view Austria needs new immigration of highly skilled and demanded professions in order to be internationally competitive.\textsuperscript{70} By contrast, employees’ representations (Chamber of Labour, Austrian Trade Union Federation) represented the position that the labour market (re)integration of persons already residing in Austria is aggravated by the immigration of young and highly-skilled persons. The current shortage of specialists on the Austrian labour market could be met by training measures of the labour force within the country and by facilitated procedures to recognise foreign qualifications. In this context it was highlighted that many immigrants are working in jobs that do not reflect their actual qualifications. Moreover, the opening of the labour market to new EU Member States in 2011 would satisfy the demand for skilled workers in Austria.\textsuperscript{71}

Regarding the changes to the immigration requirements, the introduction of a new labour immigration system was generally appreciated by many stakeholders. However, some of the interviewed experts remarked that the system may reinforce the differentiation between different categories of immigrants with regard to integration requirements (see above). In the observed period, integration conditions for family migrants continued to focus on language and were shifted abroad to the time before actual immigration. For labour immigration, the new law marks a shift from merely regulating immigration to actively shaping immigration. By contrast to family migrants, the focus on the German language as a main integration criterion could not be found in the debates (and the regulations) on the immigration of skilled workers.

### III.2 The influence of court rulings

n.a.

\textsuperscript{67} Statements to the draft amendment to the alien law by Caritas and Professor Krumm, available at: http://www.parlament.gv.at/PAKT/VHG/XXIV/ME/ME_00251/index.shtml (31.3.2011); Spokesperson of the association „Marriage without Borders“ in Der Standard, 2.2.2011.

\textsuperscript{68} Family migrants are excluded from access to the labour market in the first year of residence.

\textsuperscript{69} See Ministry of Interior (2010)

\textsuperscript{70} Der Standard, 20 January 2010

\textsuperscript{71} Der Standard, 28 July 2010 and 11.08.2010
III.3 The influence of the EU and other European countries

In relation to the foreseen introduction of pre-entry language tests, the interviewed stakeholders identified a close link of Austrian policies to other European states. According to a representative of the Ministry of the Interior for example, Austria follows the successful models of Germany, the Netherlands, France, or Denmark in this regard.\footnote{Interview Experts K3, 11; Q3, 11f} In relation to EU framework directives and ECHR court rulings, the Caritas in its statement concerning the amendment to the alien legislation regretted that the Austrian government would not regard these as chance to bring about improvements, but only to transpose EU law to the most minimum extent possible.\footnote{Statement to the draft amendment of the alien law by Caritas, available at: \url{http://www.parlament.gv.at/PAKT/VHG/XXIV/ME/ME_00251/index.shtml} (31.3.2011)} In particular, experts and NGOs expressed their concerns that the pre-entry tests violate the right to family life as laid down in article 8 of the European Convention of Human Rights and confirmed by rulings of the European Court of Human Rights.\footnote{Sen vs. the Netherlands, ECHR Judgement No. 31465/96 of December 21st, 2001.} These objections however were not taken up by the government.

The debates on the so-called Red-White-Red Card were clearly connected to the Blue Card at EU-level. The 2011 amendment to the alien legislation also introduces the Blue Card EU according to the obligation derived from the Council Directive 2009/50/EC that defines common standards for entry and residence for highly qualified workers from third countries who want to work in a EU country.\footnote{See also Explanation report to the draft law amendment of Settlement and Residence Act, available at: \url{http://www.parlament.gv.at/PAKT/VHG/XXIV/ME/ME_00251/index.shtml} (31.3.2011)} Thus, instead of integrating the Blue Card into the newly introduced criteria-based immigration system, it was introduced as an additional work permit regulated by different conditions. The Minister of Interior argued though that the RWR – Card will be far more attractive than the Blue Card and so reduce the importance of the EU Blue Card.\footnote{Fekter in Der Standard, 10.12.2010}
IV  Pre-entry programs in practice

n.a.

V  The perceived impacts of pre-entry tests

Hitherto there are no impacts of the pre-entry language tests, as it will only be introduced in July 2011. However, the anticipated impacts as expressed in the expert interviews, the public and political debates shall be briefly described in the following.

V.1  Integration effects

The government expects that the pre-entry tests will facilitate post-arrival integration of newcomers, especially of women whose access to education would only be enabled by this measure. By contrast, experts and major civil society organizations raised concerns that the pre-entry language tests have adverse effects on the integration of immigrants who are already living in Austria, because the requirement presents a major barrier to family reunification (see the exemptions in relation to article 8 ECHR as described in section II.2 above).

V.2  Immigration effects

Responding to concerns by business representatives that pre-entry language tests would present a barrier for highly skilled persons and prevent high skilled immigration to Austria, the language requirement before arrival was removed for this group of persons and their family members. Third country family members of long-term resident migrants and Austrian citizens however have to comply with the requirement. It remains to be seen, in how far the regulation will have an impact on immigration numbers.

V.3  Effects on the public perception of TCN’s

n.a.

V.4  Effects on the perceptions of integration by TCN’s

n.a.
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Der Standard, 22 February 2011, 'Kritik am Schweigen zum Fremdenpaket’

Der Standard, 28 February 2011, ‘Feministisches Fremdenrecht Innenministerin Fekter verteidigt Verschärfungen’

Der Standard, 23 March 2011, ‘Befremdliche Auftritte’
Kronenzeitung, 13 December 2010, “‘Nicht das Gelbe vom Ei‘ Diakonie-Direktor Chalupka begrüßte in der...‘

Kronenzeitung, 20 November 2010, ‘Vollgas für Reformen‘


Kronenzeitung, 28 July 2010, ‘Die Arbeiterkammer lehnt mehr Zuwanderung entschieden ab!‘

## Annex

### Summary table on the pre-entry policy in Austria

#### Key points – pre-entry policy

<table>
<thead>
<tr>
<th>Legal basis (date of enforcement)</th>
<th>Policy goals and policy theory</th>
<th>Target groups</th>
<th>Pre-entry measures and legal consequences</th>
<th>Pre entry conditions</th>
</tr>
</thead>
<tbody>
<tr>
<td>Amendment to the Alien Act (Anticipated approval in parliament: April 2011, entry into force: July 2011)</td>
<td>Promoting integration through language, Empower migrant women - Facilitating post-arrival integration (participation in social and economic life) - Strengthen the domestic economy - Benefit from the skills and capacities of migrant workers</td>
<td>Pre-entry language requirement: TCN with the exception of skilled migrants for the purpose of work, thus mainly family members who intend to stay for a longer period of time in Austria (i.e. not on the basis of a short-term residence permit) RWR Card: (Highly) skilled TCN</td>
<td>Pre-entry language test at ‘very elementary level’ (active and passive) - No state sponsored courses - Exams at certified language institutes in the CoO - Migrants have to finance the tests and the courses themselves</td>
<td>General admission criteria: Income requirement, health insurance, accommodation, no threat to national security - Criteria-based immigration: Age, qualification, language skills, work experience Marriage age over 21</td>
</tr>
</tbody>
</table>

#### Political and public discourse

<table>
<thead>
<tr>
<th>Political discourse</th>
<th>Public discourse</th>
<th>Europeanization</th>
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<tbody>
<tr>
<td>Call for demand-oriented immigration Increasing differentiation between ‘wanted’ (skilled) and ‘unwanted’ migration (unskilled, family migrants) Language proficiency regarded as key to integration for family migrants (understood as participation in social and economic life) Also strong link to adaptation to cultural norms and values Connection to emancipation of women coming from rural and patriarchal backgrounds</td>
<td>Media coverage rather marginal, because overshadowed by farther reaching amendments to the labour immigration system and the asylum law NGOs and experts point to the potential risk of the law with regard to the right to family life</td>
<td>Reference to the Dutch, Danish and German case as 'good examples'</td>
</tr>
</tbody>
</table>

#### Implementation and practice of pre-entry policies

<table>
<thead>
<tr>
<th>Implementation of pre-entry tests (as of July 2011)</th>
<th>Organization of preparation for the tests</th>
<th>Experiences with the tests</th>
</tr>
</thead>
<tbody>
<tr>
<td>- Licensed institutes (primarily the Goethe Institutes) provide certificates that are accepted at embassies/consulates as proof of sufficient language comprehension - The certificate is only valid until one year after issuance</td>
<td>- Left to migrants, as long as they pass the exam and provide the certificate</td>
<td>n.a.</td>
</tr>
</tbody>
</table>