

FOREIGNERS PRACTISING TRADES WITH BUSINESS SITES IN AUSTRIA

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Foreign natural persons with business sites in Austria can only register and practise a trade like Austrian nationals if

- There is an international treaty according to which Austrians have the same rights in their country of origin (= reciprocity) or
- Their legal residence in Austria (residence permit) allows the practice of an independent commercial activity, and
- Austrian nationality is not an express precondition for the practice of the trade (= restriction to Austrian nationals).

Foreign legal persons or registered companies of persons must prove that they have a branch registered in the Commercial Register.

STATELESS PERSONS / RECOGNISED REFUGEES / ASYLUM SEEKERS

Stateless persons (persons with no official nationality) and recognised refugees (= persons to whom asylum has been granted in accordance with the Convention on Refugees), can practise trades if they are entitled to reside in Austria in accordance with immigration law to practice an (independent) commercial activity. Asylum seekers can register and practise a trade in Austria, as of the 4th month after lodging their asylum application, for the duration of their right of residence.

NATIONALS OF EU/EEA CONTRACTING MEMBER STATES AND SWITZERLAND

Nationals of EU/EEA contracting member states and Switzerland automatically have freedom of visa and residence and can register and practise trades - as long as there is no restriction to Austrian nationals - like Austrians.

NATIONALS OF OTHER STATES

To practise a trade, nationals of other states require a residence permit in accordance with immigration law. The permit must cover the practice of an independent commercial activity. It depends upon the residence permit: the "Niederlassungsbewilligung-unbeschränkt" (unlimited residence permit) covers independent commercial activity; but the "Niederlassungsbewilligung-beschränkt" (limited residence permit) requires a further entitlement in accordance with law concerning the employment of foreigners. The right to practise a trade remains valid for the duration of the right of residence.

Please note: You must apply for your first residence permit (Erstniederlassungsbewilligung) to the representative Austrian authority in your country (Embassy or General Consulate) before entering Austria. Residence permits are subject to a quota regulation (set each year by the Austrian Federal Government). If the quota has been filled, or there are other grounds for rejection (e.g., a residence ban, insufficient financial means), a permit will not be issued.

For nationals of Bosnia-Herzegovina, because of the European/EU Agreement, the quota regulation does not apply if they wish to practise a commercial trade.

Family members, e.g., spouses, children or grandchildren under the age of 21 years, parents or grandparents, who are nationals of another state have the same rights as EU/EEA nationals, as long as they are entitled to maintenance from an EU/EEA national and entitled to residence in an EU/EEA contracting member state.

Students from other states can register and practise a trade in Austria for the duration of their student residence permit (Aufenthaltsbewilligung "Studierender"), as long as their commercial activity does not take priority over their studies.

CERTIFICATE OF QUALIFICATION

Because there are a range of different vocational qualifications in different EU/EEA contracting member states, in order to avoid discrimination, the Commercial Decree allows the training certificates of

nationals of EU/EEA contracting member states and Switzerland to be recognised in the following ways:

- **Recognition** of professional experience and vocational training in **another** contracting member state in accordance with the EEA Recognition Decree (this applies to craftspeople, agents, traders, caterers, and professions similar to crafts, among others); and certain master's examination certificates obtained in Germany (e.g., for bakers, roofers, butchers, joiners) are regarded as equal to the Austrian qualifications and require no further recognition.
- **Equal treatment** of a vocational qualification (e.g., a diploma) obtained in **another** contracting member state and the equivalent Austrian certificate of qualification. This is **an addition to the recognition rules, or applicable for professions not covered by the Recognition Decree** (e.g., in planning offices, engineering offices, or business consultancies).

Applications for recognition or equal treatment must be made to the Federal Ministry for Work and Commerce (BMWA). Confirmation of professional qualifications, and other documents concerning the person applying, from the authorities in the country of origin must be presented with this application - if the original documents were not produced in German, they must be presented in certified translations into German. You can find the application form and information about the necessary documents at the following address:

http://www.bmwa.gv.at/BMWA/Schwerpunkte/Unternehmen/Gewerbe/DiplomGewerbTaetig/1_dipl_auerkennung_gew_taetigkeiten.htm.

A positive ruling by the BMWA is a substitute for an Austrian certificate of qualification.

Alternatives to the recognition procedure: an Austrian certificate of qualification or confirmation of an "individual" qualification. Nationals of other states must have their qualifications certified in this form, as the recognition and equal treatment procedure is not applicable to them.

RESIDENCE PERMIT FOR THE PRACTICE OF A TRADE

A certificate must be submitted to the competent **commercial authorities** for the intended business site, to the effect that all the other requirements for practising the relevant trade are fulfilled - in particular, for regulated trades, the certificate of qualification, confirmation of "individual" qualification, or recognition of foreign training by the Federal Minister for Work and Commerce.

Certificate of residence permit for the independent practice of a trade: a card with your residence permit on it issued by the immigration authorities (before this, among other things, a mark in your passport)

Authorities responsible for residence permits

In Vienna: *Magistratsabteilung 35* (Municipal administrative authority department 35), in the States (*Bundesländer*): the district or municipal administrative authority (*Bezirkshauptmannschaft* or *Magistrat* respectively), if authorised by the State Governor; otherwise, the office of the State Government.

TRADES RESTRICTED TO AUSTRIAN OR EEA NATIONALS

- Chimney sweeping and weapons businesses for military weapons and ammunition can be registered only by those with Austrian nationality **and** residence.
- Employment agencies, recruitment agencies and weapons businesses for non-military weapons and ammunition can be registered only by persons with EEA nationality **and** residence in an EEA contracting member state.

For companies to register any of the above trades, their business site and head office, representative organs and managing partners must all fulfil these requirements.

Practising a trade by means of an Austrian company

In the absence of a certificate of qualification, a trade can still be practised by means of an "Austrian" company with a suitable managing director in business administration law (*gewerberechtlichen Geschäftsführer*). Registration in the Commercial Register can, however, be refused, for example, in the absence of a work permit, or if there is no confirmation from the Employment Market Service (*Arbeitsmarktservice*) that the foreign company members have any significant influence on company management.

This information sheet is a joint product of all the Chambers of Commerce. If you have any queries, please contact the Chamber of Commerce in your State. Vienna: Tel.: (01) 51450-0, Lower Austria, Tel.: (02742) 851-0, Upper Austria, Tel.: 05 90 909-0, Burgenland, Tel.: 05 90 907-0, Steiermark, Tel.: (0316) 601-406, Kärnten, Tel.: 05 90 904-0, Salzburg, Tel.: (0662) 8888-0, Tirol, Tel.: 05 90 905-0, Vorarlberg, Tel.: (05522) 305-0
Please note! You can also find this information on the internet at www.gruenderservice.at

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