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## List of Abbreviations

ABGB	Allgemeines Bürgerliches Gesetzbuch, Civil Code
ASVG	Allgemeines Sozialversicherungsgesetz, General Social Security Act
B-VG	Bundes-Verfassungsgesetz, Constitution
EEA	European Economic Area
ESC	European Social Charter
EU	European Union
EU	Exekutionsordnung, Law on Execution
GBV	Österreichischer Verband gemeinnütziger Bauvereinigungen, Austrian Federation of Limited-Profit Housing Associations
ICESCR	International Covenant on Economic, Social and Cultural Rights
MRG	Mietrechtsgesetz, Law of Tenancy
RESC	Revised European Social Charter
StGG 1867	Staatsgrundgesetz 1867, Basic Act of 1867
TWFG	Tiroler Wohnbauförderungsgesetz, Tyrol Housing Subsidies Act
WGG	Wohnungsgemeinnützigkeitsgesetz, Charitable Housing Act
WWFSG	Wiener Wohnbauförderungs- und Wohnhaussanierungsgesetz, Viennese Housing Subsidies Act
ZPO	Zivilprozessordnung, Law on Civil Procedures

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## D3.5 The Right to Housing – National Report Austria

### 1. National legal framework

The topics of social housing, housing benefits as well as protection from eviction are highly complex matters as such. Additionally, in Austria the legal norms dealing with these issues are scattered across numerous laws. Furthermore, the competences are divided between the Federal State and the provinces, which makes this legal matter even more complicated. To add to this picture, the access to municipal housing is granted by the municipalities, also foreseeing different prerequisites. To better understand the Austrian situation, historical developments will be added from time to time to help understand the status quo of social housing, housing benefits and protection from eviction.

In the following chapters, we aim to provide a coherent overview of the main relevant constitutional and federal provisions. Provisions on the provincial levels will be presented exemplarily, and relevant differences among the provincial provisions will be pointed out. It is not possible to paint the entire picture of Austria within this paper, due to the very complex issue as was pointed out above.

#### 1.1. Constitutional protection

The main constitutional treaty comprising the most relevant constitutional provisions for Austria is the *Bundes-Verfassungsgesetz* (B-VG).<sup>1</sup> In order to understand the Austrian system of social housing, housing benefits as well as protection from eviction, a brief look has to be taken at the **key characteristics of the Austrian legal system**, as laid down in the Constitution.

According to Art. 2 B-VG, Austria is a democratic republic and a federalist state. The Federal territory also comprises the territories of the provinces according to Art. 3 B-VG. Art. 6 B-VG regulates the basic rules about citizenship, stating that there is a uniform citizenship (1) and that nationals are also citizens of their province of principal residence (2). Art. 7 B-VG foresees an equality clause for all citizens: *All nationals are equal before the law. Privileges*

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<sup>1</sup> Constitution (*Bundes-Verfassungsgesetz*) (AUT).

*based upon birth, sex, estate, class or religion are excluded. No one shall be discriminated against because of his disability. The Republic (Federation, provinces and municipalities) commits itself to ensuring the equal treatment of disabled and non-disabled persons in all spheres of everyday life.* Art. 8 B-VG defines German as the official language, also foreseeing special provisions regarding the safeguarding, respect and support of the language of the autochthonous ethnic groups (2) as well as the recognition of Austrian sign language (3). Art. 9 B-VG elaborates on generally recognized rules of international law as integral parts of federal law. Art. 10 B-VG and the following provisions deal with the division of competences between the Federal State and the provinces in different thematic areas. Art 15 (1) B-VG states that *“In so far as a matter is not expressly assigned by the Federal Constitution to the Federation for legislation or also execution, it remains within the provinces autonomous sphere.*

### The rights to housing

A (subjective) right to housing for the Austrian legal order is laid down on the international level only, namely by the European Social Charter (ESC), the Revised European Social Charter (RESC) and the International Covenant on Economic, Social and Cultural Rights (ICESCR). However, those treaties were implemented in Austria with a so-called fulfilment reserve (*Erfüllungsvorbehalt*) according to Art. 50 (2) B-VG. This means, that these treaties have to be implemented by way of domestic laws. In other words, the rights laid down in the ESC, the RESC and the ICESCR are not directly applicable norms in Austria and thus do not constitute subjective rights. They cannot be considered as a tool to assess the legality of another (national) legal norm. This was also clarified by the courts, as will be presented below in the section on case law.

In the national legal framework there is **no constitutionally guaranteed right to housing** in Austria. This might find its reasoning in the age of the constitution. In the 1920s guaranteeing social rights did not play a practical role. Furthermore, the fundamental rights catalogue was primarily reproduced from the monarchy.<sup>2</sup> The Fundamental

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<sup>2</sup> Sonntag, N., 'Recht auf Wohnen aus verfassungs- und verwaltungsrechtlicher Sicht – eine Bestandsaufnahme, juridikum 2/2013, 223.

Rights Commission, which met between 1964 and 1985, discussed the implementation of a right to housing as a state objective (*Staatszielbestimmung*), but these considerations did not find their way into the Constitution.<sup>3</sup> Between 2003 and 2005 the so-called Austria-convent took place to discuss a fundamental change of the Austrian State and Constitution. The development of a central fundamental rights catalogue was discussed during this convent. In this regard, also the implication of social rights was analysed. One group of participants was in favour of anchoring such subjective rights in the constitution, while the other group was in favour of putting social rights as obligations for the state. However, regarding the right to housing it was clear that it should not be a justiciable right to receive a flat from the state.<sup>4</sup> In the end, no outcomes followed from the Austria-convent, as no consensus could be reached.<sup>5</sup>

Initially, Art. 11 (1) 3 B-VG stipulated that the **Federal State** holds the **competence** for legislation in the area of **social housing affairs** (*Volkswohnungswesen*), and that the provinces are competent for the implementation. The Constitution does not define the content of the term *Volkswohnungswesen*, but left this interpretation to the courts. The Constitutional Court stated in 1951 that *Volkswohnungswesen* is the building and provision of flats for citizen with lesser means (*“Errichtung und Bereitstellung von Wohnungen für die minderbemittelten Bevölkerungskreise”*).<sup>6</sup> In 1987, a reform of this constitutional provision led to a specification, transferring some areas of social housing in the legislative competence of the provinces. More specifically, the **provinces** became competent for the promotion of **domestic dwelling construction** (*Förderung des Wohnbaus*) and **renovation of houses** (*Wohnhaussanierung*) according to Art. 15 B-VG. As a result, the provinces thereafter adopted individual housing subsidies laws (*Wohnbauförderungsgesetze*), as will be presented below.

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<sup>3</sup> Sonntag, N., 'Recht auf Wohnen aus verfassungs- und verwaltungsrechtlicher Sicht – eine Bestandsaufnahme, *juridikum* 2/2013, 223.

<sup>4</sup> Schober, F., 'Das Recht auf Wohnen', *wobl*2012, 01.01.2012, 5.

<sup>5</sup> Sonntag, N., 'Recht auf Wohnen aus verfassungs- und verwaltungsrechtlicher Sicht – eine Bestandsaufnahme, *juridikum* 2/2013, 224.

<sup>6</sup> VfGH, VfSlg 2217/1951.

Similar to the Federal Constitution, the **provincial constitutions** also do not provide for a (subjective) right to housing. Still, some provincial constitutional treaties contain state objectives regarding housing. For example, Art. 4 of the Lower Austrian Provincial Constitution<sup>7</sup> lists “living conditions” in its rule on goals and basic principles of government action. Sufficient possibilities to live (*ausreichende Wohnmöglichkeiten*) are formulated as part of those areas, which shall be taken into special consideration. Also the Upper Austrian Constitution mentions “raising the quality of life of citizens” in the context of improving the housing and living environment in Art. 15.<sup>8</sup> Art. 9 of the Provincial Constitution of Salzburg mentions the development and provision of suitable housing conditions as an objective of the province.<sup>9</sup> Art. 7 (2) of the Tyrolean Constitution mentions the establishment and up-keeping of affordable housing possibilities as a part of goals and basic principles of the province.<sup>10</sup> The term “affordable” (*leistbar*) was introduced to the provision through an amendment in 2011. Still it is clear from the explanations to the amendment that this does not include a subjective right to subsidies.<sup>11</sup>

### The right to housing assistance

There is no constitutionally guaranteed right to housing assistance provided for in the Austrian constitutional provisions. As will be presented in detail below, housing assistance is complex subject matter and rules on housing assistance differ from one province to another.

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<sup>7</sup> Lower Austrian Provincial Constitution (*Niederösterreichische Landesverfassung*) (AUT).

<sup>8</sup> Upper Austrian Provincial Constitution (*Öberösterreichische Landesverfassung*) (AUT).

<sup>9</sup> Salzburg Provincial Constitution (*Salzburger Landes-Verfassungsgesetz*) (AUT).

<sup>10</sup> Tyrolean Provincial Constitution (*Tiroler Landesordnung*) (AUT).

<sup>11</sup> Tirol, Erläuternde Bemerkungen zum Entwurf eines Landesverfassungsgesetzes, mit dem die Tiroler Landesordnung 1989 geändert wird (Regierungsvorlage 235/11) 5.

## The protection of the right to property and the right to carry out a business

The **right to the protection of property** is prominently laid down in Art. 1 of the First Additional Protocol to the ECHR, which is in constitutional rank in Austria. This Art. 1 stipulates that “No one shall be deprived of his possessions except in the public interest and subject to conditions provided for by law and by the general principles of international law”. Also the Basic Act of 1867 (*Staatsgrundgesetz 1867, StGG 1867*)<sup>12</sup> protects the right to property in Art. 5, stating that “Property is inviolable. Expropriation against the will of the owner can only occur in cases and in the manner determined by law”. Furthermore, Art. 6 StGG 1867 states, that “(1) Every national can take up residence and domicile at any place inside the boundaries of the state, acquire every kind of real property and freely dispose of the same, as well as practice every kind of gainful activity subject to the conditions of the law. (2) Restrictions on the right of mortmain to acquire and dispose of real property are for reasons of public weal admissible by way of law”. So Art. 6 protects the right to property and the right to carry out a business.

### 1.2. Social housing policy

Social housing has a **long standing tradition** in Austria. Between 1920 and 1930 and then, after WWII, between 1950 to 1970 many so-called municipality buildings (*Gemeindebauten*) were built in various cities, especially in Vienna.

In Austria (with around 8.8 Million inhabitants), a remarkably high share of living spaces of people are rented. Approximately 42% of all housing units are rented, thereof 57% are provided by public authorities or limited-profit housing associations.<sup>13</sup>

In 2011, the Statistical Office Austria (*Statistik Austria*) published numbers stating that there are altogether 2.191.280 buildings in Austria, thereof 70.736 in possession of the Federal State, the provinces or municipalities. Another 71.822 are owned by limited-profit housing associations (*gemeinnützige Bauvereinigungen*). Out of the 4.4

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<sup>12</sup> Basic Act 1867 (*Staatsgrundgesetz 1867*) (AUT).

<sup>13</sup> Housing Europe, The State of Housing in the EU 2017, A Housing Europe Review, Housing Europe, the European Federation of Public, Cooperative and Social Housing 2017, 46.

Million flats present in Austria, around 950.000 are in the hands of the federal state, provinces or municipalities as well as limited-profit associations.<sup>14</sup>

In Vienna (with around 1.9 Million inhabitants), 235.832 flats are owned by the public hand and 145.838 by limited-profit housing associations, while in Vorarlberg (with around 390.000 inhabitants) only 2.520 flats are owned by the public hand and 21.207 flats are in the hands of limited-profit housing associations.<sup>15</sup>

This rather high ratio of social housing in Austria contributes to stable and affordable conditions of housing. This was proven during the financial crisis, as Austria did not experience problems regarding housing then.<sup>16</sup> Still, the costs for housing are on the rise. According to Housing Europe, “[t]he average share of housing costs (including energy) on disposable income is 21%, but 40% for households below 60% of the median income. The share of housing costs has significantly increased since 2010, when it was 18% on average and 34% for households below 60% of median income.”<sup>17</sup>

To better understand the development of the social housing policy and situation today, we will exemplarily look into the historical development of social housing in Vienna: The first Viennese Housing Programme (*Wiener Wohnbauprogramm*) was institutionalized in 1923. It aimed at reducing poverty and at increasing housing

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<sup>14</sup> Statistik Austria, ‘Gebäude und Wohnungen 2011 nach dem Eigentübertyp des Gebäudes und Bundesland’ (2011)

<[https://www.statistik.at/web\\_de/statistiken/menschen\\_und\\_gesellschaft/wohnen/wohnungs\\_und\\_gebaeudebestand/022985.html](https://www.statistik.at/web_de/statistiken/menschen_und_gesellschaft/wohnen/wohnungs_und_gebaeudebestand/022985.html)>.

<sup>15</sup> Statistik Austria, ‘Gebäude und Wohnungen 2011 nach dem Eigentübertyp des Gebäudes und Bundesland’ (2011)

<[https://www.statistik.at/web\\_de/statistiken/menschen\\_und\\_gesellschaft/wohnen/wohnungs\\_und\\_gebaeudebestand/022985.html](https://www.statistik.at/web_de/statistiken/menschen_und_gesellschaft/wohnen/wohnungs_und_gebaeudebestand/022985.html)>.

<sup>16</sup> Housing Europe, The State of Housing in the EU 2017, A Housing Europe Review, Housing Europe, the European Federation of Public, Cooperative and Social Housing 2017, 46.

<sup>17</sup> Housing Europe, The State of Housing in the EU 2017, A Housing Europe Review, Housing Europe, the European Federation of Public, Cooperative and Social Housing 2017, 46.

standards. Strict tenant's protection regimes were linked to building initiatives by the municipality.<sup>18</sup> The programme foresaw the building of 25.000 flats within five years. In 1927, a second programme followed, deciding to build another 30.000 flats.<sup>19</sup> The aim was to build municipality buildings (*Gemeindebauten*) to enable healthy living environments for inhabitants. The flats were built following the credo "light, air, sun" and provided a massive development regarding planning and built. Each flat had at least two rooms and a toilet, as well as running water. The rent to be paid for these flats was designed in a way that it only covered the operating costs, the administrative costs and the maintenance costs.<sup>20</sup> While those flats were rather small, they provided for a good infrastructure, like nearby kindergarten, shops, as well as outpatient clinics or pools and libraries.<sup>21</sup> After World War II, 87.000 of the flats were destroyed and around 35.000 persons were homeless. It was then one of the main aims of the city of Vienna to build as many flats as possible. In 1947, the first large complex was built with over 1.000 flats. Throughout the 1950ies, massive building of municipal housing took place to fulfil the need of persons looking for affordable flats. After those quickly established buildings in the 1950ies, the 1960ies lead to a re-assessment of goals regarding housing- and living quality. By 1970, around 75% of the flats already had three rooms. Between 1960 and 1970, around 4.500 flats were built per year.<sup>22</sup> Social housing was the most important task for the city administration of Vienna and 15.5% of the taxes were used for this purpose. There are at the moment around 300.000 social housing flats in Vienna, which were built between 1945 and 1980.<sup>23</sup>

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<sup>18</sup> Mann, W./Mundt, A., 'Armutspolitische Dimensionen von Gemeindewohnraum, gemeinnützigem Wohnbau und Wohnbauförderung' in Dimmel, N./Heitzmann, K./Schenk, M., *Handbuch Armut in Österreich* (Studienverlag Innsbruck 2014) 2.

<sup>19</sup> Stadt Wien, *Gemeinde baut. Wiener Wohnbau 1920-2020* (2014, Holzhausen), 56.

<sup>20</sup> Stadt Wien, *Gemeinde baut. Wiener Wohnbau 1920-2020* (2014, Holzhausen), 60.

<sup>21</sup> Stadt Wien, *Gemeinde baut. Wiener Wohnbau 1920-2020* (2014, Holzhausen), 60.

<sup>22</sup> Stadt Wien, *Gemeinde baut. Wiener Wohnbau 1920-2020* (2014, Holzhausen) 66.

<sup>23</sup> Stadt Wien, *Gemeinde baut. Wiener Wohnbau 1920-2020* (2014, Holzhausen) 72.

Since 1945, the building of flats by limited-profit housing associations has been of high relevance in Vienna. Those enterprises built around 25% of all new flats between 1956 and 1965, rising to one third by 1970. In 1973, the number of flats completed by limited-profit housing associations exceeded those of the municipality. The municipality transferred the building of flats to those enterprises step by step. The last municipal building (*Gemeindebau*) was built by the city of Vienna in 2004. Thereafter the entire social housing was transferred to limited-profit housing associations. A new programme to enable affordable housing was initiated during the last years, the so – called “SMART-flats”. The city of Vienna owns the land where these flats are built, the construction companies therefore save money as they do not have to buy the land.<sup>24</sup> By 2014, 60% of the Viennese citizens live in municipal or charitable housing.

### 1.3. General national rules

As mentioned in the introduction, rules on housing are spread across many different laws on the federal and provincial levels. The main norms regarding access to social housing/housing benefits and protection from eviction will be presented in this sub-chapter.

Generally speaking the national rules on social housing and housing benefits are divided the following manner: The competence of the state regarding “*Volkswohnungswesen*” is implemented through the **Charitable Housing Act** (*Wohnungsgemeinnützigkeitsgesetz, WGG*),<sup>25</sup> which will be presented below in detail.

The subsidies in the competence of the provinces are provided in two ways. Either as **subsidies regarding certain objects (buildings)** or as **subsidies regarding persons** in need. Those subsidies comprise the building of housing possibilities, renovation of housing possibilities, subsidies to buy flats and individual housing subsidies in the narrower sense – the so-called (*Wohnbeihilfe*). These individual housing subsidies are targeted at persons directly, while the other subsidies are also targeted at enterprises and municipalities, to build and provide housing for

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<sup>24</sup> Stadt Wien, *Gemeinde baut. Wiener Wohnbau 1920-2020* (2014, Holzhausen) 76.

<sup>25</sup> Charitable Housing Act (*Wohnungsgemeinnützigkeitsgesetz*) (AUT).

persons in need.<sup>26</sup> The vast amount of housing subsidies is distributed by the state and the provinces in the course of private-sector administration (*Privatwirtschaftsverwaltung*).

An area which became increasingly relevant during the recent years is the needs-based minimum benefits regime (*bedarfsorientierte Mindestsicherung*), which is a social aid scheme aimed at harmonising the social aid systems of the provinces. Within the needs-based minimum benefits systems in the provinces also subsidies exist regarding housing. For example § 3 of the Styrian Needs-Based Minimum Benefits Act (*Steiermärkisches Mindestsicherungsgesetz*)<sup>27</sup> states that that this needs-based minimum benefits are lump sums to secure living subsistence and housing subsistence. Although the scope of this paper does not allow to go into too much detail, it can nevertheless be stated that it is still disputed in academia and also in jurisprudence whether a person receives housing subsidies those have to be taken into account when deciding on the amount of needs-based minimum benefits.<sup>28</sup> Again these interrelations between the different subsidy schemes differ. In Styria, it is clarified that housing support is not to be taken into account when deciding on needs-based minimum benefits (see § 6 (2) Z5 Styrian Needs Based Minimum Benefits Act). In Lower Austria, housing subsidies are not mentioned as not to being taken into account (§ 6 Lower Austrian Needs Based Minimum Benefits Act (*Niederösterreichisches Mindestsicherungsgesetz*)).<sup>29</sup>

Additionally, there is a large variety of further subsidies linked to (affordable) housing, such as heating allowances (*Heizkostenzuschuss*), loans for personal means (*Eigenmitteleratzdarlehen*), etc. This results in a situation, which is very difficult to understand for those who are entitled. In the course of this paper we will only focus on the system of social housing as such, leaving those other subsidies aside, as they fall under the heading of social aid and not the housing subsidies as such.

Also municipalities still own houses, which they rent to residents, based on different criteria. Those criteria will be presented exemplarily for some municipalities. Finally, the topic of eviction will be presented as well. The following sub-sections will discuss each of those possibilities in detail. In the following sub-chapter, the specific rules for persons with disabilities and asylum seekers and refugees will be presented.

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<sup>26</sup> Sonntag, N., 'Recht auf Wohnen aus verfassungs- und verwaltungsrechtlicher Sicht – eine Bestandsaufnahme, *juridikum* 2/2013, 228.

<sup>27</sup> Styrian Needs Based Minimum Benefits Act (*Steiermärkisches Mindestsicherungsgesetz*) (AUT).

<sup>28</sup> Müllner, J., 'Berücksichtigung der Wohnbeihilfe in der Mindestsicherung', *DRdA* 4/2016, 231-235, 233.

<sup>29</sup> Lower Austrian Needs Based Minimum Benefits Act (*Niederösterreichisches Mindestsicherungsgesetz*) (AUT).

### *Housing subsidies:*

As was outlined above, the area of housing benefits has been transferred to the competence of the provinces in 1987. The nine provinces grant a number of different subsidies and benefits, summarized under the heading “*Wohnbauförderung*” (housing subsidies). Those different schemes of subsidies differ in some parts regarding scope and design from one province to another.<sup>30</sup> As an example, the persons eligible may differ or the relevant income levels to be eligible for receiving subsidies differ, etc.<sup>31</sup> As a detailed overview of all nine provinces is not possible within the scope of this paper, some illustrative examples will be presented below after a general introduction to housing subsidies in Austria.

There are two different types of subsidies provided by the provinces: either **subjective benefits** (targeting the individual) or **objective benefits** (targeting the buildings as such). Benefits relate to the building of houses, the renovation of buildings, benefits when buying living space and housing subsidies as such (*Wohnbeihilfe*).<sup>32</sup> Literature shows that in Austria the largest amount of subsidies is attributed to object benefits.<sup>33</sup> Emphasis is put on the construction of new buildings to allow for a sufficient amount of affordable housing, rather than supporting

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<sup>30</sup> Alexis Mundt, ‘Housing benefits and minimum income schemes in Austria – an application of the residual income approach to housing affordability of welfare recipients’ *International Journal of Housing Policy*, Vol. 18 2018, 383-411, 384.

<sup>31</sup> IIBW, *Leistbares Wohnen – Bestandsaufnahme von monetären Leistungen für untere Einkommensgruppen zur Deckung des Wohnbedarfs* (2015) 5.

<sup>32</sup> Sonntag, N., ‘Recht auf Wohnen aus verfassungs- und verwaltungsrechtlicher Sicht – eine Bestandsaufnahme, *juridikum* 2/2013, 228.

<sup>33</sup> Wolfgang Amann/Alexis Mundt, *The Austrian System of Social Housing Finance* <<http://cms.siel.si/documents/170/docs/socialhousing-finance-amman-mundt.pdf>>, 12.

individuals in paying for their living spaces. Individual subsidies amount only to around 15% of the entire subsidies with regards to housing.<sup>34</sup>

Between the 1990s and around 2015, the amount of housing subsidies had a constant level of 2.4 to 3 Billion Euro. This amount decreased to 2.3 Billion for 2017, which constituted the second lowest amount since 1993.<sup>35</sup> Until 2009, the amount of individual subsidies spent rose significantly to 420 Million Euro, due to the almost nationwide implementation of individual subsidies (which will be presented in some detail below). These expenditures decreased to 340 Million Euro in 2017.<sup>36</sup> This can on the one hand be traced back to more restrictive qualification criteria, as well as on a transfer of some of those subsidies to the area of social aid, namely the needs-based minimum benefits regime (*Bedarfsorientierte Mindestsicherung*).<sup>37</sup>

In 2017, around 4.5% of the population (around 171.000 persons) received individual housing subsidies in Austria.<sup>38</sup> 1.2 Billion Euro (55%) were spent on multi storey buildings (funding also limited-profit housing associations), around 180 Million (8%) on single family houses, 520 Million on renovation (23%) and 340 Million on individual subsidies (15%).<sup>39</sup>

### Styria

In **Styria** the **individual housing support** (*Wohnunterstützung*) has been reformed in 2016/2017. Since then, individual housing support is no longer a part of housing subsidies as such, but has been transferred to the area of

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<sup>34</sup> IIBW, *Wohnbauförderung in Österreich 2017* (2017) 22.

<sup>35</sup> IIBW, *Wohnbauförderung in Österreich 2017* (2017) 20.

<sup>36</sup> IIBW, *Wohnbauförderung in Österreich 2017* (2017) 21.

<sup>37</sup> IIBW, *Wohnbauförderung in Österreich 2017* (2017) 22.

<sup>38</sup> IIBW, *Wohnbauförderung in Österreich 2017* (2017) 22.

<sup>39</sup> IIBW, *Wohnbauförderung in Österreich 2017* (2017) 20.

social aid.<sup>40</sup> It is now applicable to Austrian nationals, relatives of Austrian nationals holding a status of “family member”, persons with a residents permits for EEA citizens, refugees, subsidiary protection status holders and other persons holding special residence permits according to the Residence and Settlement Act (*Niederlassungs- und Aufenthaltsgesetz*)<sup>41</sup> as specified in § 2 (1) Styrian Housing Support Act (*Steiermärkisches Wohnunterstützungsgesetz*).<sup>42</sup> Subsidies can only be granted to tenants according to § 1 Law of Tenancy (*Mietrechtsgesetz*),<sup>43</sup> sub-tenants in specified houses (provided by the municipality or subsidized by the province) and persons who use company flats according to § 2 (2) Styrian Housing Support Act. There are no further priority rules foreseen in these norms. § 4 Styrian Housing Support Act stipulates how the amount of subsidies is calculated, not providing an exact amount of subsidies in numbers but referencing to the equalisation supplement reference rate (*Ausgleichszulagenrichtsatz*) of the General Social Security Act (*Allgemeines Sozialversicherungsgesetz, ASVG*). The subsidies are provided in cash. § 1 Styrian Housing Support Act clearly states that there is no legal right to those subsidies. The income and assets of the persons applying for subsidies are to be taken into account according to §4 (1) Styrian Housing Support Act. Subsidies cannot be higher than factual living costs (being rent, electricity costs, operating costs).

The Styrian Housing Subsidies Act 1993 (*Steiermärkisches Wohnbauförderungsgesetz 1993*) is the relevant basis for **object subsidies** regarding the building of flats, buying flats, etc.<sup>44</sup> According to this law, individuals, municipalities, as well as limited-profit housing association are entitled to such subsidies. Individuals may request for funding support for building homes according to § 7 Styrian Housing Subsidies Act 1993. Austrian citizens are entitled, as well as refugees and EEA citizens and EU citizens (§ 7 (5) Styrian Housing Subsidies Act 1993). Subsidies can be

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<sup>40</sup> IIBW, *Wohnbauförderung in Österreich 2017* (2017) 21.

<sup>41</sup> Residence and Settlement Act (*Niederlassungs- und Aufenthaltsgesetz*) (AUT).

<sup>42</sup> Styrian Housing Support Act (*Steiermärkisches Wohnunterstützungsgesetz*) (AUT).

<sup>43</sup> § 1 states, that this act is applicable to the renting of flats, parts of flats or business premises, as well as cooperative use contracts (*genossenschaftliche Nutzungsverträge*).

<sup>44</sup> Styrian Housing Subsidies Act (*Steiermärkisches Wohnbauförderungsgesetz*) (AUT).

provided through promotional loans, interest subsidies (*Zinszuschüsse*), sponsorship contribution (*Förderungsbeiträge*) and loan guarantee support (*Übernahme von Bürgschaften*) (§ 9 Styrian Housing Subsidies Act 1993). Loans can run for a maximum of 50 years (§ 11 Styrian Housing Subsidies Act 1993) and may amount to a maximum of 50% of the entire building costs.

### Vienna

Vienna is a rapidly growing city. Its number of inhabitants rises around 25.000 per year.<sup>45</sup> The Viennese Housing Subsidies Act (*Wiener Wohnbauförderungs- und Wohnhaussanierungsgesetz 1989, WWFSG 1989*)<sup>46</sup> foresees a number of subsidies regarding housing, e.g. subsidies regarding construction costs, financial subsidies or housing assistance. Austrian citizens, refugees, EEA citizens and foreigners who legally stayed in Austria for at least five years (§ 9 (2 and 3) WWFSG 1989) are entitled for housing subsidies. § 7 WWFSG 1989 lists the different possibilities of subsidies. They may be granted as promotional loans, interest subsidies (*Zinszuschüsse*), non-refundable contributions, loan guarantee support (*Übernahme von Bürgschaften*), loans for personal means (*Eigenmittlersatzdarlehen*), housing assistance and payments to home loan banks. § 1 (3) WWFSG 1989 is remarkable, as it states that there is no legal entitlement for subsidies as such, one exception being housing assistance (*Wohnbeihilfe*).

In late 2018, an amendment to the Construction Order (*Bauordnung*) is discussed and shall be decided on 29 November 2018. Through this amendment affordable housing shall be further fostered, by introducing cost limits in the law. The costs for land shall be limited with 188€/m<sup>2</sup>, furthermore the rent in those flat (which can be bought by private persons) shall be limited to 4,87€/m<sup>2</sup> for 2018.<sup>47</sup>

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<sup>45</sup> Gruber, E., Gutmann, R. et al, *Leistbaren Wohnraum Schaffen – Stadt Weiter Bauen* (Vienna, 2018)[https://media.arbeiterkammer.at/wien/PDF/studien/Stadtpunkte\\_25.pdf](https://media.arbeiterkammer.at/wien/PDF/studien/Stadtpunkte_25.pdf)

<sup>46</sup> Viennese Housing Subsidies Act (*Wiener Wohnbauförderungs- und Wohnhaussanierungsgesetz*) (AUT).

<sup>47</sup> Stadt Wien, *Neue Flächenwidmung für geförderten Wohnbau*, <<https://www.wien.gv.at/bauen-wohnen/bauordnungsnovelle-gefoerderter-wohnbau.html>>.

## Tyrol

The province of Tyrol foresees subsidies for natural persons to alleviate the burdens of housing for Austrian citizens and EU citizens. Housing subsidies are also to be granted to persons who have lived in Tyrol for the last five years (§ 17 (4) b Tyrol Housing Subsidies Act (*Tiroler Wohnbauförderungsgesetz 1991 – TWFG 1991*).<sup>48</sup> Subsidies may also be granted to municipalities and limited-profit housing associations. Subsidies can be granted for building, buying and renovation houses, flats and dormitories (§ 5 TWFG 1991). Subsidies may be granted via grants (*Beihilfen*), loans, interest subsidies or loan guarantee support according to § 8 TWFG 1991.

## Upper Austria

In Upper Austria, the requirements to apply for subsidies are stricter than in the majority of the other provinces. The Upper Austrian Housing Subsidy Act (*Oberösterreichisches Wohnbauförderungsgesetz*)<sup>49</sup> foresees high thresholds to be able to apply for subsidies. Access to subsidies requires five years of residence in Austria, 54 months of income from employment or social insurance benefit based on employment within these five years, plus German language level A2 or five years of compulsory schooling in Austria with positive finalisation of German classes (§ 6 (9) Z 3 and (11) *Oberösterreichisches Wohnbauförderungsgesetz*). Municipalities add the criteria that an applicant must have been registered in the municipality for five years. This legal provision entered into force on 1 January 2018. Prior to this amendment, the responsible regional politicians had sent several letters to the housing companies claiming that they should not rent apartments to third country nationals, in particular not to refugees. Although this was not legally binding, many housing providers complied. A similar regulation applies for housing allowance (*Wohnbeihilfe*).

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<sup>48</sup> Tyrolean Housing Subsidies Act (*Tiroler Wohnbauförderungsgesetz 1991*) (AUT).

<sup>49</sup> Upper Austrian Housing Subsidies Act (*Oberösterreichisches Wohnbauförderungsgesetz*) (AUT).

### *Housing available through limited-profit housing associations (LPHA):*

The Charitable Housing Act (*Wohnungsgemeinnützigkeitsgesetz, WGG*)<sup>50</sup> is the law implementing the constitutional provision regarding “*Volkswohnungswesen*”.<sup>51</sup> This law developed historically not as a common ideological understanding of all involved actors, but as a result of mutual adjustments.<sup>52</sup> It is the central starting point for the building of charitable housing in Austria after the Second World War.<sup>53</sup>

Since the 1980s, the provision of social housing lies primarily with housing cooperatives and private and public limited profit housing associations, which fulfil the prerequisites to be allowed to offer social housing. The WGG, being a federal law, lays down the basic rules on social housing and building of those houses. Housing associations which fulfil the prerequisites of this act are to be acknowledged by the provincial government as being “charitable” (§ 1 WGG). Such associations generally serve the public welfare through their work.<sup>54</sup> Those housing associations are mainly owned by public authorities, charity organisations, parties, unions, companies, banks or private persons. Construction companies may not own such associations (§ 9 WGG).<sup>55</sup>

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<sup>50</sup> Charitable Housing Act (*Wohnungsgemeinnützigkeitsgesetz, WGG*) (Austria).

<sup>51</sup> Sonntag, N., ‘Recht auf Wohnen aus verfassungs- und verwaltungsrechtlicher Sicht – eine Bestandsaufnahme, *juridikum* 2/2013, 228.

<sup>52</sup> Mann, W./Mundt, A., ‘Armutspolitische Dimensionen von Gemeindewohnraum, gemeinnützigem Wohnbau und Wohnbauförderung’ in Dimmel, N./Heitzmann, K./Schenk, M., *Handbuch Armut in Österreich* (Studienverlag Innsbruck 2014) 3.

<sup>53</sup> Mann, W./Mundt, A., ‘Armutspolitische Dimensionen von Gemeindewohnraum, gemeinnützigem Wohnbau und Wohnbauförderung’ in Dimmel, N./Heitzmann, K./Schenk, M., *Handbuch Armut in Österreich* (Studienverlag Innsbruck 2014) 3.

<sup>54</sup> Heimo Kranewitter, ‘Gemeinnützige Gebäude’, *ZLB* 2016/37 (Manz 2016) 1.

<sup>55</sup> Wolfgang Amann/Alexis Mundt, *The Austrian System of Social Housing Finance* <<http://cms.siel.si/documents/170/docs/socialhousing-finance-amman-mundt.pdf>>.

Those enterprises are funded via the housing subsidies schemes already presented above. Still, as they are such an important player in the area of building affordable housing possibilities for residents, they are presented separately at this point especially regarding access to such housing facilities.

§ 8 WGG lays down that the enterprise might not restrict the leasing or buying of such flats to a certain group of people, foreseeing some detailed exceptions in (2), such as provision of flats to specific employees of companies or members of their cooperative (*Genossenschaft*), if they are set up as a cooperative.

When allocating the flats, the enterprise has to be guided by objective criteria such as need for housing, size of the household and income of the person seeking housing (§ 8 (3) WGG). According to the legal commentary, this shall in particular lead to taking into consideration persons with low income.<sup>56</sup> § 13 WGG regulates that those charitable enterprises have to set a price for the tenants or buyers, which does neither exceed nor drop below the amount needed by the enterprise to build and keep up this building and the economic management of the company. Production costs are to be considered in this regard. §§ 14 et seqq. WGG foresee very detailed provisions on setting the price. §§ 13 and 14 WGG are the main provisions of this law, being the main difference to the Law of Tenancy (*Mietrechtsgesetz, MRG*), as they order set up of rental costs according to the principle of cost coverage. Through the WGG, a sector on charitable housing industry is legally implemented following the constitutional norm of Art. 11 (1) Z3 B-VG. It therefore fulfils the state's responsibility to secure housing possibilities of the citizens through mobilizing private capital.<sup>57</sup>

A large number of limited-profit housing associations is de facto competent to distribute the flats they built, these associations provide online information and links about specifications on allocation of flats.<sup>58</sup>

The Austrian Federation of Limited-Profit Housing Associations (*Österreichischer Verband gemeinnütziger Bauvereinigungen, GBV*), the umbrella organisation for housing associations, functions as an important factor in this area, as it is the compulsory audit organisation for its members and has several tasks according to the WGG.

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<sup>56</sup> Michael Holoubek/Claudia Hanslik, '§ 8 WGG' in Alexander Illeditzs und Otto Reich-Rohrwig (eds) *Wohnrecht, Kurzkomentar* (LexisNexis 2011).

Michael Holoubek/Claudia Hanslik, '§ 8 WGG' in Alexander Illeditzs und Otto Reich-Rohrwig (eds) *Wohnrecht, Kurzkomentar* (LexisNexis 2011), 368.

<sup>57</sup> Michael Holoubek/Claudia Hanslik, '§ 1 WGG' in Alexander Illeditzs und Otto Reich-Rohrwig (eds) *Wohnrecht, Kurzkomentar* (LexisNexis 2011), 349.

<sup>58</sup> Österreichischer Verband Gemeinnütziger Bauvereinigungen - Revisionsverband, <[www.gbv.at/Mitglied/Index](http://www.gbv.at/Mitglied/Index)>.

The provincial governments have a supervisory function over those housing associations according to § 29 WGG. According to § 27 WGG the head of the association has to submit its annual report to the provincial government each year within four weeks after finalising this report.

### Municipal housing:

Many cities and municipalities offer affordable social housing facilities, which were also funded by the general housing subsidies schemes presented above. The eligibility criteria vary vastly in some of those municipalities. In most cases a certain minimum age, Austrian citizenship or European Economic Area (EEA) or EU citizenship, residence title “permanent stay EU” (*Daueraufenthalt EU*), or refugee status are required, as well as – sometimes – having already stayed a minimum amount of time in the municipality. Furthermore, the net amount of the entire family income is taken into account.<sup>59</sup> Since these regulations are a matter of the local level, the relevant provisions are only be presented exemplarily in respect to Graz, Vienna and Innsbruck in the following.

In **Vienna**, municipal housing is still highly relevant, with more than 500.000 people living in so-called *Gemeindebauten*. The requirements to apply for municipal housing are: 17 years of age, Austrian, EU or EEA citizenship, refugee status or residence title “permanent stay EU” or “permanent stay family member”. The main place of residence had to be in Vienna for two years at the time of application. The net income per year shall not exceed 44.700 € for one person, 66.610 € for two persons.<sup>60</sup>

In **Graz**, guidelines on municipal housing have been adopted by the city council. These regulations foresee that Austrian citizens, EU and EEA citizens, as well as persons with the residence title of permanent stay EU are entitled to access community housing flats. They have to be above 18 years of age, have stayed permanently in Graz for five

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<sup>59</sup> Note: this list is provided on help.gv.at a platform of the federal state providing information on various topics of interest for citizens, <<https://www.help.gv.at/Portal.Node/hlpd/public/content/21/Seite.210240.html>>.

<sup>60</sup> Wohnberatung Wien, ‘Wiener Wohn-Ticket’ (2017) <[https://www.wohnberatung-wien.at/fileadmin/user\\_upload/Media/WienerWohnTicket\\_Folder\\_web.pdf](https://www.wohnberatung-wien.at/fileadmin/user_upload/Media/WienerWohnTicket_Folder_web.pdf)>

years, or have worked here for five years.<sup>61</sup> Those persons are not allowed to have any wealth, which would allow them to get a flat on their own. Furthermore, a certain net income of the family is regulated: e.g., 27.000 € for one persons, 40.000 € for two persons, 44.500 € for three persons.<sup>62</sup> According to information from 2016 the waiting period in Graz differs between 9 to 24 months. Around 60% of the persons living in municipal housing have an income below the poverty line of then 1.128 €. <sup>63</sup>

In **Innsbruck**, the guidelines on accessing municipal housing foresee that Austrian citizens, persons who had their main place of residence in Tyrol for a minimum of five years and third country nationals, who are entitled for long term stay, are entitled to access municipal housing.<sup>64</sup>

### Eviction

There are different legal schemes and provisions on eviction in the broader sense:

First of all, the **Law of Tenancy** deals with termination of rental contracts, which in the last resort may lead to evictions. § 30 Law of Tenancy foresees that landlords may cancel tenancy contracts only for important reasons – e.g., when the tenant has not paid the rent (§ 30 (2) Z1 Law of Tenancy) or has brought significant disadvantage to the flat (§ 30 (2) Z3 Law of Tenancy). Furthermore, according to § 30 (2) Z15 Law of Tenancy a cancellation of the contract is possible, if the house or a part of it will be removed or renovated and the tenant is provided with an alternative. All these cancelations by the landlord may be done only at court according to §§ 33 Law of Tenancy. The judgement then foresees a deadline for eviction of the flat, which can be extended to a maximum of nine months, if no disproportionate disadvantage arises for the landlord (§ 34 (1) Law of Tenancy). The Law of Tenancy is applicable to all rental contracts of flats according to § 1 (1) Law of Tenancy. It mentions specific exemptions in § 1 (2) Law of Tenancy, such as: flats rented charitable organisations in the course of assisted housing; flats rented

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<sup>61</sup> Stadt Graz, 'Richtlinien für die Zuweisung von Gemeindewohnungen sowie die Vermietung von Geschäftsräumlichkeiten in der Fassung des Gemeinderatsbeschlusses GZ.: WG 058074/2014/0005 vom 29.06.2017' (2017).

<sup>62</sup> Stadt Graz, 'Ansuchen um eine Gemeindewohnung' <[https://www.graz.at/cms/dokumente/10024578/ae0e4122/Gemeindewohnung\\_Ansuchen.pdf](https://www.graz.at/cms/dokumente/10024578/ae0e4122/Gemeindewohnung_Ansuchen.pdf)>.

<sup>63</sup> KPÖ Graz, *Wer wohnt im Gemeindebau?* <<https://www.kpoe-graz.at/wer-wohnt-im-gemeindebau.phtml>>.

<sup>64</sup> Landeshauptstadt Innsbruck, 'Vormerk- und Vergaberichtlinien' (2014).

only as secondary residences, flats in buildings which do not comprise more than two separate flats. Parts of the Law of Tenancy are also applicable for flats provided by limited-profit housing associations according to § 1 (3) together with § 20 WGG (as described above).

As soon as a claim on eviction has been submitted the court has to inform the municipality, as long as the tenant does not speak up against such information (§ 33 a Law of Tenancy). The municipality may inform social institutions, which provide aid in case of homelessness.

In case a tenancy contract does not fall under the Law of Tenancy, the **Civil Code** (*Allgemeines Bürgerliches Gesetzbuch, ABGB*) is applicable. § 1118 ABGB foresees the right of the landlord to ask for cancellation of the contract in case of late payment rent or of disadvantageous usage of the property. A claim for eviction can be filed at the courts. This is also applicable for flats provided by limited profit housing associations.<sup>65</sup>

In case persons **squat** houses of others this is considered as “usage without a title” (*titellose Nutzung*) and the general rules of the Civil Code apply. The owners are entitled to file an action for trespass (*Besitzstörungsklage*) according to §§ 454 – 459 Law on Civil Procedures (*Zivilprozessordnung, ZPO*). The police has the competence to dissolve squattings of several persons according to § 37 Security Police Act (*Sicherheitspolizeigesetz, SPG*). This applies, if either dissolving the squatting is necessary to guarantee public order, or if squatting leads to severe affection of the rights of the owner and he asks for dissolving it. In case only one person is concerned, the police is entitled to “expel” (*wegweisen*) this persons from the property according to § 38 (5) Security Police Act.

Time limits regarding cancellation of tenancy contracts and legal basis for claims for eviction are regulated in §§ 560-564 Law on Civil Procedures.

Eviction of properties is generally regulated in § 349 Law on Execution (Exekutionsordnung, EO). Eviction (*Delogierung*) takes place, if the execution title states “eviction of an immovable object”. Eviction is conducted by

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<sup>65</sup> AK Wien, *Wohnrecht für Mieter von Genossenschaftswohnungen* (2013) 170.

court bailiffs. According to § 26 Law on Execution police assistance can be sought to help in evicting a property. This assistance can be ordered via telephone, and does not need the approval of a judge.<sup>66</sup>

Not a formal kind of eviction but a de-facto eviction is laid down in the provision stating that asylum seekers who received a formal positive decision where refugee status is granted, are only allowed to stay in organised quarters of federal care (*Bundesbetreuung*) for four months after the decision (Art. 2 (1) 6 Basic Care Agreement).<sup>67</sup> Finding housing within those four months might pose a big challenge for the refugees. Subsidiary Protection Status holders may stay in the residence for a longer period of time. Asylum seekers granted residence permit on humanitarian grounds are signed out of basic care and have to leave the accommodation already within two weeks. They are also not entitled to needs-based minimum benefits.

### 1.4. Specific rules targeting selected groups

#### *Persons with disabilities*

No uniform definition of the term “disability” exists within the Austrian legal system(s). This leads to the fact that provincial laws might foresee different definitions of the persons entitled to certain services or payments because of their special needs, which will be exemplarily presented below.

For example in Styria a variety of subsidies for person with disabilities is foreseen, also in the area of housing. Persons with disabilities are defined in § 1 of the Styrian Disability Act (*Steiermärkisches Behindertengesetz*)<sup>68</sup> as persons who are disadvantaged in participating in life in the society because of not only temporary impairments of their physical or intellectual abilities, psychological health or senses. Rent subsidies (*Mietzinsbeihilfe*) are foreseen in § 20 Styrian Disability Act for persons who finalised their 18<sup>th</sup> year of age, have a significantly reduced mobility, are flat occupiers (*Wohnungsinhaber*), and their income does not lie over a certain threshold. Support for living is

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<sup>66</sup> Angst/Oberhammer, EO Commentary on § 26, Rz 7.

<sup>67</sup> Basic Care Agreement (*Grundversorgungsvereinbarung – Art. 15a B-VG*) (AUT).

<sup>68</sup> Styrian Disability Act (*Steiermärkisches Behindertengesetz*) (AUT).

foreseen in § 21 Styrian Disability Act, whereby the province carries the costs for one person, who assists a person with disability to live in an own flat. Furthermore, there is a subsidy regarding construction measures to adapt to the needs of persons with disabilities foreseen in § 25 a of the Styrian Disability Act.

In case a family or person applies for housing support, certain quotas are taken into account in assessing the amount granted. While a person without disabilities is assessed with a quota of 0.5 a person with disability (holding a disability pass) is accounted for with a quota of 0.8.<sup>69</sup> Persons who already applied for rent subsidies under the Styrian Disability Act cannot apply for housing subsidies under the Housing Subsidies Act according to § 2 (3) Housing Support Act.

The Viennese Equal Chances Act (*Chancengleichheitsgesetz Wien*) aims at providing persons with disabilities with equal, independent access to all areas of life according to § 1 Viennese Equal Chances Act.<sup>70</sup> Persons with disabilities are defined in § 3 Viennese Equal Chances Act, as persons who are disadvantaged in their development because of bodily, intellectual or psychological impairments, which are not due to age. Basically, Austrian citizens are entitled according to § 4 (1) Viennese Equal Chances Act. Still, EEA citizens, refugees and subsidiary protection holders and persons with a residence permit of “permanent stay EU” in Austria or another EU Member State are equally entitled. § 4 (3) Viennese Equal Chances Act foresees that also other persons are entitled, in case it is necessary to prevent cases of social hardship. § 12 Viennese Equal Chances Act states that persons with disabilities shall be provided with a preferably independent form of living – either fully assisted or partly assisted living are funded. § 14 Viennese Equal Chances Act foresees personal assistance to enable an independent form of living. Regarding granting of housing subsidies the Viennese Housing Subsidies Act lays down that the basis of assessment of household income is reduced by 20% for persons with a documented disability (§ 20 (3) c Viennese Equal Chances Act).

Vienna foresees a special access to community housing for persons who live in assisted housing facilities. While this is not only targeted at persons with disabilities but also, e.g., at homeless persons, it is a special provision of service

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<sup>69</sup> Amt der Steiermärkischen Landesregierung, *Information über die Gewährung der Wohnunterstützung*.

<sup>70</sup> Viennese Equal Chances Act (*Chancengleichheitsgesetz Wien*) (AUT).

by the city. Those persons need to be above 18 years old, have their centre of live in Vienna for five years, were registered in Vienna for two years and are Austrian, EU, Swiss or EEA citizens or recognised refugees or hold a long-term residence permit.<sup>71</sup> Those applications are submitted by the carrier of the assisted housing institutions and are decided upon within two weeks.

The Tyrolean Participation Act (*Tiroler Teilhabegesetz*) foresees subsidies regarding housing of persons with disabilities (§ 12 Tyrolean Participation Act). This covers assisted housing, housing in shared flats, etc.<sup>72</sup> In § 2 (1) e the Tyrolean Participation Act states that subsidies according to this law have to contribute towards independent living and being able to choose between living at home or in institutions. To be entitled to these subsidies, persons have to be Austrian citizens, EEA citizens or citizens of Switzerland, persons with status to be treated equally to Austrians, subsidiary protection status holders and persons with various residence titles as mentioned in § 4 (g) Tyrolean Participation Act. Furthermore, those persons need to be disabled, whereby a definition is provided in § 3 lit a Tyrolean Participation Act (long term physical, psychological, intellectual impairments, which might hinder full and effective participation in society), have their main place of residence in Tyrol or stay permanently. There also needs to be a prospect that the measure strengthens participation of the person in society. §6 Tyrolean Participation Act on mobile assistance foresees assistance to enable independent living (§ 6 (2) c Tyrolean Participation Act). § 20 Tyrolean Participation Act on other subsidies foresees subsidies regarding making flats accessible. According to § 23 Tyrolean Participation Act, the persons with disability have to pay a reasonable contribution to the province of Tyrol, if taking up measures as mentioned in § 12 Tyrolean Participation Act. If the persons with disability does not have an income, the persons obliged to pay subsidies has to pay this contribution. The amounts are specified in an order by the province.

As already presented in detail above, the WGG foresees a general provision in § 2 (2) that a normal set-up of a flat entails in any case has to comply with an obligatory design based on the requirements of accessibility. This general provision can be assessed as a safeguard towards the requirements of persons with special needs.

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<sup>71</sup> Stadt Wien, Soziale Wohnungsvergabe, <  
<https://www.wienerwohnen.at/interessentin/sozialewohnungsvergabe.html>>.

<sup>72</sup> Tyrolean Participation Act (*Tiroler Teilhabegesetz*) (AUT).

*Refugees*

The legal rules on access to housing subsidies were already exemplarily presented above. Refugees have access to subsidies in some provinces (e.g. Styria, Vienna) but are practically excluded in others (Upper Austria), because of rather high barriers to be entitled to subsidies (certain amount of months worked, certain level of language knowledge).

If the residence title “permanent stay EU” is a prerequisite for access to municipal housing (*Gemeindewohnungen*) (as this is the case, for instance in the city of Graz) there is a certain waiting period in place. Persons who were refugees or subsidiary protection status holders for the last five years without any interruption, may apply for this residence title.

A study on the situation in Vienna showed that while persons holding a refugee status are in theory entitled to access municipal housing they are in practice excluded to a great extent.<sup>73</sup> For example, persons have to have been registered at one single Viennese address two years prior to application for municipal housing. This is often hardly possible for refugees due to forced changes of accommodation. Furthermore, a bonus system for long-term inhabitants of Vienna implemented in 2015 led to structural disadvantages, as it allows for shortening of waiting periods depending on long-term stay.<sup>74</sup> As around 50 to 70% of asylum seekers in Austria move to Vienna after the positive decision on their application this is a big issue in practice.<sup>75</sup> That is way a majority of those recognised refugees, who arrived in 2015 and later are forced to access the (higher priced) private rental market.<sup>76</sup> The study

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<sup>73</sup> TU Wien, *Der Wiener Wohnungsmarkt: schwer zugänglich für Flüchtlinge* (2018) <[https://www.tuwien.ac.at/aktuelles/news\\_detail/article/126116/](https://www.tuwien.ac.at/aktuelles/news_detail/article/126116/)>.

<sup>74</sup> Aigner, A., ‘Housing entry pathways of refugees in Vienna, a city of social housing’ *Housing Studies* <<https://www.tandfonline.com/doi/pdf/10.1080/02673037.2018.1485882?needAccess=true>>.

<sup>75</sup> Aigner, A., ‘Housing entry pathways of refugees in Vienna, a city of social housing’ *Housing Studies* <<https://www.tandfonline.com/doi/pdf/10.1080/02673037.2018.1485882?needAccess=true>>, 2.

<sup>76</sup> Aigner, A., ‘Housing entry pathways of refugees in Vienna, a city of social housing’ *Housing Studies* <<https://www.tandfonline.com/doi/pdf/10.1080/02673037.2018.1485882?needAccess=true>>, 5.

further shows, that those persons sometimes de facto stay in highly overcrowded flats, pay high amounts (250 € up) for a single bed and are subject to exploitation by the landlords.<sup>77</sup> The study names this development as the de facto development of a profit-driven informal rental submarket, where already settled migrants make profits out of subletting their apartments to fellow countrymen.

Another area of law relevant for refugees and housing is the equal treatment act, which lays down that no discrimination because of ethnic origin is allowed with regards to access to goods and services, whereby access to housing is specifically mentioned in § 31 Equal Treatment Act (*Gleichbehandlungsgesetz*). De facto recognised refugees often face discrimination at the private rental market, as described in the study already mentioned above.<sup>78</sup> It further states that while single men often face severe problems, families have higher possibilities to receive aid and support and are able to access social housing.

The cited study repeatedly provided an overview of their assessment of housing entry pathways for recognised refugees. While this was only developed based on experiences from Vienna, this will most likely also be applicable to other municipalities in Austria with a certain shortage of municipal housing facilities.

**Table 1.** Housing entry pathways and their specific characteristics.

Housing path	Intermediaries	Housing subfield	Security	Resources/capital
<i>Migrant-assisted</i>	Migrants	Private rental, informal migrant sub-market	Low	Contacts to countrymen
<i>Local-assisted</i>	Helpful locals	Private rental, civil society sub-market	Medium	Contacts to locals, language skills
<i>Non-assisted</i>	Estate agents	Private rental	Medium	Employment, savings, language skills
<i>Welfare</i>	Social workers	Social housing, 'very social housing'	High	Having children, good relationship to personal caretakers

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<sup>77</sup> Aigner, A., 'Housing entry pathways of refugees in Vienna, a city of social housing' *Housing Studies* <<https://www.tandfonline.com/doi/pdf/10.1080/02673037.2018.1485882?needAccess=true>>, 11.

<sup>78</sup> Aigner, A., 'Housing entry pathways of refugees in Vienna, a city of social housing' *Housing Studies* <<https://www.tandfonline.com/doi/pdf/10.1080/02673037.2018.1485882?needAccess=true>>, 15.

<sup>79</sup> Aigner, A., 'Housing entry pathways of refugees in Vienna, a city of social housing' *Housing Studies* <<https://www.tandfonline.com/doi/pdf/10.1080/02673037.2018.1485882?needAccess=true>>, 20.

### 1.5. Constitutional challenges

Several cases were brought before the Constitutional Court regarding the WGG and were analysed for this paper. Still, they did not provide valuable information or issues on the topics at stake in this deliverable. No cases based on the WWFSG or the TWFG were brought to the courts.

Three leaders of the opposition parties brought the new Housing Support Act in Styria to the Constitutional Court in 2017. They stated that it was unconstitutional regarding subsidies for students. The Constitutional Court clarified that the law is specific in its wording and that there is no legal entitlement to those subsidies. They are therefore granted in a not-sovereign (*nicht hoheitlich*) manner. The law is therefore considered as a self-binding law, which only shall bind the administration. This is not the same as the governmental administration as laid down in Art. 18 B-VG.<sup>80</sup>

### 1.6. Relevant institutional and procedural aspects

*Please summarise institutional aspects (eg judicial review) mechanisms) or procedural rules (eg standing) which are important in terms of guaranteeing access to social housing/housing benefits and the protection from eviction.*

As in most cases subsidies are granted in not-sovereign manner by the provinces, there is no legal entitlement to those subsidies and no instruments for appeal exist. Vienna is an exemption, as there is a legal entitlement for housing subsidy (*Wohnbeihilfe*) and a complaint can be filed at the Administrative Court (§ 28 (3) WWFSG).

Graz explicitly states that there is no legal entitlement for municipal housing.<sup>81</sup>

## 2. Impact of international and European law

After the presentation of the national legal framework, the ETHOS guidelines for Deliverable 3.5. request the description of the impact of international and European law on this national legal framework. The ETHOS project aims to grasp this impact by summarizing the challenges to national rules based on explicitly defined international instruments, European instruments, and EU law. The present paper therefore follows this structure in the subsequent subchapters. As will be seen from this description, the impacts are more or less non-existent.

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<sup>80</sup> VfGH, G31/2017, 28 September 2017.

<sup>81</sup> Stadt Graz, *Info Gemeindewohnung Ansuchen* < <https://egov.graz.gv.at/infotext/261.html> >.

## 2.1. Challenges to national rules based on international instruments

When ratifying the CRPD, the National Council stated that this treaty is implemented by introducing according national laws (so-called *Erfüllungsvorbehalt*). The CRPD is not directly applicable and does not form subjective rights. Therefore, it cannot be considered as a tool to assess the legality of another (national) legal norm. The same holds true for the ICCPR, the ICESCR, the CRC and ICERD. When ratifying the ICCPR, the government also stated that the implementation of the Convention has to be conducted through national laws (*Dieser Staatsvertrag ist im Sinne des Art. 50 Abs. 2 Bundes-Verfassungsgesetz durch Erlassung von Gesetzen zu erfüllen*).<sup>82</sup> For the CPRD, this statement was clarified in a case brought to the Supreme Court in 2017 and again stated in another case in 2018.<sup>83</sup> However, the first case dealt with guardianship of children, the second case dealt with reimbursement of hospital costs in Thailand. The cases will not be presented here as they are irrelevant for the topic of this paper. Austria has still not ratified the Additional Protocol to the ICESCR so far and also no individual complaints are possible regarding the CRC. UNCAT was ratified in Austria without an *Erfüllungsvorbehalt* and is therefore directly applicable as a standard law. However, no relevant individual complaints could be identified regarding CAT, CEDAW. Some cases regarding property could be identified regarding the ICCPR<sup>84</sup> but are not of relevance regarding social housing or eviction. One case was decided by the CRPD Committee regarding accessibility and independent living, but it also does not fall within scope of this paper.<sup>85</sup>

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<sup>82</sup> Statement put in the national version of the ICCPR at <[www.ris.bka.gv.at/GeltendeFassung.wxe?Abfrage=Bundesnormen&Gesetzesnummer=10000627](http://www.ris.bka.gv.at/GeltendeFassung.wxe?Abfrage=Bundesnormen&Gesetzesnummer=10000627)>. UNCAT was ratified in Austria without an *Erfüllungsvorbehalt* and is therefore directly applicable as a standard law.

<sup>83</sup> Oberster Gerichtshof, 5Ob183/17y, 21 December 2017; Oberster Gerichtshof, 10ObS16/18b, 20 February 2018.

<sup>84</sup> E.g. CCPR/C/81/D/1160/2003 or CCPR/C/81/D/1060/2002

<sup>85</sup> Committee on the Rights of Persons with Disabilities, *Views adopted by the Committee under article 5 of the Optional Protocol concerning communication No. 26/2014*, CRPD/C/19/D/26/2014.

## 2.2. Challenges to national rules based on European (Council of Europe) instruments?

Austria did not accept Art. 31 RESC on housing. When searching the HUDOC database, 15 cases could be identified for Austria when using the search word “housing”<sup>86</sup>. None of these is relevant regarding access to social housing or subsidies regarding housing.

## 2.3. Challenges to national rules based on EU law

No relevant infringement procedures by the EU Commission or judgements by the Court based on such procedures could be identified.<sup>87</sup>

## 2.4. Relevant institutional and procedural aspects

Art. 9 B-VG states that the generally recognised rules of international law are part of the federal law. While there are still ongoing discussion about what falls within this wording, it is uncontested that treaties do not fall within the meaning of Art. 9 (1) B-VG. The Federal President concludes state treaties according to Art. 65 B-VG. The position of state treaties within the national legal order is defined by their content. Austria follows a twofold way, on the one hand foreseeing general transformation for rule, but also on the other hand asking for special transformation, necessitating legislative steps within Austria.

Through accession to the EU, which was considered as a complete change of the Austrian constitution, also the law of the EU is one of the relevant legal orders in Austria (constitutional dualism). EU law precedes national law and “simple” constitutional law, but not the basic principles of the Constitution. The explanatory comments on the Austrian Constitutional Law on Acceding to the EU states that it aims at “opening up the Austrian legal order towards the legal order of the EU in a way, as it follows from its specific claim of validity” (*die österreichischer*

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<sup>86</sup> [<sup>87</sup> A search of all cases relevant for Austria was conducted since 1995.](https://hudoc.echr.coe.int/eng#%22fulltext%22:%22housing%22,%22respondent%22:%22AUT%22,%22documentcollectionid%22:%22GRANDCHAMBER%22,%22CHAMBER%22}>.”</a></p>
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*Rechtsordnung gegenüber der Rechtsordnung der EU in der Weise zu öffnen, wie sich dies aus deren besonderem Geltungsanspruch ergibt*).<sup>88</sup> Authors claim that the close interconnections between EU and national law led to a monist compression (*monistische Verdichtung*).<sup>89</sup>

With the accession to the EU a new section was included in the constitution (Art. 23a-23k B-VG).

Courts can invalidate or set aside national laws against EU instruments. The Constitutional Court clearly stated in judgement U466/11 that the EU Fundamental Rights Charta is a measurement tool for its proceedings to review legal acts. The Constitutional Court holds the right to invalidate laws, if they are in violation of fundamental rights.

In C-112/13 the Court of Justice of the EU dealt with a preliminary ruling of the Supreme Court, clarifying how this judgment U466/11 is to be understood for the Supreme Court, whether it is obliged to address the Constitutional Court in such matters.

### 3. Right to housing, justice as redistribution and vulnerability

#### 3.1. Right to housing and justice as redistribution

When looking into the Austrian legal framework we could not identify arguments engaging different conceptions of justice. Still, we could identify some areas where there are issues regarding justice as redistribution.

One factor possibly hindering just redistribution in the area of housing is the set-up of the Austrian state as such. Through the division of competences between the federal state and the provinces in the area of housing, the rules on subsidies differ from province to province. This is for example clearly visible when looking at the Upper Austrian rules regarding housing subsidies: There, high thresholds were implemented, which practically exclude refugees from the possibility to receive subsidies. So unequal possibilities to access subsidies exist throughout the provinces. This might also be stated for persons with disabilities – the variety of subsidies provided differs from one province to another. Furthermore, the term “disability” is not coherently defined within the Austria legal system, which also leads to different levels of recognition of persons with impairments.

Furthermore, the level of provision of social housing differs across Austria. Again this can be traced back to the provincial set-up of the country. While the number of subsidized housing possibilities in Vienna is very high, it is

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<sup>88</sup> RV 1546 BlgNR 18

<sup>89</sup> Michael Potacs, ‘Das Verhältnis zwischen der EU und ihren Mitgliedsstaaten im Lichte traditioneller Modelle’ (2010) 17 March 2010, Springer, 137 < <https://link.springer.com/content/pdf/10.1007%2Fs00708-010-0045-3.pdf>>.

significantly lower in other provinces, forcing persons to access the private housing market. Another factor with regards to social housing are the prerequisites set in the legal norms on who can enter social housing accommodation. For example the annual income limitations differ from municipality to municipality, while it amounts to 44.700€ in Vienna, it only amounts to 27.000€ in Graz.

As was presented above, subsidies are in the majority of cases provided for objects and only around 15% of the funds are spent on individuals applying for housing subsidies. Persons in favour of increasing the amount of subjective subsidies argue that those allow for better targeting these social benefits and would thus be less expensive for the state. Those in favour of subsidies for objects generally argue that this type of subsidies allow for keeping the costs of housing low.<sup>90</sup> In this regard the already mentioned income limitations might be critically assessed. Are persons with almost 45.000 € income really in need of social housing, or should social housing rather be available only for persons with lower income to foster more just redistribution, as those persons would then be able to save money on rent?

As was already described in some detail above, there is obviously a rather large gap between the legal provisions regarding access of recognised refugees to municipal housing and the de facto chances to do so. While this paper shall focus on black letter law, we decided to discuss these large discrepancies, as they are of high relevance regarding justice claims of refugees in Austria in the area of housing.

### **3.2. Right to housing and vulnerability**

We did not find any hints regarding housing and vulnerability during our research.

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<sup>90</sup> GBV, Objekt- oder Subjektförderung- die alte Frage <<https://www.gbv.at/Page/View/4405>>.

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