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**Interinstitutional File:  
2015/0231 (NLE)**

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**LIMITE**

**SCH-EVAL 59  
MIGR 67  
COMIX 231**

**NOTE**

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From:	Austrian delegation
To:	Working Party for Schengen Matters (Schengen Evaluation) - Mixed Committee (EU-Iceland/Norway/Switzerland/Liechtenstein)
No. prev. doc.:	15046/15
Subject:	Schengen evaluation of AUSTRIA - Action Plan to remedy any deficiencies identified in the 2015 evaluation report in the field of Return

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Delegations will find annexed the Action Plan to remedy any deficiencies identified in the 2015 evaluation report in the field of Return provided by Austria on 16 March 2016.

In conformity with Article 16 (2) of Council Regulation (EU) No 1053/2013 of 7 October 2013, Member States are invited to send comments, if any, by **Friday 8 April (cob)** to [schengen.evaluation@consilium.europa.eu](mailto:schengen.evaluation@consilium.europa.eu).

**ACTION PLAN to remedy any deficiencies identified in the evaluation report concerning the 2015 evaluation of Austria**

(Article 16 of Regulation 1053/2013)

**Return**

- C(2015) 6341 of 05.10.2015 (evaluation report)

- 15435/15 from 17.12.2015 (Council doc; recommendations)

RECOMMENDATION	PRIORITIZED RECOM YES/NO	PLANNED ACTION TO BE TAKEN BY AUSTRIA	FORESEEN TIME-FRAME
<p><b>Recommendation No. 1:</b></p> <p><i>improve the collection and provision of data and statistics in the field of return policy, in line with article 5 of the Reg (EC) 862/2007 of the European Parliament and the Council on Community Statistics on migration and international protection;</i></p>	No	<p>1.1 Evaluate the current status on collection and provision of data and statistics according to article 5 of the Reg (EC) 862/2007.</p> <p>1.2 Adopt the national practise on collection and provision of data and statistics according to article 5 of the Reg (EC) 862/2007.</p> <p>1.3 Forward data and statistics according to article 5 of the Reg (EC) 862/2007 to EUROSTAT regularly as foreseen.</p>	<p><b>Completed</b></p> <p><u>comments:</u></p> <p>evaluation on the current status on collection and provision of data and statistics according to article 7 of the Reg (EC) 862/2007 currently on-going.</p>
<p><b>Recommendation No. 2:</b></p> <p><i>amend the Fremdenpolizeigesetz (FPG)</i></p>	No	<p>2.1 Evaluate possible amendments of the FPG in order to clarify exemptions from the application of the Directive 2008/115/EC.</p>	<p><b>on-going</b></p>

<p><i>[Aliens' Police Act] and make it more explicit which cases are exempted from the application of the Directive 2008/115/EC) of the European Parliament and the Council ; Article 2(2)(a) and (b)) and which parts of the Directive nevertheless apply to such cases (Article 4(4))</i></p>		<p>2.2 Decide – based on that evaluation – on a possible amendment of the FPG in order to clarify exemptions from the application of the Directive 2008/115/EC.</p>	<p><u>comments:</u> possible amendments are currently discussed within the MoI; results of a possible parliamentary discussion will be communicated until January 2017.</p>
<p><b>Recommendation No. 3:</b></p> <p><i>review the current law and practice as regards the procedural rights and treatment of unaccompanied minors belonging to various age groups to make the rules clearer both for the minors and for staff dealing with them in the return procedure;</i></p>	<p>No</p>	<p>3.1 Evaluate the current law and practice as regards the procedural rights and treatment with regard to unaccompanied minors.</p> <p>3.2 Based on the evaluation establish – if needed – an action plan for further enhancing training and training materials.</p>	<p><b>on-going</b></p> <p><u>comments:</u></p> <p>findings of the evaluation will be communicated until November 2016.</p>
<p><b>Recommendation No. 4:</b></p> <p><i>bring the rules on the maximum period of detention in line with the return acquis (the maximum period should not exceed 18 months), although it is acknowledged that in practice the length of the detention period does not seem to exceed 18 months;</i></p>	<p>No</p>	<p>4.1 Evaluate the necessity of adding an addendum to the existing provisions of the FPG considering the current average detention time (13.45 calendar days).</p> <p>4.2 Decide – based on that evaluation – on a possible amendment of the FPG in order to define a maximum period of detention in line with the return acquis.</p>	<p><b>on-going</b></p> <p><u>comments:</u></p> <p>findings of the evaluation will be communicated until January 2017.</p>

<p><b>Recommendation No. 5:</b></p> <p><i>consider for the sake of legal clarity to amend the FPG to include the possibility to reduce or revoke, an application or ex officio, a life-long entry ban. This possibility is currently foreseen only in the General Administrative Procedural Act (Article 68);</i></p>	No	<p>5.1 Evaluate the necessity of amending the FPG to explicitly state in that law on the possibility to reduce or revoke, on application or ex officio, a life-long entry ban.</p> <p>5.2 Decide – based on that evaluation – on a possible amendment of the FPG in this regard.</p>	<p><b>on-going</b></p> <p><u>comments:</u></p> <p>findings of the evaluation will be communicated until November 2016.</p>
<p><b>Recommendation No. 6:</b></p> <p><i>ensure that unaccompanied minors that are held in detention are strictly separated from adults, in an environment appropriate for their age, as required by the FPG;</i></p>	No	<p>6.1 Review the current practise of holding unaccompanied minors exceptionally in detention in police detention centres other than those explicitly dedicated and designed for the holding of unaccompanied minors (“Anhaltezentrum Vordernberg” and “Familienunterbringung Zinnergasse”).</p> <p>6.2 Dedicate only the centers “Anhaltezentrum Vordernberg” and “Familienunterbringung Zinnergasse” as detention facilities for holding unaccompanied minors.</p>	<p><b>Completed</b></p>
<p><b>Recommendation No.7:</b></p> <p><u>Part 1:</u></p> <p><i>make the facilities and detention regime at Hernalser Gürtel more suitable for detaining irregular migrants;</i></p>	No	<p>7.1.1 Evaluate possible improvements concerning the infrastructure of the detention centre Hernalser Gürtel.</p> <p>7.1.2 Draw up plans for infrastructural improvements of the detention centre Hernalser Gürtel.</p>	<p><b>on-going</b></p> <p><u>comments:</u></p> <p>plans for infrastructural</p>

<p><u>Part 2:</u></p>		7.1.3 Approve the infrastructure plans for the detention centre Hernalser Gürtel.	<p>improvements have approved; a contract with a different property management firm has been concluded; completion of infrastructural measures is foreseen until end 2017.</p> <p><b>on-going</b></p> <p><u>comments:</u></p> <p>the corresponding ministerial order has been issued on 7<sup>th</sup> May 2015; completion of implementation measures is foreseen until end 2016</p>
		7.1.4 Carry out infrastructural improvements of the detention center Hernalser Gürtel.	
		7.2.1 Evaluate necessary adaptations to the Ministerial orders concerning the open regime in case of pre-removal detention.	
		7.2.2 Amend the Ministerial orders concerning removal detention to make the open regime the general rule.	
		7.2.3 Implement corresponding infrastructural,	

<p><i>ensure that the open regime is the general rule (and consider the amendment of the PAZ centres' in-house rules accordingly)</i></p> <p><i>Part 3:</i></p> <p><i>and that detainees in solitary confinement are not denied the right to visits and outdoor exercise.</i></p>		<p>organizational and personnel measures for the detention centers.</p> <p>7.3.1 Evaluate necessary adaptations to the Ministerial orders concerning solitary confinement in case of pre-removal detention.</p> <p>7.3.2 Amend the Ministerial orders concerning the rights to visits and outdoor exercise for detainees in solitary confinement.</p> <p>7.3.3 Implement corresponding infrastructural, organizational and personnel measures for the detention centers.</p>	<b>Completed</b>
<p><b>Recommendation No. 8:</b></p>	No	<p>8.1 Evaluate the current practice of holding returnees in pre-removal detention that have special medical needs</p>	<b>on-going</b>

<p><i>consider finding a more appropriate solution for holding returnees in pre-removal detention that have special medical needs either in ordinary hospitals or in suitably equipped specialised detention centres for returnees;</i></p>		<p>8.2 Draw up – based on that evaluation – if needed – an action plan for addressing the recommendation</p>	<p><u>comments:</u> findings of the evaluation will be communicated until November 2016.</p>
<p><b>Recommendation No. 9:</b>  <u>Part 1:</u>  <i>review the monitoring system to encourage for monitoring of the in-flight phase when commercial flights are used for forced returns.</i></p>	<p>No</p>	<p>9.1.1 Evaluate the current monitoring system based on the existing formal statement of the Human Rights Advisory Council (advisory body of the Austrian Ombudsman Board), which already clearly states that the possibility to monitor the in-flight phase of both commercial and charter flights used for forced returns is provided.</p> <p>9.1.2 Decide – based on that evaluation – on necessary further steps to encourage the monitoring of the in-flight phase of commercial flights used for forced returns.</p> <p>9.2.1 Evaluate the current system of making the reports publicly available, considering the fact that the reports are already provided via the MoI and the Austrian</p>	<p><b>Completed</b></p> <p><u>comments:</u> The Volksanwaltschaft (Ombudsman Board) is informed in advance about all forced returns for possible monitoring activities.</p> <p><b>on-going</b></p> <p><u>comments:</u> findings of the</p>

<p><u>Part 2:</u></p> <p><i>For the sake of transparency and the independence of the Verein Menschenrechte Österreich, its reports on return operations should be made public and submitted to Parliament;</i></p>		<p>Ombudsman Board to the parliament on a yearly basis</p> <p>9.2.2 Decide – based on that evaluation – on necessary further steps to encourage the publication of the reports of the VMÖ</p>	<p>evaluation will be communicated until November 2016.</p>
<p><b>Recommendation No. 10:</b></p> <p><i>align the practice on issuing entry bans with Article 11(1) of the Return Directive and consider amending the wording of the corresponding Article 53 of the FPG accordingly. Issue an entry ban, as a rule, if no period of voluntary departure has been granted or the subject did not comply with the obligation to return within the provided timeframe, while always taking into account the circumstances of the individual case;</i></p>	<p>No</p>	<p>8.3 Evaluate the current practice of issuing entry bans addressing also the needs to follow the decision of the highest administrative court</p> <p>8.4 Draw up – based on that evaluation – if needed – an action plan for addressing the recommendation</p>	<p><b>on-going</b></p> <p><u>comments:</u></p> <p>findings of the evaluation will be communicated until May 2017.</p>