



International Organization for Migration (IOM)



# THE ORGANIZATION OF THE RECEPTION SYSTEM IN AUSTRIA



**Saskia Koppenberg**

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**BM.I**



REPUBLIC OF AUSTRIA  
FEDERAL MINISTRY OF THE INTERIOR

The European Migration Network (EMN) is co-ordinated by the European Commission with National Contact Points (EMN NCPs) established in each EU Member State plus Norway. The National Contact Point Austria in the EMN is financially supported by the European Commission and the Austrian Federal Ministry of the Interior.

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# EUROPEAN MIGRATION NETWORK

The European Migration Network (EMN) was launched in 2003 by the European Commission (EC) by order of the European Council in order to satisfy the need of a regular exchange of reliable information in the field of migration and asylum at the European level. Since 2008, Council Decision 2008/381/EC has constituted the legal basis of the EMN and National Contact Points (NCPs) have been established in the EU Member States (with the exception of Denmark, which has observer status) plus Norway.

The EMN's role is to meet the information needs of European Union (EU) institutions and of Member States' authorities and institutions by providing up-to-date, objective, reliable and comparable information on migration and asylum, with a view to supporting policymaking in the EU in these areas. The EMN also has a role in providing such information to the wider public.

The NCP for Austria is located in the Research and Migration Law Department of the Country Office Austria of the International Organization for Migration (IOM) in Vienna, which was established in 1952 when Austria became one of the first members of the organization. The main responsibility of the IOM Country Office is to analyse national migration issues and emerging trends and to develop and implement respective national projects and programmes.

The main task of the NCPs is to implement the annual work programme of the EMN including the drafting of the annual policy report and topic-specific focussed and main studies, answering Ad-Hoc Queries launched by other NCPs, carrying out visibility activities and networking in several forums. Furthermore, the NCPs in each country set up national networks consisting of organizations, institutions and individuals working in the field of migration and asylum.

In general, the NCPs do not conduct primary research but collect and analyse existing data. Exceptions might occur when existing data and information is not sufficient. EMN studies are elaborated in accordance with uniform specifications valid for all EU Member States plus Norway in order to achieve comparable EU-wide results. Since the comparability

of the results is frequently challenging, the EMN has produced a Glossary, which assures the application of similar definitions and terminology in all national reports.

Upon completion of national reports, the EC with the support of a service provider drafts a synthesis report, which summarizes the most significant results of the individual national reports. In addition, topic-based policy briefs, so called EMN Informs, are produced in order to present and compare selected topics in a concise manner. All national studies, synthesis reports, informs and the Glossary are available on the website of the EC DG Home Affairs.



# METHODOLOGY

The present study is a Focussed Study that has been conducted by the National Contact Point (NCP) Austria in the European Migration Network (EMN) in the framework of the EMN's Annual Work Programme 2013.

The study is based on the latest information available at the Austrian level, including legislation, publications, statistics, press and other media documents, as well as internet resources. The section on the public debate about the quality of reception facilities draws upon a continuous media monitoring carried out by the International Organization for Migration (IOM) in Vienna. This monitoring collected press articles from the main daily and weekly newspapers<sup>1</sup> dealing with migration and asylum issues throughout the years 2010 to 2013 in order to gain an overview of the most important public debates.

In the course of research it became apparent that only limited information on the study topic is available. Thus, in order to complement the information gained through desk research, various methods of primary research were applied.

Firstly, a survey among the responsible authorities in the provinces was carried out. The survey was based on a questionnaire with structured open ended questions as well as statistical tables. It was distributed by e-mail. Responses were sent back by seven out of nine provinces out of which three answered the questions only partly.

Secondly, qualitative semi-structured face-to-face interviews were carried out. One group interview was carried out with officials from the Federal Ministry of the Interior (Hilbert Karl, Gerald Dreveny and Michaela Malz). The Federal Ministry of the Interior is the Austrian ministry that is responsible for, amongst others, asylum and basic welfare support matters. Furthermore, similar interviews were conducted with three practitioners from the two main church-based organizations active

1 Daily newspapers: Der Standard, Die Presse, Kleine Zeitung, Kurier, Kronenzeitung, Österreich, Salzburger Nachrichten and Wiener Zeitung; Weekly newspapers: Falter, News, Profil and Format.

in the provision of basic welfare support (Caritas Vienna: Sandra Kiendler and Karin Knogl; Diakonie Refugee Service: Christoph Riedl). Caritas and Diakonie are catholic and protestant church-based aid organizations that, amongst other activities, provide basic welfare support, counselling and supervision on behalf of the provinces. Diakonie is active in the provinces of Burgenland, Lower Austria and Vienna. Caritas is active in Burgenland, Lower Austria, Salzburg, Styria, Upper Austria, Vienna and Vorarlberg.<sup>2</sup>

Thirdly, in addition to the interview carried out with Caritas Vienna, written responses to the questions outlined in the interview guideline were received from Caritas Upper Austria and Caritas Vorarlberg.

These sources were considered to be sufficient for the purpose of the study, that is for outlining the reception conditions foreseen by federal and provincial legislation, the type of reception facilities available as well as the relevant actors and their responsibilities. While relevant divergences in federal and provincial laws were highlighted, no comprehensive comparison of federal and provincial laws was carried out. Not all practices that deviate from these legal provisions (i.e. due to single case interpretation or contempt) could be presented, but some were pointed out if considered to be relevant. The study itself does not provide an assessment of the quality of reception conditions; however, it outlines relevant legislative provisions and presents the findings of evaluations carried out by third parties.

This study was conducted by Saskia Koppenberg with the assistance of Adel-Naim Reyhani. Mária Temesvári supervised the compilation of the study. Special thanks go to Lisa Epe, Philipp Freudenthaler and Petra Knall for their support.

2 [www.diakonie.at](http://www.diakonie.at) (accessed on 22 January 2014); [www.caritas.at](http://www.caritas.at) (accessed on 22 January 2014).

## EXECUTIVE SUMMARY

The present study has been conducted by the National Contact Point (NCP) Austria in the European Migration Network (EMN), based on a common template. The study draws upon a review of national legislation at the federal and provincial level, a survey among the provinces, expert interviews with relevant stakeholders as well as a review of press articles on relevant topics. The key information can be summarized as follows.

### Legal basis:

Austria is a federal state with legislative and executive powers shared between the federal and provincial governments. The distribution of competencies as regards the provision of basic welfare support (*Grundversorgung*) in Austria is laid down in the Basic Welfare Support Agreement. The Agreement is based on Art. 15a of the Austrian Constitutional Act, which provides for the possibility to conclude agreements between the federal government and the provinces. Furthermore, the Basic Welfare Support Agreement defines the kind of reception conditions and maximum allowances to be provided throughout Austria. The legal basis of basic welfare support is comprised by the Federal Government Basic Welfare Support Act in the case of federal care (i.e. basic welfare support provided under the responsibility of the federal government) and by the laws of the provinces in the case of provincial care (i.e. basic welfare support provided under the responsibility of the provinces).

### Actors and coordination:

In Austria, there are three main groups of actors involved in the provision of basic welfare support. These are (i) the federal government, (ii) the provinces and (iii) service providers. The federal government is mainly responsible for the initial reception of applicants in admission procedures,<sup>3</sup> and the provinces are mainly responsible for applicants

3 Admission procedure refers to the stage of the application in which Austria determines whether an application will or will not be considered in substance.

admitted to the actual asylum procedure.<sup>4</sup> The operation of reception facilities is outsourced to service providers that are contracted by the respective authorities in the federal government and at the provincial level. Federal care is outsourced to a private institution, while the provinces mainly contract private guesthouse operators as well as NGOs and church-based organizations. In Vienna, the provision of basic welfare support to those living in individual accommodation is also outsourced. Service providers are furthermore contracted to deliver supervision (i.e. information provision, counselling and social support) as part of the basic welfare support in reception facilities where this is not provided on site.

The costs of providing basic welfare support are split between the federal government and the provinces at a ratio of six to four, while the costs borne by the provinces are distributed among the provinces according to their reception quota, which is based on the respective population.

#### Access to basic welfare support:

In Austria, the accommodation of applicants for international protection<sup>5</sup> and other beneficiaries is part of the so called basic welfare support that includes material reception conditions (i.e. food and clothing) and non-material reception conditions (e.g. health insurance, education, etc.).

The group of people entitled to basic welfare is comprised by non-Austrians in need of protection. These are asylum-seekers in the admission procedure, asylum-seekers who have been rejected during admission procedure until they leave the country, asylum-seekers during the actual asylum procedure, rejected asylum-seekers and non-Austrians without a legal status who cannot be deported due to legal or factual reasons, displaced persons, persons with subsidiary protection status, persons with the 'residence permit — special protection' as well as asylum-seekers who were granted asylum, but only during the first four months after being granted asylum. Furthermore, in order to get access to basic welfare

4 The actual asylum procedure begins once Austria has decided that the substance of an application will be considered.

5 Applicant for international protection means a third-country national or a stateless person who has made an application for international protection in respect of which a final decision has not yet been taken (Art. 2 para i Qualification Directive (2011/95/EU)).

support, these non-Austrians must be in need of assistance (i.e. unable by their own means to provide for their needs).

If the beneficiary has financial means, the basic welfare support is provided partially and/or the applicant has to make financial contributions. Beneficiaries' access to basic welfare support can be limited, granted conditionally or withdrawn due to certain reasons; the reasons laid down in federal and provincial laws vary. Some groups of persons are also excluded from basic welfare support. Again, legal provisions differ in the federal and provincial laws.

#### Reception facilities:

In Austria, there are three types of reception facilities: (i) collective initial/transit reception centres, (ii) organized reception facilities (including reception centres, guesthouses and other private houses or flats) and (iii) individual accommodation.

After lodging an application for international protection, beneficiaries are allocated to the reception facilities of the federal government, taking into account where in Austria the person applied for international protection (e.g. a beneficiary who has applied for international protection in the East of Austria will most likely be allocated to the organized reception facility in Traiskirchen).

After the person has been admitted to the asylum procedure, the federal government decides in agreement with the respective province about the allocation of the beneficiary to a reception facility in the province. The allocation is based on quotas that are in proportion to the provinces' populations. Vienna is the only province that has fulfilled (and even exceeded) its quota throughout the last five years (2008 to 2012). In addition to the capacities of the provinces the profile of the applicant (i.e. nationality, age, family, special needs) is also taken into consideration during the allocation process.

Besides persons in need of nursing care, for whom special accommodation and a different maximum amount are foreseen, unaccompanied minors (UAMs)<sup>6</sup> are the only group of vulnerable

6 An unaccompanied minor is a third-country national or stateless person below the age of eighteen, who arrives on the territory of the Member States unaccompanied by an adult responsible for them whether by law or custom, and for as long as they are not effectively taken into the care of such a person, or minors who are left

applicants for whom special reception conditions are broadly provided by legislation. They are accommodated in apartment-sharing groups, residential homes, supervised accommodation and other suitable organized reception facilities or in individual accommodation. Furthermore, the foreseen supervision rate is above the general rate of 1:170, namely 1:10 in apartment-sharing groups, 1:15 in residential homes and 1:20 in supervised accommodation.

#### Quality of reception conditions:

As regards the quality of reception facilities and basic welfare support in general, the Basic Welfare Support Agreement aims, through the definition of the kind of reception conditions and maximum allowances, at providing uniform reception conditions throughout Austria. However, since there are ten different regimes of reception (i.e. federal government and nine provinces), reception conditions vary in legislation. The quality of basic welfare support provided in practice was criticized by the media, civil society and some institutions who demand common quality standards applicable throughout Austria and independent control mechanisms.

#### Flexibility mechanisms:

Overall, the Federal Government through the Federal Minister of the Interior is responsible for the creation of contingency reception capacities in order to handle shortages in the provinces. The most common mechanism is to shut down reception facilities when the capacities have been exceeded. For times of increasing numbers of applicants for international protection, certain capacities are kept available or new reception facilities are opened-up. This is, however, not always possible, also because the service providers have to cover the full costs and financial risks.

unaccompanied after they have entered the territory of the Member States (Art. 2 para f Council Directive on temporary protection (2001/55/EC)).

# 1. INTRODUCTION

In Austria, the accommodation of applicants for international protection<sup>7</sup> and other entitled persons (hereafter commonly referred to as ‘beneficiaries’) is part of the so called basic welfare support (*Grundversorgung*). Basic welfare support includes, besides accommodation, material reception conditions (i.e. food and clothing) as well as non-material reception conditions (e.g. health insurance, education, etc.).

A profound transformation of the Austrian reception system took place through the adoption of the EU Reception Conditions Directive (2003/9/EC)<sup>8</sup>, which had to be transposed into national law by 6 February 2005.<sup>9</sup> The Basic Welfare Support Agreement<sup>10</sup> entered into force in 2004. The Agreement is based on Art. 15a of the Austrian Constitution, which states that the federal state Austria is composed of nine autonomous provinces with legislative and executive powers shared by the federal and provincial governments. The responsibilities of providing basic welfare support are thus shared among the federal government and the provinces.<sup>11</sup> The Basic Welfare Support Agreement furthermore defines the kind of reception conditions and maximum allowances to be provided. The latter have been recently adapted, namely through the Agreement Increasing Maximum

7 Applicant for international protection means a third-country national or a stateless person who has made an application for international protection in respect of which a final decision has not yet been taken (Art. 2 para i Qualification Directive (2011/95/EU)).

8 Council Directive 2003/9/EC of 27 January 2003 laying down minimum standards for the reception of asylum-seekers.

9 For an outline of the historical development of the reception system in Austria see Marx 2005.

10 Agreement between the federal government and the provincial governments, pursuant to article 15a of the Federal Constitution, concerning joint measures for the temporary granting of basic welfare support to aliens in need of assistance and protection in Austria (Basic Welfare Support Agreement), FLG I No.80/2004.

11 Art. 15a Federal Constitutional Act.

Amounts<sup>12</sup>, which was concluded in 2013 with retroactive effect as of 1 January 2012. In 2005, the Federal Government Basic Welfare Support Act<sup>13</sup> was adopted, which regulates basic welfare support at the federal level, thereby creating a subjective right for beneficiaries. At the province level (in Burgenland, Carinthia, Lower Austria, Salzburg, Styria, Tyrol, Upper Austria and Vienna), provincial laws were set up or regulations were integrated into existing social laws (Vorarlberg). It follows that legal provisions concerning basic welfare support are not identical at the federal and province levels, but differ to some extent.

The aim of this study is to provide information about the organization of basic welfare support in Austria with focus on reception facilities. In doing so, the study examines reception conditions (i.e. basic welfare support) foreseen by federal and provincial legislation, the type of reception facilities available as well as the relevant actors and their responsibilities. Relevant divergences in federal and provincial laws are highlighted. Challenges in the practical implementation as well as practices that deviate from the legal provisions are pointed out if considered to be relevant. The study does not provide an assessment of the actual provision of basic welfare support in Austria or of the quality of reception conditions, but refers to external assessments and media reporting as regards the latter. Furthermore, in light of fluctuating numbers of applicants for international protection, the study outlines some challenges that the reception system has faced in the last ten years and presents available mechanisms to handle capacity shortages and surpluses in a flexible manner.

12 Agreement between the federal government and the provinces, pursuant to article 15a of the Federal Constitution, concerning an incensement of selected maximum amounts laid down in Art. 9 of the Basic Welfare Support Agreement (Agreement Increasing Maximum Amounts), FLG I No. 46/2013.

13 Federal act regulating basic welfare support for asylum seekers in admission procedure and certain other aliens (Federal Government Basic Welfare Support Act), FLG I No. 405/1991, in the version of FLG I No. 68/2013.



## 2. ACTORS OF THE AUSTRIAN RECEPTION SYSTEM, THEIR ROLES AND RESPONSIBILITIES

In Austria, there are three main (groups of) actors involved in the provision of reception facilities to beneficiaries. These are (i) the federal government, (ii) the provinces and (iii) service providers.

### 2.1 Financial responsibility

Financial responsibility is shared by the federal government and the provinces. More precisely, the costs of providing basic welfare support are split between the federal government and the provinces at a ratio of six to four. The costs borne by the provinces are distributed among the provinces according to their reception quota, which is based on the respective population (for further details see 4.2.2).<sup>14</sup> This does, however, not apply to the costs for the reception of applicants for international protection where the duration of procedures exceeds twelve months; in this case, the federal government takes the sole financial responsibility.<sup>15</sup>

The expenses of the provinces are settled quarterly by the federal government according to the actual expenses, but only up to the maximum amounts as set out in the Basic Welfare Support Agreement and related Agreement Increasing Maximum Amounts (for further details see 5.1 and Table 9). The federal government may advance costs upon request.<sup>16</sup>

Furthermore, if a province provides basic welfare support to more people than its foreseen quota, the other provinces provide compensation payments in the framework of a yearly financial settlement that is negotiated and agreed upon by the provinces. This occurs mainly in the case of Vienna, which accommodates more beneficiaries than foreseen (see Table 4; for further details see 4.2.2).<sup>17</sup>

14 Art. 10 para 1 and 2 Basic Welfare Support Agreement.

15 Art. 11 para 1 and 4 Basic Welfare Support Agreement.

16 Art. 10 para 3 and 4 Basic Welfare Support Agreement.

17 Hilbert Karl, Federal Ministry of the Interior. Interview carried out by IOM Vienna, 29 May 2013.

## 2.2 Executive responsibility

The executive responsibility over reception facilities and more broadly, the provision of basic welfare support is split among the federal government and the provinces. The decisive factor is the stage of the asylum procedure (Oswald 2009: 56).

The federal government carries executive responsibility for the initial reception of applicants in admission procedures<sup>18</sup> as well as for the reception of applicants rejected during admission procedures (i.e. due to the Dublin Regulation,<sup>19</sup> a safe third country or manifestly unfounded applications) until they leave the country. Furthermore, the federal government is responsible for their health insurance.<sup>20</sup>

The provinces are responsible for the reception of applicants for international protection that have been admitted to the actual asylum procedure<sup>21</sup> and other beneficiaries as allocated (with the consent of the respective province) by the coordination unit at the federal level (for further details see 4.2.1). These include: asylum-seekers during the actual asylum procedure, rejected asylum-seekers and non-Austrians without a legal status who cannot be deported due to legal or factual reasons, displaced persons, persons with subsidiary protection status, persons with the 'residence permit — special protection' as well as applicants for international protection who have been granted asylum. The latter are only included during the first four months after asylum was granted. The provinces are furthermore responsible for their health insurance and the provision and maintenance of necessary infrastructures.<sup>22</sup>

The relevant institutions for federal care are the Federal Ministry of the Interior as the responsible authority for providing basic welfare support and the Federal Asylum Office – since 1 January 2014 the Federal

18 Admission procedure refers to the stage of the application in which Austria determines whether an application will or will not be considered in substance.

19 Applicants under Dublin means those applicants for which a Dublin procedure has been initiated and who are awaiting a Dublin decision determining the responsible country for examining the asylum claim. Council Regulation (EC) No 343/2003.

20 Art. 3 para 1 and para 2 (3) Basic Welfare Support Agreement; Art. 2 para 1 Federal Government Basic Welfare Support Act.

21 The actual asylum procedure begins once Austria has decided that the substance of an application will be considered.

22 Art. 4 para 1 Basic Welfare Support Agreement.

Office for Immigration and Asylum<sup>23</sup> – as a public authority. The Federal Office is bound to the instructions of the Federal Ministry of the Interior. In the provinces, the public authority is established within the respective provincial government office and is also responsible for providing basic welfare support.<sup>24</sup> One exception is Vienna, where the responsibility of providing basic welfare support is outsourced to a fund, the *Fonds Soziales Wien*, which is under the control of the City of Vienna.<sup>25</sup>

### 2.3 Coordination mechanisms

Department III/9 (Basic welfare support and federal care) of the Federal Ministry of the Interior (hereafter commonly referred to as ‘coordination unit’) is responsible for coordinating the provision of basic welfare support as stipulated in the Basic Welfare Support Agreement. The tasks include:

- Allocation of beneficiaries to reception facilities in the provinces according to the respective reception quotas;
- Transport of applicants to initial reception centres and from there to the provinces;
- Registration of health insurance for beneficiaries in federal care;
- Administration and overview of financial costs of the federal government and the provinces and financial settlement of cost borne by the provinces; and
- Support to the provinces in the relocation of rejected applicants who cannot be deported due to legal or factual reasons.<sup>26</sup>

Furthermore, a federal government-province coordination council was established to ensure cooperation and information exchange and to find solutions to a range of practical challenges (e.g. interpretation of the Basic Welfare Support Agreement, quality assurance, or the establishment of new reception facilities). The coordination council consists of

23 With the entering into force of the Act on the Restructuring of the Aliens Authorities (FLG. I No. 87/2012) on 1 January 2014 the Federal Asylum Office merges into the new Federal Office for Immigration and Asylum. For further information see Schrefler-König 2013.

24 Hilbert Karl, Federal Ministry of the Interior. Interview carried out by IOM Vienna, 29 May 2013.

25 Fonds Soziales Wien, [www.fsw.at/ueber\\_uns/rechtliche\\_grundlagen.html](http://www.fsw.at/ueber_uns/rechtliche_grundlagen.html), (accessed on 22 January 2014).

26 Art. 3 para 2 Basic Welfare Support Agreement.

representatives of the federal government, namely the department III/9 of the Federal Ministry of the Interior, and of representatives of the provinces, namely the public authority established within the respective provincial government office.<sup>27</sup> The coordination council meets upon request of one of the members, which, according to the Federal Ministry of the Interior, happens in practice every four months.<sup>28</sup> The representatives decide unanimously about the interpretation and implementation of the Basic Welfare Support Agreement. The decisions, called agreements, are not binding.<sup>29</sup>

According to Art. 5 para 3 Basic Welfare Support Agreement, the coordination council is responsible for preparing periodic reports analysing the implementation of the Agreement, for proposing amendments to the Agreement, as well as for preparing necessary modifications regarding the maximum allowances.<sup>30</sup> According to the Federal Ministry of the Interior, no written periodic reports are prepared in practice, although regular analysis takes place in the framework of discussions at the federal government-province coordination council.<sup>31</sup>

#### **2.4. Operation of reception facilities**

The Basic Welfare Support Agreement that regulates the responsibilities of the federal government and the provinces (for further details see 2.2) states that these may contract humanitarian, faith-based or private institutions as well as social welfare organizations to provide basic welfare support.<sup>32</sup> The service providers are bound to the authority's instructions and have to report. Staff employed by the contracted service providers and deployed to the provision of basic welfare support must be sworn to secrecy.<sup>33</sup>

27 Art. 5 para 1 and 2 Basic Welfare Support Agreement.

28 Michaela Malz, Federal Ministry of the Interior. Interview carried out by IOM Vienna, 29 May 2013.

29 Hilbert Karl, Federal Ministry of the Interior. Interview carried out by IOM Vienna, 29 May 2013.

30 Art. 5 para 3 Basic Welfare Support Agreement.

31 Michaela Malz, Federal Ministry of the Interior. Interview carried out by IOM Vienna, 29 May 2013.

32 Art. 3 para 5 and Art. 4 para 2 Basic Welfare Support Agreement.

33 Art. 4 para 1 and 2 Federal Government Basic Welfare Support Act.

At the federal level, a private institution, ORS Service GmbH,<sup>34</sup> has been contracted to operate reception facilities and to provide other basic welfare support. Also the provinces outsourced the operation of reception facilities. According to a survey carried out among the provinces, they mainly contract private guesthouse operators.<sup>35</sup> Exceptions are Vienna and Vorarlberg, where organized reception facilities are exclusively run by NGOs and church-based organizations.<sup>36</sup> The provision of basic welfare support to those in individual accommodation is usually managed by the respective public authority. An exception is Vienna, where Caritas Vienna is contracted by the responsible authority to provide basic welfare support to beneficiaries who are living in individual accommodation.<sup>37</sup> In some cases, service providers are also contracted to deliver supervision (i.e. information provision, counselling and social support) as part of the basic welfare support, namely in reception facilities where this is not provided on-site (for further details see 5.3).<sup>38</sup>

As a common practice, a call for tenders is issued in accordance with government procurement regulations, followed by a contract between the service provider and the responsible public authority at federal government or provincial level.<sup>39</sup> The contracts define the number of beneficiaries to be received and the tasks to be fulfilled by the service provider.<sup>40</sup>

34 ORS Service GmbH, [www.orsservice.at](http://www.orsservice.at) (accessed on 22 January 2014).

35 More than half of the applicants accommodated in organized facilities are accommodated in guesthouses (Survey among the provincial authorities in charge of basic welfare support of the provinces Burgenland, Carinthia, Salzburg, Styria, Tyrol, Vienna and Vorarlberg, July/August 2013, carried out by IOM Vienna).

36 Survey among the provincial authorities in charge of basic welfare support of the provinces Burgenland, Carinthia, Salzburg, Styria, Tyrol, Vienna and Vorarlberg, July/August 2013, carried out by IOM Vienna.

37 Sandra Kiendler, Caritas Vienna. Interview carried out by IOM Vienna, 1 August 2013.

38 Christoph Riedl, Diakonie Refugee Service. Interview carried out by IOM Vienna, 3 July 2013.

39 Survey among the provincial authorities in charge of basic welfare support of the provinces Burgenland, Carinthia, Salzburg, Styria, Tyrol, Vienna and Vorarlberg, July/August 2013, carried out by IOM Vienna.

40 Hilbert Karl, Federal Ministry of the Interior. Interview carried out by IOM Vienna, 29 May 2013; Karin Knogl, Caritas Vienna. Interview carried out by IOM Vienna, 1 August 2013; Christoph Riedl, Diakonie Refugee Service. Interview carried out by IOM Vienna, 3 July 2013.

### 3. ACCESS TO THE AUSTRIAN RECEPTION SYSTEM

As the table below shows, on 1 January 2012, 18,376 persons were receiving basic welfare support; these are almost as many as one year before, but around 25 per cent less than five years ago (2008: 24,563).

**Table 1: Number of persons receiving basic welfare support (as of 1 January)**

Year	2008	2009	2010	2011	2012
<b>Total number of beneficiaries</b>	24,563	23,468	21,751	18,273	18,376

*Source:* Federal Ministry of the Interior, special evaluation.

The following section describes which groups of people have access to basic welfare support in Austria.

#### 3.1 Entitlement to basic welfare support

According to the Federal Government Basic Welfare Support Act and the provincial laws regulating basic welfare support, non-Austrians who are in need of protection are entitled to basic welfare support and therewith to reception facilities. This group of people is specified therein as:

- Asylum-seekers in the admission procedure;
- Asylum-seekers rejected during the admission procedure until they leave the country (i.e. due to the Dublin Regulation, safe third country or manifestly unfounded application);
- Asylum-seekers during the actual asylum procedure;
- Rejected asylum-seekers and non-Austrians without a legal status who cannot be deported due to legal or factual reasons;
- Displaced persons with a temporary right of residence according to Art. 29 Aliens Act 1997,<sup>41</sup> granted by the federal government through a decree;

<sup>41</sup> Federal act regulating the entry, residence and settlement of aliens (Aliens Act 1997), FLG I No. 75/1997, in the version of FLG I No. 134/2002.

- Persons with subsidiary protection status;
- Persons with the ‘residence permit — special protection’ according to Art. 69a Settlement and Residence Act;<sup>42</sup> as well as
- Persons who have been granted asylum, but only for a period of up to four months after receiving asylum.<sup>43</sup>

Furthermore, applicants for international protection who have received a final negative decision on their application and are awaiting return receive, in principle, basic welfare support (Schumacher et al. 2012: 274). According to the interpretation of the Federal Ministry of the Interior, however, they are only entitled to basic welfare support if they cooperate in the aliens law procedure (Table 2; Austrian Court of Audit 2013: 44).

Diverging provisions are made in the provincial law of Tyrol, where persons who have been granted asylum are not entitled to basic welfare support.<sup>44</sup> In Burgenland, victims of trafficking are explicitly entitled to basic welfare support.<sup>45</sup>

As a principle, basic welfare support is only provided to those who are not only in need of protection (see above) but who are, at the same time, in need of assistance. People in need of assistance are defined as persons who are unable or insufficiently able by own means and efforts to provide for their livelihood and that of relatives living in the same

42 The Basic Welfare Support Agreement speaks in Art. 2 para 1(3) about the right of residence based on humanitarian grounds according to Art. 10 para 4 Aliens Act 1997. The Settlement and Residence Act 2005 that replaced the Aliens Act 1997 provided for a consecutive regulation that was then in the revision of the Settlement and Residence Act in 2009 canceled. It is undisputed that now persons with the ‘residence permit — special protection’ according to Art. 69a Settlement and Residence Act 2009 are entitled to basic welfare support (Austrian Court of Audit 2013: 43).

43 Art. 2 para 1 Federal Government Basic Welfare Support Act; Art. 2 para 1 Provincial law regulating basic welfare support in Burgenland; Art. 2 para 3 Provincial law regulating basic welfare support in Carinthia; Art. 3 para 1 and Art. 4 para 2 Provincial law regulating basic welfare support in Lower Austria; Art. 5 Provincial law regulating basic welfare support in Salzburg; Art. 3 para 1 Provincial law regulating basic welfare support in Styria; Art. 4 Provincial law regulating basic welfare support in Tyrol; Art. 1 para 1 and Art. 2 Provincial law regulating basic welfare support in Upper Austria; Art. 1 para 1 and 3 Provincial law regulating basic welfare support in Vienna; Art. 3 para 1 and 4 Provincial law regulating minimum social benefits, Vorarlberg.

44 Provincial law regulating basic welfare support in Tyrol.

45 Art. 2 para 1(6) Provincial law regulating basic welfare support in Burgenland.

household and who do not receive (sufficient) support from others (e.g. persons or institutions).<sup>46</sup> No specifications are made on the level of income or property that is considered to be insufficient. However, the provincial laws of Lower and Upper Austria define sufficient income as the ability to provide for a living standard similar to the provisions of basic welfare support.<sup>47</sup> The Tyrolean law speaks more generally about people in need.<sup>48</sup>

In practice there are some challenges in guaranteeing basic welfare support for applicants who received a negative decision. One challenge regards the interruption of basic welfare support during lenient measures, which can be imposed as an alternative to detention. According to Caritas Vienna, in some provinces those who are under lenient measures may be suspended from basic welfare support, even though they are not supported otherwise.<sup>49</sup> Some stakeholders stated that this practice was not in line with the provisions of the EU Reception Conditions Directive (2003/9/EC) (Agenda Asyl 2012: 5; Frahm 2013: 6). Rejected applicants for international protection who are in detention pending deportation are also suspended from basic welfare support,<sup>50</sup> but they receive other support according to the Detention Order<sup>51</sup> (Priewasser 2006: 66).

Another challenge regards rejected applicants who are only entitled to basic welfare support if they cannot be deported due to legal or factual reasons (see above). The issuance of an identification card for tolerated persons is regarded as constitutive for establishing that deportation is not possible (Frahm 2013: 3, 5). It follows that in cases where no identification card for tolerated persons has been issued (yet), basic welfare support can be withdrawn. This time period between when the negative decision was issued and when it is ruled that the person cannot be deported is considerable and can last for years (Frahm 2013: 5). This

46 Art. 2 para 1 Basic Welfare Support Agreement, the same follows from the Federal Government Basic Welfare Support Act and all provincial laws (Oswald 2009: 56).

47 Art. 4 para 1 Provincial law regulating basic welfare support in Lower Austria, Art. 2 para 1 Provincial law regulating basic welfare support in Upper Austria.

48 Art. 4 Provincial law regulating basic welfare support in Tyrol.

49 Karin Knoggl, Caritas Vienna. Interview carried out by IOM Vienna, 1 August 2013.

50 Art. 2 para 2 Basic Welfare Support Agreement.

51 Order of the Federal Minister of the Interior concerning the detention of persons by the national security authorities and officers of the public security service (Detention Order), FLG. II No. 128/1999, in the version of FLG. II No. 439/2005.



legal situation can lead to uncertainties, as was demonstrated, for example, by a ruling of the Provincial Court Klagenfurt from November 2013. A woman and her child who were in need of assistance were excluded from basic welfare support when they received a final negative decision on their asylum application. The court ruled that this was not legal. It argued that even though the Aliens Police did not establish that deportation was not possible due to legal or factual reasons and even though the woman did not receive an identification card for tolerated persons, she could not be deported in practice because she had no travel document to replace her missing passport. The woman and her child were without accommodation, food and health insurance for around eight months.<sup>52</sup> According to the experiences of Caritas Vienna and Diakonie Refugee Service, in practice rejected applicants for international protection sometimes continue receiving basic welfare support during the period described above based on a decision by the respective province. This is the case, for example, in Vienna.<sup>53</sup>

As regards the entitlement to special reception facilities, no general assessment of vulnerability to identify special reception needs of beneficiaries is provided for by national legislation or carried out in practice. Instead, once the application for international protection is lodged, the applicant is accommodated in an initial reception centre where he or she undergoes an initial interview and medical examination according to the asylum procedure. Furthermore, the applicant is supervised by psychologists and other personnel. During this period of reception and supervision, vulnerabilities can, according to the Federal Ministry of the Interior, be identified.<sup>54</sup> In the case of unaccompanied

52 Provincial Court Klagenfurt, 26 November 2013, 23CG 45/13m; *Kleine Zeitung, Land verlor vor Gericht gegen Flüchtling*, 4 December 2013, available at [www.kleinezeitung.at/kaernten/klagenfurt/klagenfurt/3484927/land-verlor-vor-gericht-gegen-fluechtling.story](http://www.kleinezeitung.at/kaernten/klagenfurt/klagenfurt/3484927/land-verlor-vor-gericht-gegen-fluechtling.story) (accessed on 21 January 2014).

53 Sandra Kiendler, Caritas Vienna. Interview carried out by IOM Vienna, 1 August 2013; Karin Knogl, Caritas Vienna. Interview carried out by IOM Vienna, 1 August 2013; Christoph Riedl, Diakonie Refugee Service. Interview carried out by IOM Vienna, 3 July 2013.

54 Hilbert Karl, Federal Ministry of the Interior. Interview carried out by IOM Vienna, 29 May 2013.

**Table 2: Categories of beneficiaries entitled to basic welfare support**

Different categories of applicants depending on type/stage of procedure	Entitled to basic welfare support?	Entitled to standard or special reception facilities? <sup>1</sup>
<b>Applicants under Dublin<sup>2</sup></b>	Yes.	Standard.
<b>Applicants in admission procedures<sup>3</sup></b>	Yes.	Standard.
<b>Applicants subject to accelerated procedures</b>	Yes.	Standard.
<b>Vulnerable groups of applicants<sup>4</sup> (with specific psychological/medical assistance needs)</b>	Yes, but not explicitly mentioned by legislation except for Art. 7 para 3 Law regulating minimum social benefits, Vorarlberg and Art. 6 para 4 Provincial law regulating basic welfare support in Lower Austria.	No special reception facilities are foreseen by legislation; however, specific reception facilities are available at the federal level and in some provinces.
<b>Unaccompanied minors awaiting decision for international protection</b>	Yes.	UAMs shall be accommodated in apartment-sharing groups (for minors with special needs), residential homes (for minors unable to care for themselves), supervised accommodation (for minors able to care for themselves if supervised), other suitable organized reception facilities or in individual accommodation.
<b>Unaccompanied minors who have exhausted the procedure for international protection and are awaiting return</b>	In principle yes. According to the interpretation of the Federal Ministry of the Interior, however, they are only entitled if they cooperate in the alien law procedure.	See above.
<b>Applicants who have lodged an appeal procedure</b>	Yes.	Standard.
<b>Applicants who have lodged a subsequent application</b>	Yes, if they lodged the subsequent application more than six months after they received a final decision on their first application (except in Vienna and Vorarlberg).	Standard.
<b>Applicants who have received a positive decision on their international protection application</b>	Applicants to whom asylum has been granted are entitled to basic welfare support for a period of up to four months; persons with subsidiary protection status.	Standard.

<sup>1</sup> Special reception facilities refer to facilities which divert from mainstream reception facilities, e.g. depending on the type of applicant, or stage/procedure.

<sup>2</sup> Applicants under Dublin means those applicants for which a Dublin procedure has been initiated and who are awaiting a Dublin decision determining the responsible country for examining the asylum claim.

<sup>3</sup> Admission procedures refer to the stage of the application in which (Member) States determine whether an application will or will not be considered in substance based on the criteria laid down in Article 25 of Directive 2005/85/EC (the Asylum Procedures Directive) which stipulates circumstances in which Member States are allowed to declare application as inadmissible and are subsequently not required to examine the application.

<sup>4</sup> The Reception Conditions Directive makes reference to the following categories of applicants under vulnerable groups: unaccompanied minors, disabled people, elderly people, pregnant women, single parents with minor children, persons who have been subjected to torture, rape, or other serious forms of psychological, physical, or sexual violence.

<b>Applicants who have exhausted the procedure for international protection and who are awaiting return</b>	In principle yes. According to the interpretation of the Federal Ministry of the Interior, however, they are only entitled if they cooperate in the alien law procedure.	Standard.
<b>Displaced persons</b>	Yes.	Standard.
<b>Persons holding a 'residence permit – special protection'</b>	Yes.	Standard.
<b>Victims of trafficking</b>	In Burgenland, victims of trafficking are explicitly entitled to reception.	Standard.
<b>Persons in need of nursing care</b>	Yes.	Special accommodation with a higher maximum amount (2,480 EUR per person and month).

*Source:* Federal Ministry of the Interior, special evaluation; Survey among the provincial authorities in charge of basic welfare support of the provinces Burgenland, Carinthia, Salzburg, Styria, Tyrol, Vienna and Vorarlberg, July/August 2013, carried out by IOM Vienna.

minors (UAMs),<sup>55</sup> age assessment procedures are used to decide whether to provide specific reception conditions (Fronek 2010: 27, 76). A multi-factorial examination, including radiological methods, is carried out based on Art. 15 para 1(6) Asylum Act 2005.

The table above displays common categories of applicants for international protection and their entitlement to basic welfare support in Austria. Furthermore, the table indicates whether they are entitled to standard or special reception facilities.

### **3.2 Exclusion from basic welfare support**

The federal and provincial legislation in Austria provides for different forms of exclusion of beneficiaries from basic welfare support. At the federal level, these decisions are taken by the Federal Office for Immigration and Asylum.<sup>56</sup> At the provincial level, the public authority that is responsible for basic welfare support established within the respective provincial government office is competent to take such a decision;<sup>57</sup> in case of asylum-seekers, a decision about the withdrawal of

55 An unaccompanied minor is a third-country national or stateless person below the age of eighteen, who arrives on the territory of the Member States unaccompanied by an adult responsible for them whether by law or custom, and for as long as they are not effectively taken into the care of such a person, or minors who are left unaccompanied after they have entered the territory of the Member States (Art. 2 para f Council Directive on temporary protection (2001/55/EC)).

56 Art. 4 para 3 Federal Government Basic Welfare Support Act.

57 Survey among the provincial authorities in charge of basic welfare support of the provinces Burgenland, Carinthia, Salzburg, Styria, Tyrol, Vienna and Vorarlberg,

basic welfare support has to be taken in consensus with the Federal Office for Immigration and Asylum.<sup>58</sup>

### 3.2.1 Three different forms of exclusion from basic welfare support

Basic welfare support can be granted partially when the applicant has financial means (e.g. through income,<sup>59</sup> family allowances, etc.),<sup>60</sup> but only if his or her needs are thereby adequately met. What ‘adequate’ means in this context is not further specified.<sup>61</sup> In this case, basic welfare support is provided partially and/or the beneficiary has to make financial contributions.<sup>62</sup> National legislation does not define any threshold. In practice, an additional income of up to 110 EUR is allowed and does not lead to a reduction of the basic welfare support.<sup>63</sup> If regular income exceeds the basic welfare support, the support is terminated (Knapp 2010: 37; Knapp 2013: 51). Regular checks are carried out in order to assess the financial situation of applicants and to adapt their access to basic welfare support accordingly.<sup>64</sup>

The access to employment and self-employment is in fact denied during the first three months after the applicant has been admitted to the asylum procedure. After that, applicants for international protection are allowed to become self-employed and to find employment if a work permit has been granted. In practice it is, however, rather difficult to become employed, not only because a labour market test has to be passed, but also because the access is restricted by the so called Bartenstein Decree (*Bartensteinerlass*) to selected occupations with quota-regulated

July/August 2013, carried out by IOM Vienna.

58 Art. 4 para 1 (3) Basic Welfare Support Agreement.

59 This does not include remuneration of auxiliary activities according to Art. 7 para 3 of the Federal Government Basic Welfare Support Act (for further details see table 9 in Annex 1).

60 For a list of financial means that are taken into account see Schumacher et al. 2012: 277.

61 Art. 6 para 2 Basic Welfare Support Agreement.

62 Art. 3 para 2 Federal Government Basic Welfare Support Act.

63 Hilbert Karl, Federal Ministry of the Interior. Interview carried out by IOM Vienna, 29 May 2013; other sources speak of 100 EUR (Knapp 2013: 47; Schumacher et al. 2012: 277).

64 Hilbert Karl, Federal Ministry of the Interior. Interview carried out by IOM Vienna, 29 May 2013; Sandra Kiendler, Caritas Vienna. Interview carried out by IOM Vienna, 1 August 2013.

work permits, namely seasonal work in tourism, agriculture and forestry (Schumacher et al. 2012: 279, 299).<sup>65</sup> Other beneficiaries of basic welfare support, namely persons with subsidiary protection status and asylum-seekers who have been granted asylum enjoy, instead, full access to the labour market.<sup>66</sup> (*For further information also as regards access to vocational training see table 9 in Annex 1.*)

Furthermore, access to basic welfare support can be limited, granted conditionally or withdrawn due to specific reasons, even if the beneficiary does not have the necessary means to meet his or her needs. According to the Basic Welfare Support Agreement, support can be limited or withdrawn in case of (i) serious violations of the house rules of the reception facility, (ii) a prohibition order to enter the facility due to act of violence, and (iii) a criminal conviction that represents a reason for not being granted asylum according to Art. 13 of the Asylum Act 1997 or Art. 6 para 1 of the Asylum Act 2005.<sup>67</sup> The latter refers to a case in which the person represents a grave threat to the Austrian Republic or he or she was convicted by a national court of a particularly serious crime.<sup>68</sup> The same reasons are included in the Federal Government Basic Welfare Support Act<sup>69</sup> and in the provincial laws. Reason (ii) is not foreseen in the laws of Lower Austria, Upper Austria and Vorarlberg.<sup>70</sup> Some provincial laws include further reasons. The most frequent reason (included in five out of nine provincial laws) regards absence from the reception facility exceeding three days or that is not temporary. In this case, basic welfare support can be limited, granted conditionally or withdrawn.<sup>71</sup> Other reasons that are

65 Art. 4 para 1 Act Governing the Employment of Foreign Nationals; Federal Ministry of Economy and Labour, *EU-Erweiterungs-Anpassungsgesetz; Durchführungserlass* (Bartensteinerlass), 435.006/6 — II/7/04.

66 Art. 1 para 2(a) Act Governing the Employment of Foreign Nationals.

67 Art. 2 para 4 and Art. 6 para 3 Basic Welfare Support Agreement.

68 Art. 13 para 2 Asylum Act 1997; Art. 6 para 1 Asylum Act 2005.

69 Art. 2 para 4 and 5 Federal Government Basic Welfare Support Act.

70 Provincial law regulating basic welfare support in Lower Austria; Provincial law regulating basic welfare support in Upper Austria; Provincial law regulating minimum social benefits, Vorarlberg.

71 Art. 5 para 3(5) Provincial law regulating basic welfare support in Burgenland; Art. 3a para 1(a) Provincial law regulating basic welfare support in Carinthia; Art. 8 para 1(9) Provincial law regulating basic welfare support in Lower Austria; Art. 3 para 2(1) Provincial law regulating basic welfare support in Upper Austria; Art. 9 para 1(4) Provincial law regulating basic welfare support in Salzburg.

less often included in provincial laws (three out of nine provincial laws) concern the refusal of reception facilities offered,<sup>72</sup> the refusal to take up an employment or active search thereof,<sup>73</sup> non-compliance with making financial contributions if required<sup>74</sup> and late application for international protection.<sup>75</sup> Furthermore, the following reasons are included in at least two provincial laws each: health risk,<sup>76</sup> misuse of financial allowances<sup>77</sup> and non-compliance with obligations, conditions or orders.<sup>78</sup>

There are also some groups of persons who can be excluded from basic welfare support from the outset. While the Basic Welfare Support Agreement does not say anything on exclusion, the Federal Government Basic Welfare Support Act names the following persons: (i) nationals of EU Member States, Switzerland, Norway, Iceland and Liechtenstein; (ii) asylum-seekers who were asked to but have not cooperated with the establishment of their identity or need for support; (iii) those who lodge a second asylum application within six months after a final decision was made on their first application, and (iv) asylum-seekers who do not cooperate for the establishment of the facts of their case.<sup>79</sup> Most of the provincial laws have the same regulations, except for the group of persons (i), which is included only in three out of nine provincial laws (i.e. in

72 Art. 5 para 4 Provincial law regulating basic welfare support in Burgenland; Art. 3a para 1(a) Provincial law regulating basic welfare support in Carinthia; Art. 3 para 2(1) Provincial law regulating basic welfare support in Upper Austria.

73 Art. 9 para 1(7) Provincial law regulating basic welfare support in Salzburg; Art. 3 para 2(10) Provincial law regulating basic welfare support in Upper Austria.

74 Art. 8 para 1(6) Provincial law regulating basic welfare support in Lower Austria; Art. 9 para 1(7) Provincial law regulating basic welfare support in Salzburg; Art. 3 para 2(8) Provincial law regulating basic welfare support in Upper Austria; Art. 8 para 6 Provincial law regulating minimum social benefits, Vorarlberg.

75 Art. 3a para 1(b) Provincial law regulating basic welfare support in Carinthia; Art. 8 para 1(1) Provincial law regulating basic welfare support in Lower Austria; Art. 3 para 2(5) Provincial law regulating basic welfare support in Upper Austria.

76 Art. 3a para 1(i) Provincial law regulating basic welfare support in Carinthia; Art. 8 para 1(10) Provincial law regulating basic welfare support in Lower Austria.

77 Art. 8 para 1(8) Provincial law regulating basic welfare support in Lower Austria; Art. 9 para 1(6) Provincial law regulating basic welfare support in Salzburg.

78 Art. 3a para 1(h) Provincial law regulating basic welfare support in Carinthia; Art. 8 para 1(7) Provincial law regulating basic welfare support in Lower Austria.

79 Art. 3 para 1 Federal Government Basic Welfare Support Act.

Burgenland, Salzburg and Styria),<sup>80</sup> and group (ii), which is missing in three provincial laws (Lower Austria, Vienna and Vorarlberg).<sup>81</sup> The provinces of Vienna and Vorarlberg do not have any such provisions laid down in their respective laws.<sup>82</sup>

As a general rule, however, the Basic Welfare Support Agreement states in Art. 6 para 4 that access to emergency health care must always be granted. The same provisions are foreseen in the federal and provincial laws; only the provincial law of Vorarlberg does not include any such clause.<sup>83</sup>

### 3.2.2 Legal remedies against the exclusion from basic welfare support

The Federal Government Basic Welfare Support Act provides for appeals against first instance decisions of the Federal Office for Immigration and Asylum to be decided upon by the Federal Administrative Court.<sup>84</sup> This implies the issuing of a written decision that can be appealed (Oswald 2009: 57). If the provision of support is limited, granted conditionally or withdrawn, a written decision is explicitly foreseen.<sup>85</sup> This law is applicable to federal care. Eight out of nine provinces (Burgenland, Carinthia, Lower Austria, Salzburg, Styria, Tyrol, Upper Austria and Vorarlberg) have similar provisions in their respective provincial laws. These assign the competence to take first instance

80 Art. 2 para 4 Provincial law regulating basic welfare support in Burgenland; Art. 4 para 1 Provincial law regulating basic welfare support in Salzburg; Art. 5 para 2 Provincial law regulating basic welfare support in Styria.

81 Provincial law regulating basic welfare support in Lower Austria; Provincial law regulating basic welfare support in Vienna; Provincial law regulating minimum social benefits, Vorarlberg.

82 Provincial law regulating basic welfare support in Vienna; Provincial law regulating minimum social benefits, Vorarlberg.

83 Art. 2 para 4 Federal Government Basic Welfare Support Act; Art. 5 para 5 Provincial law regulating basic welfare support in Burgenland; Art. 3a para 2 Provincial law regulating basic welfare support in Carinthia; Art. 9 Provincial law regulating basic welfare support in Lower Austria, Art. 9 para 2 Provincial law regulating basic welfare support in Salzburg; Art. 4 para 5 Provincial law regulating basic welfare support in Styria; Art. 5 and 6 Provincial law regulating basic welfare support in Tyrol; Art. 3 para 7 Provincial law regulating basic welfare support in Upper Austria; Art. 3 para 4 Provincial law regulating basic welfare support in Vienna; Provincial law regulating minimum social benefits, Vorarlberg.

84 Art. 9 para 2 Federal Government Basic Welfare Support Act.

85 Art. 2 para 6 Federal Government Basic Welfare Support Act.

decisions in form of administrative appeal procedures to the respective provincial government. The provincial government subsequently issues written decisions that can be appealed at the Independent Administrative Senate<sup>86</sup> of the respective province.<sup>87</sup> Independent Administrative Senates decide in the last instance. It is possible to bring a complaint against their decision before the Administrative High Court (Priewasser 2006: 41).

Five out of these eight provinces explicitly only provide access to administrative appeal procedures to asylum-seekers (Carinthia, Lower Austria, Salzburg, Tyrol and Upper Austria).<sup>88</sup> This is in line with the Reception Conditions Directive (2003/9/EC), which exclusively regulates the reception of asylum-seekers (Oswald 2009: 55). Private law applies to others who applied for international protection and who are entitled to basic welfare support. This means that legal remedies before a civil court are possible based on the equality principle. This principle requires that benefits be granted equally to all applicants who fulfil the criteria set by law (Priewasser 2006: 40-41).

The province of Vienna does not foresee any legal remedy. In fact, in the special case of Vienna, where the responsible authority is not established within the provincial government office, but rather outsourced to a fund,<sup>89</sup> no written decision that may be appealed can be issued. Private

86 With the entering into force of the Amendments to the Administrative Jurisdiction (FLG. I No.51/2012) on 1 January 2014 the Independent Administrative Senates are replaced. For further information see Eberhard 2013.

87 Art. 11 Provincial law regulating basic welfare support in Burgenland; Art. 9 para 2 and 6 Provincial law regulating basic welfare support in Carinthia; Art. 17 para 2 and Art. 18 para 1 Provincial law regulating basic welfare support in Lower Austria; Art. 15 Provincial law regulating basic welfare support in Salzburg; Art. 14 Provincial law regulating basic welfare support in Styria; Art. 2 para 6 Provincial law regulating basic welfare support in Tyrol; Art. 4 Provincial law regulating basic welfare support in Upper Austria; Art. 7 para 5 provincial law regulating minimum social benefits, Vorarlberg.

88 Art. 9 para 2 and 6 Provincial law regulating basic welfare support in Carinthia; Art. 17 para 2 and Art. 18 para 1 Provincial law regulating basic welfare support in Lower Austria; Art. 15 Provincial law regulating basic welfare support in Salzburg; Art. 2 para 6 Provincial law regulating basic welfare support in Tyrol; Art. 4 Provincial law regulating basic welfare support in Upper Austria.

89 Fonds Soziales Wien, [www.fsw.at](http://www.fsw.at) (accessed on 22 January 2014).



law also applies here, but in practice civil courts are difficult to access by asylum applicants.<sup>90</sup>

Even where a legal provision is available, the practice may be contrary to law. An example is Burgenland that was repeatedly criticized by the Austrian Ombudsman Board for not issuing written decisions that could be appealed (Austrian Ombudsman Board 2013b: 14).

90 Christoph Riedl, Diakonie Refugee Service. Interview carried out by IOM Vienna, 3 July 2013.

## 4. RECEPTION FACILITIES IN AUSTRIA

### 4.1 The different types of reception facilities in Austria

In Austria, there are three types of reception facilities: (i) collective initial/transit reception centres, (ii) organized reception facilities, including special reception facilities for UAMs and (iii) individual accommodation (such as houses, flats or possibilities of staying with friends or family).<sup>91</sup> Organized reception facilities are available in all provinces and at the federal level, while individual accommodation is only provided for in the provinces. Collective initial and transit reception centres are exclusively run by the federal government.

The table below shows that on 1 January 2012, 12,045 beneficiaries of basic welfare support were accommodated in the first two types of facilities, while 6,317 were living in individually arranged accommodation. Hence, almost twice as many beneficiaries were living in initial/transit reception centres and organized reception facilities than in individual accommodation.

Table 3: Different types of reception facilities

Type of accommodation	Number of facilities at the end of 2012	Number of applicants accommodated in such facilities during 2008-2012 (as of 2 January)				
		2008	2009	2010	2011	2012
Collective initial/transit reception centres	2 initial and 1 transit reception centre	13,108	12,632	12,400	10,903	12,045
Organized reception facilities	Around 805 <sup>1</sup>					
Special reception facilities for unaccompanied minors	73 (out of which 45 were apartment-sharing groups, 20 residential homes and 8 supervised accommodations)					
Individual accommodation	N/A	11,485	10,273	9,354	7,369	6,317

Source: Federal Ministry of the Interior, special evaluation.

91 Art. 9 Basic Welfare Support Agreement; Art. 1 para 4 and 5 Federal Government Basic Welfare Support Act.

## 4.2 The allocation of beneficiaries to different reception facilities

### 4.2.1 Actors involved

During the admission procedure, the allocation decision lies with the federal government (i.e. the coordination unit within the Federal Ministry of the Interior) while after the admission to the actual asylum procedure, the federal government decides in agreement with the respective province (i.e. the responsible public authority established within the respective provincial government office) about the allocation of the beneficiaries to a reception facility in the province.<sup>92</sup> The operators of reception facilities themselves are not involved in the decision making.<sup>93</sup> Until a decision has been made, the beneficiary can stay in the reception facility of the federal government, but only for a maximum period of 14 days. This is provided for by the Federal Government Basic Welfare Support Act.<sup>94</sup> After this time period, the federal government is no longer responsible by law.

### 4.2.2 Allocation factors

The capacity of reception facilities is the decisive factor in the allocation of applicants.<sup>95</sup> In addition, there are some other criteria according to which applicants are allocated to reception facilities.

Stage of the asylum procedure:

The stage of the asylum procedure is decisive for the allocation of applicants for international protection to either federal or provincial care. Applicants in the admission procedure, applicants rejected during the admission procedures and applicants under the Dublin Regulation are accommodated in initial reception centres or organized reception facilities under the responsibility of the federal government. Applicants

92 Art. 6 para 1 Federal Government Basic Welfare Support Act.

93 Sandra Kiendler, Caritas Vienna. Interview carried out by IOM Vienna, 1 August 2013; Christoph Riedl, Diakonie Refugee Service. Interview carried out by IOM Vienna, 3 July 2013; Survey among the provincial authorities in charge of basic welfare support of the provinces Burgenland, Carinthia, Salzburg, Styria, Tyrol, Vienna and Vorarlberg, July/August 2013, carried out by IOM Vienna.

94 Art. 6 para 2 Federal Government Basic Welfare Support Act.

95 Survey among the provincial authorities in charge of basic welfare support of the provinces Burgenland, Carinthia, Salzburg, Styria, Tyrol, Vienna and Vorarlberg, July/August 2013, carried out by IOM Vienna.

who have been admitted to the asylum procedure and others falling under the responsibility of the provinces (for further details see 2.2) are allocated to the different types of reception facilities in the provinces, namely to organized reception facilities or individual accommodation.

#### Geographic location:

After applying for international protection, beneficiaries in the admission procedure are allocated to the reception facilities of the federal government, taking into account where in Austria the person has applied for international protection. The five reception facilities of the federal government are geographically distributed. There is one facility each in the North, South, East and West and one in the centre of Austria. The beneficiary will most likely be allocated to the facility in the geographical area where he or she has applied for international protection.<sup>96</sup>

#### Dispersal mechanism:

Applicants who fall under the responsibility of the provinces are allocated to reception facilities in the various provinces in proportion to their population; this quota is considered on a yearly basis.<sup>97</sup> The quotas are, however, not 100 per cent fulfilled by most provinces, while others exceeded their quotas (e.g. Lower Austria, Upper Austria and Vienna). Table 4 displays the quotas and the allocation of applicants among the provinces over the last five years.

It is striking that Vienna is the only province that fulfilled (and even exceeded) its quota throughout the last five years (2008 to 2012). Compared to the other provinces, Vienna is disproportionately affected by capacity strains. In essence, Vienna's high share of foreign nationals means that a comparatively large number of applicants for international protection have family members living in Vienna. Hence, when allocating applicants who have been admitted to the actual asylum procedure to reception facilities of the provinces, a disproportionately high number is allocated to the province of Vienna, since not only the quota but also

96 Gerald Dreveny, Federal Ministry of the Interior. Interview carried out by IOM Vienna, 29 May 2013; [www.bmi.gv.at/cms/BMI\\_Asylwesen/betreuung](http://www.bmi.gv.at/cms/BMI_Asylwesen/betreuung) (accessed on 22 January 2014).

97 Art. 1 para 4 Basic Welfare Support Agreement.

Table 4: Number of beneficiaries in reception facilities, by province (as of 2 January) <sup>1</sup>

Province	Quota (%)	2008		2009		2010		2011		2012	
		Target	Actual	Target	Actual	Target	Actual	Target	Actual	Target	Actual
Burgenland	3.5	849	835	811	762	752	659	619	551	624	609
Carinthia	7.0	1,710	986	1,634	978	1,515	1,082	1,227	987	1,223	954
Lower Austria	19.2	4,727	4,857	4,516	4,679	4,186	3,936	3,513	3,157	3,529	3,591
Salzburg	6.4	1,576	1,379	1,506	1,282	1,396	1,204	1,158	1,055	1,163	953
Styria	14.7	3,618	3,178	3,457	3,161	3,204	2,831	2,643	2,340	2,650	2,331
Tyrol	8.4	2,060	1,463	1,968	1,397	1,824	1,492	1,538	1,401	1,551	1,283
Upper Austria	17.1	4,209	4,687	4,022	4,348	3,728	3,839	3,088	3,053	3,094	2,575
Vienna	19.3	4,740	6,161	4,529	5,948	4,198	5,838	3,683	5,052	3,733	5,449
Vorarlberg	4.4	1,073	1,017	1,026	913	951	870	803	695	809	631

Source: Federal Ministry of the Interior, special evaluation.

<sup>1</sup> Applicants accommodated in federal reception facilities are added to the numbers accommodated in the province where the facilities are located; hence, the displayed numbers include both applicants accommodated in reception facilities of the provinces and of the federal government.

existing family relations are taken into account (see paragraph below).<sup>98</sup> Furthermore, Vienna is particularly attractive for applicants for international protection due to its infrastructure, foreign language services and foreign communities. Therefore, relocation, if it takes place (for further details see 4.2.3), often is directed towards Vienna.<sup>99</sup>

#### Profile of the beneficiaries:

When allocating applicants for international protection in federal care to reception facilities, existing family relations, the special needs of single women and minor children as well as ethnic particularities shall be taken into consideration.<sup>100</sup> The responsible public authority in the provinces also considers the applicant's profile when receiving and allocating applicants to different types of reception facilities. These factors include nationality, ethnic group, religion, sex, age (underage or not) and family status, as well as special needs, particular need of care or possibly other medical needs. Furthermore, complementing the applicant's profile, some provinces take into consideration the type of board foreseen in reception facilities (full board or self-supply) as well as the location of the facility (e.g. nearby schools or medical facilities).<sup>101</sup>

If the applicant is a UAM, he or she is entitled to specific reception facilities according to Art. 7 para 1 and 2 of the Basic Welfare Support Agreement (see Table 2; for further details see 5.2). Therein it is defined that minors with a high need of supervision shall be accommodated in apartment-sharing groups, minors unable to care for themselves shall be accommodated in residential homes and minors who are able to care for themselves if supervised shall be accommodated in supervised accommodation. Beyond that, the allocation of UAMs to the different types of reception facilities is not specified; the practices in the provinces vary (Austrian Court of Audit 2013: 75-76).

98 Sandra Kiendler, Caritas Vienna. Interview carried out by IOM Vienna, 1 August 2013.

99 Survey among the provincial authorities in charge of basic welfare support of the provinces Burgenland, Carinthia, Salzburg, Styria, Tyrol, Vienna and Vorarlberg, July/August 2013, carried out by IOM Vienna.

100 Art. 2 para 2 Federal Government Basic Welfare Support Act.

101 Survey among the provincial authorities in charge of basic welfare support of the provinces Burgenland, Carinthia, Salzburg, Styria, Tyrol, Vienna and Vorarlberg, July/August 2013, carried out by IOM Vienna.

#### 4.2.3 The allocation process and possibilities as regards relocation

The process of assigning beneficiaries to different reception facilities is not regulated by law. However, in a standards practice, the coordination unit within the Federal Ministry of the Interior submits lists of applicants who have to be allocated to reception facilities in the provinces to the responsible authorities in the provinces on a daily basis. This list also indicates the special needs of the applicants. The provinces then – after possibly consulting the operators of reception facilities – provide feedback on which applicants they are able and/or willing to accommodate. In a final step, the provinces decide about the allocation to the reception facilities and the applicants are subsequently transferred.<sup>102</sup>

The beneficiary may also be granted a choice for a specific location or reception facility in order to maintain family unity, applying a broad definition of family (i.e. including grandparents/grandchildren).<sup>103</sup> Beneficiaries living in individually arranged accommodation can request relocation to an organized reception facility in the same province. This application is decided upon by the public authority responsible for basic welfare support established within the respective provincial government office.<sup>104</sup>

When they are under disproportional capacity strain, single provinces can, with the agreement of the coordination unit at the federal level, arrange the relocation of a number of beneficiaries to another province.<sup>105</sup> So far, this option has not been used (for further details see 6.3). Instead, in practice relocation between the provinces takes place in single cases and upon request of the respective beneficiary, for example in Carinthia and Vienna.<sup>106</sup>

102 Hilbert Karl, Federal Ministry of the Interior. Interview carried out by IOM Vienna, 29 May 2013; Survey among the provincial authorities in charge of basic welfare support of the provinces Burgenland, Carinthia, Salzburg, Styria, Tyrol, Vienna and Vorarlberg, July/August 2013, carried out by IOM Vienna.

103 Hilbert Karl, Federal Ministry of the Interior. Interview carried out by IOM Vienna, 29 May 2013.

104 Sandra Kiendler, Caritas Vienna. Interview carried out by IOM Vienna, 1 August 2013.

105 Art. 4 para 3 Basic Welfare Support Agreement.

106 Survey among the provincial authorities in charge of basic welfare support of the provinces Burgenland, Carinthia, Salzburg, Styria, Tyrol, Vienna and Vorarlberg, July/August 2013, carried out by IOM Vienna.

Rejected applicants who cannot be deported due to legal or practical reasons may be relocated to the provinces with the support of the coordination unit in the Federal Ministry of the Interior and upon request of the province (for further details see 2.3).<sup>107</sup> When applicants receive a final positive decision on their application for international protection, they may also be relocated to a reception facility in another province in agreement with the concerned provinces. This is possible for the time that they are still entitled to basic welfare support, namely for a period of up to four months after they have received the final positive decision.<sup>108</sup>

#### 4.2.4 Practical challenges during the allocation process

There are mainly two practical challenges regarding the assignment process. Firstly, in difficult cases, the allocation may take longer than usual if no adequate reception facility is available in the provinces. According to the Federal Ministry of the Interior it can take, for example, two to three months instead of the 14 days that are foreseen in Art. 6 para 2 Federal Government Basic Welfare Support Act.<sup>109</sup> These cases mainly involve people with special needs (e.g. with diseases or disabilities).<sup>110</sup> Another practical challenge occurs when insufficient information is provided on the special needs of the applicant for international protection. In such cases the individual might be allocated to provincial reception facilities that are unable to meet his or her needs.<sup>111</sup>

107 Art. 3 para 2 Basic Welfare Support Agreement.

108 Hilbert Karl, Federal Ministry of the Interior. Interview carried out by IOM Vienna, 29 May 2013.

109 Ibid.

110 Survey among the provincial authorities in charge of basic welfare support of the provinces Burgenland, Carinthia, Salzburg, Styria, Tyrol, Vienna and Vorarlberg, July/August 2013, carried out by IOM Vienna.

111 Caritas Lower Austria, Caritas Vorarlberg. Written response to interview questions, August 2013; Christoph Riedl, Diakonie Refugee Service. Interview carried out by IOM Vienna, 3 July 2013.



## 5. RECEPTION CONDITIONS IN AUSTRIA

### 5.1 Material reception conditions

The Basic Welfare Support Agreement between the federal government and the provinces aims to harmonize the provision of basic welfare support throughout Austria.<sup>112</sup> According to Art. 6 para 1 of the Basic Welfare Support Agreement, material reception support (i.e. housing, food, clothing and pocket money)<sup>113</sup> includes the following:

- Accommodation in adequate facilities, respecting human dignity and considering the family unity;
- Measures for persons in need of nursing care;
- The provision of adequate food;
- Cash or in kind allowance for necessary clothing;
- Monthly pocket money for applicants in organized reception facilities and for UAMs, but not in case of individual accommodation.

According to Art. 9 of the Basic Welfare Support Agreement and the Agreement Increasing Maximum Amounts,<sup>114</sup> the following respective maximum amounts are covered:

Rent of individual accommodation:

- Single person: 120 EUR per Person and month;
- Family (minimum two persons): 240 EUR per family and month.

Special accommodation for persons in need of nursing care (paid to the operator of the facility):

- 2,480 EUR per person and month.

Food in individual accommodation:

- Adult: 200 EUR per person and month;
- Minor: 90 EUR per person and month;

112 Art. 1 para 1 Basic Welfare Support Agreement.

113 The Reception Conditions Directive (2003/9/EC) defines material reception conditions as housing, food and clothing, provided in kind, as financial allowances or in vouchers, and a daily expense allowance (EMN 2012: 158).

114 Applicable since 1 March 2013 with retroactive effect as of 1 January 2012.

- UAM: 180 EUR per person and month.

Food and accommodation in organized reception facilities (paid to the operator of the facility):

- General: 19 EUR per person and day;
- UAM: 77 EUR when accommodated in an apartment-sharing group, 62 EUR when accommodated in a residential home and 39 EUR when accommodated in a supervised or other accommodation (per person and day).

Clothing:

- 150 EUR per person and year.

Pocket money:

- 40 EUR per person and month.

The Federal Government Basic Welfare Support Act does not define its own catalogue of reception conditions, but refers to Art. 6 and 7 of the Basic Welfare Support Agreement.<sup>115</sup> Some of the provincial laws provide reception conditions that differ from the Basic Welfare Support Agreement (see Table 9). The material reception conditions as outlined above, however, are the same in the federal and provincial laws.

## **5.2 Special reception conditions for vulnerable groups and unaccompanied minors**

Special reception conditions are foreseen in the Basic Welfare Support Agreement as well as in federal and provincial laws for persons in need of nursing care. These include special accommodation and a different maximum amount of assistance.<sup>116</sup> The consideration of special needs of other vulnerable groups (i.e. disabled people, elderly people, pregnant women, single parents with minor children, persons who have been subjected to torture, rape, or other serious forms of psychological, physical, or sexual violence) is not explicitly addressed, except for in the provincial laws of Lower Austria and Vorarlberg.<sup>117</sup> UAMs are the only

115 Art. 1 para 3 Federal Government Basic Welfare Support Act.

116 Art. 9 Basic Welfare Support Agreement.

117 Art. 6 para 4 Provincial law regulating basic welfare support in Lower Austria; Art. 7 para 3 Provincial law regulating minimum social benefits, Vorarlberg.

group of vulnerable applicants for which special reception conditions are broadly provided for by legislation. The following provisions are laid down in the Basic Welfare Support Agreement. Six out of nine provinces have transposed these provisions into their provincial legislation; a transposition into the federal act has not taken place.<sup>118</sup>

UAMs shall be accommodated in apartment-sharing groups (for minors with a high need of supervision), residential homes (for minors unable to care for themselves), supervised accommodation (for minors able to care for themselves if supervised), other suitable organized reception facilities or in individual accommodation.<sup>119</sup> The foreseen supervision rate is 1:10 in apartment-sharing groups, 1:15 in residential homes and 1:20 in supervised accommodation (see also Table 5).<sup>120</sup>

Overall, basic welfare support shall be complemented by measures aiming at building trust and mental stabilization. If necessary, socio-pedagogical and psychological care must be provided.<sup>121</sup> The requirements for and extent of such measures is, however, not further defined.

Material reception conditions (housing, food, clothing and pocket money) are provided for by Art. 6 and 9 of the Basic Welfare Support Agreement as described above. Non-material reception conditions include (as for other minors or adults) health insurance, school supplies (200 EUR per child and year) and leisure activities in organized accommodation (10 EUR per person and month). In addition, UAMs are granted 200 teaching units of German language courses (3.63 EUR per unit per person).<sup>122</sup>

Furthermore, the care for UAMs foresees an adequately structured daily routine, for example through education, leisure activities, sports, housekeeping and group and individual activities. This should take various factors into account, including age, identity, origin and residence of family members, facilitation of family reunification, clarification of

118 Art. 7 Provincial law regulating basic welfare support in Burgenland; Art. 4 Provincial law regulating basic welfare support in Carinthia; Art. 6 Provincial law regulating basic welfare support in Lower Austria; Art. 5 Provincial law regulating basic welfare support in Salzburg; Art. 8 Provincial law regulating basic welfare support in Styria; Art. 7 Provincial law regulating basic welfare support in Tyrol.

119 Art. 7 para 1 and 2 Basic Welfare Support Agreement.

120 Art. 9 Basic Welfare Support Agreement.

121 Art. 7 para 1 Basic Welfare Support Agreement.

122 Art. 9 Basic Welfare Support Agreement.

future perspectives, as well as where applicable the development of and integration plan.<sup>123</sup>

### **5.3 Non-material reception conditions that relate to the different reception facilities**

Three non-material reception conditions can be seen as directly relating to the beneficiaries' experience of being accommodation in a specific reception facility, namely, the available surface per person, the supervision rate (number of staff per person) and the possibility to take part in leisure activities. They will be addressed in more detail in the following paragraphs. A full list of non-material and material reception conditions and the respective maximum amounts that are covered are displayed in Table 9 in Annex 1.

No information is available concerning the surface in square meters per beneficiary. Neither the Basic Welfare Support Agreement nor federal and provincial laws define any minimum requirements in this regards. Instead, the contracts concluded between the federal government or the province and the service provider who runs the reception facility define a minimum surface on an individual basis (for further details see 5.4.1).

The general supervision rate as foreseen by national legislation is 1:170 (one staff per 170 persons). Supervision in this regard includes information provision, counselling and social support.<sup>124</sup> In practice, this includes support in all matters related to basic welfare and other support and life in reception facilities, for example right to family allowances, access to nursery schools and schools, health insurance, problems with operators of reception facilities or other daily life issues). Supervision may be provided directly in the reception facilities, through mobile units visiting the reception facilities or in counselling centres.<sup>125</sup> The supervision rate foreseen for UAMs is higher, depending on the kind of reception facility (1:10 in apartment-sharing groups, 1:15 in residential homes and

123 Art. 7 Basic Welfare Support Agreement.

124 Art. 9 Basic Welfare Support Agreement.

125 Sandra Kiendler, Caritas Vienna. Interview carried out by IOM Vienna, 1 August 2013; Karin Knogl, Caritas Vienna. Interview carried out by IOM Vienna, 1 August 2013; Christoph Riedl, Diakonie Refugee Service. Interview carried out by IOM Vienna, 3 July 2013.

1:20 in supervised accommodation).<sup>126</sup> No minimum qualification or experience requirements for supervisors are foreseen in legislation.

As regards leisure activities, Art. 9 of the Basic Welfare Support Agreement provides for a maximum amount of 10 EUR per person and month. This is, however, not foreseen for beneficiaries living in individual accommodation. In addition, activities are offered in the different reception facilities that vary in practice.<sup>127</sup> As for UAMs, national

**Table 5: Selected non-material reception conditions in the different reception facilities**

Type of accommodation	Surface per applicant in square meters	Supervision rate (number of staff per entitled person)	Possibility of leisure activities?
<b>Collective initial/transit reception centres</b>	No requirements defined by law.	1:170.	A maximum amount of 10 EUR per person and month is provided for by law for leisure activities. Furthermore, in practice, both federal and provincial care foresee a possibility of leisure activities in reception facilities. These include varying activities such as language and integration courses, IT courses, sports and excursions.
<b>Organized reception facilities</b>	No requirements defined by law.	See above.	See above.
<b>Special reception facilities for unaccompanied minors</b>	No requirements defined by law.	1:10 in apartment-sharing groups, 1:15 in residential homes and 1:20 in supervised accommodation	Language courses and an adequately structured daily routine (e.g. through education, leisure activities, sport, housekeeping, group and individual activities) are provided for by law. As in other organized reception facilities, the activities vary in practice.
<b>Individual accommodation</b>	No requirements defined by law.	The maximum supervision rate is 1:170.	No.

*Source:* Art. 7 and Art. 9 Basic Welfare Support Agreement; Federal Ministry of the Interior, special evaluation; Fronck 2010: 158; Survey among the provincial authorities in charge of basic welfare support of the provinces Burgenland, Carinthia, Salzburg, Styria, Tyrol, Vienna and Vorarlberg, July/August 2013, carried out by IOM Vienna.

126 Art. 9 Basic Welfare Support Agreement.

127 Survey among the provincial authorities in charge of basic welfare support of the provinces Burgenland, Carinthia, Salzburg, Styria, Tyrol, Vienna and Vorarlberg, July/August 2013, carried out by IOM Vienna.

legislation foresees the provision of language courses and an adequately structured daily routine (e.g. through education, leisure activities, sport, housekeeping and group and individual activities).<sup>128</sup> In this case as well, the activities vary in practice (Fronek 2010: 158).

## **5.4 Quality assurance of reception conditions**

### **5.4.1 Quality standards**

Overall, the Basic Welfare Support Agreement foresees accommodation in adequate reception facilities, taking into account respect for human dignity and family unity and the provision of suitable food.<sup>129</sup> However, so far no specific guidelines are available. Currently, a working group consisting of members of the federal government-province coordination council representing the provinces is developing common quality standards.<sup>130</sup>

In light of this lack of guidelines, the contracts between the federal government or the province and the service provider who runs the reception facility function as a mechanism to define minimum requirements and to set standards for the reception conditions provided.<sup>131</sup> The contracts clearly define the tasks to be fulfilled by the service provider, for example the number of applicants to be received, provision of transportation, or construction of a playground. They furthermore set out standards to be met, for example regarding food quality, supervision rate or surface per person. Sanctions for cases of non-fulfilment are also included (e.g. in form of withholding of payments).<sup>132</sup> The contracts often differ and are

128 Art. 7 and 9 Basic Welfare Support Agreement.

129 Art. 6 para 1(1) and (2) Basic Welfare Support Agreement.

130 Hilbert Karl, Federal Ministry of the Interior. Interview carried out by IOM Vienna, 29 May 2013; Survey among the provincial authorities in charge of basic welfare support of the provinces Burgenland, Carinthia, Salzburg, Styria, Tyrol, Vienna and Vorarlberg, July/August 2013, carried out by IOM Vienna.

131 Hilbert Karl, Federal Ministry of the Interior. Interview carried out by IOM Vienna, 29 May 2013; Karin Knogl, Caritas Vienna. Interview carried out by IOM Vienna, 1 August 2013; Survey among the provincial authorities in charge of basic welfare support of the provinces Burgenland, Carinthia, Salzburg, Styria, Tyrol, Vienna and Vorarlberg, July/August 2013, carried out by IOM Vienna.

132 Hilbert Karl, Federal Ministry of the Interior. Interview carried out by IOM Vienna, 29 May 2013; Karin Knogl, Caritas Vienna. Interview carried out by IOM Vienna,

set up individually. However, in Vienna there is a standard contract that is concluded with all service providers.<sup>133</sup>

In addition, provincial laws on commerce regulations, building regulations, fire protection or hygiene may apply to organized reception facilities; however, the applicability depends on the type of facility and differs in the provinces.<sup>134</sup>

It must be noted that the above applies only to organized reception facilities. There are no kinds of quality standards for individual accommodation and no control mechanisms (see 5.4.2).<sup>135</sup>

As for UAMs, there are no special guidelines for quality standards available. However, the provincial Youth Welfare Acts can be viewed as possible guidelines for defining standards in service contracts (see above).<sup>136</sup> The Federal Ministry of the Interior pointed out that its contracts with the service provider particularly emphasize the needs of UAMs.<sup>137</sup>

#### 5.4.2 Control mechanisms

In order to prepare periodic analysis on the implementation of the Basic Welfare Support Agreement (for further detail see 2.3),<sup>138</sup> the Federal Minister of the Interior, together with the Aliens Police Authority and the Fiscal Authority, is allowed to carry out inspections on site assessing to what extent the de facto provided reception conditions comply with the provisions laid down in the Basic Welfare Support Agreement. They can also participate in assessments carried out by the

1 August 2013; Christoph Riedl, Diakonie Refugee Service. Interview carried out by IOM Vienna, 3 July 2013.

133 Christoph Riedl, Diakonie Refugee Service. Interview carried out by IOM Vienna, 3 July 2013.

134 Christoph Riedl, Diakonie Refugee Service. Interview carried out by IOM Vienna, 3 July 2013; Survey among the provincial authorities in charge of basic welfare support of the provinces Burgenland, Carinthia, Salzburg, Styria, Tyrol, Vienna and Vorarlberg, July/August 2013, carried out by IOM Vienna.

135 Sandra Kiendler, Caritas Vienna. Interview carried out by IOM Vienna, 1 August 2013.

136 Christoph Riedl, Diakonie Refugee Service. Interview carried out by IOM Vienna, 3 July 2013.

137 Hilbert Karl, Federal Ministry of the Interior. Interview carried out by IOM Vienna, 29 May 2013.

138 Art. 5 para 3 (2) Basic Welfare Support Agreement.

authorities of the provinces.<sup>139</sup> The frequency of such controls, both by the federal government and the province, is not stipulated.

In practice, the frequency of inspections carried out by the provincial authorities differs, ranging from randomly, several times a year to several times a week. Furthermore, inspections are carried out in concrete cases.<sup>140</sup> Usually, reports are prepared and in case of discrepancies, adjustment measures are requested. In case of non-compliance, the contract may be cancelled.<sup>141</sup>

Inspections are also carried out on-site by staff of the federal government, who are sometimes accompanied by the Aliens Police Authority or by the service providers themselves.<sup>142</sup> If the supervision of beneficiaries is provided by mobile counselling units, the respective service provider carrying out the supervision may also be contracted to carry out inspections and to report to the province.<sup>143</sup>

Beneficiaries of basic welfare support may also issue a complaint before the responsible public authority, the service provider running the reception facility, employees of the facility or others. However, there is no common, formal mechanism of complaint in place (Priewasser 2006: 43).<sup>144</sup>

139 Art. 9a Federal Government Basic Welfare Support Act.

140 Caritas Lower Austria, Caritas Vorarlberg. Written response to interview questions, August 2013; Karin Knogl, Caritas Vienna. Interview carried out by IOM Vienna, 1 August 2013; Christoph Riedl, Diakonie Refugee Service. Interview carried out by IOM Vienna, 3 July 2013; Survey among the provincial authorities in charge of basic welfare support of the provinces Burgenland, Carinthia, Salzburg, Styria, Tyrol, Vienna and Vorarlberg, July/August 2013, carried out by IOM Vienna.

141 Christoph Riedl, Diakonie Refugee Service. Interview carried out by IOM Vienna, 3 July 2013; Survey among the provincial authorities in charge of basic welfare support of the provinces Burgenland, Carinthia, Salzburg, Styria, Tyrol, Vienna and Vorarlberg, July/August 2013, carried out by IOM Vienna.

142 Caritas Lower Austria, Caritas Vorarlberg. Written response to interview questions, August 2013; Gerald Dreveny, Federal Ministry of the Interior. Interview carried out by IOM Vienna, 29 May 2013; Survey among the provincial authorities in charge of basic welfare support of the provinces Burgenland, Carinthia, Salzburg, Styria, Tyrol, Vienna and Vorarlberg, July/August 2013, carried out by IOM Vienna.

143 Christoph Riedl, Diakonie Refugee Service. Interview carried out by IOM Vienna, 3 July 2013.

144 Ibid.



### 5.4.3 Public debate about the quality of reception conditions

A review of thematically relevant press articles from the main daily and weekly newspapers in Austria<sup>145</sup> covering the period from 2012 to 2013 found that during this recent time period, three cases were prominently covered.

Firstly, the reception facility ‘Saualm’ in Carinthia made the headlines for several months in 2012, because serious deficiencies regarding sewage, safety precautions, food safety and health care were discovered. The reception centre had temporarily been closed for renovation and was later closed down completely following civil society protests, official controls and criticism by political parties.<sup>146</sup>

Secondly, a protest of a group of asylum-seekers that started at the end of November 2012 and lasted until 2013 was widely reported in the Austrian press and extensively debated by the public.<sup>147</sup> The asylum-seekers’ demands focused on the improvement of reception conditions, such as access to health care, German language courses, healthier food, winter clothes, better infrastructure and overall improvement of living conditions. They also included access to the labour market and the improvement of asylum procedures, for example more interpreters and faster procedures.<sup>148</sup> Several faith-based organizations and NGOs as well as parts of the broader public supported their claims,<sup>149</sup> and efforts were made to engage in direct dialogue between the protesters, their supporters and political stakeholders.<sup>150</sup>

145 Daily newspapers: Der Standard, Die Presse, Kleine Zeitung, Kurier, Kronenzeitung, Österreich, Salzburger Nachrichten and Wiener Zeitung; Weekly newspapers: Falter, News, Profil and Format.

146 See, for example, Der Standard, *Saualm: Wieder Vorwürfe wegen Missstände*, 9 June 2012, p. 11; Der Standard, *Volksanwaltschaft prüft Missstände in Asylheim auf Saualm*, 7 August 2012, p. 1; Wiener Zeitung, *Weil Heizung und Fenster desolat sind, wird das Asylheim kurzzeitig geräumt*, 7 September 2012, p. 12.

147 See, for example, Österreich, *Asyl-Camp mitten in Wien*, 26 November 2012, p. 7.

148 See, for example, Falter, *Der Marsch auf Wien: Asylwerber protestieren vor dem Asylgerichtshof*, 28 November 2012, p. 19.

149 See, for example, Kurier, *Prominente Unterstützer für Wiens Flüchtlingscamper*, 27 November 2012, p. 19; Salzburger Nachrichten, *Flüchtlinge bleiben in der Kirche*, 20 December 2012, p. 11.

150 See, for example, Kleine Zeitung, *Mikl-Leitner schmettert Asylanten-Wünsche ab*, 31 December 2013, p. 4.

Thirdly, the Austrian print media reported about the findings of an investigation carried out by the association Dossier.<sup>151</sup> Dossier visited 98 reception facilities in the provinces of Burgenland, Lower Austria and Salzburg and found that one-third of the facilities had severe defects. Such defects included, for example, mildew, loose power supply lines, old mattresses with holes, poor nutrition, overcrowding, isolated locations and a lack of integration measures.<sup>152</sup> The reactions of civil society and politics were also reported by the Austrian print media. For example, the lack of common minimum standards and independent control institutions was criticized (for further information see 5.4.4).<sup>153</sup>

In addition, the Austrian press reported about a number of position papers regarding the quality of reception in Austria that were issued by civil society stakeholders in 2012 and 2013. For example, the Ombudsmen for Children and Youth in Austria issued a six-point paper calling for increased reception and supervision conditions for UAMs, as well as adequate first reception, fast procedures, access to education and vocational training and age determination procedures that are in line with international standards.<sup>154</sup> Furthermore, a group of Austrian organizations working with asylum-seekers and refugees<sup>155</sup> issued a general position paper on basic welfare support standards. Therein they stressed the divergence in practices in the provinces and the lack of a comprehensive evaluation. The organizations called for improved living conditions regarding accommodation, food and supervision.<sup>156</sup> In mid-

151 Dossier is an association supporting investigative and data journalism ([www.dossier.at](http://www.dossier.at), accessed on 22 January 2014).

152 See, for example, Der Standard, *Große Mängel in einem Drittel aller Asylpensionen*, 14 November 2013, p. 10.

153 See, for example, Die Presse, *Asyl: Ruf nach Mindeststandards*, 15 November 2013, p. 9.

154 Kinder- und Jugendanwaltschaften Österreichs, *Kritik der österreichischen Kinder- und JugendanwältInnen am Umgang mit Kinder und Jugendlichen auf der Flucht*, 2012, available at <http://cdn2.vol.at/2012/11/Umgang-mit-Fluechtlingskindern.pdf> (accessed on 14 August 2013).

155 Agenda Asyl (Asylkoordination Österreich, Diakonie Flüchtlingsdienst, Verein Projekt Integrationshaus, SOS Mitmensch, Volkshilfe Österreich).

156 Agenda Asyl, *Grundversorgungsstandards: Anstöße zur Hebung des Lebensstandards für AsylwerberInnen und nicht-abschiebbare Fremde (angemessener Lebensstandard)*, 2012, available at [www.asyl.at/fakten\\_2/gv\\_agenda\\_asyl\\_lv\\_juni12.pdf](http://www.asyl.at/fakten_2/gv_agenda_asyl_lv_juni12.pdf) (accessed on 14 August 2013).

2013, Caritas Austria and Amnesty International presented together a five-point programme demanding improvements regarding access to the labour market, increased quality of basic welfare support including quality standards for reception and supervision, improved asylum application procedures, access to education and a common EU asylum policy that is in line with human rights provisions.<sup>157</sup>

#### 5.4.4 Evaluations of the quality of reception conditions

So far, no comprehensive external evaluation of the quality of basic welfare support in general and reception facilities in particular has been carried out. Some independent stakeholders, however, did carry out inspections in selected facilities. A short overview of some recent reports that are publicly available is provided below.

In 2011/2012 the Austrian Court of Audit<sup>158</sup> (ACA) carried out inspections, including on-site assessments and interviews, in the provinces of Salzburg, Styria and Vienna, in order to assess their accomplishments regarding the overall reception of beneficiaries of basic welfare support. In terms of the quality of reception conditions, the ACA found in its report that the general supervision rate of 1:170 as laid down in national legislation was only met in Vienna. As regards the reception facilities, overall, despite shortcomings in some facilities (e.g. defective devices and dirt), the impression was positive in terms of furniture, cleanliness and construction. However, the report also highlights that after inspections were carried out by the provinces, some reception facilities had to be temporarily or permanently closed due to sanitary and hygienic deficiencies, construction and technical shortcomings or issues with the operator of the facilities. The quality standards as laid down in the respective contracts between the provinces and the operators of the reception facilities, however, were considered to be sufficient. In addition, the ACA found discrepancies in the provinces regarding the frequency of inspections and the practice of allocating UAMs to the different reception

157 Caritas Austria, *Fünf-Punkte-Programm – Initiative Zukunft Asyl*, 13 June 2013.

158 The Austrian Court of Audit (ACA) is an independent institution of the federal state. Its main task is to control that public funds are spent in an economic, efficient and effective manner. This includes public auditing of the organization and provision of basic welfare support ([www.rechnungshof.gv.at/en/home.html](http://www.rechnungshof.gv.at/en/home.html), accessed on 22 January 2014).

facility categories. The ACA thus proposed that common minimum standards and precise criteria should be defined (Austrian Court of Audit 2013).

In 2012 the Austrian Ombudsman Board<sup>159</sup> (AOB) initiated two investigative proceedings in a reaction to complaints and media reports concerning the quality of reception conditions in the provinces of Carinthia and Burgenland. Two reception facilities were assessed in Carinthia (including the reception facility “Saualm”; see 5.4.3), and nine in Burgenland based on statements of the provincial governments and documentation of the responsible public authorities established within the respective provincial government office. In its report on Carinthia, the AOB outlines deficiencies in all matters, for example regarding supervision, psychological and medical care, payment of financial allowances, provision of transportation and conduction of auxiliary activities. As regards hygiene, facilities and food, the AOB went so far as to speak of a violation of human rights. The AOB concludes that deficiencies were mainly known but not effectively addressed by the public authority. In its report on Burgenland as well, the AOB found shortcomings in complaint management and control obligation of the responsible public authority. Furthermore, the quality of reception conditions was not found to adequately meet human rights standards due to deficiencies regarding construction, hygiene or food. The lack of activities for a structured daily routine was also outlined. Both reports formulate corresponding recommendations addressing the provincial governments and the Federal Minister of the Interior (Austrian Ombudsman Board 2013a; Austrian Ombudsman Board 2013b).

The Commissioner for Human Rights<sup>160</sup> together with a delegation visited Austria from in June 2012. During his visit, the Commissioner met with national authorities and other interlocutors, including civil society

159 The Austrian Ombudsman Board (AOB) is in charge of monitoring and controlling the public administration of the federal government, the provinces and the municipalities. Investigative proceedings are initiated ex officio or as a response to individual complaints. The protection and promotion of human rights also falls within the mandate of the AOB (<http://volksanwaltschaft.gv.at/en/the-austrian-ombudsman-board>, accessed on 22 January 2014).

160 The Commissioner for Human Rights is an independent, non-judicial institution of the Council of Europe. Its mandate is to promote the awareness of and respect for human rights in the 47 member states of the Council of Europe. The activities

representatives in order to discuss human rights issues in Austria with a focus on the national system for protecting and promoting human rights and the human rights of vulnerable groups. In order to get an idea of the reception of applicants for international protection, the Commissioner visited the initial reception centre in Traiskirchen. In his report, he found that the basic needs of applicants there were met. However, based on his discussions, he understood that reception conditions vary substantially across the facilities in the different provinces. He therefore encouraged the authorities to ensure adequate standards throughout the country and to follow up on allegations of substandard conditions. Based on the observation that the number of UAMs accommodated in Traiskirchen is significantly higher than the number of special places, the Commissioner reminded the authorities to comply with international standards (Commissioner for Human Rights 2012).

In addition, UNHCR<sup>161</sup> carried out two projects in 2012 and 2013 with the aim of assessing the quality of reception facilities in Austria. UNHCR found that the quality of reception varied and was partly very poor. Because the conditions of basic welfare support were different in the provinces, UNHCR argues for the introduction of binding common quality standards as regards accommodation, reception and supervision, as well as an improved quality assurance, including affective control and complaint mechanisms (UNHCR 2013: 5-6).

As mentioned above, in 2013 the association Dossier<sup>162</sup> carried out a journalistic investigation in 98 reception facilities in the provinces of Burgenland, Lower Austria and Salzburg. The facilities were assessed according to the following criteria: location and infrastructure, building integrity, rooms, sanitary facilities, food, treatment and supervision.

include country visits, reporting, advising and awareness-raising ([www.coe.int/t/commissioner](http://www.coe.int/t/commissioner), accessed on 22 January 2014).

161 UNHCR is the UN Refugee Agency mandated to lead and coordinate international action to protect refugees and resolve refugee problems worldwide. The branch office in Austria fulfills a wide range of tasks, including, amongst others, monitoring asylum relevant laws and publishing official statements concerning refugee related questions ([www.unhcr.at](http://www.unhcr.at), accessed on 22 January 2014).

162 Dossier is an association that supports investigative and data journalism. Dossier addresses issues of public interest, carries out comprehensive research and presents the findings in an independent and clear manner ([www.dossier.at/inserate/ueber-dossier/die-idee](http://www.dossier.at/inserate/ueber-dossier/die-idee), accessed on 22 January 2014).

The findings were presented in an interactive chart on the website [www.dossier.at](http://www.dossier.at). It was found that around one-third of the reception facilities were poor. Some beneficiaries were living in isolated locations, in confined spaces without sufficient food and sometimes under conditions that pose a danger to health and hygiene.<sup>163</sup>

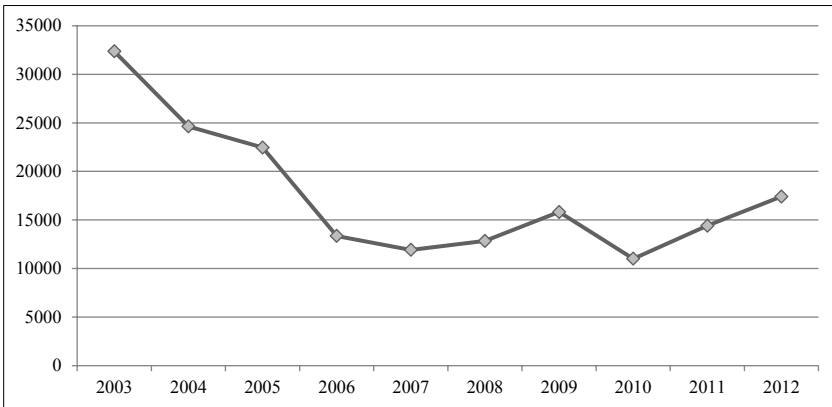
163 [www.dossier.at/asyl/karte](http://www.dossier.at/asyl/karte) (accessed on 22 January 2014).

# 6. FLEXIBILITY OF THE AUSTRIAN RECEPTION SYSTEM

## 6.1 Trends in the inflow of applicants for international protection

As the statistics displayed below show, the overall trend of asylum applications over the last ten years is negative. The number of asylum applications per year dropped from 32,359 applications in 2003 to 17,413 in 2012; that is an overall decrease of around 46 per cent. The overall high of 39,354 applications in 2002 was not reached. Taking a closer look, the number of asylum applications dropped between 2003 and 2007 by around 63 per cent (2003: 32,359; 2007: 11,921). Thereafter the number increased by around 33 per cent, reaching 15,821 applications in 2009. A second drop occurred in 2010, when the number decreased by around 30 per cent, reaching 11,012 applications, a number slightly below the low point of 2007. The number of asylum applications per year then started to increase again, reaching 17,413 in 2012 (that is an increase of around 58 %).

Figure 1: Number of asylum applications, total 2003 – 2012



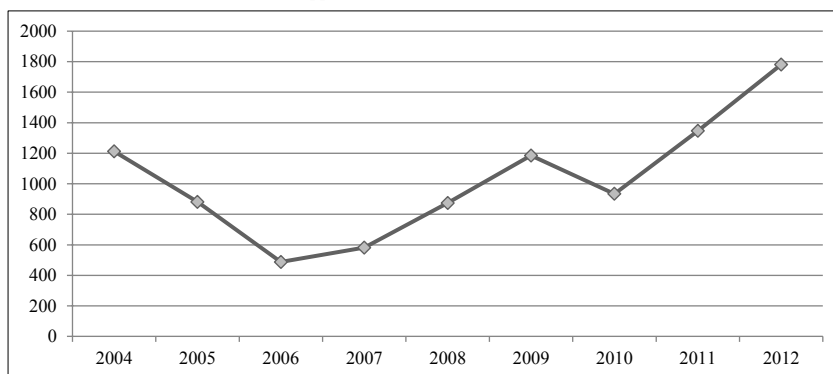
Source: STATISTIK AUSTRIA; Federal Ministry of the Interior.

The developments of the number of asylum applications lodged by UAMs mirror to some extent those of the total number of asylum applications; the overall trend, however, is positive.<sup>164</sup> The number of

164 Numbers are only available from 2004 onwards.

applications lodged by UAMs decreased from 1,212 in 2004 to 488 in 2006, which is a decrease of around 60 per cent. The number increased thereafter reaching 1,185 in 2009, which is more than twice the number of 2006. A second drop occurred in 2010 when the number decreased by around 21 per cent, reaching 934 applications, a number still almost twice as high as the low point of 2006. The number of asylum applications lodged by UAMs per year then started to increase again, reaching 1,781 in 2012 (that is an increase of around 91 %).

**Figure 2: Number of asylum applications lodged by UAMs, 2004 – 2012**



Source: STATISTIK AUSTRIA; Federal Ministry of the Interior.

**Table 6: Number of asylum applications, total and UAMs, 2003/2004 – 2012**

Year	Total number of asylum applications	Thereof asylum applications lodged by UAMs
2003	32,359	N/A
2004	24,634	1,212
2005	22,461	881
2006	13,349	488
2007	11,921	582
2008	12,841	874
2009	15,821	1,185
2010	11,012	934
2011	14,416	1,346
2012	17,413	1,781

Source: STATISTIK AUSTRIA; Federal Ministry of the Interior.



## 6.2 Reception challenges

One challenge in relation to the reception of applicants for international protection that Austria experienced recently was the overcrowding of the main initial reception centre, namely the centre in Traiskirchen, in October 2012. At that time, the centre was accommodating around 1,500 applicants (including around 600 UAMs) instead of the foreseen 480 applicants. According to the Federal Ministry of the Interior, this was caused by delays in transferring applicants for international protection who had been admitted to the actual asylum procedure from the initial reception centre to reception facilities in the provinces, which did not have the necessary capacities available.<sup>165</sup> In fact, at the end of October 2012, only two out of the nine provinces had fulfilled their reception quota, namely Lower Austria and Vienna (see table below).

Table 7: Number of beneficiaries in reception facilities at the end of October 2012, by province

Province	Quota (%)	Target	Actual	Fulfilment of quota (%)
Vienna	19.3	4,113	5,800	141.0
Lower Austria	19.2	3,889	4,118	105.9
Styria	14.7	2,919	2,808	96.2
Burgenland	3.5	687	589	85.7
Tyrol	8.4	1,708	1,408	82.4
Vorarlberg	4.4	892	731	82.0
Upper Austria	17.1	3,410	2,761	81.0
Carinthia	7.0	1,348	1,044	77.5
Salzburg	6.4	1,281	988	77.1

Source: Medien-Serviceestelle Neue Österreicher/innen, based on Federal Ministry of the Interior.

According to the Federal Ministry of the Interior, the shortage of reception facilities in the provinces can be explained by the decreasing numbers of applications for international protection in the years 2003 to 2007 and 2009 to 2010, which led to the closure of several reception facilities. When the numbers started to increase, not enough reception facilities, especially for UAMs, were available.<sup>166</sup>

Following the overcrowding of the initial reception centre Traiskirchen, an asylum summit was held at the Federal Chancellery to

165 Hilbert Karl, Federal Ministry of the Interior. Interview carried out by IOM Vienna, 29 May 2013.

166 Ibid.

address the shortage of reception facilities in the provinces. During the summit an agreement was concluded between the federal government and the provinces in which the latter committed to providing reception facilities to an additional 1,000 beneficiaries until the end of November, thereby fulfilling at least 88 per cent of their quota.<sup>167</sup>

### 6.3 Flexibility mechanisms and their costs

Overall, the federal government through the Federal Minister of the Interior is responsible for the creation of stand by reception capacities so as to handle shortages in the provinces.<sup>168</sup> Several flexibility mechanisms are provided for by national legislation (see Table 8). In practice, mostly additional flexibility measures are implemented. For example, on a daily basis, the numbers of applicants for international protection, the number of beneficiaries in federal government reception facilities and the allocation numbers to facilities in the provinces are monitored by the Federal Ministry of the Interior. Furthermore, some provinces keep certain capacities available (for example in Carinthia) or open up new reception facilities, facilitated by continuous calls for bids (for example in Carinthia) and the conclusion of short term contracts (for example in Vorarlberg).<sup>169</sup> This is, however, not always possible. If there are capacity shortages for certain groups of beneficiaries, relocations within the facility can take place (implemented for example in Vienna and Salzburg) or accommodation units may be transformed to serve beneficiaries with special needs (implemented for example in Upper Austria and Vienna).<sup>170</sup>

167 Federal Chancellery, *Bundeskanzler Faymann: "Erstaufnahmezentrum Traiskirchen bis Ende November entlasten"*, Press Release, 23 October 2012, available at [www.ots.at/presseaussendung/OTS\\_20121023\\_OTS0231/bundeskanzler-faymann-erstaufnahmezentrum-traiskirchen-bis-ende-november-entlasten](http://www.ots.at/presseaussendung/OTS_20121023_OTS0231/bundeskanzler-faymann-erstaufnahmezentrum-traiskirchen-bis-ende-november-entlasten) (accessed on 15 July 2013); Hilbert Karl, Federal Ministry of the Interior. Interview carried out by IOM Vienna, 29 May 2013.

168 Art. 11 para 1 Federal Government Basic Welfare Support Act and Art. 3 para 4 of the Basic Welfare Support Agreement.

169 Hilbert Karl, Federal Ministry of the Interior. Interview carried out by IOM Vienna, 29 May 2013; Survey among the provincial authorities in charge of basic welfare support of the provinces Burgenland, Carinthia, Salzburg, Styria, Tyrol, Vienna and Vorarlberg, July/August 2013, carried out by IOM Vienna.

170 Caritas Lower Austria, Caritas Vorarlberg. Written response to interview questions, August 2013; Survey among the provincial authorities in charge of basic welfare

**Table 8: Overview of flexibility mechanisms and measures**

Type of mechanism/measure	Description	Has this mechanism/measure been used?
<b>Early warning mechanism</b>	Monitoring of the numbers of applicants for international protection, the number of applicants in federal government reception facilities and of the allocation numbers to facilities in the provinces.	Yes, on a daily basis.
<b>Additional reception centres acting as buffer capacity</b>	The Minister of the Interior can, in agreement with the Minister of Defence, use barracks as reception facility per decree.	No.
<b>Emergency plans</b>	In the event of a mass influx of displaced persons, the coordination unit at the federal level decides, in cooperation with the federal government-province coordination council, about the accommodation in reception facilities in line with available capacities and about the provision of additional facilities.	N/A
<b>Budget flexibility</b>	If the expenses exceed the budget foreseen for the respective calendar year, additional budget can be made available through budgetary processes (e.g. liquidating reserves).	N/A
<b>Temporary protection</b>	In the event of a mass influx of displaced persons established either by a Council Decision according to Art. 5 para 1 of Council Directive 2001/55/EC or per decree according to Art. 76 of the Settlement and Residence Act, temporary protection can be given as flexible protection mechanism.	No, but under the previous law (Art. 12 and 13 Residence Act <sup>1</sup> ) the federal government issued a decree <sup>2</sup> granting nationals of Bosnia-Herzegovina who fled war in their home country right of residence until 31 December 1994.
<b>Application of different standards/modalities of reception conditions in emergency situations<sup>3</sup></b>	In the event of a mass influx of displaced persons, the basic welfare support of the displaced persons can be limited, but without compromising the satisfaction of their basic needs and taking into consideration Art. 8 ECHR.	N/A
<b>Relocation of entitled persons to different reception facilities</b>	If there are disproportional capacity strains, single provinces can, with the agreement of the coordination unit at the federal level, arrange the relocation of a number of applicants to another province.	No.

<sup>1</sup> Residence Act, FLG No. 466/1992, in the version of FLG No. 314/1994.

<sup>2</sup> Decree of the federal government concerning the right of residence of displaced nationals of Bosnia-Herzegovina, FLG No. 368/1994.

<sup>3</sup> Article 14 paragraph 8 of the Reception Conditions Directive 2003/9/EC stipulates that: "Member States can exceptionally set modalities for material reception conditions different from those provided for in Article 14 for a reasonable period which shall be as short as possible, when: an initial assessment of the specific needs of the applicant is required; material reception conditions, as provided for in article 14, are not available in a certain geographical area; housing capacities normally available are temporarily exhausted; the asylum-seeker is in detention or confined to border posts. The different conditions must cover in any case basic needs".

<b>Relocations within reception facilities</b>	In times of temporary capacity shortages regarding certain groups of entitled persons, relocations within the facility can take place (e.g. Vienna, Salzburg) or accommodation units may be transformed to serve applicants with special needs (e.g. Upper Austria, Vienna).	Yes.
<b>Stand-by capacities</b>	In some reception facilities certain capacities are kept available for times of capacity shortages (e.g. Carinthia).	Yes, but not always possible.
<b>Opening up of new reception facilities</b>	Some provinces open up new reception facilities, facilitated by continuous calls for bids (e.g. Carinthia) and the conclusion of short term contracts (e.g. Vorarlberg).	Yes, but not always possible.
<b>Facilitation of individual accommodation</b>	Salzburg also highlighted the possibility to facilitate individual accommodation as a way to ease high pressure on reception facilities.	Yes, but with a very limited scope of application.
<b>Reduction of capacities in case of surpluses</b>	Shut-down of reception facilities in case of capacity surpluses (e.g. Vienna, Styria).	Yes.

*Source:* Art. 4 para 3 Basic Welfare Support Agreement; Art. 8 para 2 and 3 Basic Welfare Support Agreement; Art. 8 para 4 Basic Welfare Support Agreement; Caritas Lower Austria, Caritas Vorarlberg. Written response to interview questions, August 2013; Art. 11 para 2 Federal Government Basic Welfare Support Act 2005; Federal Ministry of the Interior, special evaluation; Hilbert Karl, Federal Ministry of the Interior. Interview carried out by IOM Vienna, 29 May 2013; Survey among the provincial authorities in charge of basic welfare support of the provinces Burgenland, Carinthia, Salzburg, Styria, Tyrol, Vienna and Vorarlberg, July/August 2013, carried out by IOM Vienna.

In times of capacity surpluses, on the other hand, reception facilities are closed down (for example in Vienna and Styria).<sup>171</sup>

No cost estimations are available on the flexibility mechanisms used in Austria. However, overall, keeping certain capacities available for times of high numbers of beneficiaries is cost intensive. This is because the running costs have to be covered by the service providers, while their income is only as high as the number of actual beneficiaries accommodated, namely the amount paid to the operator per person and day.<sup>172</sup> Because service providers usually ensure a nearly 100 per cent capacity utilization in order to be able run their reception facility in an economical manner, limited capacities are available.<sup>173</sup>

171 Survey among the provincial authorities in charge of basic welfare support of the provinces Burgenland, Carinthia, Salzburg, Styria, Tyrol, Vienna and Vorarlberg, July/August 2013, carried out by IOM Vienna.

172 Hilbert Karl, Federal Ministry of the Interior. Interview carried out by IOM Vienna, 29 May 2013.

173 Karin Knoggl, Caritas Vienna. Interview carried out by IOM Vienna, 1 August 2013; Christoph Riedl, Diakonie Refugee Service. Interview carried out by IOM Vienna, 3 July 2013.

For the creation of new capacities in times of capacity shortages, that is opening new reception facilities, the service providers have to cover the full costs.<sup>174</sup> In times of decreasing numbers and therefore capacity surpluses, service providers are under financial pressure, because vacant reception places means income losses.<sup>175</sup> This is especially true for reception facilities for UAMs, because service providers receive a higher amount per person and day. It follows that even a minimal decrease in capacity utilization leads to high financial losses.<sup>176</sup>

These costs have to be covered by the service providers themselves because no supporting financial mechanism is available at the federal or province level.<sup>177</sup>

174 Christoph Riedl, Diakonie Refugee Service. Interview carried out by IOM Vienna, 3 July 2013.

175 Caritas Lower Austria, Caritas Vorarlberg. Written response to interview questions, August 2013; Christoph Riedl, Diakonie Refugee Service. Interview carried out by IOM Vienna, 3 July 2013.

176 Christoph Riedl, Diakonie Refugee Service. Interview carried out by IOM Vienna, 3 July 2013.

177 Hilbert Karl, Federal Ministry of the Interior. Interview carried out by IOM Vienna, 29 May 2013.

## 7. CONCLUSIONS

Based on the study, the following conclusions can be made regarding the key aspects of the Austrian reception system.

Distribution of responsibilities among the federal government and the provinces:

In Austria, the provision of basic welfare support to applicants for international protection and other beneficiaries is split among the federal government and the provinces. While the federal government is mainly responsible for the initial reception of applicants in admission procedures, the provinces are mainly responsible for applicants admitted to the actual asylum procedure. While this distribution of competencies is laid down in the Basic Welfare Support Agreement, some legislative gaps were identified in this regard. These include, for example, a gap in competencies regarding applicants who have been admitted to the asylum procedure but who were not allocated to provincial care after 14 days. This may be problematic since the allocation process can in some cases take two to three months. Another gap exists in providing reception during the period when a negative decision was issued and the establishment that deportation is not possible due to legal or factual reasons. However, the question of whether these legislative gaps lead to significant practical challenges in ensuring that beneficiaries get access to basic welfare support could not be further analysed in the framework of this study. Further primary research would be necessary.

Access to basic welfare support throughout Austria:

The provision of basic welfare support is regulated in the Federal Government Basic Welfare Support Act in the case of federal care and by the laws of the provinces in the case of provincial care. As the study has shown, this leads to some divergences in Austria regarding the legal provisions defining access to basic welfare support and the refusal thereof. As regards the access, some provinces, for example, define a level of income or property to assess a 'need of assistance' while others do not. Regarding the refusal of basic welfare support, in some provinces an absence from

the reception facility can lead to the limitation, granting on conditions or withdrawal of reception conditions while in others it does not. Again, it was beyond the scope of this study to examine any practical challenges regarding the provision of harmonized basic welfare support throughout Austria that may derive from these divergences.

Use of the different types of reception facilities:

In Austria, there are three types of reception facilities: (i) collective initial/transit reception centres, (ii) organized reception facilities and (iii) individual accommodation. On 1 January 2012, 12,045 beneficiaries were accommodated in the first two types of facilities, while 6,317 were living in individually arranged accommodation. Hence, almost twice as many beneficiaries were living in initial/transit reception centres and organized reception facilities than in individual accommodation. Among the beneficiaries in provincial care who are accommodated in organized reception facilities, more than half were living in private-run guesthouses according to a survey carried out in the provinces. However, reliable and centrally collected information on the number of reception facilities run by the different kinds of service providers (i.e. humanitarian, church or private) and the beneficiaries living in the respective facilities is lacking.

Quality assurance of reception conditions:

So far there are no specific guidelines available to ensure that reception conditions throughout Austria meet certain minimum quality standards. As the study has shown, the Austrian print media, civil society stakeholders and different institutions and organizations criticized the quality of reception conditions in some facilities in various provinces. They demanded the development of uniform and binding minimum standards and the establishment of independent control institutions so as to improve reception conditions throughout Austria. In mid-2013, a working group consisting of representatives of the provinces started developing common quality standards. The results were not yet available at the time of finalizing the study.

Challenges regarding the flexibility of the reception system:

Austria witnessed a negative trend in the number of asylum applications over the last ten years. The number dropped from 32,359

applications in 2003 to 17,413 in 2012; that is a decrease by around 46 per cent. After the low point of 2010 (11,012 applications), however, the numbers started to increase again by around 58 per cent. This is also considered to be one reason why in 2012 not enough reception facilities were available in the provinces (the decreasing numbers of applications for international protection in the years 2002 to 2007 and 2009 to 2010 led to the closure of several reception facilities). In consequence, the lack of transfer of applicants admitted to the actual asylum procedure from initial reception centres to reception facilities in the provinces (despite the fact that most of them did not fulfil the set reception quota), resulted in the overcrowding of the main initial reception centre in Traiskirchen. In this regard, the study finds that flexibility mechanisms such as creating standby capacities (i.e. keeping a certain number of beds available) and opening new facilities cannot always be implemented. One crucial obstacle is the lack of a financial mechanism at the federal or province level to support service providers in these matters so that they do not have to cover the full costs and take the full risks.



# **ANNEX**

## **A.1 Overview of reception conditions in different reception facilities**

According to Art. 7 and 9 of the Basic Welfare Support Agreement and the Agreement Increasing Maximum Amounts, the following reception conditions and respective maximum amounts are foreseen for applicants for international protection in the various reception facilities. Variations that exist in the laws of the federal government and the provinces are highlighted.

**Table 9: Reception conditions in the different reception facilities**

Reception condition	Collective initial/transit reception centres	Organized reception facilities	Special receptions facilities for UAMs	Individual accommodation
<b>Rent</b>	19 EUR per day and person (paid to the operator).	19 EUR per day and person (paid to the operator).	77 EUR when accommodated in apartment-sharing group, 62 EUR when accommodated in residential home and 39 EUR when accommodated in supervised accommodation; per day and person (paid to the operator).	Single person: 120 EUR per month and person; Family (minimum two persons): 240 EUR per month and family.
<b>Food</b>				Adult: 200 EUR per month and person; minor: 90 EUR per month and person; UAM: 180 EUR per month and person. <sup>1</sup>
<b>Clothing</b>	150 EUR per year and person.	150 EUR per year and person.	150 EUR per year and person.	150 EUR per year and person.
<b>Pocket money</b>	40 EUR per month and person.	40 EUR per month and person.	40 EUR per month and person.	Not applicable.
<b>Leisure activities</b>	10 EUR per month and person.	10 EUR per month and person.	10 EUR per month and person.	Not applicable.
<b>Supervision rate (includes information, counselling and social care)</b>	1:170	1:170	1:10 in apartment-sharing group, 1:15 in residential home, 1:20 in supervised or other accommodation.	1:170
<b>Structured daily routine</b>	If needed: measures for a structured daily routine.	If needed: measures for a structured daily routine.	Adequately structured daily routine.	If needed: measures for a structured daily routine.
<b>Special accommodation</b>	Not applicable.	Special accommodation for persons in need of particular care (paid to the operator): 2,480 EUR per month and person.	Not applicable.	Not applicable.
<b>Medical examination</b>	Medical examination during initial reception if needed. <sup>2</sup>	Not applicable.	Not applicable.	Not applicable.

<sup>1</sup> The provincial law of Carinthia foresees for UAM 190 EUR per month and person (Art. 6 para 1 Provincial law regulating basic welfare support in Carinthia).

<sup>2</sup> This is not provided for in the provincial law regulating basic welfare support in Lower Austria, the provincial law regulating basic welfare support in Salzburg, the provincial law regulating basic welfare support in Styria and in the provincial law regulating basic welfare support in Tyrol.

<b>Medical care</b>	Payment of contributions of health insurance; treatment that is not covered by the health insurance may be paid upon request. <sup>3</sup>			
<b>Emergency health care</b>	To be provided also in case of limitation or termination of basic welfare support. <sup>4</sup>			
<b>Psychological care</b>	Not applicable.	Not applicable.	In case of need psychological and socio-pedagogical care.	Not applicable.
<b>Interpretation services</b>	Provided for in the framework of supervision and return counselling.	Provided for in the framework of supervision and return counselling.	Provided for in the framework of supervision and return counselling.	Provided for in the framework of supervision and return counselling.
<b>German language courses</b>	Not applicable.	Not applicable.	200 teaching units (3.63 EUR per unit per person).	Not applicable.
<b>Access to education<sup>5</sup></b>	Not applicable.	School supplies: 200 EUR per year and child; transportation costs. <sup>6</sup>		
<b>Access to vocational training</b>	A work permit for vocational training can be granted to applicants for international protection until the age of 25, but is restricted to occupations where there is a shortage of apprentices. As a condition, the applicant must have been admitted to the asylum procedure for at least three months previously and must have passed a labour market test. <sup>7</sup>			
<b>Access to employment</b>	<p>Access to self-employment is granted three months after the application for international protection has been lodged;<sup>8</sup> Access to employment can be granted by a work permit applied for by the future employer three months after the applicant has been admitted to the asylum procedure and if the applicant has passed a labour market test<sup>9</sup> (access is restricted by the so called Bartenstein Decree (<i>Bartensteinerlass</i>) to selected occupations with quota-regulated work permits, i.e. seasonal work in tourism, agriculture or forestry).<sup>10</sup></p> <p>Applicants for international protection may have access to auxiliary activities in their reception facility (e.g. cleaning, cooking) or on behalf of the federal government, the province or the municipality (e.g. landscape work). These activities are remunerated with a financial allowance but do not count as employment.<sup>11</sup></p> <p>Persons with subsidiary protection status and asylum-seekers who have been granted asylum and are entitled to basic welfare support (i.e. during the first four months) enjoy full access to the labour market.<sup>12</sup></p>			

<sup>3</sup> The provincial law of Salzburg only speaks of the provision of necessary health care (Art. 6 para 1 Provincial law regulating basic welfare support in Salzburg).

<sup>4</sup> Only the Provincial law of Vorarlberg regulating minimum social benefits does not include any such clause.

<sup>5</sup> School attendance is compulsory in Austria for the first nine school years (up to the age of 15). Asylum-seeking children thus have access to primary and secondary school, but only after they have been admitted to the asylum procedure, i.e. access to school is normally not granted in collective initial/transit reception centres during the admission procedure (Fronek 2010: 144-145, 149; Knapp 2013: 52). There is no legal entitlement to secondary education. Here the rules applying to asylum-seeking children are the same as for Austrian nationals (Priewasser 2006: 56).

<sup>6</sup> Transportation costs are not provided for in the provincial law regulating basic welfare support in Salzburg.

<sup>7</sup> Federal Ministry of Labour, Social Affairs and Consumer Protection, *Erweiterung der Beschäftigungsmöglichkeiten für Asylwerber/innen*, BMASK-435.006/0005-VI/AMR/7/2012; Federal Ministry of Labour, Social Affairs and Consumer Protection, *Erweiterung der Beschäftigungsmöglichkeiten für Asylwerber/innen; Altersgrenze für jugendliche Asylwerber/innen*, BMASK-435.006/0005-VI/B/7/2013.

<sup>8</sup> Art. 7 para 2 Federal Government Basic Welfare Support Act.

<sup>9</sup> Art. 4 para 1 Act Governing the Employment of Foreign Nationals.

<sup>10</sup> Federal Ministry of Economy and Labour, *EU-Erweiterungs-Anpassungsgesetz; Durchführungserlass (Bartensteinerlass)*, 435.006/6 - II/7/04.

<sup>11</sup> Art. 7 para 4, 5 and 6 Federal Government Basic Welfare Support Act; similar provisions are made in Art. 6 Provincial law regulating basic welfare support in Burgenland, Art. 3 para 8 Provincial law regulating basic welfare support in Carinthia, Art. 4 para 6 Provincial law regulating basic welfare support in Styria and Art. 4 para 5 Provincial law regulating basic welfare support in Vienna.

<sup>12</sup> Art. 1 para 2(a) Act Governing the Employment of Foreign Nationals.

<b>Transportation costs</b>	In case of relocation and official summons.	In case of relocation and official summons.	In case of relocation and official summons.	In case of relocation and official summons.
<b>In case of voluntary return to country of origin</b>	Return counselling; travel costs; pocket money in special cases (370 EUR one-time payment per person) <sup>13</sup>			
<b>In case of death</b>	Funeral or repatriation costs.	Funeral or repatriation costs.	Funeral or repatriation costs.	Funeral or repatriation costs.

*Source:* Art. 7 and 9 Basic Welfare Support Agreement; Agreement Increasing Maximum Amounts; and as indicated in footnotes.

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<sup>13</sup> These are not provided for in the provincial law regulating basic welfare support in Salzburg.

## A.2 List of translations and abbreviations

**Table 10: Translations and abbreviations**

English term	English Abbreviation	German term	German Abbreviation
Administrative High Court	-	Verwaltungsgerichtshof	VwGH
Act Governing the Employment of Foreign Nationals	-	Ausländerbeschäftigungsgesetz	AuslBG
Aliens Act 1997	-	Fremdengesetz 1997	FrG
Aliens Police	-	Fremdenpolizei	-
Aliens Police Authority	-	Fremdenpolizeibehörde	-
Asylum Act 2005	-	Asylgesetz 2005	AsylG
Austrian Court of Audit	ACA	Rechnungshof	RH
Austrian Freedom Party	-	Freiheitliche Partei Österreich	FPÖ
Austrian Green Party	-	Die Grünen	-
Austrian Ombudsman Board	AOB	Volksanwaltschaft	-
Austrian People's Party's	-	Österreichische Volkspartei	ÖVP
Bartenstein Decree	-	Bartensteinerlass	-
Basic Welfare Support Agreement	-	Grundversorgungsvereinbarung	GVV
Detention Regulation	-	Anhalteordnung	AnhO
European Commission	EC	Europäische Kommission	EK
European Convention on Human Rights	ECHR	Europäische Menschenrechtskonvention	EMRK
European Migration Network	EMN	Europäisches Migrationsnetzwerk	EMN
European Union	EU	Europäische Union	EU
Federal Administrative Court	-	Bundesverwaltungsgericht	-
Federal Asylum Office	-	Bundesasylamt	BAA
Federal Chancellery	-	Bundeskanzleramt	-
Federal Constitutional Act	-	Bundesverfassungsgesetz	B-VG
Federal Government	-	Bund	-
Federal Government Basic Welfare Support Act	-	Grundversorgungsgesetz Bund	GVG-B
Federal Law Gazette	FLG	Bundesgesetzblatt	BGBL
Federal Ministry of Labour, Social Affairs and Consumer Protection	FMLSC	Bundesministerium für Arbeit, Soziales und Konsumentenschutz	BMASK
Federal Ministry of the Interior	FMI	Bundesministerium für Inneres	BMI
Federal Office for Immigration and Asylum	-	Bundesamt für Fremdenwesen und Asyl	BFA
Fiscal Authority	-	Abgabenbehörde	-
Independent Administrative Senate	-	Unabhängiger Verwaltungssenat	UVS
Initial Reception Centre	-	Erstaufnahmestelle	EAST
International Organization for Migration	IOM	Internationale Organisation für Migration	IOM
Media Service Point New Austrians	-	Medien-Serviceestelle Neue Österreicher/innen	MSNÖ
Lenient measure	-	Gelinderes Mittel	-
National Contact Point	NCP	Nationaler Kontaktpunkt	NKP
Non-Governmental Organization	NGO	Nichtregierungsorganisation	NRO
Ombudsmen for Children and Youth in Austria	-	Kinder- und Jugendanwaltschaften Österreichs	kija
Province	-	Bundesland	-
Provincial Law Gazette	PLG	Landesgesetzblatt	LGBl.
Residence Act	-	Aufenthaltsgesetz	-

Settlement and Residence Act	-	Niederlassungs- und Aufenthaltsgesetz	NAG
Social Democratic Party of Austria	-	Sozialdemokratische Partei Österreichs	SPÖ
Unaccompanied Minors	UAM	Unbegleitete Minderjährige	-
United Nations High Commissioner for Refugees	UNHCR	Hoher Flüchtlingskommissar der Vereinten Nationen	UNHCR

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