



August 2007
AK Position Paper

Circular migration – “Issues Paper on Circular Migration”

About Us

The Federal Chamber of Labour is by law representing the interests of about 3 million employees and consumers in Austria. It acts for the interests of its members in fields of social-, educational-, economical-, and consumer issues both on the national and on the EU-level in Brussels. Furthermore the Austrian Federal Chamber of Labour is a part of the Austrian social partnership.

The AK EUROPA office in Brussels was established in 1991 to bring forward the interests of all its members directly vis-à-vis the European Institutions.

Organisation and Tasks of the Austrian Federal Chamber of Labour

The Austrian Federal Chamber of Labour is the umbrella organisation of the nine regional Chambers of Labour in Austria, which have together the statutory mandate to represent the interests of their members.

The Chambers of Labour provide their members a broad range of services, including for instance advice on matters of labour law, consumer rights, social insurance and educational matters.

More than three quarters of the 2 million member-consultations carried out each year concern labour-, social insurance- and insolvency law. Furthermore the Austrian Federal Chamber of Labour makes use of its vested right to state its opinion in the legislation process of the European Union and in Austria in order to shape the interests of the employees and consumers towards the legislator.

All Austrian employees are subject to compulsory membership. The member fee is determined by law and is amounting to 0.5% of the members' gross wages or salaries (up to the social security payroll tax cap maximum). 560.000 - amongst others unemployed, persons on maternity (paternity) leave, community- and military service - of the 3 million members are exempt from subscription payment, but are entitled to all services provided by the Austrian Federal Chambers of Labor.

Herbert Tumpel
president

Werner Muhm
director

Executive Summary

- The AK rejects the introduction of a circular migration model as it is aimed largely at a Europe-wide seasonal migrant model.
- It is not clear whether the EU has the power or competence to enact such regulations in general. This issue should therefore be clarified first of all.

General

We would first like to say that the present paper “Issues on Circular Migration” as well as the associated minutes of the meetings of experts on 20 July 2007 as well as on “Mobility partnership” on 24 July 2007 cannot be viewed in isolation – they need to be viewed in connection with the other relevant activities of the EU Commission.

Progress is being made with formulating a European **migration policy** and it affects areas that are particularly delicate from both the worker’s perspective as well as in terms of a successful integration policy.

The Commission already advocates the possibility of “circular migration” in its Communication published on 1 September 2005 entitled “**Migration and development: some concrete orientations**”, COM(2005) 390 final, and starts from the assumption that this should be fostered in order to strengthen the development effect of temporary migration. The Commission proposals in the Communication “Circular migration and mobility partnerships between the European Union and third countries”, COM(2007) 248 final of 16 May 2007, are already a lot more concrete. The present “Issues Paper on Circular Migration” is also in essence a summary of this Commission Communication.

The circular migration approach is squarely aimed at implementing a Europe-wide seasonal migrant model.

In the above-mentioned Communication on circular migration, the Commission writes on page 11: “The main measure to foster circularity would be the introduction of a multi-annual residence/work permit for seasonal migrants, allowing them to come back several years in a row to perform seasonal work.” In close connection with this is also the “**Policy plan for legal migration**”, COM(2005) 669 final published by the EU Commission on 21 December 2005, which provides among other things guidelines on the purposes of seasonal work. A corresponding proposal should be presented by the Commission in 2008.

The AK rejects the introduction of a Europe-wide seasonal migrant model for the following reasons.

Unlike the EU Commission’s opinion, we believe that circular migration is in fact largely concerned with a “programme for guest workers”. The proposals on short-term and temporary labour migration work on the assumption that these people will leave the EU again after their work has been completed. This view has not proved true in Austria and Switzerland in the last 40 years. Trust in particular has also shown itself to be false – owing to the seasonal worker regulation, one can refrain from carrying out the necessary investments in integration policy (living, labour market, education).

The AK has already been calling for a sustained reduction of the national seasonal migrant model for some time. There is no reason why this model should be extended to the whole of Europe, particularly as there is no demand for low-skilled workers in the foreseeable future in Austria.

In connection with this, reference should also be made to the so-called Community preference, whereby preference should be given to citizens from the new EU Member States when filling jobs.

The AK declares itself against Austria taking part in “mobility partnerships”.

The demand for seasonal workers can undoubtedly be covered by domestic worker potential and from the EU as well by EU workers from the “old” Member States (in particular Germany) and the new acceding countries, especially as Romania and Bulgaria have been EU members since 1 January 2007. The transitional provisions on the labour market for the two last-named countries can be maintained until 31 December 2013 so that implementation of the concrete proposals would probably take place before the transitional periods have expired.

We therefore call for no support for proposals that amount to a Europe-wide introduction of a seasonal migrant model.

The AK also declares itself against Austria taking part in “**mobility partnerships**”.

Legal basis in the EC Treaty

It has not yet been clarified fully whether the EC in fact has the power or competence to enact directives that regulate migration for the (sole) purpose of labour market access.

A not inconsiderable migration from third countries to Austria is taking place under the guise of **family reunion**, and there is also a legal claim to this to the greatest possible extent. As numerous workers therefore also come to Austria, there is no reason in terms of labour market policy to also actively recruit persons from third countries, particularly as there is the possibility anyway for highly skilled migrant persons to move as key personnel if a corresponding quota place exists.

In addition, it has not yet been clarified fully whether the EC in fact has the power or competence to enact directives that regulate migration for the (sole) purpose of labour market access.

The measures affected should probably have their basis above all in Article 63(3) lit a of the EC Treaty. Accordingly, the Council can adopt measures on migration policy in the following area: "Conditions of entry and residence, and standards on procedures for the issue by Member States of long-term visas and residence permits, including those for the purpose of family reunion."

In the absence of relevant ECJ adjudication, it has not been clarified whether questions regarding access to the labour market have also been covered by this competence provision. This is not viewed the same in teaching (cf for instance Lenz/Bardenhewer, EC Treaty, Article 63(12), and Muzak in Mayer (publisher), EU and EC Treaty,

Article 63(41), Wiedmann in Schwarze, EU commentary, Article 63(35), also ter Steeg, Das Einwanderungskonzept der EU, p. 327 et seq., Peyrl, in Wagner/Wedl (publisher), Bilanz und Perspektiven zum europäischen Recht, Auf dem Weg zu einer gemeinsamen europäischen Migrationspolitik, p. 267 et seq.).

Before we continue thinking about such regulations, we should first clear up this question, for example with an independent report.

Answers to select questions from the paper "Issues Paper on Circular Migration"

The following only contains answers to questions that the AK feels are particularly relevant:

Question Box 1: What are your views on the principles and objectives of circular migration as presented here? Please identify any problems or additional elements that you think are missing.

To answer this question, we refer to the point entitled "General" and emphasise once again that we reject a circular migration model as we largely see in it a repeat of the failed "guest worker model" from the 1960s and 1970s. We consider the assumption that these persons will return home incorrect.

We also consider a model wrong that, whilst it calls for cheap labour in the event of a possible short-term labour demand, relies neither on sufficient training and qualification measures in its own country in order to cover the demand for skilled personnel from job-seekers nor on accompanying integration measures as the people will only remain in the EU for a short time according to the model's conception.

On the contrary, an overriding objective of a migration and integration policy must be to ensure secure jobs, high social security and intensive education and social policy integration measures for as many of those living in Austria as possible, and this also means above all persons that have moved permanently and their family members.

This also answers Question Box 2.

Question Box 3: Incentives – outward mobility: What incentives does your country consider should be offered to encourage settled highly skilled third country nationals in the EU to return temporarily to their country or region of origin for work or investments (e.g. by facilitating extensive periods of absence from the EU without affecting residence rights or routes to naturalisation; transferability of social or pension rights; business initiatives to facilitate career breaks and inter/intra-company transfers or exchange programmes)?

Taking pension rights with you (except if the qualifying period was completed in full in Austria) and rights to social security benefits in non-contracting states and the payment of contributions paid in on one's return home (native country) are not possible owing to the current legal situation and would also constitute discrimination against workers from contracting states who, having paid social security contributions in Austria, e.g. never however acquire a right to benefits for want of completing the qualifying period. Adding up coverage periods with insurance rights from non-contracting states would be a breach of the key principles of the current social security system (principle of reciprocity). We reject this in view of the fact that we do not consider the circular migration of highly skilled persons to be a realistic approach at all.

Question Box 4a: Incentives – Inward mobility:

b) What are your views on allowing simplified admission/re-entry procedures or access to multiple entry/residence/work permits to facilitate the circular mobility of i) highly skilled workers, students and researchers and ii) lower-skilled workers?

With regard to lower-skilled workers, it should be noted that Austria will not have any demand for lower-skilled workers in the foreseeable future.

Before thinking about provisions on circular migration at EU level, it is important to investigate the right of residence and migration in Austria

This is why we also do not see a reason to introduce procedures on simplified admission for such a group. As stated above, the migration – in particular joining one’s family – of low-skilled persons to Austria is already taking place on a large scale. Labour market integration of these persons should therefore be an urgent goal.

Researchers as well as scientists already enjoy (not least owing to Directive 2005/71/EC, “Researcher Directive”) simplified access to Austria. An amendment to the Foreign Nationals Employment Act (Ausländerbeschäftigungsgesetz), which deals among other things with scientists and members of their family, is currently being assessed. We consider it important in particular here that this does actually involve research activities as activities involving scientists and researchers in private enterprises are also explicitly exempted from the scope of the Foreign Nationals Employment Act. Not every skilled activity in a private enterprise is ultimately a scientific activity.

Incidentally, since the Austrian law on settlement and residence (Niederlassungs- und Aufenthaltsgesetz / NAG) entered into force on 1 January 2006, scientists and researchers have only been receiving a residence permit instead of a permanent residence permit aimed at a permanent right of residence. With regard to an unlimited right of residence, which is now not possible for this group in law, fewer mobility rights

are therefore granted.

The same law introduced a regulation whereby unlimited rights of residence can expire without notice if the person is away from Austria. The mobility of nationals of third countries was therefore greatly restricted.

Before thinking about provisions on circular migration at EU level, it is important to investigate the right of residence and migration in Austria. We request that such an evaluation of the 2005 foreign nationals law package (Fremdenrechtspaket) takes place (the advisory board for asylum and migration issues, an advisory body of the Minister of the Interior, could for instance be commissioned). In the process, provisions that hinder mobility could also be dismantled completely.

d) What are your views on the notion that the promise of future legal mobility in exchange for abiding by the rules and conditions of admission and stay significantly reduce the temptation to overstay among i) highly skilled workers, students and researchers and ii) lower-skilled workers?

The AK does not share this opinion at any rate with regard to lower-skilled workers. We refer to the above-mentioned fears that a large seasonal migrant model is to be created here that harks back in principle to the guest worker model of the 1960s and 1970s.

This danger does not seem to be as great with researchers and highly skilled workers. Before we agree to such a regulation, more concrete investigations into the benefits of such mobility for all those involved should exist.

Reference should also be made here to the fact that – when it comes to managers – there is already a right of residence for so-called “rotation workers” in the prevailing law.

In conclusion, the AK kindly requests that its matters of concern are taken into consideration.

For any further questions please contact

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