



COMPLAINT TO THE EU COMMISSION AGAINST THE REPUBLIC OF AUSTRIA 27 April 2026

Since July 2025, Austria has purported to unilaterally disapply the [Family Reunification Directive 2003/86/EC](#) (“the Directive”) as it relates to family members of refugees resident in Austria. That purported, unilateral suspension of secondary EU law constitutes a grave violation of the EU constitutional order, breaching Austria’s duty of sincere cooperation under [art. 4\(3\) TEU](#) and its fundamental obligations under [art. 2 TEU](#) to respect the rule of law, equality, and the rights of people belonging to minorities: see e.g. [CJEU C-204/21](#) §§ 67–68.

The purported legal basis for Austria’s unilateral disapplication of refugees’ reunification rights under the Directive are Ministerial decrees claiming that “the maintenance of public order and the protection of internal security are endangered”: see Appendix 1. The Treaties strictly prohibit Member State attempts to unilaterally disapply secondary EU legislation on such grounds without oversight by the EU institutions: see [CJEU C-808/18](#) § 216. Austria has now issued two such decrees, for the periods 03.07.2025–02.01.2026 and 03.01.2026–02.07.2026, without any oversight by the EU institutions. The fact that no Austrian court has yet addressed whether the decrees violate EU law or referred that question to the CJEU under [art. 267 TFEU](#) makes it all the more essential that the Commission proactively take measures against Austria now.

Austria’s purported basis for its unilateral suspension of the Directive as to refugees is unfounded and unlawful in substance. While [art. 72 TFEU](#) may permit Member States to derogate from secondary EU law on grounds of law and order or internal security “in exceptional and clearly defined cases” ([CJEU C-808/18](#) § 214), that derogation power “must... be interpreted strictly” ([ibid.](#) § 215), with Austria bearing the burden of proving that it is “necessary” to derogate from the secondary EU law in question in order to exercise its responsibilities as to maintaining law and order and safeguarding internal security ([ibid.](#) § 216). Far from meeting this exacting test, Austria’s claimed justifications for unilaterally suspending refugees’ reunification rights under the Directive abuse it. They rely substantially on alleged concerns that are completely unrelated to the concepts of law and order or internal security within the meaning of the Treaties (e.g. [CJEU C-601/15](#) §§ 65–66), such as purported concerns about strain on the education system, and the state’s fears of increasing use of languages other than German within the home. Austria’s purported justifications are based on misconceived statistical projections about the numbers of immigrants through reunification with refugees and their feared rates of criminality. Austria has failed to account for the significant scope that the Directive itself already gives Member States to introduce conditions or waiting periods for reunification with foreign nationals (including, in defined circumstances, refugees). And Austria has ignored the power the Directive already gives it, under art. 6 and 16, to

always refuse reunification (or refuse to prolong it) in any individual case on grounds of public policy, public security or public health – a power which in itself makes it unnecessary for Austria to derogate from the Directive in order to exercise its responsibilities as to law and order and internal security. See further Appendix 2.

Austria's sole carve-out – allowing reunification with a refugee only if a decision is “urgently required within 6 months pursuant to art. 8 [ECHR](#)” – introduces an urgency threshold that is alien to the Directive. More fundamentally, as recently interpreted by the European Court of Human Rights, art. 8 [ECHR](#) can give states a “wide margin of appreciation” in limiting refugees' family reunification: [Dabo v. Sweden, no. 12510/18, 18.04.2024](#), § 105. By contrast, the Directive requires Member States to authorise family reunification in the cases it specifies “without being left a margin of appreciation”: [CJEU C-540/03](#) § 60. Given that crucial disparity, Austria's limited concession to art. 8 ECHR does not secure even indirect compliance with EU law, and is no answer to the fundamental violation of the EU constitutional order now complained of.

Not only does Austria's purported unilateral suspension of these Directive obligations unlawfully violate core EU rights of affected individuals. As long as it is unaddressed, this purported suspension can only embolden the Member States to invoke mischaracterized “public order” and “security” concerns so as to unilaterally disapply the EU laws they find inconvenient. This poses a genuine threat to the rule of law on which the Union is predicated. As guardian of the Treaties, the Commission is urged to commence infringement proceedings against Austria without delay, even if Austria's suspension should end in the meantime: [CJEU C-620/16](#) §§ 30–60.

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For and on behalf of the following not-for-profit entities and legal academics established in the Union:

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Appendix 1: Relevant Austrian legislative material

Appendix 2: Other material