

Expected Short-Term Effects of EU-Enlargement on Migration – the case of Austria

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1. Overview

On 1 May 2004, ten new Member States (MS) will accede to the EU-15. This means that the full EU *acquis* is immediately applicable in the EU-25 except for those matters for which transition periods have been agreed upon in the Accession Treaty.

Regarding migration, freedom of movement and residence will be immediately open to nationals of the new MS, while the EU-15 countries may individually opt to restrict free access to their labour markets for up to 7 years (see para. 3). Controls on the internal borders to the new MS, and between the new MS, will be kept until the full implementation of the Schengen *acquis* will lift border controls (not before 2006/2007).

Regarding asylum, the Dublin Regulation² and the EURODAC system will become fully operational across the EU-25 on 1 May 2004, as the technical systems in the new MS should be in place at the time of accession. This will streamline readmission procedures between EU MS but may have differentiated effects across EU MS. While the total number of asylum applications in the EU-25 is likely to be reduced (e.g. by removing the incentives for double applications and secondary movements) and most MS hope to be able to significantly step up readmission efforts, some MS may well receive more asylum seekers in the short term.³

2. Migration potential from the new MS

Regarding the long-term migration potential of citizens of the new MS to the current EU-15 after EU enlargement, more than 30 academic studies have tried to estimate expected migration flows. Taken together, they all argue that future migration flows from the acceding countries to the original Member States will be relatively modest, with a long-term migration potential of around 2-3% of the whole population of the new MS.

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² Also called “Dublin II”, this regulation specifies the country responsible for examining asylum applications within the EU countries and regulates the readmission of asylum seekers within the EU. Dublin II went into force in October 2003.

³ This may be the case for those MS with large migrant communities from source countries of asylum seekers, who are regarded by many asylum seekers as their countries of final destination. In this case, asylum seekers may refrain from lodging asylum applications in “transit” countries, preferring instead to move directly to their countries of final destination.

The most comprehensive study, assuming free access to the labour market from 2002 onwards, was done by a consortium of European economic research institutes in 2000 and projects that annual migration flows from the 10 new MS to the present EU-15 would amount to some 330,000 persons in 2002, decreasing to 150,000 in 2012 and only 2,400 in 2030. Around 80 % of the migrants would go to Germany. The latest update of this study commissioned by DG Employment⁴ estimated a net increase of migration from the 10 new MS of initially 286,000 per year, increasing to 360,000 per year and falling to 100,000 by 2012. Total migration potential to the EU-15 from the 10 new MS is estimated at 3.2 – 4.5 million. Another study, completed in 2001, estimates that annual migration from the 8 new MS in Central Europe would decrease from an initial level of some 240,000 persons annually to 125,000 persons after 15 years. A 2003 study, concentrating on the migration effects on Austria⁵, estimates potential migration to Austria (if free access to the labour market were to apply immediately) from the 8 CEECs acceding to the EU on 1 May 2004 at 22,000 – 24,000 annually over the first few years. Over the long term migration potential to Austria is estimated at some 230,000 in total. In addition, some 70,000 border-commuters could seek work in Austria.

The most recent comprehensive study on migration potential from the new MS, based on survey data from a Eurobarometer poll conducted in April 2002, and hastily published by the European Commission in the midst of a heated discussion about the introduction of transitional periods for the free movement of workers (see para. 3), found that the volume of “*firmly intended migration*” amounted to only 1% of the population older than 15 years in the ten Acceding Countries.⁶ Based on these findings, the study estimates that for the first five years after enlargement the volume of migration from the 10 “new” MS to the 15 “old” MS could reach some 220,000 annually, if full freedom of movement were to apply immediately.

However, for the short-term perspective of 6-12 months, these studies are of limited use, as they all try to predict future migration flows under the assumption of full freedom of movements applying immediately across the enlarged EU. As this is not the case (see para. 3), the results of the study do not apply in the short term. In fact, most labour migration from the new MS will continue to be regulated directly by national migration policies. Thus, for Austria, the level of regular labour migration will continue to be determined by the annual migration quotas, except for family members of nationals of the new MS, who have been working in Austria for longer than 12 months (see para. 5).

⁴ See European Commission (2003): Potential Migration from Central and Eastern Europe into the EU-15. An update. Report for the European Commission DG Employment and Social Affairs (October 2003)

⁵ See Huber, Peter und Brücker, Herbert (2003): Auswirkungen und Ausnutzung von Übergangsfristen für die Freizügigkeit der Arbeitskräfte nach der EU-Erweiterung (Consequences and Usage of Transitional Periods for the Freedom of Movement of Workers after EU-Enlargement), WIFO, November 2003

⁶ European Foundation for the Improvement of Living and Working Conditions, 26.2.2004 (draft version), available at: <http://www.eurofound.eu.int/newsroom/migration.htm> (3.3.2004).

3. Application of transition periods in the access to the labour market

In the accession negotiations a transitional period of up to seven years was agreed upon, during which time the “old” Member States individually may still regulate access to their labour markets for citizens of the new MS in CEE.⁷ Austria and Germany had insisted on long transition periods, and might even apply them for the full period of up to seven years. France, Belgium, Finland, Spain and Greece will also make use of the transitional periods for at least the first two years. The Netherlands will make use of the transition period for at least two years in case more than 22,000 migrant workers from the new MS want to work in the country. Italy, Portugal and Luxembourg had previously announced an immediate opening of their labour markets but more recently have declared to make, at least initially, use of transition periods. Likewise, Denmark and Sweden have introduced administrative regulations to limit any potential misuse of their social welfare systems. Finally, Ireland and Great Britain, who had already prepared legislation allowing the immediate opening of their labour markets to citizens of the “new” MS are currently reconsidering applying some form of transition periods, after all.

4. Migrants from Central and Eastern Europe in Austria

Overall, immigration from CEE to Austria has been very modest since the fall of the Iron Curtain. According to the latest Census results, the total population of Austria in 2001 was slightly above 8 million of whom some 710,000 (or 9 %) were foreigners. Of all foreigners, 315,000 (or 44 %) were from the successor states of the former Yugoslavia (excluding Slovenia), while 127,000 (or 18 %) were from Turkey and 106,000 (or 15 %) were from the current EU-15 MS. Only about 57,000 (or 8 %) of all foreigners in Austria were from the 8 new MS in CEE (including Slovenia). The largest group were Poles (21,841), Hungarians (12,729), Slovaks (7,739), Czechs (7,313) and Slovenians (6,893).

Recent net migration from the new MS has been even lower. In 2001, 10,638 citizens of the new Member States immigrated to Austria, while 8,987 emigrated, resulting in net immigration from the new MS of only 1,651. This high rate of return migration from Austria (some 16 % of all foreigners from the new MS per year) could, however, decrease after their EU accession, as the stipulations of the Accession Treaty will allow access to the labour market for family members of persons, who have been working in Austria for more than 12 months and, conversely, foresee a loss of this right in case of remigration. Thus, if fewer migrants from the CEECs decide not to return for this reason, net migration will increase somewhat already in the first year.

⁷ Transition periods will not apply to citizens of Malta and Cyprus. The transition periods are valid for an initial period of 2 years. After this, Member States have to announce whether they wish to extend the transition periods for up to 3 more years. Following this, transition periods can be extended for another 2 years in case of serious disturbances of the labour market or the threat thereof.

5. Legal immigration

Permanent immigration to Austria⁸ is regulated by the use of a Quota-System. The total number of initial permanent residence permits (*Erstniederlassungsbewilligungen*) is decreed by the federal government after consulting various institutions such as the chambers of labour and commerce, and taking into account the current situation on the labour market, housing situation, capacities of the education and health care system. The so-called immigration quota (*Zuwandererquote*) refers to: self-employed and employed key employees (*Schlüsselkräfte*) and their family members, persons with “residence purpose private”⁹, and family members of immigrants who settled in Austria before 1 January 2003.¹⁰ Additionally a permanent resident permit can be granted for humanitarian reasons.¹¹ Further to that, special regulations exist for Turkish citizens, family members of Austrian, EU/EEA and Swiss citizens, and self-employed persons from the EU Accession Countries.¹²

The immigration quota is divided into three sub-quotas (key employees, private, family reunification) and divided among the nine Austrian provinces. The overall immigration quota for 2004¹³ was slightly reduced to a total of 8,050 persons (8,070 persons in 2003). The sub-quota for persons with “residence purpose private” was increased to 360 (175 in 2003). The sub-quota for family reunification remains at 5,490 persons (the same number as in 2003). From 1 May 2004 on, family members of citizens of the new MS will have the same rights concerning access to the Austrian labour market as family members of other EU/EEA Countries.¹⁴ Experts believe that this stipulation could increase labour supply in Austria by up to 12,000 persons. In addition to that, 35,000 citizens from the new MS may be entitled to unlimited access to the Austrian labour market, because they have been working in Austria legally for more than 12 months (As a matter of fact these persons stayed and worked in Austria already before 1 May 2004, and therefore no additional pressure will be put on the Austrian labour market after the enlargement). Due to the ongoing restrictions during the transition periods, all further labour migration from the new MS can be influenced directly by the use of the quota-system. Consequently no significant short-term pressures on the Austrian labour market are to be expected as a result of the upcoming EU enlargement.

⁸ All foreigners (except citizens of EU/EEA countries and Switzerland) who intend to stay in Austria for longer than three months require a residence permit (*Aufenthaltserlaubnis*). In case of an envisaged permanent stay a permanent residence permit (*Niederlassungsbewilligung*) has to be granted.

⁹ Persons who wish to reside in Austria permanently without being gainfully employed and their family members (e.g. retired persons)

¹⁰ The so called “general family reunification quota” (*Familiennachzug*).

¹¹ Children and spouses of a person who is a permanent legal resident; persons who are legally permitted to work; persons who cannot be deported because their life would be at risk in their home country; persons who were forced to leave their home country because of an armed conflict.

¹² Citizens of Poland, Hungary, the Czech Republic, Slovakia and Bulgaria, who wish to engage in self-employment in Austria are currently granted a non-quota permanent residence permit. At the same time Austria is entitled under the Accession Treaty to restrict access to the labour market for self-employed citizens of the Accession Countries who engage in the construction industry after 1 May 2004.

¹³ Decreed by the Federal Government of Austria in November 2003.

¹⁴ It is important to note that only family members of citizens from the new MS who have worked in Austria for more than 12 months will qualify for free access to the labour market.

6. Asylum

Regarding asylum applications lodged, Austria is the fourth-largest receiving country of asylum seekers in the EU, receiving 39,354 applications in 2002 and 32,364 applications in 2003.¹⁵ The main intention of the 2003 Amendment to the Austrian Asylum Act (*Asylgesetznovelle 2003*), which will come into force on 1 May 2004, is to speed up asylum procedures and to better distinguish between legitimate claims for asylum and illegitimate ones. Thus, processing of first applications shall be guaranteed within 72 hours, during which time authorities have to decide whether to immediately reject or to further examine the case. The new law includes a stipulation that in case of an appeal against a first-instance decision, no additional evidence can be provided except for several clearly defined cases (*Neuerungsverbot*).¹⁶ Another stipulation is targeted at abolishing the possibility of chain applications. The new law will also eliminate the possibility to apply for asylum at the Austrian border. Legal possibilities will be limited to embassies and airports. At the same time a special procedure for family members of recognized refugees will be established and – a novelty in Austria – the Asylum Law will include special stipulations concerning protective clauses for victims of torture.

The new law will take effect on 1 May 2004. By then, Austria will be surrounded by EU countries only (except Switzerland) and at the same time the “Dublin II” and the EURODAC system will become fully operational across the EU-25. Therefore the application of the “third country rule” will be significantly facilitated.¹⁷ As a result of the legal amendments mentioned above, and the facilitated application of the third country rule, entering the asylum system in Austria is expected to become less attractive for migrants and the total number of asylum applications lodged is expected to decrease significantly in the short term.

7. Irregular migration

Irregular migration to and through Austria is likely to increase somewhat during the period immediately following EU enlargement. There are two reasons for this. First, the application of the Dublin II regulation, supported by the EURODAC system, in the new MS may divert flows from the asylum system to completely clandestine (transit) movements (see para.1). Second, the immediate validity of the principle of freedom of movement and residence after enlargement in May 2004, in connection with restrictions

¹⁵ Provisional figure of the Federal Ministry of Interior.

¹⁶ E.g. in case of traumatization, material defects of legal proceedings, inadequate caution.

¹⁷ In the past the Austrian Federal Asylum Review board had ruled that Austrian authorities were not entitled to remove migrants to the Slovak Republic and Hungary on safe third country rules. A number of problems regarding asylum procedures in Hungary and Slovakia were identified: no full translation of administrative decisions, no compulsory legal assistance for applicants, uncertain implementation of legal regulations as a result of new legislation, lack of personnel examination of the non-refoulement principle and its methodology etc.

in the access to the labour market, could lead to a situation, where more citizens of the new MS pursue illegal employment in the “old” MS.

On the other hand, it is not to be expected that either of these two effects on irregular migration will be very large. Regarding the first reason mentioned, irregular migrants, who are known to have used the asylum system in Austria as a “temporary resting place” on their way to other European States in the past (as evidenced by the high rate of disappearances¹⁸), are likely to continue to transit Austria on their way to other European States with long established and larger migrant communities. If, after 1 May 2004, they face an increased risk of being sent back to one of the new MS they transited as a first country of asylum, they will likely make less use of the asylum system in Austria. On balance, the police might detect even fewer irregular migrants, as more of them will stay underground.

Regarding the potential increase in illegal foreign employment in Austria, this could result from the decrease in the risk of residence for nationals of the new MS (residence would be legal due to the freedom of residence) coupled with a continuously high migration potential on the one hand and a sustained demand for illegal foreign workers from employers and households on the other hand.¹⁹ The result might be a rise in illegal foreign employment in Austria originating in the new MS over the coming years.

It is unlikely, however, that this effect will be large. Already now, there is a substantial market for illegal foreign labour in Austria²⁰ and there will be no additional demand resulting from EU enlargement in the short term. It is also unlikely that there will be a sudden expansion in the supply of illegal foreign labour in Austria, as there will be no sudden changes in the entry regime (citizens of the new MS have long been exempted from visa obligations for travel to Austria). It is well known that illegal foreign workers in Austria are embedded in their own migrant networks, passing on jobs, accommodation, information and support to relatives and friends. This is particularly true for irregular workers from the new MS, who will normally not move to Austria before accommodation and jobs have been arranged for them. It is expected that the accession of the new MS to the EU on 1 May 2004 will change little in this pattern. And while the lifting of residence restrictions on nationals of the new MS might have some migration

¹⁸ Statistics on asylum applications and statistics on status decisions show that a very substantial part of asylum seekers „disappear“ during asylum procedures in Austria, often only a few days after having made an application. In 2002, there were 39,354 asylum applications, while 24,523 persons (corresponding to 62 per cent of asylum applications in the same year) had their case closed without a positive or negative decision being made, mainly because they disappeared during the procedures.

¹⁹ Employers will face the same incentives to promote illegal employment, while foreign workers without access to a work permit and legal employment will face fewer risks of expulsion. In addition, foreign “visitors” from the new MS will not need to leave Austria every three months in order to get a new entry date stamped into their passport and will be spared interrogation by the border police in case their passport carries a suspicious succession of entry stamps.

²⁰ The branches most affected by illegal foreign employment in Austria are: construction, catering, small-scale industry / handicraft owned by foreign employers and individual households (cleaning, cooking, child care and care for the sick and elderly). A rough estimate of illegal foreign employees in Austria would be some 70,000, of which less than half originate from the new MS.

effect over the medium to long term, as argued above, increasing opportunities at home will also decrease migration potential in the long run.

Over the longer term, however, it is likely that the demand for low-priced personal services, such as those provided by many illegal foreign workers to Austrian households, will continue to expand due to demographic and other developments (for example personal care for an increasing number of sick and elderly people, cleaning and cooking for a rising share of double-income households, more child care services, etc.). In “subcontracting” these services, a considerable part of households will prefer irregular employment to formal employment relationships.²¹ Having a ready pool of labour from the new MS, who may formally reside in Austria but who are restricted in their access to the official labour market, will allow the gradual expansion of these informal working relationships over the coming years.

²¹ Even at the same level of net wages, employers save taxes and social security contributions and may also profit from inferior working conditions and longer working hours; at the same time the risk of detection and financial punishment is very low.