

Policies and practices with respect to cross border labour migration in Austria after EU-enlargement in 2004

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1 Introduction

Today, foreign nationals account for a significant part of the Austrian labour force. In 2007, the share of migrants in the supply of dependent labour was 12,5%. Approximately one fifth of them come from the new member states that joined the EU in 2004/2007. In accordance with the accession treaty, Austria has applied transitional arrangements to suspend free access from new member states (Cyprus and Malta accepted) to its labour market until 2009, with a further extension until 2011 to be decided during the next months.

Employment of foreign workers increased to significant magnitude in the late 1960's, when economic growth was strong and domestic labour supply stagnated. Admission and active recruiting of workers from Yugoslavia and Turkey was intended to alleviate shortages of labour which began to emerge in the construction sector and in tourism, and to prevent a general acceleration of wage inflation in the Austrian economy. Employment of foreign workers reached a first record level at 226.000 in 1973, which amounted to 8,8% of the dependent labour force.

Since 1976, the legal framework for employment of foreign workers has been provided by a special „*Ausländerbeschäftigungsgesetz*“ (employment of foreign nationals act, for specific provisions see section 2 of this paper). The issuance of employment permits is tied to certain criteria such as sectoral bottlenecks, skill shortages, and also general business cycle and employment conditions. Originally, the law envisaged a kind of "rotation system“ in which variations in the employment of foreign workers would provide the necessary flexibility for adjustments of the labour supply to demand fluctuations.

Social partner organizations (trade unions, the Chamber of Labour, the Economic Chamber) were assigned an important role in the institutional setup that regulates access to the Austrian labour market. In most cases, consensus between social partners is necessary for a decision, which gives trade unions a strong position vis á vis demands of employers for additional permits for foreign labour.

In a study jointly undertaken by the social partners' Economic and Social Council (*Beirat für Wirtschafts- und Sozialfragen*) in 1976 an agreement was reached on the recommendation that employment of foreign workers should be reduced in case of excess supply of labour. The adjustment to changing demand side conditions should give due consideration to social aspects – in particular, reductions in the foreign labour force should result as much as possible from voluntary return of foreign workers to their home countries (Beirat 1976, p. 87). During much of the 1980's, policies with respect to employment of foreign workers were in accordance with this recommendation. Until 1984, the number of foreign workers declined to 139.000, remaining at a low level until 1988. The share of foreigners in total dependent employment decreased from 8,8% in 1973 to 5,4% in 1988.

After 1988, orientation of policies for the employment of foreign labour changed markedly. Firstly, in the early phase of the business cycle upswing of 1989/90 the government satisfied more urgent demands from the business side for more workers from abroad. As a consequence, access to the Austrian labour market was practically liberalized for more than one year for migrants from the neighbouring countries and from Turkey. In addition, when secessionist conflicts exacerbated in Yugoslavia after 1990, several ten thousand refugees from this region seeking shelter and protection from war came to Austria where many of them had relatives who had been working here for some time already.

Due to this sudden inflow from abroad, total supply of labour increased sharply. Despite strong growth in GDP and employment, the unemployment rate rose during the boom phase of the cycle. The government and the social partners reacted to these developments with a joint decision in 1991, according to which a ceiling was set for the employment of foreign labour at 10% of the total dependent labour force, and access to the labour market was again restricted for foreigners. Nonetheless, employment of foreigners continued to rise modestly, so that the ceiling was exhausted by the end of the 1990's.

When Austria became a member of the EU in 1995, no significant net inflows of labour were expected from other member states¹. After 2000, labour immigration re-accelerated though. Between May 2000 and May 2008, the number of foreign nationals with regular employment in Austria increased by 118.500, which amounts to an increase of 40,3%, compared to an increase of total dependent employment of 9,4% in the same period. The share of foreign nationals in the dependent labour force increased to 12,5% in 2007 (annual average). In May 2008, 81.300 foreign workers and employees came from new member states which amount to 18,4% of the foreign labour force. In recent years, the majority of labour immigrants came from old and new EU member-states (see Walterskirchen in this volume).

As a consequence, the growth of foreign labour supply in Austria seems to be largely determined by exogenous factors such as labour market or political conditions in neighbouring countries and income differentials.

2 Regulatory framework for employment of foreign nationals in Austria

Access to the labour market for third country nationals is restricted to so called "key workers", which means that only highly qualified migrants can obtain a residence permit for

¹ This expectation proved true until 2003. Thereafter, there was a strong inflow of workers from Germany.

the sole purpose of employment (whether self employed or as an employee). Another possibility is family reunification, in fact, in recent years, most of the third country nationals who gained access to the Austrian labour market have done so on grounds of family reunification. The remainder of the chapter will focus exclusively on citizens of the new member states.

2.1 Transitional measures

The free movement of workers within the European Union is one of the main principles of the community. However, access to the Austrian labour market has been suspended for the member states that joined the European Union on May 1st, 2004² (Czech Republic, Estonia, Hungary, Latvia, Lithuania, Poland, Slovenia and Slovakia). The same transitional measures apply to citizens of Bulgaria and Romania which became EU-member states in January 2007.

According to the accession treaty the period during which it is possible to suspend the free movement of workers is limited to seven years; this period further divides into a 2+3+2 year scheme after accession of the A8 countries. There were no specific requirements for the first five years of transitional arrangements; member states who wanted to restrict access to their labour markets for A8 (and A2) nationals only had to notify the EU commission of their decision. For the last two years of the transitional period member states still have the option of extending the restrictions regarding free movement of workers but only if their labour markets suffer serious disturbances:

“A member state may [...], in case of serious disturbances of its labour market or threat thereof and after notifying the Commission, continue to apply these measures until the end of

² With the exception of Cyprus and Malta.

the seven year period following the date of accession“(Accession treaty between EU-15 and the new member states).³

At present, there is uncertainty about how the ECJ might interpret this clause, since in European law no precedent exists. Moreover, the formal procedure remains unclear too. Does a unilateral notification suffice, or do the member states have to make a formal application? A legal expert opinion by Professor Werner Schroeder of the University of Innsbruck points out that the member states will have a wide scope to interpret this expression on their own and that member states who would like to extend the transitional measures just have to notify this to the commission.⁴ This view is also shared by the Austrian ministry of economics and labour, the Chamber of Labour (AK) and the Austrian Federation of Trade Unions (ÖGB).

2.2 Employment of A8 and A2 nationals during the period of transitional measures

Citizens of A8 and A2 countries are not yet permitted to be employed or seek employment in Austria freely, i.e. without specific authorization. They need a work permit which is granted by the public employment service only after passing an economic needs test. The duration of a work permit is normally 1 year. The potential employer has to apply for a work permit at the employment service which will try to place a person already available on the Austrian labour market in the particular job. If the employment service fails to do so, the economic needs test is passed (Schumacher/Peyrl, 2007: 232ff).

³ Art 5 of the „List referred to in Article 24 of the Act of Accession“, Official Journal of the European Union, L 236, 23.9.2003. The texts of all annexes of the A8 countries have the same wording.

⁴ The commission and the A8 countries do have the possibility to take legal action against such a decision.

After passing the labour market test, additionally several other conditions must be fulfilled, before the permit can be granted: Either the regional advisory board within the labour market service („*Regionalbeirat*“)⁵ permits the employment by unanimous decision or the A8 or A2 national meets the criteria for a highly qualified employee (so called „*Schlüsselkraft*“ – “key worker”). The criteria for qualifying as "key worker“ are as follows: the annual salary before tax and social security contributions has to amount to at least EUR 33.087,60 (2008).⁶ Additionally to this salary, key workers must possess a special training or specific skills for which there is a special demand on the labour market. Furthermore, it is necessary to have a diploma from university or college unless other “soft“ criteria like “benefit of the economy of the area“ are met.

Overall 2.970 work permits for highly qualified persons were granted since EU enlargement in 2004. Until February 2008, the total number of work permits for A8 and A2 nationals (including temporary permits for seasonal workers) is 245.018.⁷

However, for A8 and A2 nationals who have been working in Austria for a specific time period special rules for free access to the labour market during the transitional period apply: A8 and A2 nationals are granted complete free movement of workers and are entitled to freely choose employment all over Austria if they were or still are legally employed on 1 May 2004 or, respectively, 1 January 2007 or thereafter and were admitted to the regular labour market

⁵ The "Regionalbeirat“ is an advisory board situated in every regional office of the employment service, its members are delegated from social partners and the employment service itself.

⁶ This is 60% of the ceiling for the obligation to pay social insurance contributions.

⁷ The figure is without permits for citizens of Estonia, Lithuania and Latvia because for unknown reasons they are not listed in the statistics of the Austrian employment service. However, in January 2008 only 328 persons from Baltic countries were employed in Austria at all.

for at least 12 months without interruption.⁸ Free access to the labour market also applies to all A8 and A2 citizens of the mentioned states who have settled permanently in Austria for five years and currently have a regular income from a permitted occupation (self-employed or employed) and to persons who are entitled to a so-called "*Befreiungsschein*"⁹ (§ 15 *Ausländerbeschäftigungsgesetz*, act for alien employment in Austria).¹⁰

Normally, after being employed with a work permit for one year, they earn free movement (of workers) in Austria.¹¹ It is important to mention that this freedom only applies to Austria and is of no significance to other member states that also have restricted the access to the labour market for A8 and A2 nationals.

Family members (spouses and children under 21 years or older if maintenance is provided) of the persons mentioned above also enjoy free access to the Austrian labour market. However, for a transitional period until 31 December 2008, family members of Bulgarian and Romanian citizens (A2 nationals) are only entitled to free labour market access if they had a common legal residence in Austria on 1 January 2007 (date of accession) or, in the case that they entered Austria after 1 January 2007 if they had a common residence for 18 months.

⁸ The 12-months employment requirement does not apply to spouses of an Austrian or EU-15 citizen who are allowed to work on the Austrian labour market without further permission.

⁹ A "*Befreiungsschein*" is a document which allows the holder to work in Austria without restrictions and is valid for five years. This "*Befreiungsschein*" is granted to people who are former spouses of Austrian or EU-15 citizens after a divorce or death of the partner. A "*Befreiungsschein*" can also be granted to people who have been employed in Austria for at least five years.

¹⁰ This is integral part of the accession treaty, see Art 2 of the list referred to in Article 24 of the Act of Accession, see orrnote 3 for details.

¹¹ Deutsch/Neurath/Nowotny/Seitz, *Ausländerbeschäftigungsrecht*, commentary to § 32a *Ausländerbeschäftigungsgesetz*.

By February 2008, 30.140 people had gained free access to the Austrian labour market, which means these people can take up any employment they like without permission. So their legal status concerning free movement of workers is exactly the same as that of e.g. an Irish or French national.

2.3 Employment in certain professions

Special rules apply for A8 and A2 nationals who help to fill skill gaps and/or labour shortages in certain professions; they can get a work permit more easily. Employers still have to file an application though. In case the employer can proof that the person to be hired has a formal vocational training in one of the specific professions¹², a work permit is granted right after a labour market test has been passed.

A8 and A2 nationals who work in the field of nursing and/or care do not need a work permit in case they work for a private household.¹³ Nurses working in a hospital do need a permit but this permit can be granted relatively easily.

However, there are no special arrangements for cross border commuters, so if e.g. a Slovakian citizen living in Bratislava likes to work in Vienna, the normal procedures as described above apply.¹⁴

¹² The professions for which the special procedure applies are listed in a governmental regulation. The list includes brick layers, plasterers, carpenters, concrete workers, civil engineers, roofers, tilers, glaziers, joiners, some types of plumbers, varnishers, smiths, locksmiths, turners, cutters, welders, motor mechanics, crane operators, architectural technicians, heating technicians, opticians, butchers and cooks.

¹³ There are some criteria to be met: The persons to be nursed need to be entitled for nursing assistance”(so called “Pflegegeld“ according to the “Bundespflegegeldgesetz“).

¹⁴ There are bilateral agreements with Hungary and the Czech Republic regarding employment in border region and trainees

2.4 *Seasonal workers*

In case of short-term labour demand which cannot be covered by the labour force already residing and available in Austria, the Austrian Federal Minister of Economic Affairs and Labour is authorized by law to enact a regulation about the admission of seasonal workers in a specific branch of the economy or a certain area.¹⁵ Usually there are regulations admitting seasonal workers in agriculture and in winter- and summer tourism. Work permits for seasonal workers may normally not be valid for more than six months, but working permits for A8 and A2 nationals may be granted for nine months if those people are employed in agriculture and have been employed as seasonal workers for at least three years consecutively. If it is still impossible to find someone else eligible on the labour market, the work permit can be extended for another six months, with 12 months being the absolute maximum. After a period of 12 months seasonal workers cannot obtain a new work permit for the next two successive months.¹⁶

If, through this regulation, it would be theoretically possible to earn free access to the Austrian labour market, in fact this hardly ever happens because it is nearly impossible to be employed for 12 continuous months as seasonal worker.

2.5 *Posting of workers*

There are also some restrictions on the free movement of services regarding the posting of workers. In order to prevent serious disturbances in labour markets of specific sensitive

¹⁵ This regulation by the minister for economic affairs must not be mistaken with a regulation by the EC council, though the expression is the same.

¹⁶ For further details see Bichl/Schmid/Szymanski, *Das neue Recht der Arbeitsmigration*, commentary to § 5 *Ausländerbeschäftigungsgesetz*.

service sectors¹⁷, which could arise in certain regions from the provision of services across borderlines, Austria is entitled to maintain the national law about posting of workers by companies established in the new member states.

Companies from the new member states that want to perform contracts with their own workers (who are employed in a new member state) must apply for a posting permit ("*Entsendebewilligung*"). In most cases a labour market test is carried out before the permission is granted. Such an economic needs test is not necessary though, if workers who are already residing in Austria are not able to do that specific work or provide the specific service.¹⁸

2.6 *Bogus self employment*

A problem frequently encountered since May 2004 is so-called "bogus self employment" which means that activities which according to Austrian labour law are performed by dependent labour are offered by persons who pretend to be self-employed and thereby assume that transitional measures do not apply to them. In fact, restrictions actually only apply to the free movement of dependent employees (see section 2.1.) and apart from minor restrictions regarding the posting of workers (see section 2.6) there are no transitional measures regarding self-employment. Therefore it is possible for citizens of the new member states to settle in Austria and run his/her own business.

¹⁷ These sensitive service sectors are as follows: gardening/horticultural services, cutting, shaping and finishing of stone, manufacture of metal structures and parts of structures, construction (including related branches), security activities, industrial cleaning and home nursing and "social work and activities without accommodations".

¹⁸ § 18 Ausländerbeschäftigungsgesetz (act for alien employment in Austria), for instance if it is clear that the contract can only be performed by workers of the posting company (e.g. because they are the only ones to have the required know-how).

If a certain agreement is indeed a contract of services or (in reality) a working contract is not subject to an arbitrary individual decision: It depends on the real meaning of both partners in terms of independence, freedom to choose the working times, possibility of substitution, etc. So it does not matter whatever the title or even the wording of such a contract says, if in reality the partners have something else in their mind.¹⁹ So in theory the contract partners may well have a working contract despite having agreed to a contract of services.

In most cases it is difficult or even impossible for authorities to prove that the person is bogus self-employed and would need a work permission. So in most cases the “employer” gets away with it. If the authorities are able to prove though that the worker from the new member states is employed by the company (and not self-employed) the employer not only has to pay taxes and social insurance contributions retroactively but will also be fined with at least €1.000 for every person who is employed without a permit. The fine can be up to €50.000 per person without a valid permit.

Most cases of bogus self-employment occur in the construction sector. Many persons officially run a business called “spackling of gypsum plasterboards” (this is not the only but the most prominent example) , a business for which a permission can be easily obtained.

¹⁹ For example if a person is obliged to work at a construction site as a bricklayer regularly from 7 am until 5 pm without having the right to call for substitution and if he receives instructions by a construction foreman he does in fact have a working contract, no matter if a paper says that he is self employed.

3 Review of other government policies and practices since 2004

As has been pointed out in section 2, nevertheless the Austrian government adopted transitional measures to restrict access to the labour market for A8 and A2 nationals and extended those measures into the second phase of the 2+3+2 year's scheme there are several possibilities to work in Austria. The figures in section 1 and 2 and the chapter of *Walterskirchen*, in this book show that in fact a large number of citizens from new member states (more than 70.000 people) work legally in Austria. Step by step, the government allowed more options for those people either to get a work permit or to work even without having to apply for permission.

Since accession restrictions for free movement of workers have been relaxed by the government in a number of jobs: Since 2004 nurses in hospitals can gain a permit easily if they receive an annual salary of no less than €22.000. Since 2006 workers in field of care and nursing do not need a permit if the job is done in private households. Since 2007 deliverers of newspapers do no longer need a work permit and since 2008 (and partly 2007) workers in professions where labour shortages must be filled can also obtain a permit easily. Furthermore, due to community preference, people from new member states must be given preference over third country nationals regarding permits for seasonal workers.

There is no active recruiting by the government. Therefore, a company which would like to employ an A8 or A2 citizen cannot rely on governmental programmes. As far as workers in the field of care in households are concerned, most workers are supposed to have worked without permission before the restrictions were lifted in that area. It is worth mentioning that these restrictions were lifted following a public debate about „emergency of care“ which broke out during the election campaign 2006.

The minister of economic affairs and labour has already indicated that Austria will keep transitional measures until 2011 but will continue at the same time to open the labour market step by step for persons working in certain professions. However, no formal decision has been taken yet.

4 Review of attitudes and positions of social partners towards regulation of access during the transition period

4.1 Agreement of Austrian social partners

In October 2007 the Austrian social partners jointly published a paper called “*Arbeitsmarkt – Zukunft 2010*”²⁰ (“Labour market – towards 2010”). In this paper they underline the necessity of steering the labour market according to future needs. In the view of social partners a sustainable labour market policy should meet the following goals:

- Unemployment rate is still worryingly high and needs to be lowered (with special attention to fight long term unemployment);
- Well directed measures to support people who face disadvantages in the global competition;
- It is necessary to tap the full potential of people already residing in Austria and available on the labour market by supporting occupational and vocational retraining to fill labour shortages (with special regards on persons who do have migrant background, so called “second generation”). To meet demands of the economy, the social partners propose that the employment service should provide additional training and retraining for up to 10.000 skilled workers every year.
- The Austrian labour market will be opened step by step to A8 and A2 nationals. As first step highly qualified persons and workers filling skill gaps and labour shortages

²⁰ This paper is published on the website of the Austrian social partners, www.sozialpartner.at.

shall gain access to the Austrian labour market. In case the demands for skilled workers cannot be covered by people already residing in Austria, the Austrian social partners agreed that the quota for highly skilled third country nationals to be admitted to the Austrian labour market should be increased significantly to 5.000 places per year.²¹

Nevertheless Social partners agreed that the transitional measures in general should be extended until 2011.

In order to prevent wage dumping and social dumping, social partners also agreed that authorities should be enabled to control if wages for posted workers are effectively being paid by the posting company. There is anecdotal evidence that posting companies often do not pay the salary they would be obliged to pay according to the posting-directive.²²

4.2 *Employers*

The position on transitional arrangements taken by employers' associations is not uniform. Whereas the Austrian Federal Economic Chamber²³ ("WKO", *Wirtschaftskammer Österreich*) – an organisation of which all companies are by law member – has principally accepted the need for such arrangements and their application for a longer period, the Federation of

²¹ The government did not respond to this demand. Hence, the quota for "key workers" for the year 2008 was fixed at 2.545.

²² Directive 96/71/EC, Official Journal L 18, 21.1.1997.

²³ The system of interest representation in Austria is based on the existence of Chambers ("*Kammern*") for most forms of economic activity. Membership in the WKO is mandatory for all companies and individual businesses. Likewise, all workers and employees (with few exceptions) are members of the Chamber of Labour (*Arbeiterkammer*). There is also a Chamber of Agriculture for farmers, and several small chambers for the liberal professions.

Austrian Industry (“iv”, *Industriellenvereinigung*)²⁴ has generally questioned the necessity of restrictions and has frequently called for liberalization of access for workers from new member states.

As encompassing organization of Austrian business enterprises, the WKO has given explicit support to transitional arrangements, while, at the same time, it has emphasized the need for instruments that give access to workers from new member states in case of demand for increased labour supply, especially for skilled workers. Demands of this kind should be fulfilled by granting access through bilateral “agreements for practitioners” (“*Praktikantenabkommen*”) with neighbouring countries, by increasing the maximum number of seasonal workers, and by issuing permits according to existing regulations (see for example Leitl 2004).

The WKO had a key interest in forestalling serious disturbances in specific sensitive service sectors especially in regions bordering new member states which could arise from cross border performance of such services. For the WKO it was essential that the provisions of national law about posting of workers would apply to companies from the new member states for the transitional period (see section 2.5).

In 2006, the WKO gave general support to the extension of transitional arrangements until April 2009. When labour markets improved during the business cycle upswing 2006/07, the WKO put forward the demand for additional permits for workers from the A8 to ease skill shortages which, according to employers’ view, had emerged with the acceleration of industrial production (see section 2.3)

²⁴ Membership in the Federation of Austrian Industry is voluntary. Most of the bigger industrial companies and also some companies producing services are members of the iv. Small businesses are not iv-members.

Compared to the WKO, the Federation of Austrian Industry (iv) has taken a rather uncompromising position for swift and full liberalization of access to the Austrian labour market for A8 and A2 citizens. If, restrictions are maintained, a scenario which the iv is well aware that is a realistic one, the iv pleads for a flexible application of quotas, for example easier access of R&D specialists.

Neither iv nor WKO offer specific incentives to skilled employees to sign a working contract in Austria, though. On the contrary, the Chamber of Labour and the Austrian Federation of Trade Unions fear that the income of those workers might be well below the salary of Austrian workers or migrant workers already residing in Austria (for details on this topic see section 4.3).

The difference in attitudes towards restrictions to free movement of labour between the WKO and the iv can be explained by the fact that the latter represents a more narrowly defined, more homogeneous group of companies which are highly export orientated, and therefore primarily interested in lowering the cost of labour. The WKO represents all companies and businesses, the majority of which is made up of small and medium sized enterprises, to a large extent dependent on domestic demand. To our opinion, the WKO also wants to extend the transitional measures free movement of services, but this is only possible if restrictions of free movement of workers are maintained as well.

The chamber of agriculture is primarily interested in obtaining a sufficient number of permits for seasonal workers to meet the short term demands for labour needed for harvesting the various products of agriculture.

4.3 Trade unions

Both the Chamber of Labour (AK) and the Austrian Federation of Trade Unions (ÖGB) expressed their satisfaction when the government introduced transitional measures in 2004 since this was exactly what both organizations had called for. Both AK and ÖGB had expressed their concerns that a sudden increase in the number of immigrants could push up unemployment figures that were already high by historical standards especially because of the possibility of commuting of persons living in regions near the Austrian border (though there are bilateral agreements with Hungary and the Czech Republic regarding employment in border region and trainees, many persons work without booking a place in this quota with a “normal” work permit (see section 2) and sometimes illegal).²⁵ Moreover, it was feared that considerable downward pressure on wages would result from an increase in labour supply. Transitional measures were also considered necessary because an increase of the labour force in Austria was foreseen due to immigration of third country nationals and of EU citizens (both A8 nationals who started to work lawfully in Austria after the accession and nationals from old member states, e.g. Germany). ÖGB and AK also stressed that permits for seasonal work (see section 2.4) should – according to European law – be primarily granted for nationals of „new“ member states (so called community preference). This view was shared by the government as well.

AK and ÖGB have supported the extension of transitional measures until 2009. In their judgement, a further extension to 2011 is well justified, because they feel that there is at least a threat of labour market disturbances. (see section 2.1 for details).²⁶

²⁵ According to *Hars* in this volume about 25% of the cross border commuters from Hungary to Austria work without permission.

²⁶ It is necessary to bear in mind that when restrictions on free movement of workers are abandoned, the transitional measures regarding posting of workers in special branches disappear as well (see section 2.5).

There are no special projects or programmes geared to migrant workers because AK and ÖGB feel all of their members should be treated equally. Indeed, many, if not most of the people seeking help from AK to take action against their employer do have a migrant background.²⁷ An exception in this regard is a special counselling project that provided migrant workers (most of them cross border commuters) in the border region of Austria and Hungary with legal advice about their rights.²⁸

There is evidence that blue collar workers from new member states earn up to 20% less than Austrian blue collar workers (see Walterskirchen in this volume). The Chamber of Labour and the Austrian Federation of Trade Unions also fear that the income of workers coming through the so called “Fachkräfte-Verordnung” (see section 2.3) might be well below the salary of Austrian workers or migrant workers who have settled in Austria in recent times (no matter if they enjoy free movement of workers or not) because the education they completed outside of Austria is often not formally acknowledged in Austria. In some collective agreements a salary on a particular higher level is bound to a diploma as skilled worker (“Lehrabschluss”). In theory workers who were educated outside of Austria can apply for a decision of equivalence (so-called “Gleichhaltungsbescheid”) but in reality this does not happen very often, because the procedure is rather complicated.²⁹

²⁷ This is anecdotal evidence of the legal advisors because no statistics exist on the nationality of people seeking legal advice.

²⁸ International council of trade unions West-Hungary and Burgenland, see www.igr.at.

²⁹ In fact most applications happen if the applicant likes to retire on grounds of occupational disability and needs this decision to prove he has worked as a qualified worker.

5 Concluding remarks

It has been four years ago that transitional arrangements for labour market access have taken force with EU-enlargement in May 2004 (and one and a half years after accession of Bulgaria and Romania). From the viewpoint of those institutions which have called for this kind of restrictions, policies were successful. The aim was not to seal off the Austrian labour market completely but to prevent a sudden increase of the labour supply in Austria and to allow for a gradual transition to full freedom of movement of workers. Numbers of migrant workers from new member states have increased significantly in terms of annual average fully employed persons.

Therefore the strategy proposed by AK and ÖGB has worked: On the one hand, to maintain national laws on admitting of new arriving A8 and A2 nationals (especially to carry out a labour market test), but on the other hand to ease restrictions step by step for workers needed on the Austrian labour market and as well introducing measures to make Austria “fit“ for the time when transitional measures expire.³⁰ If the government follows the recommendations of Austrian social partners recently submitted in a joint paper (see section 4.1), the extension of transitional arrangements in combination with steps towards facilitating access for additional groups of workers would be a continuation of policies which have proven workable and effective in the last four years.

³⁰ See recommendations of the Social partners, section 4.1.

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