

**Federal Act concerning settlement and residence in Austria (the Settlement and Residence Act – SRA)  
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## **CHAPTER 1: GENERAL PROVISIONS**

### **Section 1 Scope and Definitions**

#### **Scope of application**

**Article 1.** (1) This Act governs the issue, rejection and withdrawal of residence titles from aliens who reside or wants to reside in the federal territory for longer than six months, as well as the documentation of existing rights of residence and settlement.

(2) This Act does not apply to aliens who:

1. are entitled to reside in the federal territory pursuant to the Asylum Act 2005 (AG 2005), Federal Law Gazette I No. 100, as well as previous provisions of the Asylum Act, unless otherwise provided for under this Federal Act;
2. possess an identity card with photograph and are entitled to privileges and immunities pursuant to Art. 95. of the Aliens Police Act 2005 (FPG 2005), FLG I No. 100 or
3. are authorised to pursue a merely temporary occupation in accordance with Art. 24 of the Aliens Police Act.

#### **Definitions**

**Article 2.** (1) For the purpose of this Federal Act:

1. Alien means a person not possessing Austrian nationality;
2. Travel document means a passport, a document serving in lieu of a passport recognized for travel purposes by federal law or decree or under international agreement; foreign travel documents shall benefit from the protection afforded under criminal law to Austrian public documents Art. 224, 224a, 227 of the Penal Code (StGB), FLG No. 60/1974;
3. A travel document shall be valid if it has been issued by a duly authorized subject of international law, if it unmistakably displays the identity of the bearer, if its term has not expired and if its scope of application includes the Republic of Austria; except in the case of Convention travel documents

- and travel documents issued for stateless persons or for persons of indeterminate nationality, the bearer's nationality must also be unmistakably displayed. The insertion of additional pages in the travel document must be certified;
4. EEA national means an alien who is national of a Member State to the European Economic Area Agreement (EEA Agreement);
  5. Member State means a state, who is a Contracting Party to the Treaty on European Union, Federal Law Gazette III No. 85/1999 amended by FLG III No. 4/2003 and FLG III Nr. 54/2004;
  6. Third-country national means an alien who is not an EEA national;
  7. Independent economic activity means an activity which is pursued for no more than six months within a twelve-month period, provided that the residence of the person concerned in the third country is abided, and represents the centre of his vital interests and by no means a case of obligatory insurance pursued to Art. 2 of the Social Insurance Act on Self-employed Persons (GSVG), FLG No. 560/1978;
  8. A temporary employment means an employment under which an authorization or other confirmation according to the Aliens Employment Act (AuslBG), FLG No. 218/1975 has been issued and which validity does not exceed six months; or a gainful occupation which has been pursued for not more than six months within a period of twelve months, on grounds of an exemption pursuant to the Art. 1, Section 2-4 of the Aliens Employment Act;
  9. Family member: A spouse or an unmarried under-age child, including adopted and step children (nuclear family), whereas the spouses, except spouses of Austrian nationals, EEA nationals and Swiss nationals must have reached 18 years of age; In the event of a polygamous marriage, where the sponsor already has a spouse living with him in the federal territory, the issue of a residence title to a further spouse will not be authorized.
  10. Sponsor: A third-country national residing legally in the federal territory or a person a right in terms of this Federal Law is derived from;
  11. Prolongation: Application for prolongation of the same or for the issue of another residence title (Art. 24);
  12. Change of purpose: Application for granting of a residence title with another purpose during the validity of one residence title (Art. 26);
  13. Initial application: Application, which is either an application for prolongation or application for the change of purpose of residence (Z 11 and 12);
  14. Right to free movement means the right of an EEA national to settle in Austria under the Community Law
  15. Declaration of liability means a statement of a third party authenticated by an Austrian public notary or court with the minimum period of validity of five years, which confirms that the person concerned is able to fulfil all the requirements of the sickness insurance covering all risks or has an accommodation or sufficient income, and shall be liable for all costs arising for a regional corporation from the enforcement of a residence ban, an expulsion, a forcible return or from the execution orders for detention pending deportation, including the disbursement for the compensation of more lenient means, as well as the social assistance system and a federal or provincial law, implementing the Social Care Agreement pursuant to the Art. 15a of the Austrian Federal Constitutional Law (B-VG), FLG I No. 80/2004, and the ability of the third party to bear costs has been proved, and
  16. Representative authority means an authority in charge of implementing consular activities and representing Austria abroad.
- (2) Settlement means an actual or intended residence in the federal territory for the purpose of:
1. Establishing of a domicile existing for more than six months within a year;
  2. Creating a centre of one's vital interests or
  3. Pursuing of non-temporary occupation
- (3) The legal residence of an alien by virtue of residence permit (Art. 4, paragraph 1 Z 5) is not considered as settlement in terms of paragraph 2.
- (4) For the purposes of this federal law,
1. nonage shall be estimated according to the provisions of the Austrian General Civil Code (ABGB), JSB 946/1811;
  2. adoption prior to granting of a residence authorization shall be issued and evaluated pursuant to the provisions of the Austrian law only and

3. Maintenance claim shall be estimated for the purpose of furnishing proof for the means of support not only according to its legal foundation, but according to the actual amount and benefit.
- (5) Within the meaning of this Federal act the photographic and fingerprint data encompass photos, papillary lines of the fingerprint, external physical characteristics and the signature.

## **Section 2**

### **Jurisdiction of authorities**

#### **Functional competence**

**Article 3.** (1) The competent authority according to this Federal law is the provincial governor. If appropriate in the interests of administrative simplification, expediency or economy, the provincial governor may, by provision, authorize the district administrative authorities to render decisions on his behalf in all or specific cases.

(2) The Federal Minister of the Interior shall decide on appeals against decisions made by the head of the provincial government.

(3) In case of application submitted from outside Austria (Art. 22) the competent representative authority shall be in charge of accepting these applications. Rulings on applications which ought to be refused on formal reasons (Art. 22, paragraph 1 and 2) shall be given by this representative authority; Appeals against this decision shall be inadmissible.

(4) The police authority in the first instance in cases of Art. 77 shall be the local competent district administrative authority.

#### **Territorial competence within Austria**

**Article 4.** Territorial competence within Austria shall be determined by the alien's place of domicile or by the intended place of domicile. If the alien does not actually reside in the federal territory or his place of residence is unknown, the territorial competence shall be determined by the authority which last issued a residence authorization. If this authority has no longer the responsibility according to this Federal law, the authority which would be competent shall decide hereon.

#### **Territorial competence outside Austria**

**Article 5.** (1) Territorial competence for the performance of official acts pursuant to this Federal law shall be determined outside Austria by the alien's place of domicile. Any diplomatic or consular authority may, on instruction of the Federal Minister for Foreign Affairs, take action.

#### **National contact point**

**Article 6.** National contact point within the meaning of the EU regulations shall be the Federal Minister of the Interior.

#### **Decentralized Information Centres**

**Article 7.** The Federal Minister for Foreign Affairs may, in consultation with the Federal Minister of the Interior, by decree, entrust diplomatic or consular authority, particularly with:

1. the tasks of a contact and information point for aliens
2. the tasks of a contact point for procedures conducting authorities
3. the acquisition of data within the framework of this Federal law
4. the collection of regional information which is relevant for the decisions made pursuant to this Federal law or allows migration analysis,

and may declare them decentralized information centres.

**Section 3**  
**Residence and settlement authorizations**

**Types and form of residence titles**

**Article 8.** (1) Residence titles shall be issued as:

1. "Settlement permits" for a non-temporary limited settlement in the Federal territory for a specific purpose (paragraph 2) with the possibility of obtaining a residence title "long-term resident's EC residence permit" (Z 3);
2. Residence title "family member" for the restricted settlement with the chance of receiving afterwards a residence title "long-term resident's EC residence permit- family member" (Z 4);
3. Residence title "long-term resident's EC residence permit" for the documentation of the unlimited right of settlement, without prejudice to duration of validity of the documents;
4. Residence title "long-term resident's EC residence permit- family member" for the documentation of the unlimited right of settlement, without prejudice to duration of validity of the documents;
5. "Residence permit" for a non-permanent limited residence in the Federal territory for a specific purpose (Art. 58 until 69 and Art. 72) with the possibility of obtaining a settlement permit afterwards, unless otherwise provided for by this Federal law.

(2) Settlement permits pursuant to Art. 1 Z 1 shall be issued as:

1. "Settlement permit- key worker" which entitles to a limited settlement and pursuing of an occupation a written statement or a certificate within the meaning of Art. 12, paragraph 4 or 24 of the Aliens Employment Act has been issued for;
2. "Settlement permit- for private purpose" entitles to limited settlement without the possibility of pursuing an occupation;
3. "Settlement permit- unrestricted" authorizes to limited settlement and pursue of a gainful occupation in a self-employed capacity or a gainful occupation in a non-self employed capacity according to Art. 17 of the Aliens Employment Act;
4. "Settlement permit- restricted" gives entitlement to limited settlement and pursue of an activity as a self-employed person or employee, for which an appropriate authorization pursuant to the Aliens Employment Act applies;
5. "Settlement permit- relative" authorizes to limited settlement without pursuing a gainful occupation; the pursue of an occupation shall be only admissible due to an additional change of purpose which is subject to quota requirement;

(3) The form and contents of the residence titles shall be determined according to paragraph 1 by order of the Federal Minister of the Interior. The residence titles shall in particular contain the name, the date of birth, photograph issuing authority and the period of validity; the residence titles shall serve as means of identification.

(4) The resident permit (paragraph 1 Z 5) for spouses and unmarried under-age children during the time limit pursuant to Art. 27, paragraph 1 is linked to the existence of residence permit of the sponsor concerned (Art. 69).

(5) Holder of a residence permit, except social service workers (Art. 66) may, during the period of validity of their residence permit within Austria, apply for change of purpose of residence or settlement permit. Such application shall provide for a right of abode which goes beyond the period of validity of the original residence permit, until delivery of decision of the authority in first instance.

## **Documentation and form of residence and settlement rights according to EU laws**

**Article 9.** (1) For purpose of documentation of the residence and settlement right under EU law the following shall be issued:

1. for EEA nationals who have settled in Austria, a “confirmation of registration” (Art. 53), upon application, and
2. for family members of EEA nationals who are third-country nationals, upon application, a “permanent residence permit” (Art. 54), if the EEA nationals make use of their right of free movement within the EU.

(2) Holders of confirmations of registration may, upon application, be issued an “identity card with photograph for EEA nationals”. The identity card for EEA nationals and confirmation documents shall serve as identification documents. The form and contents of confirmation registrations, identity cards with photograph for EEA nationals and permanent residence permit shall be regulated by the Federal Minister of the Interior by ministerial order.

## **Invalidity and non-relevance of residence titles and documentations of residence and settlement permits**

**Article 10.** (1) Residence titles and documentations of rights of residence and settlement shall be declared invalid, if a residence ban or an expulsion order becomes enforceable or final against aliens. Such aliens lose their right of settlement. A residence title or residence and settlement authorization shall be reinstated as of right if during its original period of validity the residence ban or expulsion order is lifted other than provided for in Art. 65 of the Aliens Police Act.

(2) Residence titles shall be rendered invalid if the authority by means of an administrative order finds that a third-country national, except for those possessing a residence title “long-term residence permit-EC” (Art. 45) and “long-term resident’s EC residence permit- family member” is no longer resident in the federal territory.

(3) Residence title or a documentation of residence or settlement right shall be no longer relevant:

1. If an additional residence or settlement authorization with an overlapping period of validity is issued to the alien
2. If the alien becomes an Austrian national or a citizen of the EEA
3. If the alien is issued a residence title “long-term resident’s EC residence permit” of another Member State
4. If the alien is in possession of a residence title “long-term resident’s EC residence permit” or “long-term residence permit- family member” or has not been settled for six years in Austria or
5. In case of Art. 8, paragraph 4.

(4) The invalidity or non-relevance of residence titles indicated in alien’s travel documents shall be clearly displayed. Any authority coming into possession of a travel document in the conduct of an official act pursuant to the present federal law shall be empowered to make such entries. Citizenship authorities shall be obliged to act in this manner.

(5) Invalid or non-relevant documents shall be presented to the authority concerned. Any authority conducting an official act in virtue of the federal law shall be entitled to confiscate documents presented to it. Citizenship authorities shall be obliged to do so. The agents of the public security service shall be empowered to confiscate documents presented to them without delay.

## **Section 4**

### **General requirements**

#### **General requirement for residence titles**

**Article 11.** (1) The granting of residence titles to an alien shall be refused if:

1. A final and legally binding residence ban pursuant to Art. 60 of the Aliens Police Act has been imposed on him
2. A residence ban of another EEA Member State is effective against him
3. An expulsion order pursuant to Art. 54 of the Aliens Police Act or Art. 10 of the Asylum Act has become enforceable against him within the last twelve months
4. A marriage of convenience or an adoption of convenience (Art. 30, paragraph 1 and 3) of the alien is evident
5. The alien has exceeded the period of the visa-exempt entry and residence permitted relating to Art. 21, paragraph 4
6. The alien has been legally convicted for evasion of the border control or illegal entry into the federal territory within the last twelve months.

(2) The residence title shall be issued to an alien, if:

1. The residence of the alien does not run counter to the public interests;
2. The alien can furnish proof of statutory right to an accommodation in conformity with local accommodation for national residents;
3. The alien holds sickness insurance in respect of all risks normally covered in the federal territory, and the insurance authority is liable to pay;
4. The alien's residence does not lead to a financial burden on a territorial entity
5. The alien's residence would not harm the relations between Republic of Austria and another State or another international subject;
6. In case of renewal application, the alien has already complied with the integration agreement pursuant to Art. 44 or one single module of this agreement provided that he has been settled on the federal territory for the period of one year and has not been granted any extension of time according to Art. 14, paragraph 8.

(3) Notwithstanding the absence of the requirement pursuant to paragraph 2 Z 1-6, a residence permit may be issued to an alien if it is necessary for the maintaining his privacy or family life within the meaning of Art. 8 of the Convention for the Protection of Human Rights and Fundamental Freedoms (European Convention on Human Rights- ECHR), No. 210/1958.

(4) The granting of a residence permit to an alien shall oppose the public interests (paragraph 2 Z 1), if:

1. the alien's residence would constitute a threat to law and order or public safety, or
2. the alien has a close relationship to an extremist or terrorist group, and with regard to existing structures or future developments in their surroundings, extremist or terrorist acts by this group cannot be excluded.

(5) The residence of an alien shall not lead to a financial burden on a territorial entity (paragraph 2 Z 4), if he has stable and regular resources which are sufficient to maintain himself, without recourse to the social assistance system of the respective territorial entity and which corresponds to the amount set out by the standard rates of the General Social Security Law, Art. 293, FLG No. 189/1955. In case of providing evidence for the means of support by maintenance claims (Art. 2, paragraph 4 Z 3), the garnishment-free minimum wage of the obliged party pursuant to Art. 291a of the Enforcement Act (EO), RLG No. 79/1896, shall not be taken into account for evaluation of the ability of the obliged party to pay.

(6) The admissibility of furnishing proof of one or several conditions of the paragraph 2 Z 2-4, along with a declaration of liability (Art. 2, paragraph 1 Z 15) shall be expressed under the respective purpose of residence.

(7) When submitting the application for an initial residence permit, the alien shall present a health certificate, even if he would have needed one pursuant to Art. 23 of the Aliens Police Act, too, in order to obtain a visa (Art. 21 of the FPA).

### **Quota requirement**

**Article 12** (1) The following is subject to the provisions on the quota requirements pursuant to Art. 13:

1. The granting of an initial settlement permit and
2. The change of purpose of a valid resident permit, insofar as the settlement permit applied for, prior to granting of an initial settlement permit, would have been subject to quota requirements.

(2) Applications for granting of a settlement permit which is subject to quota, filed for within a quota year, shall be entered into a settlement register according to the date of its submission to the respective authority which shall be maintained by the head of the provincial government by quota year and quota type, and which shall be allocated to this quota year. In case that the head of the provincial government has established a register automatically processed for the sequence of the applications, the precise entry time into the register shall provide an additional sequence element for the applications submitted on the same day. Applications filed for within a quota year shall be allowed for without prejudice to the time of the settlement of the application, as long as there is quota space available within the register.

(3) Without prejudice to other requirements for the granting of a settlement permit, such settlement permit shall only be issued if space assigned in accordance with Art. 2 is available within the settlement register. The issue of a settlement permit reduces accordingly the number of quota spaces available within the register, pursuant to Art. 2. The concrete assignment of the quota space shall follow upon the issue of the settlement permit, and in case of Art. 23, paragraph 2 upon authorisation of the representative authority concerned.

(4) If, by the time of submission of and the decision on the application, the number of available quota spaces in the year in question has been exhausted within the register pursuant to Art. 2, the application shall, except in cases of family reunification pursuant to Art. 46, paragraph 4, be rejected. The details on the sequence and the total number of the applications filed for up to the point of decision-making in the respective year, as well as information on the available quota spaces shall be contained in the rejection ruling - appeals against this ruling shall be inadmissible.

(5) If by virtue of the sequence of applications pursuant to Art. 2, an application for granting of a settlement permit may either be rejected or refused, because not all available quota spaces of the quota type in question have been legally assigned, the settlement of this application shall be postponed until one quota space within the respective year becomes available or the quota type in question has become exhausted. The respective postponement shall delay the expiry of the time limit according to Art. 73 of the General Administrative Procedure Act 1991 (AVG, FLZ No. 51).

(6) If the application for granting of a settlement permit was refused, or rejected for reasons other than pursuant to Art. 4, and an appeal was lodged against it, this shall not influence the sequence of other applications in the settlement register according to Art. 2. In case of existence of a ruling which has been refused or rejected by the appeal authority, the quota space concerned shall become vacant.

(7) In cases of family reunification pursuant to Art. 46, paragraph 4, if the number of quota spaces in a Member State concerned has been exhausted, the respective authority shall postpone the ruling until one quota space becomes available, provided, the concerned authority shall not reject or refuse the application for other reasons. Such postponement shall delay the expiry of the time limit pursuant to Art. 73 of the General Administrative Procedure Act and Art. 27 of the 1985 Administrative Court Act (VwGG) from FLG No. 10. The alien or the rejoining family member shall have the right of notification on the availability of quota number within the register until the postponement deadline. The notification regarding to sequence shall be procured one-time to the alien in the form of a

decision- no appeals shall be admissible against it. Other sequence notifications may be presented in another technically appropriate manner which provides protection of personal data. Three years after submitting the application, an additional postponement shall not be admissible and the quota requirement pursuant to Art. 1 shall extinct.

(8) Settlement permits for children entitled to visa-exemption and aliens who have been legally deprived of their asylum status pursuant to Art. 7, paragraph 1 Z3 of the 2005 Asylum Act and who are still settled in the federal territory, shall not be subject to quota requirement. The same shall apply to children born between the period of mother's application and the granting of the settlement permit.

### **Settlement regulation**

**Article 13.** (1) The Federal Government shall, upon proposal of the Federal Minister of the Interior, in agreement with the Executive Committee of the National Council, stipulate, for periods of one year in each case, the maximum number of settlement permits and work permits for temporarily employed aliens (settlement regulation).

(2) The settlement regulations shall lay down the maximum number of settlement permits valid for the year in question, according to quota types which may be granted to:

1. Key workers (Art. 2, paragraph 5 and Art. 12, paragraph 8 of the AuslBG and Art. 41) and their family members;

2. Third-country nationals who hold a "residence permit- long-term residence permit EC" (Art. 8, paragraph 1, Z 3) of another Member State and wish to come Austria for the purpose of pursuing activities as employees or self-employed persons or in cases of Art. 49, paragraph 1;

3. Relatives of third-country nationals in cases of Art. 46, paragraph 4;

4. Third-country nationals who possess a "settlement permit – relative" and aim at changing the purpose of settlement into "settlement permit- restricted" (Art. 47 and 48, paragraph 39) and

5. Third-country nationals and their family members who are entitled to settle in the federal territory on a permanent basis, with no intention of working (Art. 42 and 46, paragraph 1).

The Government shall ensure the development of a well-regulated labour market and shall, in the ministerial order, allocate the permits among the provinces in a manner consistent with their facilities and requirements.

(3) Prior to issue of the settlement regulation pursuant to paragraph 1, consultations shall be held with the Chamber of Commerce and Trade of Austria, the Federal Chamber of Labour, The Presidents' Conference of Chambers of Agriculture of Austria, the Austrian Federation of Local Authorities, the Austrian Federation of Municipal Authorities, the Austrian Trade Union Federation, the Austrian Association of the Industrialists and the Austrian Institute for Economic Research. The provincial authorities shall be given an opportunity to submit specific proposals with regard to the number of settlement permits required in the federal province concerned (paragraph 2 Z 1-5); When making their proposals, the provincial authorities shall take into account the existing facilities in the areas of schooling and health care, - after consulting the relevant local authorities- as well as developments in the housing market - after consulting bodies representing employers' and employees' interests at the provincial level- and the situation and development in the labour market.

(4) The settlement regulations shall stipulate the number of aliens which are entitled to pursue a self-employment activity as key workers within the quota system pursuant to Art. 2 Z 1.

(5) In the settlement regulations, the Federal Government shall stipulate:

1. The maximum number of work permits for temporary employed aliens (Art. 5 of the AuslBG) which the Federal Minister of Economic Affairs and Labour may, by decree, link to entitlement to entry and residence permit pursuant to Art. 24 of the FPG, and

2. The maximum number of employment authorizations for harvest labourers (Art. 5 of the AuslBG) which the Federal Minister for Economic Affairs and Labour may, by ministerial order, link to entitlement to entry and residence permit pursuant to Art. 24 of the AuslBG.

(6) **(Constitutional provision)** In issuing the ministerial order, the Federal Government shall give due consideration to the absorption capacity of the domestic labour market and the proposals of the provincial authorities; the numbers stated in any such proposal may be exceeded solely with the consent of the provincial authority.

(7) If the labour supply on the domestic labour market is expected to clearly exceed demand during the period of validity of the ministerial order, only labour not available within Austria whose employment as key workers (Art. 22, paragraph 5 and 12, paragraph 8 of the AuslBG) is in the general interests of the economy, by reason of the related transfer of investment capital or by reason of their special training and particular skills, and their reunification with family members shall be taken into account, at the time of issue of the regulation, in the case of persons pursuing a gainful occupation (paragraph 2, Z 1.2 and 4, paragraph 4). With regard to quota types pursuant to paragraph 2 Z 2, 3 and 4, the Federal Government shall, at the time of issue of the settlement regulation, taking into account the employment situation and the development of the labour market, assess, with priority being given to the integration of resident aliens willing to work, the extent to which additional aliens willing to work could be admitted into the labour market in a non-self-employed capacity. In such assessment, the Federal Government may designate categories of resident third-country nationals whose reunification with family members is to be made possible on a preferential basis by reason of the advanced stage of their integration. The Federal Government may further designate categories of relatives whose reunification with family members is to be made possible on a preferential basis, owing to specific circumstances facilitating their integration such as the approaching enrolment age for compulsory education.

(8) The settlement regulations shall, in each case, be issued in good time so that they may enter into force at the commencement of the ensuing year. If these regulations are not issued in good time, the regulations valid in the previous year shall be applicable, with the proviso that a maximum of one twelfth of the number of settlement permits may be issued in each month.

(9) If so necessitated by a significant change in circumstances, the Federal Government shall amend these regulations during their period of validity, subject to observance of paragraph 2 and 6.

### **Integration agreement**

**Article 14.** (1) The integration agreement shall be for the purpose of integration of permanently or long-term settled third-country nationals. Its object shall be the acquisition of basic knowledge of German language, especially the capability of reading and writing and the ability to participate in social, economic and cultural life in Austria.

(2) The integration agreement shall consist of 2 modules:

1. Module 1 "acquisition of the ability to read and write" and
2. Module 2 "acquisition of knowledge of the German language and becoming capable to participate in the social, economic and cultural life in Austria".

(3) Third-country nationals who possess an initial settlement permit or apply for an additional settlement permit shall be required to comply with the integration agreement. The third-country national shall be informed of this requirement. This requirement shall cease to exist, if he makes a written statement that, within a twenty-four months period, his residence shall not exceed twelve months. This statement shall encompass the abandonment of the application for an additional settlement permit.

(4) The following third-country nationals shall not be required to enter into the integration agreement:

1. Third-country nationals who are underage or will be underage
2. Third-country nationals who cannot reasonably be expected to comply with the integration agreement by reason of their advanced age or their state of health; such lack of reasonable expectation shall be established through an expert opinion given by the official medical officer;

(5) The two modules of the integration agreement shall be fulfilled, if the third-country national:

1. can furnish prove of being able to read and write (for module 1)
2. attends a German language course and completes it successfully (for module 2)
3. provides proof of having attended at least 5 years of compulsory education in Austria and having passed the subject "German" successfully or having successfully passed the subject "German" at 9<sup>th</sup> school year level (for module 2);
4. furnish prove of having successfully passed the subject "German" at a school abroad at which the German language is taught at the level of the 9<sup>th</sup> year of compulsory education in Austria (for module 2),
5. provides proof of sufficient knowledge of German language (for module 2),
6. is in possession of a school leaving certificate corresponding to the general university entrance qualification within the meaning of Art. 64, paragraph 1 of the University Act 2002, FLG 1, No. 120, or the leaving certificate of a vocational college (for module 2),
7. is in possession of a final apprenticeship examination according to the Vocational Training Act (for module 2),
8. is in possession of a settlement permit: "key worker" (Art. 41) or is a special executive according to Art. 2, paragraph 5a of the AuslBG; aforementioned shall apply also to their family members (for module 2).

The fulfilling of module 1 shall encompass module 2.

(6) Explicit instructions on the implementation of the integration courses and certificates shall be stipulated by ministerial order of the Federal Minister of the Interior.

(7) The authority may lead orientation talks with the third-country national or identify special integration requirements and recommend concrete steps towards the integration improvement.

(8) Third country-nationals who have entered into the integration agreement shall comply with it within five years following the issue of the initial or the additional residence title. They may, upon application, be granted, in consideration of their personal circumstances, an extension of time to comply with their integration agreement; such extension shall not exceed a period of two years in each case and shall delay the expiry of the time limit according to Art. 15.

### **Cost sharing**

**Article 15.** (1) The Federal Government shall cover the course costs up to a maximum amount within the meaning of paragraph 3, if the conclusion of the module 1 takes place within the first year at the latest, following the beginning of the fulfilment obligations.

(2) The Federal Government shall bear 50 per cent of the costs of the module 2 attended by family members pursuant to Art. 47, paragraph 2 and family members of third-country nationals in the cases of Art. 46, paragraph 4, if its conclusion takes place within two years after they have entered the fulfilment obligations. The two year period shall start with the fulfilment of the module 1, however, in any case, twelve months following the beginning of the settlement.

(3) The Federal Minister of the Interior, in consultation with the Federal Minister of Finance, shall be empowered by ministerial order to lay down the maximum rates which the Federal Government shall reimburse pursuant to paragraph 1 and 2. The maximum rates shall orientate on the available costs of the integration courses.

(4) In case where the integration course costs are not reimbursed to the language course offerer by the Federal Government, the liable person from a liability declaration shall be solidly liable for the costs.

### **Course offers**

**Article 16.** (1) The courses offered shall in any case include:

1. Module 1: Acquisition of capability of reading and writing and  
2. Module 2: Knowledge of the German language for purposes of communication and reading of everyday texts, topics of everyday life incorporating nationality and citizenship elements and topics imparting European democratic values which allow the participation in the social, economic and cultural life in Austria.

(2) The certification of the courses and evaluation of the teaching content imparted shall be carried out by the Austrian Integration Fund. The courses shall be certified for a period of validity of up to three years; the certification may, upon application, be extended by three years in each case.

(3) In granting of certifications, due consideration shall be given to the willingness of provincial and municipal authorities which have already run and financed courses, prior to the entry into the force of the present federal law, and declare their willingness to continue to do so. The share of the costs assumed by the provincial and municipal authorities shall not reduce the contributions referred to in Art. 15.

(4) The Federal Minister of the Interior shall be entitled by ministerial order to establish the contents with respect to the teaching aims, method of instruction and qualifications of the teaching staff and the number of teaching units, as well as the form and content of the course certification.

(5) The Austrian Integration Fund may withdraw the certification during its period of validity, if the teaching aims, the method of instruction or the qualifications of the teaching staff are not in conformity with paragraph 1.

## **Section 5**

### **Integration support and Asylum and Migration Advisory Board**

**Article 17.** (1) Aliens who are entitled to settle may be granted integration support, without prejudice to the provisions of Art. 14-16; the purpose thereof shall be to bring about their involvement in the social, economic, and cultural life in Austria and their equal opportunity with the Austrian nationals in those areas.

(2) Integration support measures shall include in particular:

1. Language courses;
2. Basic and advanced training courses;
3. Events organized to provide an introduction to the Austrian culture and history;
4. Joint events with the Austrian nationals to promote mutual understanding;
5. Dissemination of information relating to the housing market and
6. Services provided by the Austrian Integration fund

(3) Private, humanitarian and ecclesiastical organizations and voluntary welfare or local authority institutions shall, to the extent possible, be called upon to furnish integration support. The services to be provided shall be set out in a contract under private law which shall also regulate the reimbursement of costs.

(4) As far as the Federal Minister of the Interior is empowered under Art. 66, paragraph 2, B-VG, to conclude interdepartmental agreements, he may arrange cooperation with international organizations whose object is to resolve problems relating to migration and integration of aliens in Europe.

(5) The acquisition and processing of personal data and the transmission thereof for integration-related purposes to institutions of the federal and provincial authorities with a view to furnishing integration support shall be admissible in accordance with the provisions of Art. 37.

## **Asylum and Migration Advisory Board**

**Article 18.** (1) The Federal Minister of the Interior shall receive advice from the Asylum and Migration Advisory Board on asylum and migration questions; The Asylum and Migration Advisory Board shall, upon request of one of its member, issue recommendations on specific asylum or migration matters, particularly in connection with the implementation and financing of integration support measures (Art. 17).

(2) The Asylum and Migration Advisory Board shall consist of twenty tree members, who shall hold office in an honorary capacity. The members of the Asylum and Migration Advisory Board shall be appointed by the Federal Minister of the Interior, for a term of office of five years, one each at:

1. the proposal of the Federal Minister for Foreign Affairs, the Federal Minister for Education, Science and Culture, the Federal Minister for Health and Women Issues, the Federal Minister for Social Security, Generations and Consumer Protection and the Federal Minister for Economic Affairs and Labour;
2. the proposal of the Federal Chamber of Labour, the Chamber of Commerce, the Austrian Trade Union Federation, the Austrian Association of Industrialists, the Presidents' Conference of Chambers of Agriculture of Austria;
3. four representatives from the federal provinces;
4. at the proposal of the Austrian Federation of Local Authorities and the Austrian Federation of Municipal Authorities as well as
5. representatives of the Austrian Integration Fund and one representative of four exclusively humanitarian or ecclesiastical organizations, designated by the Federal Minister of the Interior, who are concerned with the integration or provision of advice to the aliens, as well as two representatives of the Federal Ministry of the Interior.

(3) the representative of the Austrian Integration Fund shall preside over the Asylum and Migration Advisory Board and in the event of an equal number of votes, shall have the casting vote.

(4) The members of the Asylum and Migration Advisory Board shall be subject to the obligation of official secrecy.

(5) The Federal Minister of the Interior shall provide the Asylum and Migration Advisory Board with the necessary personnel and material requirements for the performance of its administrative activities. The Asylum and Migration Advisory Board shall draw up its rules of procedure, in which the powers of its president and regulations governing representation in the event of impediment of a member shall be laid down.

## **Section 6 Procedure**

### **General procedural provisions**

**Article 19.** (1) Applications for the granting of residence title shall be personally submitted to the authority concerned. In case that the applicant is not capable of acting, his legal representative shall submit the application.

(2) The reasons for residence shall be clearly specified in the application. Applications which contain different purposes of residence or simultaneous submission of multiple applications, as well as filing of further applications during a pending proceeding shall be inadmissible within the meaning of this Federal Law. The authorization required for a specific purpose of residence shall be verified prior to issue of the residence title. If the purpose of residence is solely for carrying out a trade activity, the confirmation issued by the trade authority stating that the requirements for the carrying on a trade with exception to corresponding residence titles are evident, shall serve as proof of the necessary authorization.

(3) The Federal Minister of the Interior shall stipulate by ministerial order the documents and certifications which are to be attached to the application for the respective purpose of residence. This order may contain the form and type of an application including specific application form which is to be used.

(4) In the course of application, the alien shall provide photographic and fingerprint data necessary for issue of a residence permit and shall, if necessary, take part in the evaluation and verification of this data in accordance with the provisions of Art. 35, paragraph 3; his application shall, otherwise, be rejected. In case of renewal of residence permit the photographic and fingerprint data shall only be evaluated if they are no longer available within the authority or are required for identification of the applicant.

(5) Unless the evaluation of the personal data necessary for issue and personalization of a residence permit did not take place during the application with the representative authority, the aforementioned shall be carried out by the national authority concerned. In the event of renewal of a residence permit, the collection of personal data necessary for issue and personalization of a residence permit shall, in any case, be accomplished during each application by the national authority concerned. If appropriate in the interests of administrative simplification, expediency or economy, the head of the provincial government may authorize single or several district administrative authorities, by decree, to collect the necessary data through district administrative authorities not responsible territorially therefore. Their actions shall be assigned to the territorially and functionally responsible authority.

(6) The alien shall provide information on his delivery address and in case of change of his delivery address during the conduct of the procedure, the alien shall immediately notify the authority concerned. As far as the initial applications are filed for abroad, the representative authority shall also be submitted the information on delivery address. If the personal delivery of a summons or ruling is impossible on repeated occasions, the proceedings may be closed, if the alien was instructed hereof during the submitting of the application.

(7) Residence permits shall be handed out personally to aliens who have reached the age of 14. Residence permits for underage aliens shall only be handed out to their legal representatives;

#### **Period of validity of residence titles**

**Article 20.** (1) Unless otherwise provided for, the limited residence titles shall be issued for the period of duration of twelve months computing from the date of issue, provided that, no shorter duration of the residence permit was applied for or the period of validity of the travel document does not feature the corresponding period of validity.

(2) The period of validity of a residence title shall begin with the date of issue; the period of validity of a renewed residence title with the day immediately following the last day of the last issued residence title.

(3) Holder of a resident title “Long-term resident- EC” (Art. 45) or “long-term resident- family member” (Art. 48) shall be settled in Austria on an unlimited basis, without prejudice to the limited duration of validity of the document corresponding to this residence title. This document shall be issued for a period of validity of five years. As far as no measures are enforceable pursuant to Aliens Police Act from 2005, this document shall, after expiration and upon application, be renewed.

(4) A residence title according to paragraph 3 shall extinct, if the alien is residing longer than twelve months outside the territory of the EEA. For reasons worthy of consideration such as severe illness, fulfilment of a social obligation or performance of the compulsory military service or a service comparable to the community service, the alien shall be entitled to reside outside the territory of the EEA for a period of validity for up to twenty four months, if he has inform the authority thereof.

## **Initial application procedure**

**Article 21.** (1) Initial applications outside Austria shall be submitted to the representative authority which is territorially competent. The decision on the application shall be awaited abroad.

(2) Notwithstanding paragraph 1, the following persons are entitled to submission of application:

1. Family members of Austrian nationals, EEA nationals and Swiss nationals who permanently reside in Austria and who are not entitled to free movement after having entered legally the federal territory and during their legal residence
2. Aliens who have been settled in the federal territory up to now without having the authorization to settle or documentation in accordance with this Federal Law;
3. Aliens who have been Austrian nationals or EEA nationals hitherto;
4. Children within the meaning of Art. 23, paragraph 4 within six months after the birth;
5. Aliens who are entitled to visa-exempt entry during their allowed visa-exempt residence;
6. Aliens who apply for a residence permit as researcher (Art. 67) and their family members

(3) The Federal Minister of the Interior shall be empowered by ministerial order to allow nationals of certain States to submit their applications within the federal territory, in case of reciprocal agreement or if it is in the public interest.

(4) Submission of an application within the federal territory pursuant to paragraph 2 Z 1 and Z 4-6 and paragraph 3 shall not provide for a right of abode which exceeds the allowed visa-exempt residence.

### **Procedure for granting an initial residence title from the representative authorities outside Austria**

**Article 22.** (1) The territorially competent representative body outside Austria shall work toward the accuracy and completeness of the application, collect application data and transfer the application to the head of the provincial government concerned. If the application is filed for to a territorial incompetent authority the latter shall dismiss with it without further formality and the applicant shall be referred to the representative authority concerned.

(2) If the application does not correspond to a form and type of application stipulated by the provision in accordance with Art. 19, paragraph 3, including use of certain application forms, the representative authority shall instruct the applicant to remove the shortcomings with the effect that the application, upon fruitless expiry of the appropriate time limit which is to be determinate at the same time, shall be dismissed without further formality.

### **Issuance procedure for initial residence titles within Austria**

**Article 23.** (1) If due to the application or during the preliminary proceedings the alien requires a different residence title for his intended purpose of residence than the one he applied for, he shall be instructed hereof; Art. 13, paragraph 3 AVG shall apply.

(2) The authority concerned shall verify the application and make the decision, if the application was submitted outside the federal territory through the territorial competent representing authority. If the application of the alien residing outside the federal territory has been approved, the authority concerned shall authorize the territorial competent representative authority to issue a visa (Art. 21 of the FPG) for a single entry, if it is required by the alien. This application shall become irrelevant if the alien does not submit the visa application within three months upon notice, and if the representative authority fails to instruct him hereof; the procedure shall be closed without further formality.

(3) If the alien fails to collect the residence title within six months after the notice (paragraph 2) from the competent authority, the procedure shall be closed without further formality. Any previous action shall be irrelevant.

(4) In case of an initial application of a child (Art. 2, paragraph 1 Z 9) the type and duration of its residence permit shall comply with the residence permit of its mother or another alien who is responsible for its care and upbringing; when deriving from the father, only if the right of care and upbringing for other reason than on the ground of mother's waiver falls solely to the father. If a parent is an Austrian national who reside in the federal territory, the child shall, in any cases, be granted a residence permit "Family member" (Art. 47, paragraph 2); in all other cases the child shall be issued a residence permit with the purpose of family reunification.

### **Prolongation procedure**

**Article 24.** (1) Application for prolongation of a residence title shall be submitted to the territorial competent authority within the federal territory prior to expiry of the period of validity of the residence title; Art. 23 shall apply. A single confirmation relating to the application submitted on time for a residence permit which shall be valid for three months, may, upon justified application, be affixed to the travel document. It shall entitle the alien to a visa-exempt entry into the federal territory. The Federal Minister of the Interior shall be empowered by ministerial order to designate the form and contents of the confirmation.

(2) Applications submitted after expiry of the period of validity of the limited residence permit shall be treated as prolongation applications only if the applications have been submitted six months at the latest after the expiry of the period of validity of the residence title last issued. After that, the applications shall be considered as initial applications. After the application for prolongation of a residence title until the legal ruling on the application submitted, the applicant may continue to reside legally within the federal territory, without prejudice to the provisions of the Aliens Police Act.

(3) Aliens who remain legally in the federal territory after expiry of their limited residence permit, shall, upon application and, if necessary, be granted a residence title with the unchanged purpose of residence. They shall- except in case of a waiver according to Art. 14, paragraph 3- on the grounds of a circumstance which disallows either expulsion or residence ban, shall be granted a further residence permit for the same purpose of residence. If the termination of a residence is inadmissible the authority concerned shall issue the residence title.

(4) The change of the residence purpose of the current residence title or the change of the residence title may be linked to a prolongation application (paragraph 1), if another residence title applied for can be issued following the current residence permit, in accordance with the provisions of this Federal Act. If the requirements for another purpose of residence or residence title are not fulfilled, the reasons for refusal shall be issued in a notification.

The current residence title with the same purpose of residence shall be renewed if the requirements therefore still exist.

### **Procedure in case of absence of provisions for prolongation of residence titles**

**Article 25.** (1) If in the course of a procedure for prolongation of a residence or settlement title the provisions therefore (Art. 11, paragraph 1 and 2) are missing, the authority shall- if necessary, after obtaining of the opinion of the Aliens Police- notify the applicant hereof and inform him that his right of residence pursuant to Art. 52 ff. of the Aliens Police Act is about to be terminated and explain him, with due regard to the protection of his private and family life (Art. 66, FPG) why such measure appear admissible. Moreover, the authority shall inform the applicant that he has the right to express his views within a time limit, not exceeding 14 days, to be fixed at that time. Upon expiry of this time limit, the authority shall notify the Aliens Police in charge of the residence termination - if necessary, accompanied with a statement of the alien.

In the course of the procedure for termination of residence the expiry of the time limit according to Art. 73, AVG shall be suspended.

(2) If a termination of residence becomes final and binding, the procedure relating to the application for the granting of an additional residence title shall be discontinued without formality. The procedure

shall be resumed as soon as the termination of the residence is lifted, provided that anew residence terminating measure will not be taken.

(3) Notwithstanding paragraph 1 and 2, paragraph 3 shall be applicable, if:

1. The case of Art. 11, paragraph 2 Z 6 is not available and the respective alien has been settled in the federal territory prior to entry into force of this Federal Act.
2. The granting of an additional residence permit is linked to the application for change of purpose of residence.

### **Procedure in case of change of purpose of residence**

**Article 26.** If the alien wishes to change the purpose of residence during his stay in Austria, he shall immediately notify the authority thereof. A change of purpose of residence shall be admissible if the alien fulfils the requirements for the residence title he applied for and, if necessary, a required quota space is available. If all requirements are met, the alien shall have the legal claim for granting of this residence title. If the requirements are not satisfied, the application shall be dismissed; the dismissal shall have no effect on the existing right of residence.

### **Right of settlement and right of abode for family members possessing settlement authorization**

**Article 27.** (1) Family members with a settlement permit have the right of residence derived from the sponsor valid for up to five years. The right of continued abode shall remain, if the requirements for the family reunification cease to exist later than five years after granting of the initial settlement permit. The loss of the settlement permit of the sponsor in the first five years shall cause the loss of the settlement right of the family member *ex officio*.

(2) Paragraph 1 shall not apply if the family member is able to fulfil the requirements pursuant to Art. 11, paragraph 2 Z 2-4 for the granting of the settlement permit. In this case, the authority shall issue a settlement permit whose purpose of residence is corresponding to the purpose of residence originally derived from or held by the sponsor.

(3) Without prejudice to derivation of the settlement permit from family members within the time limit set out in paragraph 1, the family member shall not lose the requirements for the purpose of residence of his settlement permit:

1. by death of the spouse or a parent
2. by divorce for predominant default of the other spouse or
3. in cases particularly deserving consideration

(4) Cases particularly deserving consideration within the meaning of paragraph 3 Z 3 may include domestic violence- if the family member has become victim of domestic violence- a restraining order pursuant to Art 382b of the EO has been issued against the sponsor or the loss of the settlement permit has resulted from a measure taken by the Aliens Police which is set due to the final conviction of the sponsor for committing a deliberate criminal act.

(5) In order to protect this right the alien shall inform immediately the authority of such circumstances. The authority shall in such case issue a settlement permit whose purpose of residence complies with the purpose of residence which was originally derived from or held by the sponsor.

### **Downgrading and withdrawal of unrestricted right of residence**

**Article 28.** (1) In case of requirements pursuant to Art. 54 of the FPG for the issue of an expulsion order or the requirements according to Art 60 of the FPG for the issue of a residence ban against a holder of a residence title "long-term residence EC residence permit" (Art. 45) or "long-term residence- family member (Art. 48), and in the event that these measures can not be imposed in view of Art. 66 of the FPG, the authority shall lay down the expiry date of the unlimited settlement right

with a notification and issue, by law, a limited “settlement permit-unrestricted” (Art. 2, paragraph 2 Z 3) (downgrading).

(2) Third-country nationals who hold a residence title may lose it if a final, enforceable expulsion ruling (residence ban) of another State member of the EEA is effective against him, and if the residence of the alien constitute an acute threat to law and order and national security and the residence ban:

1. is based on the criminal judgement of an offence that carries a minimum sentence of imprisonment of one year, or
2. was imposed owing to the existence of a well-founded suspicion that the third-country national had committed serious offences or to the existence of material evidence to suppose that he was planning such acts within the territory of a Member State, or
3. was imposed because the third-country national had infringed the entry and residence regulations of the State pronouncing the ruling.

(3) Withdrawal of the residence title pursuant to Art 2 shall not be admissible, if by means of the enforcement of the return ruling in accordance with Art. 2 and 3 of the European Convention on Human Rights, the Protocol No. 6 to the Convention for the Protection of Human Rights and Fundamental Freedoms on Abolition of Death Penalty, FLG No. 138/1985, or the Protocol No. 13 to the Convention for the Protection of Human Rights and Fundamental Freedoms on Total Abolition of Death Penalty, FLG No. 22/2005 would be violated.

(4) If the withdrawal of a residence title pursuant to paragraph 2 would interfere with the aliens’ private or family life, it shall be admissible only if it is urgently required in order to achieve the objectives specified in Art. 8, paragraph 2 of the Convention for the Protection of Human Rights.

### **Cooperation of aliens**

**Article 29.** (1) The alien shall take part in the procedure.

(2) If the alien shall fail to furnish evidence by means of harmless documents for the affinity relationship he refers to pursuant to this Federal Act, he shall be allowed, upon request and at his own expense, to carry out a DNA –test. The alien shall be instructed thereof. The lack of request for the conducting of a DNA-test shall not be interpreted as a refusal of the alien to participate in the clarification of the circumstances and shall have no effect on the appraisal of evidence.

(3) In further course of the procedure, the information on the affinity relationship only shall be processed; all other data shall be deleted.

### **Marriage and adoption for the purpose of enabling the alien to reside in a Member State**

**Article 30.** (1) Spouses who do not lead a join family life within the meaning of Art 8 of the Convention for the Protection of Human Rights and Fundamental Freedoms may not invoke their marital status as ground for the granting or prolongation of residence titles.

(2) Adopted aliens enjoying full legal capacity may invoke such adoption in connection with the granting and maintaining of the residence titles if the granting and maintaining of the residence titles was not sole or predominant reason for their adoption.

### **General conditions**

**Article 31.** The conduct of an alien who reside in Austria shall orientate on the social, economic and cultural life in Austria, as well on the basic values of a democratic state and its society.

## **Self-employment**

**Article 32.** Except for the cases according to Art. 22, paragraph 1 Z 7 the pursue of a self-employed occupation- without prejudice to an adequate residence and settlement authorization in accordance with this Federal Law- shall require the issue of a residence title with corresponding purpose.

## **Paid employment**

**Article 33.** (1) The entitlement to pursue an activity as an employee shall act - without prejudice to a corresponding residence and settlement authorization in accordance with this Federal Law- upon the provisions of the Aliens Employment Act.

(2) The communications of the regional office of the Labour Market Service pursuant to Art. 12, paragraph 9 and 17, paragraph 2 of the AEA shall, if necessary, be obtained by law from the authority.

## **Section 7 Use of personal data**

### **General provisions**

**Article 34.** (1) The authorities may use personal data only if it is required in the performance of the duties assigned to them.

(2) The authorities may processed personal data on third parties and their social security number only if there is no provision for the selectability of such data from the total quantity of stored information. The procedural data shall be deleted, as soon as they are no longer needed, not later then ten years upon the judgement becoming final.

### **Use of photographic and fingerprinting data**

**Article 35.** (1) The authorities concerned pursuant to this Federal Act and the representative authorities shall be empowered to collect photograph and fingerprint data from the aliens who applies for a residence title or shall be issued one.

(2) Art. 64 and 65, paragraph 4-6 as well as Art. 73, paragraph 7 of the Security Police Act, FLG No. 566/1991 shall apply.

(3) The authority which is to carry out photographing and fingerprinting procedures shall notify the alien without formality thereof. If the alien concerned fails to comply with the notice, he shall be called upon, once again, with due consideration to consequences resulting from non-cooperation with the respective authority, in written form, to provide photograph and fingerprint data.

### **Central information gathering system; information gathering system**

**Article 36.** (1) The authorities pursuant to this Federal Act may process and use jointly data they acquired, such as procedural information on applications, rulings and appeals. The Federal Minister of the Interior shall, in such case, fulfil the task of an operator according to Art. 50 of the Data Protection Act 2000 (DPA 2000), FLG I No. 165/1999, as well as a processor, within the meaning of Art 4 Z 5 (DPA 2000).

(2) The authorities pursuant to this Federal Act may acquire data in connection with the procedure from the asylum and aliens police authorities processed by them, if it is required for the performance of the tasks assigned to them.

(3) Inquiries from the central information gathering system shall be admissible insofar as is it necessary for fulfilling a task commissioned pursuant to this Federal Act and the alien, at least, can be identified according to his name, a number assigned to him or a papillary lines of his fingerprint.

(4) For the data processed within the central information gathering system Art. 34, paragraph 2 shall apply.

### **Obligation of notification and cooperation**

**Article 37.** (1) The authorities pursuant to this Federal Act shall be obliged to surrender data referred to in Art. 102, paragraph 1 of the Aliens Police Act, to the aliens police authority competent according to aliens' domicile for the purpose of processing this data within the Central Aliens Registration as far as they are not able technically to process the data themselves within the Central Aliens Registration.

(2) The citizenship authorities shall inform the authorities concerned pursuant to this Federal Act about the granting of a citizenship to an alien.

(3) The criminal courts shall communicate the charges they have submitted for criminal intents subject to the jurisdiction of the provincial courts, furthermore, the final judicial decisions along with a copy of the decision, promulgation and revocation of custody to the competent authority in the first instance pursuant to this Federal Law; the penal institutions and court house jails shall notify the competent authority in the first instance pursuant to this Federal Law on the commencement and the expiration of the sentence of imprisonment of the alien. These communications shall be submitted to the appeal authority by the authority in the first instance insofar as the proceeding is pending in the second instance.

(4) If the authority in the course of carrying out the official acts in accordance with this Federal Act has valid ground for assuming that a fictitious marriage or fictitious adoption is evident in relation to a certain alien, it shall inform thereof the aliens police authority concerned. If the aliens' police authority notices that there are no grounds for assuming that the marriage and adoption are fictitious or if such notice is not submitted within three months (Art. 110, FPG), the authority concerned shall assume that the respective marriage and adoption are fictitious.

(5) The federal, provincial and municipal authorities, the agencies of the Labour Market Service as well as the social insurance institutions who dispose regularly of data are entitled and obliged, upon request, to transmit the respective data to the authority, insofar as these are required for the granting of a residence title. The data shall be deleted as soon as they are no longer needed for achieving of the certain aim.

### **International data exchange**

**Article 38.** (1) As far as the Federal Government is empowered under Article 66, paragraph 2 B-VG, it may conclude international agreements concerning the communication to certain recipients of data processed in accordance with Art. 35 on aliens who are not nationals of the Member States. In such case, it shall be stipulated that a reciprocal arrangement will be granted and that any data in one Member State shall, within six months, give rise to deletion of the data transmitted to the other Member State.

(2) Personal data communicated from outside Austria on aliens, by virtue of an agreement concluded pursuant to paragraph 1 may be processed in the central gathering information system.

(3) The national contact point (Art. 6) shall, pursuant to Art.102, paragraph 1 Z 1-11, FPG, be empowered to transmit the data on aliens to other national contact points, by virtue of the provisions under EU law, and to receive and process corresponding data from other national contact points.

### **Legitimate use of the data from the central resident register**

**Article 39.** During an inquiry in the central resident register opened according to an authority under the Register Act 1991, FLG No. 9/1992, the selectability of data from the total quantity of data

processed in the central resident register may be carried out besides the name, after the residence address, too.

### **Settlement register**

**Article 40.** (1) The Federal Minister of the Interior shall maintain an automatically processed register in which all residence titles applied for and granted (Art. 8) during the year in question shall, without delay, be entered separately by type, with an indication of the sex, age, nationality, country of origin, country of destination, marital status, school education, vocational training of the alien concerned and the purpose of his residence. The authority shall be empowered- without prejudice to other authorization for evaluation- to process such data. They shall be anonymized directly after the procession and transmitted to the Federal Minister of the Interior in this form. The data shall be deleted by the authority following the transmission.

(1a) Along with the transmission of data pursuant to paragraph 1, the authorities shall forward the following information to the Federal Minister of the Interior on the respective alien: school education, vocational education, his name (first name, middle names and family names), date of birth and address of domicile, for the purpose of the National Educational Attainment Register (Art. 10 of the Education Documentation Act) and the National Statistics Office Statistics Austria (Art. 22, paragraph 1 of the Federal Statistics, 2000). Following the transmission, the authority shall, relating to the respective alien, delete the data and the Statistics Austria shall apply for the sector-specific personal identifiers needed for the official statistics sector (bPK-AS) with the Austrian Source PIN Register Authority (Art. 7, E-Government Act). Upon receipt of the requested information the authority concerned shall delete the data of the respective alien without delay, except for school and vocational education,

(2) The authorities shall regularly inform the Federal Minister of the Interior without delay of the residence titles (Art. 8) and documentations of the residence and settlement rights under EU law (Art. 9) within the meaning of paragraph 1 and shall present monthly a report on the fulfilment of the quota requirement.

(3) If the number of settlement permit stipulated in the settlement regulations (Art. 12) in respect of one province or the federal territory is reached for the year in question, the Federal Minister of the Interior shall, without delay, report such fact to the Federal Minister of Economics and Labour.

## **CHAPTER 2: SPECIAL PART**

### **Section 1: Settlement of third-country nationals**

**Article 41.** (1) Third-country nationals may be issued a “settlement permit: key worker” if:

1. the requirements set out in the chapter I are fulfilled;
2. a quota space is available and
3. a written notice of the regional office or an expert opinion from the provincial office of the Labour Market Service pursuant to Art. 12, paragraph 4 or 24 of the AuslBG is available.

(2) Decisions relating to the granting of a “settlement permit- key worker” shall be taken by the competent authority in accordance with the provisions of Art. 12 or 24 of the AuslBG, without delay and within six weeks at the latest, following submission of the application. The obtaining of a written communication from the regional office or an expert opinion from the provincial office of the Labour Market Service shall be dispensed with if the application:

1. shall be refused on grounds of lack of form (Art. 21-24)
2. shall be rejected on grounds of immediate obstacles to the issue of settlement permit (Art. 11, paragraph 1) or
3. shall be refused on grounds of non-availability of a quota space

(3) If a negative decision by the regional office of the Labour Market Service concerning the admission of a key worker (Art. 12, AEA) becomes final and binding, the procedure shall be discontinued without formality. If the expert opinion of the provincial office of the Labour Market

Service relating to the application for granting of a settlement permit for key worker (Art. 24, AEA) is negative, the application shall be dismissed without further delay.

(4) The initial settlement permit for a key worker shall be issued for a period of validity not exceeding eighteen months.

(5) Holders of a valid residence permit for students (Art. 64) may, in the course of the procedure for changing of purpose after completing of their studies at a university, vocational school or accredited private university be issued with a “settlement permit- key worker” if the requirements set out pursuant to paragraph 1 Z 1 and 3 are fulfilled.

### **Settlement permit- for private purpose**

**Article 42.** (1) Third-country nationals may be granted a “settlement permit- for private purpose” if:

1. they comply with the requirements of the chapter I.
2. a quota space is available to them
3. their solid and regular monthly incomes are twice as high as the standard rates within the meaning of Art. 293 of the ASVG.

(2) Third-country nationals who enjoyed privileges and immunities (Art. 95, Aliens Police Act) may be granted a “settlement permit- for private purpose” if they:

1. meet with the requirements
2. are retired

### **Settlement permit- unrestricted**

**Article 43.** If the requirements of the chapter I are met a “settlement permit-unrestricted” shall be issued to the following persons:

1. key workers after a period of eighteen months at the earliest following the settlement, in case of a notice in accordance with Art. 12, paragraph 9 of the Aliens Employment Act, and
2. third-country nationals in the event of downgrading pursuant to Art. 28, paragraph 1.

### **Settlement permit- restricted**

**Article 44.** (1) Third-country nationals who hold a “settlement permit-key worker” may be issued a “settlement permit-restricted” subject to no quota if:

1. they fulfil the requirements set out in the chapter I
2. they possess an work permit pursuant to the Aliens Employment Act

(2) Third-country nationals who are entitled to free movement within the EU, due to an Act of the European Union, may be granted a “settlement permit-restricted” for the purpose of pursuing a self-employed occupation if they meet the requirements laid down in the chapter I.

### **Resident permit- long-term resident’s EC residence permit**

**Article 45.** (1) Third-country nationals who have been permanently settled in the federal territory during the last five years may be issued a “residence title-long-term residence permit EC” if:

1. they have satisfied the requirements of the chapter I
2. they have complied with the integration agreement.

(2) The five years period, in accordance with paragraph 1, shall be discontinued if within this period, the third-country national have resided longer than ten months or more than six months continuously outside the federal territory. In such cases, the period shall commence with the last legal entry.

(3) In cases particularly deserving of consideration such as severe illness, fulfilment of a social obligation or military service, the third-country nationals are entitled to reside for up to twenty-four

months within a five years period outside the federal territory without interruption, provided they can furnish proof of having notified hereof the authority concerned.

(4) The five year period shall not be interrupted if the third-country nationals in the course of their occupation, particularly while providing cross-border services, reside outside Austria.

(5) In case of a communication from the asylum authority under Art. 7, paragraph 2 of the Asylum Act, 2005 the respective alien shall be granted a residence title “long-term resident’s EC residence permit” *ex officio*, unless Art. 47 and 48 are applicable; in such case, a residence title “long-term resident’s EC residence permit- family member” shall be issued *ex officio*. These official acts shall be exempt from administrative charges. The asylum authority shall be informed about the legal granting of a residence title.

### **Provisions on the right to family reunification**

**Article 46.** (1) Family members of third-country nationals pursuant to Art. 42 may be issued a “settlement permit- for private purpose” if:

1. the requirements of the chapter I are satisfied and
2. in case of family members of third-country nationals within the meaning of Art. 42, paragraph 1, a space within the quota system is available

(2) Family members of third-country nationals according to Art. 44, paragraph 2 may be granted a quota-free “settlement permit- for private purpose” if they fulfil the requirements of the chapter I.

(3) Family members of key workers (Art. 41) may be issued a “settlement permit- restricted” for a period of validity not exceeding eighteen months if:

1. they meet the requirements of the chapter I
2. a space within the quota system is available.

(4) Family members of third-country nationals shall be granted a “settlement permit- restricted” if:

1. they fulfil the requirements of the chapter I
2. a space within the quota system is available, and
3. the sponsor
  - a) possesses a residence title “long-term resident’s EC residence permit”;
  - b) holds a “settlement permit- unrestricted”
  - c) has a settlement permit, except “settlement permit- for private purpose” within the meaning of Art. 42 and has complied with the integration agreement (Art. 14) or
  - d) is entitled to asylum and Art. 34, paragraph 2 of the Asylum Act is not admissible

(5) Family members of third-country nationals shall, in the event of paragraph 4 Z 3 a, b and d, and if they continue to fulfil the requirements of the chapter I, be granted a “settlement permit- unrestricted” following the expiry of the twelve-month period from the granting of a settlement permit.

### **Section 2: Family members and other relatives of sponsors permanently residing in Austria Residence title- “family member” and “settlement permit- relative”**

**Article 47.** (1) Sponsors within the meaning of paragraph 2-4 are Austrian nationals and EEA nationals or Swiss nationals who reside permanently in Austria and have the right of free movement within the EU.

(2) Third-country nationals who are family members of the sponsors under paragraph 1 shall be granted a residence title “family member” if they fulfil the requirements of the chapter I. This residence title shall be renewable if the requirements of the chapter I are satisfied, once for the period of twelve months, afterwards for a twenty-four months period in each case.

(3) Relatives of the sponsors within the meaning of paragraph 1 may, upon application, be issued a quota-free “settlement permit- relative” if they meet the requirements of the chapter I and:

1. are first-degree relatives in the direct ascending line of the sponsor or his spouse, in case they actually enjoy family support
2. are unmarried partner, who can provide evidence for the existence of a long-term relationship and who enjoy financial support from the sponsor in the country of origin; or
3. are other relatives of the sponsor who
  - a) have already enjoyed financial support through the sponsor in the country of origin
  - b) have already lived with the sponsor under the same roof in the country of origin and were financially supported by him
  - c) on grounds of their severe health problems are dependent on the personal care through the sponsor

Without prejudice to his own maintenance, the sponsor shall in any case submit a liability declaration.

(4) Relatives of the sponsors within the meaning of paragraph 1 who hold a “settlement permit- relative” (paragraph 3) may be granted a “settlement permit- restricted” if:

1. they fulfil the requirements of the chapter I
2. a quota space is available
3. a work permit pursuant to the Aliens Employment Act is available.

(5) In the events under Art. 27, paragraph 3, if the requirements of the chapter I are met, the third-country nationals may be granted a residence title “settlement permit- unrestricted”, provided they were in possession of a residence title “relative”.

#### **Residence title- “long-term resident’s EC residence permit- family member”**

**Article 48.** (1) Family members of the sponsors within the meaning of Art. 47, paragraph 1, who have been entitled to permanent settlement for the period of five years, shall be issued a residence title “long-term resident’s EC residence permit- family member” if they:

1. fulfil the requirements of the chapter I
2. have complied with the integration agreement and
3. in case of a spouse, have been married with the sponsor for at least two years

(2) Relating to interruption of the five years period pursuant to paragraph 1, Art. 45, paragraph 2-4 shall be applicable.

#### **Section 3: Settlement of third-country nationals from other Member States permanently residing in Austria and their family members**

**Article 49.** (1) Third-country nationals who hold a residence title “long-term resident’s EC residence permit” of another Member State may be issued a “settlement permit- for private purpose” if:

1. they meet the requirement of the chapter I
2. a quota space is available within quota system

(2) Third-country nationals who possess a residence title “long-term resident’s EC residence permit” may be issued a “settlement permit- restricted” for the purpose of pursuing a gainful occupation if:

1. they have fulfilled the requirement of the chapter I
2. a quota space is available
3. a work permit pursuant to the Aliens Employment Act is available.

(3) A “settlement permit- unrestricted” may be issued to third-country nationals under paragraph 2 not earlier than after a period of twelve months provided that:

1. they fulfil the requirements of the chapter I and
2. a notice in accordance with Art. 17, paragraph 2 of the Aliens Employment Act is available.

(4) Third-country nationals who hold a residence title “long-term resident’s EC residence permit” may be issued a “settlement permit-restricted” with a period of validity limited to twelve months for the purpose of pursue of a self-employed occupation if

1. they meet the requirements of the chapter 1
2. a quota space is available.

(5) In cases of paragraph 1, 2 and 4 the application shall be submitted within a time limit of three months following the entry. This application shall not entitle to a residence exceeding a period of three months after the entry into the federal territory. In such cases, the authority shall make a decision within four months.

#### **Family members of third-country nationals possessing a residence title “long-term resident’s EC residence permit” of another Member State**

**Article 50.** (1) Family members of third-country nationals who hold a residence title “long-term resident’s EC residence permit” of another Member State may, in cases under Art. 49, paragraph 1, be issued a “settlement permit- for private purpose” and, in cases under Art 49, paragraph 2 or 4, a “settlement permit-restricted” if:

1. they fulfil the requirements of the chapter 1
2. in case of a spouse, a straight marriage with the third-country national exists at the time of the settlement.

(2) In the events under paragraph 1, the application shall be submitted within a period of three months following the entry. This application shall not entitle to a residence exceeding a period of three months after the entry into the federal territory. In such cases, the authority shall make a decision within four months.

#### **Section 4: Right to settle under Community Law Right of EEA nationals to settle**

**Article 51.** EEA nationals who are entitle to free movement under EU law and who reside in the federal territory for longer then three months, shall have the right to settle if:

1. they are Austrian nationals or self-employed
2. they have sufficient sickness insurance for themselves and for their family, and disposes of enough means to support themselves and the members of their family, without recourse to the social assistance system or
3. they complete an education from a legal accredited public or private school or educational institution and meet the requirements under Z 2.

#### **Right of EEA nationals’ relatives to settle**

**Article 52.** Relatives of the EEA nationals entitled to free movement (Art. 51) who are EEA nationals themselves are entitled to settle if they:

1. are spouses;
2. are relative of an EEA national or his spouse in direct descending line up to the attainment of twenty-one years of age and beyond, as far as they are financially supported by them;
3. are relative of an EEA national or his spouse in direct ascending line, as far as they enjoy financial support from them;
4. are unmarried partners who can furnish proof of a long-term relationship in the country of origin;
5. are other relatives of the EEA national,
  - a) who have already been supported by him in the country of origin,
  - b) who have already lived with the EEA national in a joint household or
  - c) who, on grounds of their severe health problems are dependent on the personal care through the EEA national, who accompany him or move to him

## **Confirmation of registration**

**Article 53.** (1) EEA nationals making use of their right to free movement and their relatives within the meaning of Art. 52 shall, provided that they are staying longer than three months within the federal territory, notify hereof of the authority concerned not later than upon expiry of the three-month period. If all requirements are met (Art. 51 or 52) the authority shall, upon application, issue a confirmation of registration. This shall be considered as certificate of authorization for the long-term residence of the EEA national.

(2) In order to furnish prove for right of settlement a valid identity card or travel document shall be submitted as well as

1. an employer authorization or an evidence of self-employment, pursuant to § 51 Z 1;
2. proof of sufficient sickness insurance and financial means for support according to § 51 2;
3. certificate of sufficient sickness insurance and admittance to a school or educational institution as well as statement or other documents on sufficient substantial means;
4. marriage certificate pursuant to § 51 Z 1;
5. certificate confirming the existence of family relationship and evidence for actual financial support for children older then 21, relatives of EEA nationals or his/her spouse in direct ascending line in accordance with Art. 52 Z 2 and 3;
6. evidence for the existence of a long-term relationship with the EEA national in the country of origin pursuant to Art. 52 Z 4;
7. certificate from the authority concerned in the country of origin relating to supporting of the EEA national pursuant to Art. 52, Z 5, their joint household, or grounds for severe health problems requiring personal care on the part of the sponsor.

## **Right of permanent residence**

**Article 54.** (1) Relatives of the EEA nationals entitled to move freely (Art. 51) and who are not EEA nationals, may settle in the federal territory if they comply with the requirements under Art. 52 Z 1-3. They shall be granted a long-term settlement authorization for the period of validity of ten years. The application for granting thereof shall be submitted not earlier than three months commencing from the date of their settlement.

(2) For the purpose of verification the right concerned, a valid identity card or travel passport shall be presented, along with

1. marriage certificate pursuant to § 51 Z 1;
5. document confirming the existence of family relationship and evidence for actual financial support for children older then 21, relatives of EEA nationals or his/her spouse in direct ascending line in accordance with Art. 52 Z 2 and 3;

## **Lack of right to settle**

**Article 55.** (1) If, according to Art. 51, 52 and 54, the documented right to settle is lacking on grounds of serious threat to public law, safety or health, or, if the evidences under Art. 53, paragraph 2 or Art. 42, paragraph 2, have not been provided; the authority concerned shall inform the applicant of non-existence of such requirements in written form, and communicate that the aliens' police authority might consider a possible determination of residence. The aliens' police authority shall immediately take action relating to the communication.

(2) If the determination of residence (Art. 53 and 54 of the Aliens Police Act) cease to exist, the aliens' police authority shall notify the authority thereof. In such case, the authority shall immediately carry out the documentation of the residence and settlement right.

(3) If a determination of residence becomes final and binding, the procedure shall be discontinued. The procedure shall be continued with, if the determination of residence becomes revoked as far as no residence determining actions have been taken anew.

### **Special cases of settlement for relatives of EEA nationals**

**Article 56.** (1) Relatives within the meaning of Art. 52 Z 4, of the EEA nationals entitled to free movement (Art. 51) who are not EEA nationals, may be granted a quota-free “settlement permit-relative”, if they fulfil requirements set out in the chapter I. Without prejudice to his own means of support, the reunifying EEA national shall submit a liability declaration.

(2) For the purpose of evidence for the respective right a valid identity card or travel passport shall be submitted as well as:

1. evidence for the existence of a long-term relationship with the EEA national in the country of origin pursuant to Art. 52 Z 4;
2. certificate from the authority concerned in the country of origin relating to supporting of the EEA national pursuant to Art. 52, Z 5, their joint household or grounds for severe health problems requiring personal care on the part of the sponsor;

(3) Relatives under paragraph 2 may be issued a “settlement permit-restricted” if:

1. they comply with the requirements of the chapter I
2. a quota space within the quota system is available
3. a work permit pursuant to Aliens Employment Act is available

### **Swiss nationals, their relatives and relatives of Austrian nationals**

**Article. 57.** The provisions under Art. 51-56 shall also apply to Swiss nationals who enjoy the right of free movement, as well as their relatives and relatives of Austrian nationals who are entitled to move freely.

### **Section 5: Residence permits Rotational workers**

**Article 58.** Third-country nationals may be granted a residence permit as rotational workers (Art. 2, paragraph 10 of the Aliens Employment Act) if:

1. they fulfil the requirements of the chapter I and
2. a confirmation of guaranteed work or work permit as rotational worker pursuant to the Aliens Employment Act is available.

### **Persons on business assignments**

**Article 59.** Third-country nationals may be issued a residence permit as persons on business assignments (Art. 18, paragraph 4 of the Aliens Employment Act) if:

1. they fulfil the requirements of the chapter I and
2. a confirmation of guaranteed work or employment authorization document as persons on business assignments pursuant to the Aliens Employment Act is available.

### **Self-employed**

**Article 60.** Third-country nationals may be granted a residence permit as self-employed if:

1. they comply with the requirements of the chapter I, and
2. they have committed contractually to one particular activity which shall exceed a period of six months, and
3. the competent provincial office of the Labour Market Service has found out, upon inquiry submitted by the authority concerned who expressed justified doubts about the existence of self-employment, that, due to the presented documents, a self-employment activity within the meaning of Z 2 exists, further, the provisions of the Aliens Employment Act have not been violated and the conduct of this occupation under economic and labour market relevant aspects lays within the interests of Austria.

Art. 2, paragraph 4 of the Aliens Employment Act shall remain unaffected.

(2) Following the granting of a residence permit pursuant to paragraph 1, the authority shall transmit the employment authorization and, in any case, one copy of the contract and the statement of the regional office of the Labour Market Service to the competent customs authority responsible for the implementation of the Aliens Employment Act, in whose territorial jurisdiction the contractor is headquartered. If the contractor does not have headquarters within Austria, the respective documents shall be submitted to the customs authority in charge of third-country national's domicile. The authority shall notify the third-country national, upon application, of this transmission.

### **Artists**

**Article 61.** Third-country nationals may be granted a residence permit as artists, if:

1. their activity is primarily of artistic nature, and their living is covered by the income they earn due to their artistic activity; a liability declaration shall be admissible;
2. they fulfil the requirements of the chapter I
3. in case of employment, a confirmation of guaranteed work or restricted work permit as artist pursuant to Aliens Employment Act is provided for.

### **Special cases of paid employment**

**Article 62.** Third-country nationals may be issued a residence permit for the purpose of pursuing an activity as an employee under a specific employer if:

1. they meet the requirements of the chapter I
2. pursue an occupation that is exempted from the substantial jurisdiction of the Alien Employment Act.

### **Pupils**

**Article 63.** Third-country nationals may be granted a residence permit as pupils if they:

1. fulfil the requirements of the chapter I;
2. are ordinary pupils of a public school;
3. are ordinary pupils of a private school with the public status
4. are pupils of a statutory school with public status under Art. 14, paragraph 2 (b) of the Private Schools Act, FLG No. 244/1962 or
5. are pupils of an accredited non-educational institution (Art. 70).

A liability declaration is admissible.

(2) The pursue of an employment activity is subject to the Aliens Employment Act. This activity shall not detract from the purpose of residence which is school education.

(3) If the residence of the third-country national is for the purpose of visiting a school pursuant to paragraph 1, the renewal of a residence permit shall be admissible for this purpose only if the third-country national provide evidence of school education. In case of reasons that are outside the sphere of influence of the third-country national, unavoidable or unforeseeable, the authority may, notwithstanding the lack of educational achievement, renew a residence permit.

### **Students**

**Article 64.** (1) Third-country nationals may be granted a residence permit as students if they:

1. meet the requirements of the chapter I
2. pursue a ordinary or extraordinary study at a university, university of applied sciences, or accredited private university, and in case of a CVET university course, the attending of such is not solely for the purpose of imparting of language.

A liability declaration is admissible.

(2) The pursue of an employment activity is subject to the Aliens Employment Act. This activity shall not detract from the actual purpose of residence which is study.

(3) If the residence of the third-country nationals is for the purpose of a regular or extraordinary study, the renewal of a residence permit shall be admissible for this purpose only if the third-country nationals provide evidence of educational achievement in accordance with the significant provisions of the Study Law from the university, university of applied sciences or accredited private university. In case of reasons that are outside the sphere of influence of the third-country national, unavoidable or unforeseeable, the authority may, notwithstanding the lack of educational achievement, renew a residence permit.

#### **Holders of a residence title “long-term resident’s EC residence permit” from another Member State**

**Article 65.** Third-country nationals who possess a residence title “long-term resident’s EC residence permit” from another Member State may obtain a residence title for the purpose of study or school education (Art. 63 or 64) if they satisfy the requirements of Art. 63 -64.

#### **Social service workers**

**Article 66.** (1) Third-country nationals may be issued a residence permit as social service workers if:

1. they fulfil the requirements of the chapter I
2. the social service is not subject to the Aliens Employment Act and is provided for a non-party, non-profit making organisation
3. the providing of the service does not serve any profit making ambitions;
4. the organization for who they provide service has submitted a liability declaration, and
5. the educational or vocational training character of the activity is proved

(2) The resident permit shall be issued for a period of validity not exceeding one year; renewal is not permitted.

#### **Researchers**

**Article 67.** (1) Third-country nationals may be granted a “residence title- researcher” if:

1. they meet the requirements of the chapter I
2. they pursue an occupation for a research institution that is exempted from the substantial jurisdiction of the Alien Employment Act.

(2) Due to an assignment agreement between an accredited research institution and a third-country national (Art. 68), the latter shall be granted a residence permit as researcher. In such case, the verification of the requirements under Art. 11, paragraph 2 Z 3 and 4 shall be dispensed with.

#### **Hosting agreement**

**Article 68.** The research institution shall examine the qualification of the researcher required for the concrete research project prior to conclusion of the hosting agreement. This shall include:

1. the contracting partners;
2. the purpose, duration, size and financing of the concrete research project;
3. a liability declaration towards all regional corporations for residence and repatriation costs; this liability shall end six months after the expiry of the hosting agreement, unless it has been obtained by fraud.

#### **Maintenance of family unity**

**Article 69.** (1) In case of family union of third-country nationals in the country of origin, their family members and later born children may be granted a derived residence permit if they meet the requirements of the chapter I. The period of validity of this residence permit shall be linked to the period of validity of the residence permit of the third-country nationals

(2) Paragraph 1 shall not apply to family members of third-country nationals who have been issued a residence permit for persons on business assignment (Art. 59), self-employment (Art. 60), pupils (Art. 63) or social service worker (Art. 66).

### **Section 6: Accreditation of institutions Accredited non-educational institutions**

**Article 70.** (1) The Federal Minister of the Interior shall, by ministerial order and upon application, issue a certificate for the non-educational institution for a period of validity of five years, provided that it complies with the tasks and nature of a school within the meaning of Art. 2 of the School Organization Act, FLG Nr. 242/1962, as well as the tasks according to the type and size of its existence. Accredited non-educational institutions shall be presented, particularly on the Internet, at least once a year, in an appropriate way. Non-educational institutions run by legal entity within the meaning of Art 1, paragraph 1 of the Liability of Public Bodies' Act (AHG), FLG No. 20/1949 shall not require certification.

(2) A prolongation of the certificate shall be prohibited by administrative order; an existing certificate may be revoked if the requirements for the certification procedure do not exist or no longer exist or the certification has been obtained by fraud.

(3) A prolongation of the certificate shall be prohibited by administrative order; an existing certificate may be revoked, if the persons in charge of a non-educational institution were legally sentenced more than once for administrative infraction pursuant to Art. 77, paragraph 2 Z 1 or 2.

(4) Persons in charge of the non-educational institutions shall notify immediately:

1. the territorial competent authority of every circumstance in the person of a trainee, that indicates that the continuation of his training shall not be expected, or of the completion of education of a pupil, within two months, and
2. the Federal Minister of the Interior on every circumstance that the accomplishment of the tasks pursuant to paragraph 1 render impossible.

### **Accredited research institutions**

**Article 71** (1) The Federal Minister of the Interior shall by administrative order, upon justified application, issue a certificate with a period of validity of five years, if:

1. the research aim is valid
2. the liability for researcher on grounds of hosting agreements (Art. 68) which he wants to enter into was explained;
3. the financial means for the conclusion of hosting agreements have been proved, and
4. the requirements of other federal and provincial provisions set out in the Act needed for the operation of the research institution are complied with.

The application shall be accompanied by an expertise from the Austrian Research Promotion Agency on the purpose of research of the institution. Accredited research institutions shall be presented once a year particularly on the Internet, in an appropriate way. Research institutions run by the legal entities within the meaning of Art. 1, paragraph (AHG) are no subject to certification relating to conclusion of hosting agreements.

(2) A prolongation of the certificate shall be prohibited by administrative order; an existing certificate may be revoked if the requirements for the certification procedure do not exist or no longer exist or the certification has been obtained by fraud.

(3) A prolongation of the certificate shall be prohibited by administrative order; an existing certificate may be revoked, if the persons in charge of a non-educational institution were legally sentenced more than once for administrative infraction pursuant to Art. 77, paragraph 2 Z 1 or 2.

(4) Persons in charge of the non-educational institutions shall notify immediately:

1. the territorial competent authority of every premature termination of hosting agreements, of every circumstance in the person of a researcher, that indicates that his further participation within the

research project is unlikely to be expected, or of the termination of the research project and termination of the hosting agreement agreed upon, within two months, and

2. the Federal Minister of the Interior on every circumstance that impedes the implementation of the research project.

## **Section 7: Residence permits for humanitarian reason**

### **Residence permits for humanitarian reasons**

#### **Residence permits for humanitarian reasons**

**Article 72.** (1) The authority may issue a residence permit to third-country nationals residing in the federal territory *ex officio* notwithstanding the existence of an impediment to granting of a residence permit (Art. 11, paragraph 1), except in case of residence ban (Art. 11, paragraph 1 Z 1 and 2), and in cases particularly deserving of consideration, on humanitarian grounds. Cases particularly deserving of consideration shall exist in particular if the third-country nationals are exposed to a danger pursuant to Art. 50 of the Aliens Employment Act. Third-country nationals who have left their native country as victims of an armed conflict may be granted such residence permit solely for the probable duration of that conflict, and for a maximum period of three months.

(2) In cases involving punishable act, such residence permit may be granted, on humanitarian grounds, to third-country nationals for the necessary period, for a minimum period of six months, to witness, with a view to guaranteeing the outcome of the criminal prosecution, and to victims of the traffic in persons or border-crossing prostitution traffic, with a view to enforcing civil rights claims against the perpetrators.

#### **Settlement permits for humanitarian reasons**

**Article 73.** (1) The authority may, in case of existing requirements under Art. 72 issue a “settlement permit- restricted” or a “settlement permit- for private purpose”. The provision on quota requirements shall not apply.

(2) a “settlement permit- restricted” may be granted on humanitarian grounds, *ex officio* if:

1. the alien has complied with the integration agreement (Art. 14) and
2. in the event of paid employment a work permit within the meaning of the Aliens Employment Act is available.

(3) A “settlement permit- for private purpose” may be issued on humanitarian grounds *ex officio*, if the alien has fulfilled the integration agreement (Art. 14).

(4) In case that, on humanitarian grounds, a “residence permit- restricted” relating to family reunification should be issued, the authority concerned shall, by means of a separate application as preliminary question for verification of the humanitarian grounds (Art. 72) make a decision and agree on it separately, if the application is not to be allowed for. Such application shall be admissible if an application relating to family unification has been submitted at the same time or such is already pending; the integration agreement shall be dispensed with.

#### **Submission of application within Austria**

**Article 74.** The authority may render admissible the submission of application within Austria for granting of a residence title or cure for procedural violations if the requirements under Art. 72 are fulfilled *ex officio*.

#### **Agreement to issue of residence permits for humanitarian reasons**

**Article 75.** The granting of a residence permit on humanitarian grounds pursuant to Art 72-74 is subject to consent of the Federal Minister of the Interior.

## **Section 8: Right of residence for displaced persons**

### **Displaced persons**

**Article 76.** (1) In times of armed conflict or other circumstances threatening the safety of entire population groups, the Federal Government, in agreement with the Executive Committee of the National Council, may by ministerial order grant temporary right of residence in the federal territory to directly affected groups of aliens who can find no protection elsewhere (displaced persons).

(2) In the ministerial order referred to in paragraph 1 the aliens' entry and the duration of their residence shall be regulated with due regard for the circumstances of their particular case.

(3) If permanent integration becomes necessary as a result of the prolonged duration of the circumstances referred to in paragraph 1, it may be stipulated in the ministerial order that specific categories of persons having right of residence may validly submit within Austria an application for the granting of a settlement permit and that the settlement permit may be issued to them notwithstanding the existence of any grounds for refusal.

(4) The right of residence conferred under the ministerial order shall be certified in the aliens' travel documents by the authority. If the alien does not possess a travel document, an alien's identity card for displaced persons shall be issued to him *ex officio*.

(5) The identity card shall be considered "identity card for displaced persons"; it may be renewable and substitutes for a travel passport. The form and content of the identity card, as well the confirmation within the meaning of paragraph 4 shall be stipulated by the Federal Minister of the Interior by ministerial order.

## **CHAPTER 3: PENAL, FINAL AND TRANSITIONAL PROVISIONS**

### **Penal provisions**

**Article 77.** (1) Any person who:

1. fails to notify the authority without undue delay of any change in the purpose of residence during the period of validity of the residence title or take actions not covered in the scope of purpose ;
2. submits an application more than once for renewal of the residence permit following the expiry of the residence title last issued;
3. fails to hand over invalid or non-relevant documents to the authority;
4. is required to comply with the integration agreement and fails to furnish proof thereof five years following the issue of the residence title pursuant to this federal act for reasons that fall solely within his sphere of influence, unless he has been granted an extension of time pursuant to Art 14, paragraph 8 or
5. fails to apply on time for a confirmation of registration or long-term resident permit in accordance with Art. 53 and 54

shall be guilty of an administrative infraction and subject to a fine of not more than 200 euros.

(2) Any person who:

1. fails to meet the requirement to register pursuant to Art. 70, paragraph 4 and Art. 71, paragraph 4 or
2. have submitted a liability declaration according to Art. 2, paragraph 1 Z 15, although he knows or should have known that he is not able to satisfy his duties set out in the liability declaration shall be guilty of an administrative infraction and imposed a fine of up to 1500 euros; in case of uncollectibility, he shall be sentenced to a term of imprisonment of not more than two weeks.
3. signs a hosting agreement (Art. 68) without determining the necessary qualification of the researcher in individual cases, shall be guilty of an administrative infraction and be liable to payment of a fine up to 3000 euros; in the event of uncollectibility, he shall be sentenced to a term of imprisonment of not more than four weeks.

## **Official appeal**

**Article 78.** The Federal Minister of the Interior may institute, on the grounds of illegality, appeals against rulings of the independent administration review board on administrative infraction under Art. 77; such appeals may be lodged either for the benefit or to the detriment of the person concerned, within six weeks time with the Administrative Court. The time limit for appeal shall start from the delivery of the ruling to the authority.

## **Grammatical equivalence**

**Article 79.** Where references made in the present federal law to natural persons appear only in the masculine form, they shall apply equally to females and to males. In cases where the reference applies to a particular natural person, the specific form of the gender shall be employed.

## **References**

**Article 80.** If reference is made in the present federal law to provisions of other federal laws, those provisions shall be applicable in their current wording.

## **Transitional provisions**

**Article 81** (1) Procedures for the granting of residence and settlement authorizations which are pending at the time of entry into force of this Federal Act shall be continued in accordance with the provisions hereof.

(2) Residence and settlement authorizations granted prior to entry into force of the present Federal Act shall continue to be valid during their period and purpose of validity, insofar as they comply with the provisions of this Federal Act, according to the purpose of residence. The right of pursuing a gainful occupation requires the granting of a residence title in accordance with this Federal Act, provided that this has already been the case under Aliens Employment Act of 1997. The Federal Minister of the Interior shall be empowered to determine by decree, which residence and settlement authorization issued prior to entry into force of the present Federal Act may continue to be valid as corresponding residence and settlement permits, according to their purpose of residence.

(3) Residence authorizations granted prior to entry of this Federal Act, which does not comply with any purpose of residence or provisions of this Federal Act, on grounds of their being issued for the solely purpose of temporary employment (Art. 2, paragraph 1 Z 7 and 8), shall remain valid until their expiry date.

(4) For EEA nationals who have been settled legally in the federal territory prior to entry into force of this Federal Act, and who are registered in accordance with the Registration Act of 1991, registration under the Registration Act of 1991 shall be considered as confirmation of registration within the meaning of Art. 53.

(5) Compliance with the integration agreement shall be considered as accomplished if the alien at the time of entry into force of the Federal Act has already fulfilled the integration agreement according to Art 50a of the Aliens Act or was excluded from the fulfilment.

To aliens who are subject to this integration agreement within the meaning of Art 50a of the Aliens Act, the regulations on integration agreement (Art. 14 ff.) shall not apply, provided that they have commenced the fulfilment of the integration agreement prior to entry of this Federal Act, and shall comply with these in accordance with Art. 50a of the Aliens Act until December 31, 2006 at the latest. Such compliance shall be considered as compliance with the integration agreement according to this Federal Act.

(6) Art. 77 shall not apply to aliens who had already been settled prior to entry of the present Federal Act.

(7) The photoprinting and fingerprinting procedures within the meaning of Art 2, paragraph 5 encompass papillary lines of the fingerprint only if, due to a directly applicable act of the European Union, it is intended for the scope of application of this Federal Act.

### **Entry into force**

**Article 82.** (1) This Federal Act shall enter into force on January 1<sup>st</sup>, 2006.

(2) **(Constitutional provision)** Art. 13, paragraph 6 shall enter into force on January 1<sup>st</sup>, 2006.

(3) Provisions or governmental agreements may be passed or concluded due to this Federal Act, from the day following their announcement; they shall, however, come into effect with the entry into force of this Federal Act at the earliest.

(4) **(Constitutional provision)** The settlement regulation for 2006 may- following the implementation of the procedure standardized in Art. 13 be waived from the day following the announcement; it shall, however, come into effect with the entry into force of this Federal Act at the earliest.

(5) Art. 2, paragraph 1 Z 11, 11 paragraph 5, 19, paragraph 4, 24 paragraph 2 and 4, 37 paragraph 5 and 60 paragraph 1 in the version of the Federal Act, FLG I No. 157/2005 shall enter into force on January 1<sup>st</sup>, 2006.

(6) Art. 40, paragraph 1a in the version of the Federal Act, FLG I No. 31/2006 shall enter into force on January 1<sup>st</sup>, 2006.

### **Execution**

**Article 83.** Responsibility for the execution of

1. Art. 13, 38, paragraph 1 and 76, paragraph 1 shall be entrusted to the Federal Government;
2. Art. 5, paragraph 2 and 7 shall be entrusted to the Federal Minister for Foreign Affairs in agreement with the Federal Minister of the Interior;
3. Art. 14, paragraph 4 shall be entrusted the Federal Minister of the Interior in agreement with the Federal Minister of Finance and
4. other regulation shall be entrusted to the Federal Minister of the Interior