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From: General Secretariat of the Council
On: 16 December 2015
To: Delegations

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Subject: Schengen evaluation of Austria - Council Recommendation on addressing the deficiencies identified in the 2015 evaluation of the application of the Schengen acquis in the field of Return

Delegations will find in the annex the Council Recommendation on addressing the deficiencies identified in the 2015 evaluation of the application of the Schengen acquis in the field of Return by Austria, adopted by the Council at its 3441st meeting held on 16 December 2015.

In line with Article 15(3) of Council Regulation (EU) No 1053/2013 of 7 October 2013, these recommendations will be forwarded to the European and national Parliaments.

COUNCIL RECOMMENDATION

on addressing the deficiencies identified in the 2015 evaluation on the application of the Schengen acquis in the field of Return by Austria

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to Council Regulation (EU) No 1053/2013 of 7 October 2013 establishing an evaluation and monitoring mechanism to verify the application of the Schengen acquis and repealing the Decision of the Executive Committee of 16 September 1998 setting up a Standing Committee on the evaluation and implementation of Schengen ¹, and in particular Article 15 thereof

Having regard to the proposal from the European Commission,

Whereas:

- (1) The purpose of this Recommendation is to recommend to Austria remedial actions to address deficiencies identified during the Schengen evaluation in the field of return carried out in 2015. Following the evaluation, a report covering the findings and assessments, listing best practices and deficiencies identified during the evaluation was adopted by Commission Implementing Decision (C(2015) 6341 final).
- (2) The limited average period of pre removal detention as well as the new detention centre of Vordenberg, with its open door regime and high standards of accommodation, can be seen as examples of good practices.
- (3) It is important to remedy each of the deficiencies identified immediately. Therefore no indication of priority for implementation of the recommendations should be given.

¹ OJ L 295, 6.11.2013, p. 27.

- (4) This Recommendation should be transmitted to the European Parliament and to the parliaments of the Member States. Within three months of its adoption, Austria shall, pursuant to Article 16 of Regulation (EU) No 1053/2013, establish an action plan to remedy the deficiencies identified in the evaluation report and provide this to the Commission and the Council,

HEREBY RECOMMENDS:

Austria should:

1. 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;
2. amend the Fremdenpolizeigesetz (FPG) [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));
3. 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;
4. 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;
5. consider for the sake of legal clarity to amend the FPG to include the possibility to reduce or revoke, on application or ex officio, a life-long entry ban. This possibility is currently foreseen only in the General Administrative Procedural Act (Article 68);

6. 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;

7. make the facilities and detention regime at Hernalser Gürtel more suitable for detaining irregular migrants; ensure that the open regime is the general rule (and consider the amendment of the PAZ centres' in-house rules accordingly) and that detainees in solitary confinement are not denied the right to visits and outdoor exercise;

8. 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;

9. review the monitoring system to encourage for monitoring of the in-flight phase when commercial flights are used for forced returns. 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;

10. 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;

Done at Brussels,

*For the Council
The President*