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AUSTRIA'S RETURN POLICY: APPLICATION OF ENTRY BANS POLICY AND USE OF READMISSION AGREEMENTS

Julia Rutz

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EUROPEAN MIGRATION NETWORK

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

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

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

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

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

assures the application of similar definitions and terminology in all national reports.

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

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1. INTRODUCTION

According to the European Commission, the implementation of effective return policies remains a highly relevant topic for European Union Member States.[1] Entry bans and readmission agreements are distinct measures that serve different purposes within the return process. A return decision can be accompanied by an entry ban, prohibiting the third-country national concerned from entering the country. As instruments of the return policy, readmission agreements aim to guarantee an efficient readmission to the country of origin for persons who are irregularly present by defining enforcement modalities, procedures and deadlines.

This study topic was chosen for the EMN work programme 2014 in order to gain an understanding of the extent to which European Union Member States use entry bans and readmission agreements to enhance their national return policies. The possible synergies between entry bans and readmission agreements, on the one hand, and reintegration assistance on the other hand, will also be explored.

This study is based on common specifications valid for all European Union Member States plus Norway in order to achieve comparable EU-wide results. The objective of this national report is to provide an overview of the existing approaches, mechanisms and practical measures implemented by Austrian institutions and authorities. The study does not provide an extensive overview of all measures used to combat irregular migration; nor does it address all aspects of the EU's external policy on migration and asylum within which the readmission agreements are embedded. Instead, the following content is included in the study:

After an introduction outlining the objectives, the EU legal and policy framework and the methodology, the legal framework of entry bans is described. The relevant legislative developments, with regards to the regulation of entry bans in Austria, are characterized by significant amendments to the Aliens Police Act in 2011 and 2013. Those provisions included the

1 Communication from the Commission to the Council and the European Parliament on EU Return Policy, COM (2014) 199 final, 28 March 2014, p. 4.

transposition of the Return Directive,[2] specifically its Article 11, which stipulates that return decisions may be accompanied by an entry ban. Special attention is given the connection between return decisions and entry bans within the legal regulations. Thereafter, the grounds upon which an entry ban may be imposed are analysed.

Furthermore, several aspects relating to the practical application of entry bans are examined. One of them is the possibility for third-country nationals, upon whom an entry ban has been imposed, to appeal against this decision.

A further section considers some aspects relating to readmission agreements – their practical application, for instance. A comprehensive overview lists the different groups of bilateral readmission agreements concluded by Austria, both with third countries and with EEA countries.

The dependencies that might exist between entry bans and readmission agreements, on the one hand, and reintegration assistance, on the other hand, are outlined. This section also examines the level of cooperation between the decision makers in charge.

The final chapter offers statistics on forced return, on voluntary return and on voluntary departure in Austria. Conclusions summarizing the main findings are provided in chapter seven to close the study.

1.1 Definitions

The following key terms used in this study according to the Directive 2008/115/EC (the Return Directive) and the EMN Glossary[3] are defined as follows:

Entry ban: an administrative or judicial decision or act prohibiting entry into and stay on the territory of the Member States for a specified period, accompanying a return decision;[4]

EU readmission agreement: an agreement between the EU with a third country, on the basis of reciprocity, establishing rapid and effective procedures for the identification and safe and orderly return of persons who

2 Directive 2008/115/EC of the European Parliament and of the Council of 16 December 2008 on common standards and procedures in member States for returning illegally staying third-country nationals, hereinafter "Return Directive".

3 EMN Glossary, available at www.emn.at/images/stories/Glossary/EMN_Glossary_EN_Version.pdf (accessed on 30 June 2014).

4 Article 3 subpara 6 Return Directive.

do not, or no longer, fulfil the conditions for entry to, presence in, or residence on the territories of the third country or one of the Member States of the European Union, and to facilitate the transit of such persons in a spirit of cooperation;[5]

Forced return: The compulsory return of an individual to the country of origin, transit or third country [i.e. country of return], on the basis of an administrative or judicial act;[6]

Removal: the enforcement of the obligation to return, namely the physical transportation out of the Member State;[7]

Return: the process of a third-country national going back – whether in voluntary compliance with an obligation to return, or enforced – to: his or her country of origin, or; a country of transit in accordance with EU or bilateral readmission agreements, or; another third country, to which the third-country national concerned voluntarily decides to return and in which he or she will be accepted;[8]

Voluntary departure: compliance with the obligation to return within the time-limit fixed for that purpose in the return decision;[9]

Voluntary return: the assisted or independent return to the country of origin, transit or third country, based on the free will of the returnee.[10]

1.2 EU legal and policy framework

Since 1999 the EU has been working to develop a comprehensive approach to migration and asylum. According to that, the return of

5 EMN Glossary, p. 157.
6 EMN Glossary, p. 179.
7 Article 3 subpara 5 Return Directive.
8 Article 3 subpara 3 Return Directive.
9 Article 3 subpara 8 Return Directive.
10 Common Template EMN Focussed Study 2014, final version 5th March 2014, *Good Practices in the return and reintegration of irregular migrants: Member States' entry bans policy & use of readmission agreements between Member States and third countries.* For a description of the term "voluntary" see Kratzmann, *Unterstützte Rückkehr: Alternative zur Abschiebung?* 2014, available at www.oeaw.ac.at/kmi/Jahrestagung%20Abstracts/Papers%202014/Kratzmann_Vortrag_KK_Unterstuetzte%20Rueckkehr%20als%20Alternative%20zur%20Abschiebung.pdf (accessed on 4 November 2014); regarding the term of Assisted Voluntary Return see Katerina Kratzmann, Elisabeth Petzl, Mária Temesvári, *Programmes and Strategies in Austria fostering Assisted Return to and Re-Integration in Third Countries*, 2010, p. 16.

irregularly staying third-country nationals is essential to the credibility of the EU common migration and asylum policy. The Hague Programme called for the development of a coherent return policy and the Stockholm Programme reaffirmed this need by calling on the EU and its Member States to intensify efforts to return irregular third-country nationals by implementing an effective and sustainable return policy.

The main legal instruments on EU level relating to return are the EU Readmission Agreements and the Return Directive from 2008.[11]

The **Return Directive** lays down common EU standards on forced return and voluntary departure. The Directive has a two-fold approach: on the one hand, it stipulates that Member States are obliged to issue return decisions to *all* third-country nationals staying irregularly on the territory of a Member State.[12] On the other hand, the importance of implementing return policy with full respect for the fundamental rights and freedoms and the dignity of the individual returnees, including the principle of *"non-refoulement"* is emphasized. As a result, any return may only be carried out in compliance with EU and other international human rights' guarantees.[13]

The Return Directive stipulates different types of return measures. First, a broad distinction[14] can be made between voluntary and forced return, with the Directive emphasizing that voluntary return is preferred.[15] Therefore a return decision normally provides for a period of voluntary departure. If, however, the obligation to return has not been complied with or voluntary return was not granted following the exceptions listed in

11 Directive 2008/115/EC of the European Parliament and of the Council of 16 December 2008 on common standards and procedures in member States for returning illegally staying third-country nationals.

12 E.g. third-country nationals who entered the EU territory illegally (clandestinely or by using fraudulent travel documents); rejected applicants for international protection; visa over-stayers.

13 E.g. the EU Charter of Fundamental Rights, the 1950 Convention for the Protection of Human Rights and Fundamental Freedoms, the 1984 Convention against Torture and other Cruel, Inhuman and degrading treatment or punishment and the 1951 Geneva Convention related to the Status of Refugees as amended by the 1967 New York Protocol.

14 For the group of the "non-removable returnees", see F. Lutz, The Negotiations of the Return Directive, comments and materials, 2010, p. 64.

15 Recital 10.

Art. 7 para 4 Return Directive, Member States must take all necessary measures to enforce the return decision so as to remove irregular third-country nationals from their territory.

Art. 11 of the Return Directive stipulates one concrete return measure: entry bans. The relevant elements of the provision are summarized as follows:

Provisions	**Description**
Article 11 (1)	Return decisions shall be accompanied by an entry ban: (a) If no period for voluntary departure has been granted, or (b) If the obligation to return has not been complied with. In other cases return decision may be accompanied by an entry ban.
Article 11 (2)	Member States shall determine the length of the entry ban which shall not in principle exceed five years. It may however exceed five years if a serious threat to public security and order is given.
Article 11 (3)	Member States may withdraw or suspend an entry ban: – If the returnee can demonstrate that he/she left the territory in full compliance with a return decision. – If the third-country national constitutes a victim of trafficking in human beings who has been granted a residence permit pursuant to Council Directive 2004/81/EC, he/she shall not be subject of an entry ban provided that the third-country national concerned does not represent a threat to public policy, public security or national security. – In individual cases, certain categories of cases, or for other reasons. Member States may refrain from issuing, withdraw or suspend an entry ban in individual cases for humanitarian reasons.

The provision leaves a certain degree of discretion to Member States as to the implementation of entry bans. Entry bans are therefore used as a coercive policy measure – sending a signal prior to arrival that it does not pay to come to the EU irregularly.

Although the Return Directive does not include an explicit provision on **readmission agreements**, it includes a reference to it in Recital 7, emphasizing the need for EU and bilateral agreements with third countries to facilitate the return process.

Since the Lisbon Treaty entered into force, the conclusion of Readmission Agreements has an explicit legal basis in Art. 79 para 3 of the Treaty on the Functioning of the European Union.

While the EU acquis provides some common elements to the way that Member States should carry out their return policies, they are still left some discretion as to which measures to apply, in what circumstances, and their method of implementation. In particular, little is known about their practical application and the effectiveness of these measures.

1.3 Methodology

The study at hand is based on common specifications that are valid for all EU Member States plus Norway in order to achieve comparable EU-wide results as much as possible. It follows up on the EMN study "Reducing Irregular Migration in the EU" (EMN, 2012). While the former study focused primarily on the practical measures implemented by national authorities to reduce irregular migration movements, the study at hand is concerned with two return measures in particular: entry bans and readmission agreements.

The study is based on recent information available at the national, European and international level including publications, existing studies and statistics, press releases and media documents as well as internet resources. The desk research includes a collection of material on the legal situation in Austria. An overview of the sources of information is available in the bibliography in the Annex. During the desk research it became apparent that available material focussing on entry bans and readmission agreements in Austria was rather limited, especially in regard to statistical data. In order to round out the research, qualitative semi-structured face-to-face interviews were carried out with relevant experts in the field of entry bans and readmission agreements and professionals working in the wilder

area of aliens' and asylum law in Austria. These were Thomas Mühlhans (Head of Unit Asylum and Return Funds, Federal Ministry of the Interior), Thomas Neugschwendtner (Lawyer), Gerhard Reischer (Head of Department Immigration and Border Control, Federal Ministry of the Interior), Manuel Scherscher (Department Asylum and Immigration, Federal Ministry of the Interior), and Christoph Steinwendtner (Diakonie Flüchtlingsdienst Wien).

Depending on the specific expertise of each interviewee, the interviews provided detailed information on specific issues. The interview guidelines were developed beforehand and covered all aspects relevant for this national study, but left enough room to respond to the particularities of the different interview partners. All interviews were carried out by staff members of the National Contact Point Austria in the EMN. The interviews were transcribed and the content included in the study was sent to the experts prior to publication.

The present study was drafted by Julia Rutz (Head of Research and Migration Law, IOM). The statistical annex was compiled and elaborated by Saskia Koppenberg (Research Associate, IOM). Special thanks also go to Katerina Kratzmann (Head of Office, IOM) for reviewing the report, to Andrea Götzelmann (Head of Assisted Voluntary Return and Reintegration, IOM) for her contributions in the reintegration assistance chapter, to Adel-Naim Reyhani (Legal Associate, IOM) for his comments and to Judith Tutzer (Research Intern, IOM) for her support in research for the study.

2. LEGAL FRAMEWORK OF ENTRY BANS

Entry bans are defined in the Return Directive as an "administrative or judicial decision or act preventing entry into and stay in the territory of the Member States for a specified period, accompanying a Return Decision".[16] According to Szymanski, this regulation does not only aim to protect the internal security of a state, but also the security of the member states. Consequently, the regulation of entry bans aims to promote the overall objective of the Return Directive to transpose effectively the pan-European return policy (Szymanski, 2014:3).

In Austria, significant amendments to the Aliens Police Act relating to the regulation of entry bans took place in the years 2011 and 2013. These provisions included the transposition of the Return Directive, and, specifically, its article 11 stipulating entry bans as one concrete return measure.

In the following chapter, the legal framework relating to entry bans in Austria is analysed in that light. In particular, it discusses the connection between return decisions and entry bans, the grounds for imposing an entry ban, the grounds for not imposing an entry ban, the categories of third-country nationals who can be issued an entry ban, the territorial scope of entry bans, and the authorities and institutions responsible.

2.1 Connectivity between return decision and entry ban

First, the connection between return decision and entry bans will be analysed. This chapter investigates whether entry bans are automatically imposed in cases in which an individual has not complied with a return obligation, or if they are automatically imposed on all return decisions, or if entry bans are issued on a case by case basis.

This question is of specific interest in Austria, where the relevant legal regulation has changed in the past years. Since it entered into effect on 1 July 2011[17] the **prior regulation** relating to a valid legal situation,

16 Art. 3 para 6 Return Directive.

17 Federal Act amending the Residence and Settlement Act, the Aliens Police Act 2005, the Asylum Act 2005, the Federal Government Basic Welfare Support Act 2005 and the Citizenship Act 1985 (Aliens' Law Amendment Act 2011), FLG I No. 38/2011, entry into force 1 July 2011.

prescribed an automatic imposition of entry bans on all return decisions. The previous version of Art. 53 para 1 Aliens Police Act prescribed that with a return decision an entry ban with duration of at least 18 months ought to be issued.[18] Therefore, the old regulation did not provide space for the execution of a discretionary power, but prescribed the combination of a return decision with an entry ban in a binding manner. This entry ban is typically difficult or not possible to suspend. (Schmied, 2011: 151-153). This obligatory entry ban (lasting for at least 18 months) was imposed independently of other considerations.

The previous legal situation was criticized by Schmied (2011: 151) who argued that the mere fact of irregular stay in Austria would be sufficient to cause an entry ban. Its compatibility with the return directive was questioned as, according to Art. 11 of the return directive, an entry ban can be only be directly combined with a return decision under certain circumstances.

Furthermore, the June 2011 version of Art. 53 Aliens Police Act (according to which entry bans are automatically imposed to all return decisions) has received criticism from a group of Austrian organizations working with asylum-seekers and refugees.[19] They state that the imposition of a general entry ban is not in compliance with the reasoning of Art. 11 of the Return Directive. Moreover, they argued that an entry ban imposed by Austria was also relevant in other EU member states. Therefore, the return directive does not appear to allow justification for an entry ban to be imposed without exception. Agenda Asyl concludes that this regulation needed to be reconsidered, arguing that it did not conform to the constitution.[20]

18 See also further explanation to the previous regulation in Katerina Kratzmann, Adel-Naim Reyhani, *Practical measures for reducing irregular migration in Austria. Study of the National Contact Point Austria in the European Migration Network*, 2012, p. 27–37, available at www.emn.at/images/stories/2012/Studien_/Irregular_Migration_EMN_NCP_AT_final_EN.pdf (accessed on 7 March 2014).

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

20 Agenda Asyl, *Stellungnahme von AGENDA ASYL betreffend ein Bundesgesetz, mit dem das Niederlassungs- und Aufenthaltsgesetz, das Fremdenpolizeigesetz 2005, das Asylgesetz 2005 das Staatsbürgerschaftsgesetz 1985 geändert werden (251/ME)*, 2011, point 2.5, available at www.integrationshaus.at/cgi-bin/file.pl?id=631 (accessed on 13 March 2014); see also Der Standard, *Auch für Europa schädlich,* 1 July 2011, p. 32.

The Austrian Caritas asserts that the automatic imposition of an entry-ban on all return decisions was in contradiction to Art. 11 Return Directive, which does not request the automatic release of an entry ban with a return decision. The Return Directive only requires such action in two specific cases: 1) if no period for voluntary departure has been granted, or 2) if the individual concerned has not complied with the obligation to return. In a position paper, Caritas calls for the discontinuation of automatic entry bans which are not open to individual assessment.[21]

In fact, this led to an examination of the Art. 53 Aliens Police Act on conformity with the constitution and with EU law.

This issue has also been brought to the Administrative High Court, who decided that the direct application of Art. 11 para 2 return directive would contradict the previous version of Art. 53 Aliens Police Act, insofar as it prescribes the imposition of an entry ban without exception.[22] In cases presenting only a minor danger to public peace and order, an entry ban must not be issued.

Effective 1 January 2014 the Aliens Police Act was modified to become the **current legal regulation**.[23] This amended version of Art. 53 para 1 Aliens Police Act foresees the possibility to combine a return decision with an entry ban. The new law does not prescribe an automatic combination of both, which was criticized in the previous legal regulation, but allows the possibility. While an entry ban had to be issued together with a return decision according to the old regulation, this is no longer obligatory.

21 Caritas Austria, *Stellungnahme der Caritas Österreich zum Entwurf eines Bundesgesetzes, mit dem ein BFA-Einrichtungsgesetz und ein BFA-Verfahrensgesetz erlassen sowie das Asylgesetz 2005, das Fremdenpolizeigesetz, das Niederlassungs- und Aufenthaltsgesetz, das Staatsbürgerschaftsgesetz 1985, das Grundversorgungsgesetz – Bund 2005 und das Einführungsgesetz zu den Verwaltungsverfahrensgesetzen geändert werden*, 2012, p. 11, available at www.parlament.gv.at/PAKT/VHG/XXIV/SNME/SNME_11087/imfname_284624.pdf (accessed on 13 March 2014).

22 Austrian Administrative High Court, 15 May 2012, 2012/18/0029.

23 Act Amending the Aliens Authorities Restructuring Act which amends the Act Establishing the Federal Office for Immigration and Asylum, the Federal Office for Immigration and Asylum Procedures Act, the Asylum Act 2005, the Aliens Police Act 2005, the Settlement and Residence Act, the Border Control Act and the Federal Government Basic Welfare Support Act 2005, Federal Law Gazette I No. 68/2013.

Art. 53 Aliens Police Act allows in its new version the possibility to combine a return decision with an entry ban (para 1) under certain conditions. In its following paragraphs 2 and 3, the duration of such an entry ban is determined.

Paragraph 2 regulates entry bans for up to five years and provides a framework for estimating the length of the entry ban. Thereafter, the past behaviour of the third-country national must be considered, in addition to any possible endangering of public peace and order or public interests. Furthermore, a possible threat to public interests mentioned in Art. 8 European Convention on Human Rights (ECHR) must be considered.[24] Afterwards, nine different types of behaviour are listed where such endangering of pubic peace and order is to be assumed.[25]

Entry bans of up to ten years are regulated for in paragraph 3 of Art. 53 Aliens Police Act. An entry ban lasting up to 10 years can be issued, "if certain facts justify the assumption, that the stay of third-country nationals constitutes a serious danger for public peace and order".[26] In order to assume such "certain facts", a catalogue with eight cases is listed, which provides an indication but no final list of the fact relevant for such a decision. This list is provided in addition to the referral to the public interests mentioned in Art. 8 ECHR.[27]

In certain types of cases, the entry ban can also be issued with unlimited duration. This is only possible, according to Art. 53 para 3 Aliens Police Act, if a final sentence to unconditional imprisonment of more than five years has been issued (subpara 5), there is evidence of membership in a criminal organization or of committing terrorist acts or providing instructions for a terrorist act (subpara 6), national security is endangered through public participation in or incendiary promotion of violence (subpara 7), such as in case of approval of war crimes or crimes against humanity (subpara 8).

24 Art. 53 para 2 sentence 1 Aliens Police Act.
25 Art. 53 para 2 sentence 2 Aliens Police Act.
26 Art. 53 para 3 sentence 1 Aliens Police Act.
27 Art. 53 para 3 sentence 2 Aliens Police Act.

2.2 Grounds for imposing entry bans

2.2.1 Positive list of grounds

In Austria, the possible grounds for imposing entry bans are listed in Art. 53 Aliens Police Act. The law differs according to the length of the imposed entry ban. Paragraph 2 of Art. 53 Aliens Police Act lists the grounds for the imposition of an entry ban for up to five years. Paragraph 3 of Art. 53 Aliens Police Act lists the grounds for the imposition of an entry ban for up to ten years in its numbers one to four, and for an unlimited entry ban in its numbers five to eight.

Examples for grounds for imposing entry bans lasting up to five years are listed in Paragraph 2. The responsible authority, the Federal Office for Immigration and Asylum, needs to take two considerations into account when determining the length of the entry ban:

1) The past behaviour of the third-country national;
2) To what extent the stay of the third-country national might endanger public peace and order, or is contradictory to the other public interests mentioned in Art. 8 para 2 ECHR.

For the second consideration – for the evaluation of the existence of possible endangering public peace and order – the law lists nine groups of cases where such a disturbance is to be assumed. Those groups are the following:[28]

1. *Several forms of administrative infringements, for example violations of road traffic regulations (disregarding the speed limit, with resulting driving license suspension),[29] or violations of the Trade, Commerce and Industry Regulation Act (running a business without a permit),[30] or final conviction resulting from a violation of the Border Control Act, the Registration Act, the Transportation of Dangerous Goods Act or the Act Governing the Employment of Foreign Nationals.*

28 Groups according to Art. 53 para 2 (1-9) Aliens Police Act, full text (in German) available at www.ris.bka.gv.at/GeltendeFassung.wxe?Abfrage=Bundesnormen&Gesetzesnummer=20004241 (accessed on 9 May 2014).

29 Art. 20 para 2 Road Traffic Regulations, FLG No. 159/1960; Art. 26 para 3 Driving License Law, FLG No. 120/1997.

30 Art. 366 para 1 (1) Trade, Commerce and Industry Regulation Act concerning a qualified commercial activity requiring authorization according to Art. 81 and 82 Security Police Act.

2. *Legally enforceable penalty of at least 1,000 Euro or a primary prison sentence resulting from an administrative infringement;*
3. *Legally enforceable penalty due to an infringement of the Aliens Police Act, or of the Settlement and Residence Act;*
4. *Intentional financial offences;*
5. *Legally enforceable penalty resulting from a violation of prostitution regulations;*
6. *Destitution;*
7. *Undeclared employment;*
8. *Marriage for the purpose of residence;*
9. *Adoption for the purpose of residence.*

Further to the exploration of entry bans for up to five years in Art. 53 para 2 Aliens Police Act, paragraph 3 of the same article explains the requirements under which entry bans can be imposed for up to ten years or with indefinite duration. Entry bans for up to ten years or longer can be imposed in cases when certain facts encourage the assumption that the stay of a third-country national constitutes a serious danger of public peace and order.

For those relevant facts the law lists, in Art. 53 para 3 subpara 1 to 4, the following grounds for imposing an entry ban of up to ten years:

1 and 2. Final conviction of a crime;
3. Final conviction of pimping;
4. Repeated punishment resulting from infringement of the Aliens Police Act or the Settlement and Residence Act.

In Art. 53 para 3 subpara 5 to 8 the law list the following criteria as grounds for imposing entry bans with unlimited duration:

5. Final sentencing to unconditional imprisonment of more than 5 years;
6. Evidence of membership in a criminal organization or of committing terrorist acts, financing terrorism or providing instructions for a terrorist act;
7. Endangerment of national security due to the behavior of the Third-Country National, in particular through public participation in or incendiary promotion of violence;
8. Approval of war crimes or crimes against humanity.

Looking at the statistical data, the total number of entry bans issued increased between 2012 and 2013 from 1,854 to 2,132, which is an increase of 15 per cent (see Table 1).

Table 1: Number of entry bans[31] issued, by reasons, mid-2011–2013

Reason	2011 *(second half)*	2012	2013
Threat to public security according to Art. 8 para 2 ECHR (Art. 53 para 2 Aliens Police Act)	*281*	546	461
Administrative offence – qualified offence (Art. 53 para 2 subpara 1 Aliens Police Act)	*12*	11	13
Administrative offence – qualified sentence (Art. 53 para 2 subpara 2 Aliens Police Act)	*4*	1	1
Final penalty infringement Aliens Police Act/Settlement and Residence Act (administrative offence) (Art. 53 para 2 subpara 3 Aliens Police Act)	*8*	26	17
Premeditated financial/foreign currency delict (Art. 53 para 2 subpara 4 Aliens Police Act)	*N/A*	1	1
Prostitution (Art. 53 para 2 subpara 5 Aliens Police Act)	*3*	10	0
Lack of resources (Art. 53 para 2 subpara 6 Aliens Police Act)	*282*	539	763
Violation of the Act Governing the Employment of Foreign Nationals (Art. 53 para 2 subpara 7 Aliens Police Act)	*83*	161	178
Marriage of convenience (Art. 53 para 2 subpara 8 Aliens Police Act)	*1*	1	3
Adoption of convenience (Art. 53 para 2 subpara 9 Aliens Police Act)	*N/A*	1	0
Other final convictions (Art. 53 para 3 subpara 1 Aliens Police Act)	*217*	427	540
Final conviction three months after entering the country (deliberate intention) (Art. 53 para 3 subpara 2 Aliens Police Act)	*43*	92	129
Final conviction of more than five years (no suspended sentence) (Art. 53 para 3 subpara 5 Aliens Police Act)	*15*	34	21
Organized crime/terrorist group (Art. 53 para 3 subpara 6 Aliens Police Act)	*4*	1	1
National security (Art. 53 para 3 subpara 7 Aliens Police Act)	*1*	3	4
Total number of entry bans issued	***954***	***1,854***	***2,132***

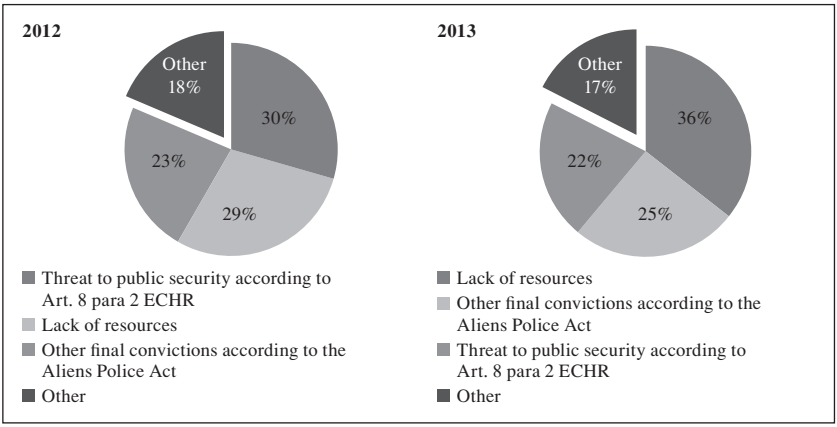
Source: Federal Ministry of the Interior, Aliens Police and Visa Statistics.

The three most common reasons for issuing an entry ban were lack of resources, other final convictions according to Art. 53 para 3 subpara 1 Aliens Police Act, and threat to public security according to Art. 8 para 2

31 To clarify, entry bans only apply to third-country nationals. Therefore, EU-citizens are not considered in this data; they would receive an exclusion order.

ECHR. Together these made up 82 per cent of all entry bans issued in 2012 and 83 per cent of those issued in 2013 (see Figure 1).

Figure 1: Main reasons of entry bans issued in 2012 and 2013 in per cent (%)



Source: Federal Ministry of the Interior, Aliens Police and Visa Statistics.

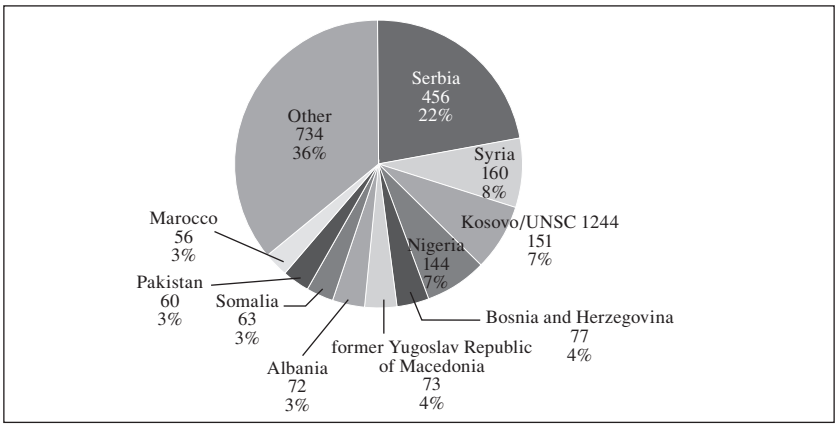
The main reasons for issuing entry bans in the second half of 2011 and in 2013 in Austria was lack of resources (according to Art. 53 para 2 subpara 6 Aliens Police Act), as the third-country national needs to provide evidence that he/she has the financial means to cover his/her living costs.[32]

The statistical data relating to the citizenship of the persons with an entry ban is also informative (Figure 2). The majority of entry bans issued between January and November 2013 were issued to Serbian citizens (22 %), followed – by some distance – by Syria (8 %), UNSC resolution 1244-administered Kosovo[33] (7 %) and Nigeria (7 %).

32 It is important that such financial means do not derive from illegal sources. Further it can be noted that the third-country national is not required to provide these means him- or herself, as they can also be guaranteed by a third person. The authority has an obligation to provide a detailed argument in case it considers there to be a lack of resources; see Federal Administrative Court, 4 June 2014, G306 2008113-1.

33 Hereinafter referred to as Kosovo/UNSC 1244.

Figure 2: Number of entry bans issued by citizenship, 2013 (Jan.-Nov.)



Source: Reply to parliamentary request from 5 February 2013.

2.2.2 Reasons for prevention for imposition of entry bans

Further analysis is being conducted into the national grounds upon which an EU Member State can decide not to issue an entry ban, in addition to the research undertaken relating to their imposition. This question aims to verify whether there are higher-order grounds that might prevent the imposition of an entry ban, even if the requirements for its issuance had been met.

Before the question of the reasons for prevention for imposition of entry bans may be explored, the specific situation in Austrian law must be explained.

Here, the imposition of an entry ban is inextricably linked with a return decision (Art. 53 para 1 Aliens Police Act). In short: if there is no return decision, there is no entry ban.

To issue a return decision a further requirement needs to be fulfilled: in cases such where a return decision interferes with the private or family life of the third-country national, such a decision is only admissible if required to fulfil the aims specified in Art. 8 para 2 ECHR. That is, generally speaking, in cases in which a return decision is within the interests of national security, public safety or for the prevention of crime[34] (Art. 9

34 Art. 8 para 2 ECHR reads as follows: "There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public

para 1 Federal Office for Immigration and Asylum Procedures Act). In order to identify if such return decision does interfere with the private or family life of the third-country national, Art. 9 para 2 Federal Office for Immigration and Asylum Procedures Law specifies the categories that require particular consideration. They are the following:

1. Form, duration and legality of the stay;
2. Existence of family life;
3. Worthiness for protection of the private life;
4. Level of Integration;
5. Liaisons to the home country;
6. Clean criminal record;
7. Breach of public order, especially in the area of Asylum- Aliens' Police- and Immigration Law;
8. Question whether private or family life started to exist in the moment where the person was aware about the uncertainty of his right to stay;
9. Question whether the duration of the stay was due to delays caused by the authority.

Certain grounds also need to be verified in any case before a removal – such as the enforcement of the obligation to return, namely the physical transportation out of the Member State – due to the provisions of Art. 3 ECHR. In Art. 50 para 1 Aliens Police Act, Austrian law explicitly details that a forced return is not permissible if Art. 2 or 3 ECHR[35] could be violated, or Protocol number 6 or 13 of the Convention for the Protection of Human Rights and Fundamental Freedoms concerning the abolition of the death penalty, or in case of serious threat of life or integrity due to arbitrary force in frame of conflict.

In the light of the weighing of interests within Art. 8 ECHR, the health reasons must also be considered, according to Jurisdiction of the

safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others".

35 Article 2 ECHR is titled with "Right to life", Article 3 ECHR with "Prohibition of torture". See full text under http://www.echr.coe.int/Documents/Convention_ENG.pdf.

Constitutional Court.[36] Therefore, a serious disease is to be considered as a private interest in the sense of Art. 8 ECHR.

To conclude, the above listed grounds – such as a disproportional interference in private or family life including health aspects – prevent the issuance of return decisions. As Austrian legislation inextricably links the imposition of an entry ban with a return decision (Art. 53 para 1 Aliens Police Act), in those listed cases also no entry ban must be issued.

In addition to the grounds resulting in a decision to not impose entry bans (as explained in the text above), there is one further reason for which an entry ban cannot be imposed.

For the specific **case of a forcible return**,[37] where a readmission agreement exists with the country in which the person is supposed to be returned, the law[38] foresees that no return decision is to be issued. As according to the Austrian law, an entry ban can only be released where a return decision exists (Art. 53 Aliens Police Act), in those cases no entry ban can also be imposed.

In **daily practice** this means that in Austria, a return decision can't even be issued if family life or social grounds including health reasons exist which outweigh the state's interest. According to the legislation of the Constitutional Court,[39] this sort of verification must always be carried out before issuing a return decision.

One lawyer specialized in Aliens Law and Administrative Law, among others, reports that health reasons always need to be specifically pleaded in front of the relevant authority, and are not automatically considered.[40]

2.3 Recipients of entry bans – return decisions regime

The legal system in Austria does not differentiate between different categories of third-country nationals when it comes to entry bans. Instead, there are different elements of the offence for a return decision with an

36 For instance, see Constitutional Court, 20 September 2011, B760/11.
37 For further explanations on a specific form in Austria, the "forcible return", see below under chapter 2.3.
38 Article 52 Para 7 Aliens Police Act.
39 Constitutional Court, 20 September 2011, B760/11.
40 Thomas Neugschwendtner, Lawyer, 29 April 2014.

entry ban. Those different elements of the offence are listed in Art. 53 para 2 and 3 Aliens Police Act (see above under section 2.2.1).

On EU level the return directive defines in Art. 2 the categories of third-country nationals that can be issued an entry ban.[41] The categories, as indicated in the return directive, are not all directly reflected in the law, and are not explicitly mentioned in the framework of the entry bans regime. This approach is due to the fact that Austria's existing legal regulations were maintained and the return directive was later adopted not the other way around.

In order to determine the categories of third-country nationals that can be issued an entry ban, it is necessary to identify the type of the procedure terminating residence according to Austrian legislation. This is due to Austria's legal obligation to combine the imposition of an entry ban with a return decision (see Art. 53 para 1 sentence 1 Aliens Police Act). In order to terminate residence, there are three different procedures. They are:

1) Return Decision
2) Expulsion
3) Exclusion order

Each of those three different procedures is dedicated to a certain group of persons:

1) Return decision

The return decision can be issued only against **third-country nationals** (Art. 52 para 1 Aliens Police Act). Such a decision imposes the obligation to leave the country. Together with the return decision, an entry ban may also be issued. The consequence of such entry ban is that, during the time period determined in the entry ban, the third-country national

41 Art. 2 Return Directive reads: "(1) This Directive applies to third-country nationals staying illegally on the territory of a Member State. (2) Member States may decide not to apply this Directive to third-country nationals who: (a) are subject to a refusal of entry in accordance with Article 13 of the Schengen Borders Code, or who are apprehended or intercepted by the competent authorities in connection with the irregular crossing by land, sea or air of the external border of a Member State and who have not subsequently obtained an authorization or a right to stay in that Member State; (b) are subject to return as a criminal law sanction or as a consequence of a criminal law sanction, according to national law, or who are the subject of extradition procedures. (3) […]".

concerned is prohibited from both entering and staying in Austria (Art. 53 para 1 sentence 2 Aliens Police Act).

Such return decisions can be imposed on different groups of third-country nationals:

a) Third-country nationals, staying unlawfully on the territory of Austria (Art. 52 para 1 subpara 1 Aliens Police Act).

b) Third-country nationals, who stayed unlawfully on the territory of Austria and where the return procedure has been initiated within 6 weeks since departure (Art. 52 para 1 subpara 2 Aliens Police Act).

c) Third-country nationals, whose asylum procedure has led to a negative decision, though not leading to a residence permit. (Art. 52 para 2 Aliens Police Act).

d) Third-country nationals having conducted a procedure for a residence permit, and this procedure led to a negative decision. (Art. 52 para 3 Aliens Police Act).

e) Third-country nationals, staying legally on the territory of Austria, if

aa) a ground for denying approval exists or becomes known or existing at a later stage;

bb) he/she was unemployed for more than four months within his/her first year of settlement or for almost one year in case a person stayed already for one to five years;

cc) Modul 1 – corresponding to A2 level of the language – of the integration agreement has not been fulfilled within two years for reasons which fall under the responsibility of the third-country national.

Those reasons are listed in Art. 52 para 4 Aliens Police Act.

A practical example would include, a third-country national who no longer has a residence permit, it is sufficient if he/she continues to remain in Austria despite the deadline set for departure and he/she already has been charged due to the irregular stay.[42] Such cases already fulfill the requirements for an entry ban. Further examples are serious administrative offence and serious breach of the trade and commerce law, disturbance of public peace and impetuous behavior towards the executive, such as criminal acts.[43] The length of the entry ban imposed then depends on the level of seriousness of the misconduct.

42 Gerhard Reischer, Head of Department Immigration and Border Control, Federal Ministry of the Interior, 10 April 2014.

43 Gerhard Reischer, Head of Department Immigration and Border Control, Federal Ministry of the Interior, 10 April 2014.

2) Expulsion

The form of the expulsion to terminate residence only concerns **EEA citizens, Swiss nationals and privileged third-country nationals**. The expulsion can be imposed to this group of persons, in case of irregular stay (Art. 66 para 1 Aliens Police Act) for the reasons listed in Art. 55 para 3 Settlement and Residence Act. Those reasons are the endangering of public order and security, lack of documents required for the registration certificate, or if the conditions for granting residence rights no longer exist.

The term "privileged third-country nationals" covers – as defined by the legislator – the spouse or relatives of an EEA/Swiss/Austrian citizen, who exercise their EU right of residence under certain conditions.[44]

Looking at the practical aspect, the requirements to terminate residence for the privileged third-country national are similar to those for an EEA national. The requirements to impose an exclusion order on a privileged third-country national are significantly higher than to impose an entry ban on a non-privileged third-country national. For the privileged third-country national to be issued with an exclusion order, a close and immediate danger for public order is required.[45]

To the contrary, for a third-country national who no longer has a residence permit, the simple continuation of the irregular stay can fulfill the requirements for the release of an entry ban.

44 Art. 2 para 4 subpara 11 Aliens Police Act defines the privileged third-country national as "the spouse, registered partner, direct relatives and relatives of the spouse or registered partner of an EEA citizen, Swiss citizen or Austrian, who have made use of their right of residence according to Union law or the Agreement on Free Movement of Persons between the EU and Switzerland, in the direct descending line until the completion of age 21, as long as they are dependents, as well as direct relatives and relatives of the spouse or registered partner in the direct ascending line, as long as they are dependents, provided that this third-country national accompanies or joins the EEA citizen or Swiss citizen from whom their privileges according to Union law derive".

45 Gerhard Reischer, Head of Department Immigration and Border Control, Federal Ministry of the Interior, 10 April 2014; also the European Court of Justice set strict limits in regard to the prerequisites for an exclusion order: "In so far as it may justify certain restrictions on the free movement of persons subject to community law, recourse by a national authority to the concept of public policy presupposes, in any event, the existence, in addition to the perturbation of the social order which any infringement of the law involves, of a genuine and sufficiently serious threat affecting one the fundamental interests of society."; see European Court of Justice, *Régina v. Pierre Bouchereau*, 27 October 1977, C-30/77, ground 35.

3) Exclusion order

The exclusion order is a means by which residence may be terminated, which only concerns **EEA citizens, Swiss nationals such as privileged third-country nationals**. The exclusion order can be imposed in cases where the conduct of those persons seriously endangers public order (Art. 67 para 1 Aliens Police Act).[46]

The Austrian Special Case: Forcible Return[47]

To conclude the overview of the specifics of the relevant regulations in the Austrian law, one must finally mention forcible return. Art. 45 Aliens Police Act regulating the forcible return foresees that foreigners can be forcibly returned under the following conditions:

1. Unlawful entry and capture within seven days;
2. Return obligation due to return agreement within seven days after entry;
3. Capture within seven days after the stay became irregular;
4. Capture in course of leave if the stay was irregular.

If one of the above listed requirements exists in addition to a readmission agreement (entered into force before 13 January 2009)[48] with the country of return, then in that case no regular return decision is issued. This is prescribed in Art. 52 para 7 Aliens Police Act.

As in Austria, an entry ban can only be issued if a return decision exists (see Art. 53 para 1 Aliens Police Act), in the cases listed under subpara 1–4 an entry ban cannot be issued.

The Austrian Administrative High Court clarifies the purpose and the application area of the forcible return provision in the case[49] of a Pakistani irregularly entering Austria, after leaving Hungary. The third-country national requested international protection the day after he was detected. The request for international protection was rejected and an exclusion order

46 See footnote 43.

47 Regarding the competence for forcible return see also chapter 4.1.

48 This additional requirement can be found in Art. 9a Aliens Police Act Implementing Decree, FLG II No. 450/2005, in the version of FLG II No. 497/2013, according to which the eventually existing readmission agreements needs to be entered into force before 13 January 2009.

49 Austrian Administrative High Court, 22 January 2014, 2013/21/0175.

to Pakistan was issued; he did not comply with the obligation to leave Austria. He was arrested and forcefully returned to Hungary as he entered Austria from Hungary, according to Art. 45 para 1 subpara 1 Aliens Police Act and on the basis of the readmission agreement with Hungary. The Pakistani appealed against this return decision, which was admitted from the Austrian Administrative High Court.

The Austrian Administrative High Court argues that in case a forcible return is possible, and in addition, a readmission agreement with the country of return exists, then no return decision should be issued. However, if a return decision was issued after an application for international protection anyway, forcible return without a procedure is no longer possible.[50]

This was the case with the Pakistani, where a title already existed in the form of an expulsion order to Pakistan. Therefore, forcible return to Hungary was not an option, according to Art. 45 para 1 subpara 1 Aliens Police Act.

An additional area for consideration is the fact that this forcible return is generally facilitated without conducting any formal procedure or legal counselling. However, those formal requirements are necessary for ordinary asylum procedures, like the regular return decision. This opinion has also been confirmed by the Austrian Ombudsman Board in the "Hungary case". A forcible return, according to Art. 45 para 1 subpara 1 Aliens Police Act, is only admissible as long as no procedure of the Aliens Police or an asylum procedure took place already. This could be concluded from the intention of the legislator, visible in the systematic of the law.[51] From the moment that the Pakistani has received a decision about his application for international protection, the competence is with the Asylum Authorities, and does not leave the opportunity for forcible return.

2.4 Territorial scope of entry bans

The territorial scope of entry bans in Austria is determined in the same provision prescribing entry bans in general. Art. 53 para 1 Aliens Police

50 Ibid.

51 Constitutional Court, 10 October 1994, B1382/93; Austrian Ombudsman Board, *Missstandsfeststellung und Empfehlung des Kollegiums der Volksanwaltschaft*, VA-BD-I/0205-C/1/201328, March 2014, available at http://volksanwaltschaft.gv.at/downloads/ftvke/missstand.pdf (accessed on 25 June 2016).

Act defines, in its second sentence, the term "entry ban". An entry ban is "the order to a third-country national, not to enter the territory of the member states and not to stay there for a certain time frame". According to the wording of the article, the territorial scope of the entry ban refers to the "territory of the member states".

It is questioned, however, as to whether this automatically implies that the "territory of the member states" means the entire EU territory.

Schmied has argued that Austrian authorities do not have the final say in the admission of an individual to a Schengen Member State, but rather the authorities of the Member State which the individual seeks to enter, even if that individual was issued an entry ban by the Austrian authorities (2011, 153). According to Schmied, this would result from the provisions of the Schengen Borders Code, in which according to Art. 5 para 1 (d), the entry of third-country nationals is conditional upon the absence of a refusal of entry registered in the Schengen Information System (SIS). In such a case, entry would be denied in accordance with Art. 13 para 1.

Therefore, in practice, the provisions of the Schengen Borders Code result in the territorial validity of an entry ban covering the entire Schengen area.

This question about the geographical scope of Art. 53 para 1 Aliens Police Act[52] became the subject of an Administrative High Court ruling on 22 May 2013.

The Administrative High Court argues that Art. 53 para 1 Aliens Police Act, as stated in the government bill on the Act Amending the Aliens Law,[53] should reflect the legal requirements stipulated in Art. 11 Return Directive. An entry ban is defined by the Return Directive as being applicable to the 'sovereign territory of the Member States' (Art. 3 subpara 6 and Art. 11 para 1 Return Directive). In principle, the Return Directive applies to the Member States of the European Union. However, according to recitals 25 to 30 of the Return Directive, all Member States of the European Union except for Ireland and the United Kingdom are required to implement the Return Directive, in addition to the associated Schengen

52 Austrian Administrative High Court, 22 May 2013, 2013/18/0021-3.

53 Aliens' Law Amendment Act 2011, Preamble, Government Proposal, Explanatory Notes, p. 4 and p. 29, available at www.parlament.gv.at/PAKT/VHG/XXIV/I/I_01078/fname_206974.pdf (accessed on 27 March 2014).

states Switzerland, Norway, Iceland and Liechtenstein, which are also bound by the directive.[54] According to the Administrative High Court, the geographical scope of Art. 53 para 1 Aliens Police Act thus results from the references to EU legal provisions. These identify the countries for which the Return Directive applies. The territorial area intended by Art. 53 para 1 Aliens Police Act is therefore not identical with the Member States of the European Union. Instead, Ireland and the United Kingdom are excluded whereas Iceland, Norway, Switzerland and Liechtenstein come in addition to the other Member States.

In the daily practice of the competent authorities, a change took place regarding the custom of stating the existence of an entry ban in the award of the administrative decision. In previous years it was common in Austria that the authorities would explicitly state, in the administrative decision, that the entry ban would be applicable in the entire Schengen area. This practice has since changed in response to the argument that the applicability in the entire Schengen area is a legal automatism which does not need to be explicitly mentioned in the administrative decision. In case of an entry ban to Austria, this is automatically valid in the entire Schengen area, and an alert into the Schengen Information System (SIS) is entered.[55] In current practice, the authorities do not explicitly state, in the administrative decision, that the exclusion order and entry ban would be applicable in the entire Schengen area.[56]

This practice is also reflected in jurisdiction from the Austrian Independent Administrative Senate. There were several decisions, according to which the award of the decision must not include the "entire Schengen area" in regard to the territorial scope of the entry ban. For instance, in

54 See also European Commission, Press Release, 29 September 2011, available at http://europa.eu/rapid/press-release_IP-11-1097_en.htm (accessed on 26 March 2014). In this press release, the European Commission asked Austria, Belgium, Cyprus, Germany, Lithuania, Poland, Sweden and The Netherlands to comply with the Return Directive; see also Wirtschaftsblatt, *EU-Kommission mahnt Österreich wegen Rückführungsrichtlinie*, 29 September 2011, available at http://wirtschaftsblatt.at/home/nachrichten/oesterreich/1206825/index (accessed on 3 June 2014); Der Standard, *Abschiebungspraxis: EU-Kommission droht Österreich mit Klage*, 30 September 2011, p. 5.

55 Thomas Neugschwendtner, Lawyer, 29 April 2014.

56 Ibid.; Christoph Steinwendtner, Diakonie, 25 April 2014.

2011 the Austrian Independent Administrative Senate ruled in regard to the applicability of the entry ban to the entire Schengen area as follows:[57]

The validity of the entry ban for the entire Schengen area is "… a (possible) legal consequence, following directly from the Schengen treaty and in specific from the Schengen Boarder Code, but it must not be ordered in a normative way from the Austrian authorities." The Austrian Independent Administrative Senate argues that Austria doesn't have the last word on a decision regarding a third-country individual's freedom to enter another Schengen State. Rather it is the competent authority in the concerned Schengen State to take this final decision. Austria would only enter the entry ban in the SIS.

According to Art. 5 para 1 lit. d Schengen Boarder Code, entry would only be allowed if the third-country national is not registered in the SIS for refusal of entry. Art. 13 para 1 Schengen Boarder Code would then deny the entry to a state in cases where not all requirements are fulfilled. Therefore, each member state needs to make its own decision about a possible entry ban. In consequence, the explicit stating of an entry ban for the entire Schengen area is to be repealed.[58]

It is interesting that, additionally, there are individual cases that derivate from this new established practice. In some cases the official in charge would refrain from entering an alert into the SIS and thereby would limit the entry ban to Austria, thus imposing a national entry ban. According to a lawyer, specialized in Aliens' and Administrative Law among others, there were some cases conducted in that manner. In those cases it was known that the third-country national intended to go to another EU country.[59]

57 Independent Administrative Senate, 14 November 2011, FRG/46/12805/2011.
58 Ibid.
59 Thomas Neugschwendtner, Lawyer, 29 April 2014.

3. PRACTICAL APPLICATION OF ENTRY BANS

In the following section several aspects relating to the practical application of entry bans are examined, according to the common specifications of the EMN study.

3.1 Authority responsible

In Austria, the decision of whether or not to issue an entry ban on third-country nationals who are the subject of a return decision is taken by the Federal Office for Immigration and Asylum (Art. 53 para 1 Aliens Police Act). As of 1 January 2014 the Federal Office for Immigration and Asylum replaced the Federal Asylum Office, and is subordinate to the Federal Ministry of the Interior.[60]

The Federal Office for Immigration and Asylum is also responsible for informing third-country nationals of the imposition of the entry ban. This is regulated in Art. 58 para 1 Aliens Police Act. Further details of this written decision are regulated in the so called Federal Office for Immigration and Asylum Procedures Act. In its Art. 12, more detailed regulations are made for written decisions. According to Art. 12 para 1, decisions of the Federal Office for Immigration and Asylum need to include an award and an instruction on the right to appeal "in a language understandable to the foreigner, or in a language at which it can be considerably expected that this language is understood by the foreigner." In sentence 2 of this regulation the consequences of a possible incorrect translation are determined. Thereafter, an incorrect translation gives the right to request a *restitution in integrum*.

This Federal Office for Immigration and Asylum is also the competent authority to decide on withdrawal or suspension according to Art. 60 para 1 and 2 Aliens Police Act.

3.2 Possibilities of appeal

Third-country nationals who are subject to an entry ban have the right to appeal the decision in Austria.

60 See for more information Saskia Koppenberg, *Austria – Annual Policy Report*, 2013, available at www.emn.at/images/2014/APR_2013/APR_2013_National_Report_Austria_Part_2_FINAL.pdf (accessed on 8 August 2014).

The Federal Office for Immigration and Asylum is responsible for the deciding on entry bans according to Art. 53 para 1 sentence 1 and Art. 5 para 1 a subpara 2 Aliens Police Act. Against those decisions of the Federal Office for Immigration and Asylum, the Federal Administrative Court has competence to decide (Art. 9 para 2 FPG). The Federal Administrative Court has its seat in Vienna, and branch offices exist in Graz, Innsbruck and Linz.

The procedural requirements for the appeal before the Federal Administrative Court are regulated in the Federal Office for Immigration and Asylum Procedures Act. In regard to asylum procedures, two administrative particularities need to be highlighted for the appeal procedures concerning decisions of the Federal Office for Immigration and Asylum. The first concerns the shortened deadline for submitting an appeal (below under 3.2.1), and the second particularity to be emphasized is the prohibition of new pleas (below under 3.2.2).

3.2.1 Deadline

The first particularity is a shortened deadline of only two weeks against decisions of the Federal Office for Immigration and Asylum. According to Art. 16 para 1 sentence 1 Federal Office for Immigration and Asylum Procedures Act,[61] the appeal needs to be submitted within two weeks. In contrast, the normal deadline for appeals before the Federal Administrative Court, in procedures other than against decisions of the Federal Office for Immigration and Asylum, amounts to four – not two – weeks. The only exception to this shortened timeline is for unaccompanied minors, who fall under the ordinary four weeks rule.[62]

Upon closer inspection of the two-week deadline for appeals against decisions of the Federal Office for Immigration and Asylum, it is questionable as to why this appeal timeline in the new administrative procedure in Austria is shorter than in other procedures.

According to the explanations for the government bill[63] Art. 16 and the Procedural Act on the Federal Office for Immigration and Asylum

61 Art. 20 para 1 (1–4) Federal Office for Immigration and Asylum Procedures Act.

62 Art. 16 para 1 Federal Office for Immigration and Asylum Procedures Act, at the end.

63 Act adjusting the Restructuring of the Aliens Authorities 2013, Preamble, Government Proposal, Explanatory Notes page 11, available at www.parlament.gv.at/PAKT/VHG/XXIV/I/I_02144/imfname_285862.pdf (accessed on 28 May 2014).

intend to create special regulations for the complaint procedure under the competence of the Federal Office for Immigration and Asylum. In the explanations it is stated that the requirement for special norms in the Aliens and Asylum Law would derive from the "special requirements of the asylum procedure" and the necessity of an "effective execution of the aliens' law".[64] Halm-Forsthuber, Höhl and Nedwed expressed doubts that an undifferentiated different treatment for aliens might be justified through public interest, in light of cases where there is no specific need for a quick and efficient enforcement of asylum and aliens' law (2014: 294).

3.2.2 Prohibition of new pleas

The second particularity which needs to be highlighted for the appeal procedures concerning decisions of the Federal Office for Immigration and Asylum is the so called "prohibition of new pleas", the prohibition of alteration prescribed in the new version of Art. 20 Federal Office for Immigration and Asylum Procedures Act.

This regulation prescribes, that against a decision of the Federal Office for Immigration and Asylum new facts and evidences can only be brought forward under the following conditions:

1. The circumstances of the cases did change significantly after the decision of the Federal Office for Immigration and Asylum.
2. The procedure before the Federal Office for Immigration and Asylum was defective.
3. The new facts were not available to the person concerned until the decision of the Federal Office for Immigration and Asylum.
4. The person concerned was not able to plead the new facts.

Art. 20 Federal Office for Immigration and Asylum Procedures Act prescribes the scope of an examination of a procedure following an appeal.[65] Therefore, the regulation concerning the prohibition of new pleas has a

64 Ibid.

65 Art. 20 Federal Office for Immigration and Asylum Procedures Act needs to be read in connection with Art. 27 code on administrative procedure which is describing the scope of examination of an appeal; see Simone Böckmann-Winkler, *§ 20 BFA-VG*, p. 1, in Alexandra Schrefler-König, Wolf Szymanski, *Fremdenpolizei- und Asylrecht mit umfassendem Kommentar und höchstgerichtlicher Judikatur I*, 2014, Teil I B.

more rigid impact than in previous (pre-1 January 2014) valid legal regulation (Böckmann-Winkler, 2014:1).

This regulation leads, in fact, to the situation where everything which was possible to bring before the Federal Office for Immigration and Asylum was required to be brought forward.[66] This means that in general it is not possible to provide new facts in the next instance, unless one of the above mentioned exceptions (1. to 4.) applies.

The intention of the legislator, with the new legal regulation of the prohibition of new pleas, is to prevent asylum-seekers from misusing the system with the intention of prolonging the procedure (Böckmann-Winkler, 2014:2–3). Therefore, exceptions from the prohibition of new pleas are restricted to those cases in which the asylum-seeker was unable to bring forward facts and evidences in the first instance due to "reasons not based on lack of cooperation".[67]

Halm-Forsthuber, Höhl and Nedwed raised the question of whether there is a need to verify the admissibility of the prohibition of new pleas again. They argue that the extent of the restriction to still consider facts and evidences relevant for the procedure needs to be more closely observed. Only when the extent of the restriction becomes clear can it be decided if this new legal regulation requires an evaluation of its admissibility (2014: 294).

3.3 Withdrawal and shortening of entry bans

When considering whether entry bans can be withdrawn or shortened, Austrian law provides certain possible outcomes in Art. 60 Aliens Police Act.

The law differs depending on the length of the entry ban imposed:

1) Entry bans with a duration of up to five years

In case of the existence of an entry ban with a duration of up to five years, according to Art. 53 para 2 Aliens Police Act the concerned third-country national can file an application to shorten or withdraw the entry ban. This is conditional on the fact that the third-country national

66 Christian Schmaus, Lawyer. Explanation during the Seminar "Einführung Asylrecht" held by the Asylkoordination, Vienna, 10 and 11 February 2014.

67 Constitutional Court, 15 October 2004, G237/03; Asylum Court, 7 January 2009, E13 237600 – 2/2008.

did leave the country within the prescribed deadline. The burden of proof for the timely exit lies on side of the third-country national. The decision of the competent authority, the Federal Office for Immigration and Asylum, is made bearing in mind the circumstances which were relevant for the application of the entry ban (Art. 60 para 1 Aliens Police Act).

2) Entry bans with a duration of up to ten years

In the case of an entry ban with a duration of up to ten years according to Art. 53 para 3 no. 1–4 Aliens Police Act, the entry ban can be shortened, but not withdrawn. The conditions are the same as for an entry ban of up to five years (see above under 1), plus one additional requirement: that the third-country national did spend at least more than 50 per cent of the original duration of the entry ban abroad (Art. 60 para 2 Aliens Police Act).

3) Entry bans of an indefinite duration

The law does not foresee any possibility to shorten or withdraw an entry ban of indefinite duration.

The current version of the law, as described above, has been published in response to a judgement of the Constitutional Court from the year 2012.[68] In this judgement, the previous version of this Art. 60 Aliens Police Act was declared as unconstitutional due to a breach with Art. 8 ECHR.[69] Art. 8 ECHR prescribes that there must be the chance to weigh the interests; in case the situation of the concerned third-country nationals does change, there must be the opportunity to consider this, which was not reflected in the law.

This new regulation's intention was to create a graded system of situations in which it may be possible to shorten and withdraw entry bans (Muzak, Pinter, 2013:146).

68 Constitutional Court, 3 December 2012, G74/12.

69 See also Jeanette Benndorf, Dietmar Hudsky, Wolfgang Taucher et al., Fremdenrecht. 6. Aktualisierte Auflage, 2014, p. 624.

3.4 Cooperation between EU-Member States

3.4.1 Information sharing through SIS or other mechanisms

This section evaluates whether it is standard or regular practice for an alert to be entered into the SIS when an entry ban has been imposed on a third-country national, or it is simply decided on a case by-case basis.[70]

In Austria alerts are entered into the SIS II on a regular basis. If an entry ban has been imposed on a third-country national it is entered in the SIS II.[71] According to Gerhard Reischer, Austria does not share information on the use of entry bans with other member states; this is the only information exchange to occur.[72]

In case of a request from the authorities of another country about the reasons for the release of an entry ban, the only information provided is the general explanation of irregular stay. Further details are not shared,[73] such as the number of entry bans imposed, or the decision to withdraw or shorten an entry ban.

Although there are other information systems in Austria, those do not aim to share information with other Member States. Those Austrian Information systems are the "Integrated Aliens' Administration" (so-called IFA-System)[74] and the "Electronic Information System of the Criminal Police" (so-called EKIS).[75]

3.4.2 Consultation among Member States on entry bans

Further analysis was undertaken within the framework of this study as to how the consultations mentioned in Art. 11 para 4 Return Directive takes place in the different member states.

70 See Art. 24 para 3 Regulation (EC) No 1987/2006 of the European Parliament and of the Council of 20 December 2006 on the establishment, operation and use of the second generation Schengen Information System (SIS II), available at http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:32006R1987 (accessed on 13 November 2014).

71 Gerhard Reischer, Head of Department Immigration and Border Control, Federal Ministry of the Interior, 10 April 2014.

72 Ibid.

73 Ibid.

74 In German: "Integrierte Fremdenadministration (IFA-System)".

75 In German: "Elektronisches Kriminalpolizeiliches Informationssystem (EKIS)".

Art. 11 para 4 Return Directive stipulates that

> *"where a Member State is considering issuing a residence permit or other authorisation offering a right to stay to a third-country national who is the subject of an entry ban issued by another Member State, it shall first consult the Member State having issued the entry ban and shall take account of its interests in accordance with Article 25 of the Convention implementing the Schengen Agreement".*

In Austrian **practice** if, during a procedure for a residence title, it occurs that an entry ban exists, the appropriate settlement and residence authorities (those are the district commissions) consult the Member State in question. This consultation takes place through the so-called "SIRENE-Austria".[76] SIRENE Austria is the Austrian authority designated to ensure the exchange of all supplementary information. It is located within the Federal Criminal Intelligence Service, in the Department for International Police Cooperation.[77]

The **legal regulation** in Austria denies the issuance of a residence permit to a third-country national who is the subject of a return decision issued by another Member State.

According to Art. 11 para 1 subpara 2 Settlement and Residence Act the Austrian Settlement and Residence Act,[78] a residence title must not be issued to someone against whom a return decision of another EEA States or of Switzerland exists. Therefore, the opportunities outlined in Art. 11 para 4 Return Directive to consider issuing a residence permit to a third-country national who is the subject of an entry ban is excluded by

76 Information provided by email through Tamara Völker, Acting Head of Department of Residence, Civil Status and Citizenship Affairs, Federal Ministry of the Interior, 10 June 2014.

77 In accordance with Art. 7 of Regulation (EC) No 1987/2006 of the European Parliament and of the Council of 20 December 2006 on the establishment, operation and use of the second generation Schengen Information System, available at http://eur-lex.europa.eu/legal-content/EN/ALL/?uri=CELEX:32006R1987 (accessed on 13 November 2014). For further information see Federal Criminal Intelligence Service, *Presseunterlage zum Hintergrundgespräch "Schengener Informationssystem der zweiten Generation (SIS II)"*, 5 April 2013, available at www.bmi.gv.at/cms/BK/presse/files/542013_SIS_II.pdf (accessed on 21 March 2014).

78 Federal act regulating the settlement and residence in Austria (Settlement and Residence Act), FLG I No. 100/2005, in the version of FLG I No. 144/2013.

Austrian legislation. A similar regulation can be found in the Asylum Act.[79] The Asylum Act also denies the issuance of a residence permit to a third-country national who is the subject of a return decision issued by another Member State (Art. 60 para 1 subpara 2 Asylum Act).

There are no **statistics** recorded in Austria about the issuance of residence permits or any other authorizations offering a right to stay to a third-country national who is the subject of an entry ban imposed by another Member State.[80]

3.5 Effectiveness of entry bans

3.5.1 Practical challenges using entry bans

Monitoring compliance with entry bans remains a challenge according to an official of the Ministry of the Interior; the authorities cannot monitor with certainty whether entry bans to Austria are respected, and therefore how many people re-enter Austria despite having an entry ban is unknown. It is assumed that a certain number of persons are staying irregularly in the country. Especially with forceful returns to countries in close proximity to Austria, it is difficult to evaluate the effectiveness of the return measures.[81]

On the other hand, according to an official of the Ministry of the Interior, third country nationals with an entry ban have a strong interest in providing proof to the Austrian authorities that they had left the country,[82] as it is only from that moment that the deadline for the entry ban begins to run according to the law.[83]

This requirement is easily fulfilled when the persons leave the country via the airport or if they leave the Schengen area, due to the exit stamp. If for whatever reason the exit stamp is missing, there is a significant number

79 Federal act regulating the granting of asylum (Asylum Act 2005), FLG I No 100/2005, in the version of FLG I No. 68/2013.

80 Information provided by email through Tamara Völker, Acting Head of Department of Residence, Civil Status and Citizenship Affairs, Federal Ministry of the Interior, 10 June 2014.

81 Ibid.

82 Gerhard Reischer, Head of Department Immigration and Border Control, Federal Ministry of the Interior, 10 April 2014.

83 Art. 54 para 4 Aliens Law.

of individuals who refer to the Austrian embassies abroad in order to obtain confirmation that they have left Austria.[84]

Another challenge Austria faces is to secure the cooperation of the country of origin in the implementation of entry bans.[85]

3.5.2 Measuring the effectiveness of entry bans

In Austria no systematic evaluations of the effectiveness of entry bans have been conducted thus far.[86] There are also no studies of people returning to Austria despite having an entry ban.

Gerhard Reischer considers it difficult to conduct a conclusive evaluation with valid data, as this group of persons is often staying irregularly in the country.[87] Due to their proximity to Austria it is considered difficult to evaluate the effectiveness of return measures of those nationals.[88]

However, statistical data on the number of entry bans imposed in Austria is available. The number of entry bans imposed from the last two and a half years demonstrates an annual increase.

Table 2: Number of entry bans

	2011 ***(second half)***	**2012**	**2013**
Number of entry bans imposed	*954*	1,854	2,132

Source: Federal Ministry of the Interior, Aliens Police and Visa Statistics.

84 Ibid.

85 Manuel Scherscher, Department Asylum and Immigration, Federal Ministry of the Interior, 6 May 2014.

86 Gerhard Reischer, Head of Department Immigration and Border Control, Federal Ministry of the Interior, 10 April 2014; Manuel Scherscher, Department Asylum and Immigration, Federal Ministry of the Interior, 6 May 2014. Apart from the lack of an evaluation of the effectiveness of entry bans, ICMPD conducted a study on monitoring forced returns in the year 2011; see ICMPD, *Comparative Study on Best Practices in the Field of Forced Return Monitoring*, 2011, p. 56–58.

87 Gerhard Reischer, Head of Department Immigration and Border Control, Federal Ministry of the Interior, 10 April 2014.

88 Citizens of Serbia and former Yugoslav Republic of Macedonia have the right to stay 90 days in the Schengen area without a visa; they only need a valid passport.

Further data to measure the effectiveness of entry bans has been requested within the framework of this EMN-study, but was not available in Austria.[89]

89 Those other indicators for measuring the effectiveness of entry bans were the following: Number of decisions to withdraw an entry ban; Number of persons who are the subject of an entry ban who have been re-apprehended inside the territory (not at the border); Proportion of persons issued an entry ban who have returned voluntarily – out of the total number of persons that were issued an entry ban; Proportion of persons who were not issued an entry ban who have returned voluntarily – out of the total number of persons that were imposed a return decision.

4. PRACTICAL APPLICATION OF READMISSION AGREEMENTS

As instruments of the return policy, readmission agreements aim to guarantee an efficient readmission to the country of origin for persons who are irregularly present by defining enforcement modalities, procedures and deadlines.

An EU Readmission Agreement is defined[90] in the EMN-Glossary as

> *"an agreement between the EU with a third-country, on the basis of reciprocity, establishing rapid and effective procedures for the identification and safe and orderly return of persons who do not, or no longer, fulfil the conditions for entry to, presence in, or residence in the territories of the third-country or one of the Member States of the EU, and to facilitate the transit of such persons in a spirit of cooperation."*[91]

EU readmission agreements impose reciprocal obligations on the contracting parties to readmit own nationals as well as, in certain circumstances, third-country nationals or stateless persons who stayed in or transited through the territory of the other party. They further set out the technical and operational criteria for this process.

The Austrian policy of signing readmission agreements with countries of origin or transit is in line with the policy of the EU and its Member States which conclude readmission agreements or include return clauses in association and cooperation agreements with many countries of origin and transit in order to more effectively manage irregular migration.

4.1 Authority responible

The responsible authority for making applications for readmission to **third countries** in individual cases of forced and voluntary return is the Federal Ministry of the Interior.

90 See also under chapter 1.1 Definitions.

91 EMN Glossary, p. 157, available at www.emn.at/images/stories/Glossary/EMN_Glossary_EN_Version.pdf (accessed on 30 June 2014).

A regulation of the Ministry of the Interior being the competent authority can be explicitly found in the following readmission agreements, their implementation protocols or in the EU-readmission agreements:

- Bosnia and Herzegovina: Art. 1 of the Implementation Protocol
- Georgia: Art. 1 of the Implementation Protocol
- Kosovo/UNSC 1244: Art. 1 of the Implementation Protocol
- Former Yugoslav Republic of Macedonia: Art. 1 of the Implementation Protocol
- Republic of Moldova: Art. 1 (a) of the Implementation Protocol
- Montenegro: Art. 1 of the Implementation Protocol
- Nigeria: Art. XV of the Readmission Agreement
- Russian Federation: Art. 1 (f) of the Implementation Protocol
- Serbia: Art. 1 of the Implementation Protocol

In addition, it should also be mentioned for complementarity reasons that similar regulations can be also found in the agreements with **EEA countries**.[92]

Only in one specific case, the agreement with the Czech Republic, does the regulation contain a differentiation in its relevant Article X of the Implementation Protocol: For cases of transit, the Federal Ministry of the Interior is competent; and for other cases, the respective Directorates for Security.

For Tunisia, Switzerland and Ukraine, an explicit corresponding regulation of the competent authority is missing.

Several agreements with EEA countries are missing an explicit regulation of the competent authority. Those are the readmission agreements between Austria and the following countries: Belgium, Netherlands, Luxemburg, Hungary, Croatia, Italy, Germany, Bulgaria, Lithuania, and Latvia.

Even in those cases where an explicit regulation of the competent authority in the agreement itself is missing, the competence of the Ministry of Interior can, nonetheless, be derived from the general

92 Estonia: III to Article 4, 1 (4) of the Implementation Protocol; France: Annex 8 of the Implementation Protocol; Poland: III to Article 4, 1 (4) of the Implementation Protocol; Romania: C to Article 4, 1 (4) of the Implementation Protocol; Slovak Republic: Article 5, 1 b) of the Implementation Protocol of the Agreement for Amendment; Slovenia: Article 5, 1 of the Agreement for Amendment of the Readmission Agreement.

regulations about the competences among the different ministries in the Federal Ministry Law.[93]

Therefore, the competence for making applications for readmission in individual cases of forced and voluntary return always stays with the Ministry of Interior in principle, independently of whether the agreement contains an explicit regulation or not.

On 1 January 2014, a significant change of competences took place in the course of an administrative reform in Austria. Several competences in the area of Immigration and Asylum are now with the newly established Federal Office for Immigration and Asylum, which falls under the competence of the superordinate authority of the Ministry of the Interior.

In addition to this general **competence rule**, a further differentiation is needed for the case of a form of return which exists specifically in Austria, the **forcible return**.[94]

According to Art. 45 Aliens Police Act foreigners can be "forced to return in a member state by the organs of public security upon request of the regional police directorate […]" under certain conditions prescribed in the law.[95]

According to this regulation, in certain cases the competence lies with the aliens police (staying under the Federal Ministry of the Interior) in case of a capture within seven days.

Within those seven days, no regular return decision is issued. Within those seven days there is no space for an entry ban (Art. 53 para 1 Aliens Police Act), under the following conditions: a readmission agreement exists with the country of return (Art. 52 para 7 Aliens Police Act) and this readmission agreement entered into force before 13 January 2009 (Art. 9a Aliens Police Act Implementing Decree).

Once this time frame of seven days, in which Art. 45 Aliens Police Act foresees special mechanisms, has expired, then again the regular

93 Thomas Mühlhans, Head of Unit of Asylum and Return Funds, Federal Ministry of the Interior, 6 May 2014; see also Art. 2 and Annex to Art. 2 part 2 H Austrian Federal Ministries Act, FLG No. 76/1986 (WV).

94 See also chapter 2.3 at the end about forcible return.

95 See also above under chapter 2.3; those cases are 1. Irregular entry and capture within 7 days, 2. Return obligation due to return agreement within 7 days after entry, 3. Capture within 7 days after the stay became irregular, and 4. Capture in course of leave it the stay was irregular (Art. 45 para 1 Aliens Police Act).

institute of the return decision is applicable again. For return decisions the Federal Office for Immigration and Asylum is competent according to Art. 52 para 1 and Art. 5 para 1a subpara 2 Aliens Police Act (Art. 3 para 2 subpara 4 Federal Office for Immigration and Asylum Procedures Act).

It can be summarized that for making applications for readmissions and their execution, a shared competence between the aliens police and the Federal Office for Immigration and Asylum exists. This shared competence depends on the seven days limit, or more specific on the question if a forcible return takes place within this seven days limit.

4.2 Austria's bilateral readmission agreements

4.2.1 Bilateral readmission agreements with third countries

Austria has eight separate bilateral readmission agreements in place with third countries.[96]

Table 3: Austria's bilateral readmission agreements with third countries

Third-country	Date of the agreement	Date of entry into force
Bosnia and Herzegovina*	5 May 2006	1 September 2007
Kosovo/UNSC 1244	30 September 2010	1 March 2011
Former Yugoslav Republic of Macedonia*	5 May 2005	1 February 2007
Montenegro*	25 June 2003	29 April 2004
Nigeria	8 June 2012	18 August 2012
Serbia*	25 June 2003	29 April 2004
Switzerland	3 July 2000	1 January 2001
Tunisia	28 June 1965	1 August 1965

* Those bilateral Agreements do still exist, but have since been replaced though EU Readmission Agreements.[97]

96 See also Katerina Kratzmann, Adel-Naim Reyhani, *Practical measures for reducing irregular migration in Austria. Study of the National Contact Point Austria in the European Migration Network*, 2012, p. 60–62.

97 Gerhard Reischer, Head of Department Immigration and Border Control, Federal Ministry of the Interior, 10 April 2014. Differently Panizzon who questions the preclusion of member states from concluding bilateral agreements once an EU agreement was adopted; see Marion Panizzon, *Readmission Agreements of EU Member States: A Case for EU Subsidiarity or Dualism?*, Refugee Survey Quarterly 31 (4), 2012.

Considering the structure and content of the bilateral readmission agreements that Austria has signed with Bosnia and Herzegovina,[98] Kosovo/UNSC 1244,[99] former Yugoslav Republic of Macedonia,[100] Montenegro,[101] Serbia[102] and Switzerland,[103] they all present a very similar structure with only few deviations. All those agreements are structured in a preamble defining the agreements purpose, definitions (only in the agreements with Bosnia and Herzegovina and former Yugoslav Republic of Macedonia), readmission obligations, transit and escort operations, costs, data protection, implementation, and final provisions.

The bilateral readmission agreements with Nigeria[104] and Tunisia[105] are not easily comparable because of their different structure.

98 Agreement on readmission between the Austrian Federal Government and the Council of Ministers of Bosnia and Herzegovina, available at www.ris.bka.gv.at/Dokumente/BgblAuth/BGBLA_2007_III_100/COO_2026_100_2_363706.pdf (accessed on 24 March 2014).

99 Agreement on readmission between the Austrian Federal Government and the Government of the Republic of Kosovo, available at www.ris.bka.gv.at/Dokumente/BgblAuth/BGBLA_2011_III_21/COO_2026_100_2_652966.pdf (accessed on 24 March 2014).

100 Agreement on readmission between the Austrian Federal Government and the Government of the Republic of Macedonia, available at www.ris.bka.gv.at/Dokumente/BgblAuth/BGBLA_2007_III_11/COO_2026_100_2_319613.pdf (accessed on 24 March 2014).

101 Agreement on readmission between the Austrian Federal Government and the Council of Ministers of Serbia and Montenegro, available at www.ris.bka.gv.at/Dokumente/BgblAuth/BGBLA_2004_III_66/BGBLA_2004_III_66.pdf (accessed on 24 March 2014).

102 Agreement on readmission between the Austrian Federal Government and the Council of Ministers of Serbia and Montenegro, available at www.ris.bka.gv.at/Dokumente/BgblAuth/BGBLA_2004_III_66/BGBLA_2004_III_66.pdf (accessed on 24 March 2014).

103 Agreement on readmission between the Austrian Federal Government, the Swiss Federal Council and Principality of Liechtenstein, available at www.ris.bka.gv.at/Dokumente/BgblPdf/2001_1_3/2001_1_3.pdf (accessed on 24 March 2014).

104 Agreement on readmission between the Austrian Federal Government and the Government of the Federal Republic of Nigeria, available at www.ris.bka.gv.at/Dokumente/BgblAuth/BGBLA_2012_III_116/COO_2026_100_2_778706.pdf (accessed on 24 March 2014).

105 Exchange of notes concerning the conclusion of an agreement between Austria and Tunisia on returning home Tunisian and Austrian nationals, 255, available at www.ris.bka.gv.at/Dokumente/BgblPdf/1965_255_0/1965_255_0.pdf (accessed on 24 March 2014).

In addition to the countries listed in table 3 above, where a bilateral readmission agreement with Austria already exists, there are also other countries under consideration for closer cooperation.

In 2013 Austria conducted two visits to Afghanistan, where agreements were made to initiate negotiations on readmission agreement and to discuss return and reintegration measures.[106] Similarly, with Morocco meetings and a visit to the country took place in 2013 in order to intensify bilateral cooperation on readmission. In the same year, an exchange of visits with the Russian Federation also took place.

The Austrian Federal Ministry of the Interior has stated that although currently no conclusion of further bilateral agreements can be expected, some further bilateral agreements are under consideration. Bilateral readmission agreements with Gambia and Mongolia are in draft stage, although the current progress in that regards is quite slow and a successful conclusion is not promptly expected.[107]

Furthermore, cooperation with Pakistan on readmission matters was strengthened throughout 2013. Meetings with responsible stakeholders took place both in Vienna and in Islamabad (Federal Ministry of the Interior 2014).

In addition to the existing bilateral readmission agreements, the Federal Ministry of the Interior stated in its "Multiannual Programme 2008 – 2013", that for Austria additional EU readmission agreements with Morocco, Turkey, China and Algeria would be of interest.[108] In the

106 Federal Ministry for Europe, Integration and Foreign Affairs, *Spindelegger in Kabul: Rücknahme abgewiesener Asylwerber thematisiert*, Press Release, 16 February 2013, available at http://www.bmeia.gv.at/das-ministerium/presse/aussendungen/2013/apa-spindelegger-in-kabul-ruecknahme-abgewiesener-asylwerber-thematisiert/?ADMCMD_editIcons=%2524 (accessed on 13 November 2014); Federal Ministry of the Interior, *BMI Delegation zu Migrationsgesprächen in Afghanistan*, Press Release, 16 April 2013, available at http://www.bmi.gv.at/cms/BMI/_news/BMI.aspx?id=44434631646B74624A38413D&page=5&view=1 (accessed on 13 November 2014); Die Presse, *Von neuen Offensiven – in Afghanistan und auch in Österreich*, 20 June 2013, p. 27.

107 Manuel Scherscher, Department Asylum and Immigration, Federal Ministry of the Interior, 6 May 2014.

108 Federal Ministry of the Interior, *Mehrjahresprogramm 2008–2013*, Member State Austria, p. 22, available (in German) at www.bmi.gv.at/cms/BMI_Fonds/rueckkehrf/programme/files/RF_MJP_ffentlich_neu.pdf (accessed on 20 March 2014). As far as Turkey is concerned, it can be noted that in the meanwhile an EU

connection to that the Ministry also states in this Multiannual Programme, that it is recommendable to conduct an evaluation of both the EU and the national reintegration agreements with the view to improve the practical use and possible additional value of those agreements.[109]

There is one bilateral readmission agreement signed by Austria that includes an article encouraging both parties to **promote the use of voluntary return**. This is the readmission agreement with Nigeria from 8 June 2012 (in force since 18 August 2012).[110]

This readmission agreement with Nigeria provides (in its Article XVIII "Technical Cooperation and Support") a regulation encouraging the parties to promote the use of voluntary return. Paragraph 1 of this article determines several forms of reciprocal support in letters (a) to (e). In letter (c) is then determined that the contract parties oblige themselves to "cooperation in the area of return, especially by promoting voluntary return of persons to be returned and their reintegration".[111]

readmission agreement with Turkey has been concluded; see Agreement between the European Union and the Republic of Turkey on the readmission of persons residing without authorization, available at http://eur-lex.europa.eu/legal-content/EN/TXT/?qid=1405601796131&uri=CELEX:22014A0507%2801%29; also see Kurier, *Türkei will Visafreiheit für mehr Grenzschutz*, 9 March 2012, p. 5; Die Presse, *EU öffnet der Türkei die Tür für eine schrittweise Aufhebung der Visumpflicht*, 21 June 2012, p. 5; Der Standard, *Türkei glaubt daran*, 6 December 2013, p. 6; Kurier, *Rücknahme von Flüchtlingen*, 17 December 2013, p. 6; APA, *Pirker: Rückübernahmeabkommen mit Türkei zur Bekämpfung illegaler Einwanderung beschlossen*, 22 January 2014, available at www.ots.at/presseaussendung/OTS_20140122_OTS0089/pirker-rueckuebernahmeabkommen-mit-tuerkei-zur-bekaempfung-illegaler-einwanderung-beschlossen (accessed on 26 March 2014).

109 Federal Ministry of the Interior, *Mehrjahresprogramm 2008–2013*, *Member State Austria*, p. 22, available (in German) at www.bmi.gv.at/cms/BMI_Fonds/rueckkehrf/programme/files/RF_MJP_ffentlich_neu.pdf (accessed on 20 March 2014).

110 See Agreement on readmission between the Austrian Federal Government and the Government of the Federal Republic of Nigeria, available at www.ris.bka.gv.at/Dokumente/BgblAuth/BGBLA_2012_III_116/COO_2026_100_2_778706.pdf (accessed on 24 March 2014).

111 In German: "(1) Die Vertragsparteien verpflichten sich hiermit, innerhalb der Grenzen ihrer Fähigkeiten und Ressourcen und in Übereinstimmung mit ihren innerstaatlichen Gesetzen zur folgenden gegenseitigen Unterstützung: … (c) Zusammenarbeit im Bereich der Rückkehr, vor allem durch Förderung der freiwilligen Rückkehr von rückzuführenden Personen und deren Wiedereingliederung".

Paragraph 2 of the Article XVIII further determines that projects related to paragraph 1 can be decided by the parties on the basis of the coordination committee mentioned in Article XX.

This bilateral readmission agreement with Nigeria is the only one containing a provision encouraging both Parties to promote the use of voluntary return. All other readmission agreements do not contain such a provision.

4.2.2 Bilateral readmission agreements with EEA countries

In addition to the readmission agreements concluded with third countries, Austria also concluded a number of readmission agreements with EEA countries. The bilateral readmission agreements between Austria and other EEA countries fall outside the scope of the study[112] but should be mentioned in this national report for complementarity reasons.

Table 4: Austria's bilateral readmission agreements with EEA countries

EEA Country	Date of the agreement	Date of entry into force
Belgium	15 February 1965	1 April 1965
Bulgaria	26 June 1998	30 November 1998
Croatia	18 June 1997	1 November 1998
Czech Republic	12 November 2004	9 October 2005
Estonia	20 July 2001	1 September 2001
France	20 April 2007	1 November 2007
Germany	16 December 1976	15 January 1998
Hungary	9 October 1992	20 April 1995
Italy	7 October 1997	1 April 1998
Latvia	8 June 2000	1 September 2000
Liechtenstein	3 July 2000	1 January 2001
Lithuania	9 December 1998	1 January 2000
Luxembourg	15 February 1965	1 April 1965
Netherlands	15 February 1965	1 April 1965
Poland	10 June 2002	30 May 2005
Romania	28 November 2001	6 February 2002
Slovenia	3 December 1992	1 September 1993
Slovakia	20 June 2002	1 October 2002

112 See footnote 34 of the *Common Template EMN Focussed Study 2014, final version 5th March 2014, Good Practices in the return and reintegration of irregular migrants: Member States' entry bans policy & use of readmission agreements between Member States and third countries.*

4.3 Challenges to implementing readmission agreements

With regards to the practical obstacles encountered when implementing readmission agreements, from the Austrian perspective there is no difference between an EU and a Bilateral Readmission agreement according to an official of the Ministry of the Interior.[113]

One problem would be the different level of evidence required by different countries with regards to accepting persons without valid travel documents as nationals of their country. Manuel Scherscher explains that it is often reported that an individual would intentionally pretend to have a different citizenship, which makes the process of identifying own nationals in the course of issuing travel documents much more difficult.[114]

A well-functioning register of birth, marriages and deaths of a third-country is also considered by Gerhard Reischer as very helpful in such situations. Regardless of the existence of a reliable register, the requirement is still to verify the real identity. In cases of a false identity, persons cannot be found in their countries of origin, even if the register of birth, marriage and death is well-functioning. Possible solutions in such cases would be the use of fingerprints or photographs for the purpose of identification.[115]

According to Manuel Scherscher, a further challenge is that the modes and ways of communication differ a lot. There are differences in the communicating institutions (from embassy to embassy or from Ministry to Ministry). The forms to be completed differ, as do other formal requirements.[116]

113 Manuel Scherscher, Department Asylum and Immigration, Federal Ministry of the Interior, 6 May 2014.

114 Ibid. Difficulties in obtaining travel documents were described as organizational obstacles already in the EMN study on assisted return; see Katerina Kratzmann, Elisabeth Petzl, Mária Temesvári, *Programmes and Strategies in Austria Fostering Assisted Return to and Re-Integration in Third Countries*, 2010, p. 53–54.

115 Gerhard Reischer, Head of Department Immigration and Border Control, Federal Ministry of the Interior, 10 April 2014. Challenges with establishing identity are also mentioned in the EMN study *Establishing Identity for International Protection – Challenges and Practices in Austria and the EU*, available at www.emn.at/images/stories/2012/Studien_/Establishing_Identity_for_International_Protection_EMN_Focussed_Study.pdf (accessed on 22 June 2014).

116 Manuel Scherscher, Department Asylum and Immigration, Federal Ministry of the Interior, 6 May 2014.

Furthermore, the adherence to deadlines related to the implementation of readmission agreements is a significant difficulty for the Austrian authorities.

In general, practical obstacles faced in the implementation of readmission agreements also depend a lot on the specific countries. Some practical obstacles in the implementation of readmission agreements are experienced in relation to certain third countries and are not of a general nature.[117]

On the contrary, the EU Readmission Agreements with Albania, Bosnia and Herzegovina, Georgia, former Yugoslav Republic of Macedonia, Montenegro, Pakistan and Ukraine are well functioning.[118] No difficulties are being reported in the implementation of the bilateral readmission agreement with Nigeria. Cooperation with Serbia and Kosovo/UNSC 1244 is also running smoothly.[119]

4.4 Evaluation of effectiveness

In Austria there are no written evaluations of the effectiveness of readmission agreements.

Although there is currently no systematic evaluation, the extremely good cooperation with the Russian Federation was highlighted during the interviews for this study. The reason underpinning this is the high level of functioning of the register for birth, marriage and death.[120] A well-functioning cooperation also exists with the Chechen Republic. Close cooperation with Georgia must also be highlighted.

According to Gerhard Reischer it can be stated that in all cases where reintegration support is offered, voluntary returns are considered more sustainable.[121]

However, the general intention to improve the effectiveness of returns of persons staying irregularly is expressed in an official document. The

117 Ibid.

118 Gerhard Reischer, Head of Department Immigration and Border Control, Federal Ministry of the Interior, 10 April 2014. In regard to Pakistan see also International Organization for Migration Vienna, *Austria Annual Policy Report 2013. Contribution to Commission and to EASO Annual Reports*, p. 19, available at www.emn.at/images/2014/APR_2013/APR_2013_National_Report_Austria_Part_1_FINAL.pdf (accessed on 30 June 2014).

119 Gerhard Reischer, Head of Department Immigration and Border Control, Federal Ministry of the Interior, 10 April 2014.

120 Ibid.

121 Ibid.

explanations to the government bill emphasize that the intent of the suggested changes in the Alien's Police Act aim to improve the effectiveness of measures concerning the return of third-country nationals with irregular stay.[122]

It is also worth mentioning that the Federal Ministry of the Interior announced in its "Multiannual Programme 2008–2013", that it would be good to conduct an evaluation both of the EU and the national readmission agreements in order to improve the practical application and raise the additional benefit of those agreements. The authorities of the reception countries would need to be included in any such evaluation.[123]

4.5 Preferences for the use of bilateral- or EU readmission agreements

The possibilities that separate bilateral and EU readmission agreements provide raise the question of which agreements the Member States concerned prefer.

Gerhard Reischer emphasizes, that the question of a possible preference would not be applicable in practice. If the EU has concluded an agreement with a third-country, its provisions would take precedence over any pre-existing bi-lateral agreement.[124]

Therefore, the chronology of conclusion of the bilateral and the EU readmission agreement is relevant. There are four countries, with who both kinds of agreement exist: Serbia, Montenegro, former Yugoslav Republic of Macedonia and Bosnia/Herzegovina. In all four of those cases, the bilateral agreement between Austria and the country concerned was concluded *before* the conclusion of the EU readmission agreement. There are no cases in which a bilateral readmission agreement has been concluded *after* the conclusion of an EU readmission agreement.

For the practical context, it has been emphasized that bi-lateral readmission agreements are relevant in case EU readmission agreements are not concluded.

122 *Aliens' Law Amendment Act 2011*, Preamble, Government Proposal, Explanatory Notes, p. 4, available at www.parlament.gv.at/PAKT/VHG/XXIV/I/I_01078/fname_206974.pdf (accessed on 27 March 2014).

123 Federal Ministry of the Interior, *Mehrjahresprogramm 2008–2013. Member State Austria*, p. 22, available (in German) at www.bmi.gv.at/cms/BMI_Fonds/rueckkehrf/programme/files/RF_MJP_ffentlich_neu.pdf (accessed on 20 March 2014).

124 Gerhard Reischer, Head of Department Immigration and Border Control, Federal Ministry of the Interior, 10 April 2014.

5. SYNERGIES WITH REINTEGRATION ASSISTANCE

This section outlines the dependencies that might exist between entry bans and readmission agreements, on the one hand, and reintegration assistance, on the other hand. This section also examines the level of cooperation between decision makers in charge of issuing entry bans and making readmission applications, and the officials in charge of administering reintegration assistance. Those questions aim to identify whether greater cooperation between the relevant authorities would lead to better outcomes for sustainable return in a wider sense.

5.1 Cooperation with authorities in third-country

Cooperation with the non-EU countries of origin of the third county nationals is according to the European Commission essential to improve the capacity for managing migration flows, and for addressing challenges linked to the return of third-country nationals who do not have a legal right to stay in the EU. Therefore, a vast number of bilateral- and EU cooperation frameworks are being engaged in order to foster mutually beneficial cooperation in this field (European Commission, 2014:9).

With the aim of further fostering mutual interests on a number of migration-related questions, Austria is invested in intensive dialogue and close cooperation with several countries of origin.

When considering the cooperation between the authorities in charge of imposing an entry ban – in Austria the Federal Office for Immigration and Asylum – and the authorities of the concerned third-country to which the individual is to be returned, frequent contact is evident. The competent Austrian authorities are in a general and intensive dialogue with the respective embassies and authorities of the third-country.

Active communication takes place in cases for which an entry ban has been imposed; the ban is communicated to the authorities of their country of origin.[125]

125 Thomas Mühlhans, Head of Unit of Asylum and Return Funds, Federal Ministry of the Interior, 6 May 2014.

Depending on the case, this contact can be established from the moment of a first instance decision of the responsible authority. In Asylum cases, however, where a negative first instance decision is likely, then the Federal Office for Immigration and Asylum might make contacts with the authorities of the third-country in advance, for instance in order to begin organizing a return travel certificate. If the third-country national does possess valid travel documents, such a contact in advance is unnecessary.[126]

For those individuals upon whom Austria has already imposed an entry ban, there is no specific information available that would indicate whether or not third countries have subsequently imposed a travel ban. On the other hand, however, third countries are often interested to learn the reasons as to why a third-country national has received an entry ban in Austria. Detailed information to this end has never been provided to those countries. The only reason provided to the authorities abroad is irregular stay. Data protection ensures this limited information exchange. Exceptions are only made to facilitate judicial cooperation; in which cases more data can be provided.[127]

5.2 Application for reintegration assistance with entry ban

In Austria, there are a number of target-group specific projects that offer reintegration assistance[128] to voluntary returnees and are funded by different donors. The most important donor in this context is the Federal Ministry of the Interior, which is responsible for the administration of the national programme within the European Return Fund.[129] In some cases the federal provinces act as donors.

In addition, there are projects implemented in third countries that offer reintegration assistance for their own nationals who have returned

126 Gerhard Reischer, Head of Department Immigration and Border Control, Federal Ministry of the Interior, 10 April 2014.

127 Ibid.

128 For a description on how reintegration assistance is functioning in general, see Katerina Kratzmann, *Unterstützte Rückkehr: Alternative zur Abschiebung?* 2014, available at www.oeaw.ac.at/kmi/Jahrestagung%20Abstracts/Papers%202014/Kratzmann_Vortrag_KK_Unterstuetzte%20Rueckkehr%20als%20Alternative%20zur%20Abschiebung.pdf (accessed on 4 November 2014).

129 The fund is aimed at persons enjoying (or applying for) international or temporary protection and those illegally resident in a European Union (EU) country. The fund can be used to finance national and transnational actions or actions at EU level.

from European countries, including Austria. These projects do not only target voluntary returns, but also persons who returned in the framework of a readmission agreement.

5.2.1 Authority Responsible

For reintegration measures that are (co-)financed by the Federal Ministry of the Interior, the Ministry itself is the responsible authority. It is important to note that until the end of 2013 the competent authority in this regard was the Federal Ministry of the Interior in Austria. On 1 January 2014 the competence moved to the Federal Office for Immigration and Asylum. With that change, the competent authorities involved in making decisions about the use of entry bans and granting of re-integration assistance remained the same. The competence now lies always with the Federal Office for Immigration and Asylum. The Federal Office for Immigration and Asylum initially took over the criteria developed from the previously competent Ministry. It is expected that those criteria will be reviewed in the upcoming period.[130]

5.2.2 Reintegration assistance with entry ban

In Austria, returnees with an entry ban are, in general, not excluded from applying for re-integration assistance. Equally, persons with a removal order are also able to apply for re-integration assistance. The criteria according to which the selection for reintegration assistance is available depend on and are verified by the donor.

In the reintegration projects (co-)funded by the Austrian Federal Ministry of the Interior, the competent authority – the Federal Office for Immigration and Asylum – checks on a case by case basis whether the person who has applied for participation in a reintegration project is eligible.

Personal reasons are taken into account when each the case is considered, for example – a possible previous conviction. Having a criminal record reduces the probability of being accepted for reintegration assistance.[131]

130 Thomas Mühlhans, Head of Unit of Asylum and Return Funds, Federal Ministry of the Interior, 6 May 2014.

131 Thomas Mühlhans, Head of Unit of Asylum and Return Funds, Federal Ministry of the Interior, 6 May 2014.

Also, their needs and the specific background are taken into account, such as the duration of the previous stay.[132]

As these projects are also co-funded by the European Return Fund, applicants who are not part of the Fund's target group[133] are not eligible for participation.

In addition to those general criteria, the specific projects supporting the return might impose additional selection criteria when deciding whether or not to support an application.

For example, the project "Assistance for the Voluntary Return and Reintegration of Returnees to the Russian Federation / the Chechen Republic", requests that eligible applicants must have stayed a minimum of one year in Austria before the return.[134] The "SIREADA" project for Facilitation of Assisted Voluntary Return and Reintegration with Moldova, Russian Federation and Ukraine[135] includes in its criteria the description of the categories of beneficiaries and the criteria for eligibility. Also the project "Reintegration assistance after return to Georgia"[136] foresees explicitly the criteria for participation in the project and the eligibility criteria.[137]

Similar provisions describing the selection criteria for the specific project can be found in most of the different projects.

132 Ibid.

133 The target group of the European Return Fund comprises third-country nationals who wish to return voluntarily and who (a) have not yet received a final negative decision in relation to their request for international protection in a Member State (b) enjoy a form of international protection or temporary protection, (c) do not or no longer fulfil the conditions for entry and/or stay.

134 Project *"Assistance for the Voluntary Return and Reintegration of Returnees to the Russian Federation / the Chechen Republic"* is implemented by IOM and co-financed by the Austrian Federal Ministry of the Interior and the European Return Fund, July 2010 to June 2014.

135 SIREADA, *"Support to The Implementation of EU Readmission Agreements with the Republic of Moldova, the Russian Federation and Ukraine: Facilitation of Assisted Voluntary Return and Reintegration"*; funded by the European Union and co-funded by the Austrian Development Agency (Moldovan component), the Federal Office for Migration of Switzerland, the Italian Development Cooperation, and the IOM; 1 March 2011 until 28 February 2013.

136 Project *"Reintegration assistance after return to Georgia – Mobility Centre"*, implemented by IOM, funded by the European Union, December 2013 to June 2017.

137 For more information, see http://informedmigration.ge/cms/sites/default/files/pdf/publications/ENG%20Leaflet%20-%20Reintegration.pdf (accessed on 28 July 2014).

5.2.3 Reintegration assistance for returnees removed on basis of readmission agreement

In Austria, support for reintegration is generally offered only to returnees who are returning voluntarily.[138]

Although the Austrian Government does not provide reintegration assistance for returnees removed on basis of readmission agreements, there are re-integration programs which are explicitly aimed at returnees who have been removed on the basis of a readmission agreement:

One example is the "SIREADA" program.[139] It prescribes, as a requirement for participants, that the persons are returnees from EU member states who were removed on basis of a readmission agreement or returned voluntarily.

Another example is the project "Reinforcing the Capacities of the Government of Georgia in Border and Migration Management",[140] which receives funding from the European Union's Eastern Partnership Integration and Cooperation Programme and offers reintegration assistance in Georgia. The beneficiaries are Georgians who have been returned to Georgia through the readmission procedure, and also Georgian migrants who have returned voluntarily with or without IOM assistance (but without reintegration) or who were deported. It is open to returnees from Austria.

138 Thomas Mühlhans, Head of Unit of Asylum and Return Funds, Federal Ministry of the Interior, 6 May 2014.

139 SIREADA, Support to The Implementation of EU Readmission Agreements with the Republic of Moldova, the Russian Federation and Ukraine: Facilitation of Assisted Voluntary Return and Reintegration; funded by the European Union and co-funded by the Austrian Development Agency (Moldovan component), the Federal Office for Migration of Switzerland, the Italian Development Cooperation, and the IOM; 1 March 2011 until 28 February 2013.

140 Project *"Reinforcing the Capacities of the Government of Georgia in Border and Migration Management"*, implemented by IOM, funded by the European Union's Eastern Partnership Integration and Cooperation Programme for 2012, available at http://informedmigration.ge/cms/en/About-the-Project (accessed on 28 July 2014).

6. RETURN STATISTICS

Comprehensive data on the topic of return which is of interest to this study is centrally collected by the Federal Ministry of the Interior. In practice, the FMI collects data on forced returns, independent voluntary return, assisted voluntary return and voluntary departure.[141] The FMI relies on third-party service providers to implement assisted voluntary return, and these service providers collect and send data on assisted voluntary returns they have carried out back to the FMI.

As shown in the Figure below (Figure 3), between 2009 and 2013, the number of forced returns in Austria decreased by 23.3 per cent from 2,481 forced returns in 2009 to 1,903 forced returns in 2013. However, within that period, the development was fluctuating with slight increases between the years in the beginning and at the end of the period and a decrease in the middle of the period, namely between 2010 and 2012.

With regards to voluntary returns and voluntary departures,[142] there was an overall decrease by 14 per cent from 4,088 voluntary returns and voluntary departures in 2009 to 3,512 voluntary returns and voluntary departures in 2013. Similar to the forced returns, the development fluctuated within that period. In the beginning and at the end of the period the numbers increased, while between 2010 and 2012 the numbers decreased.

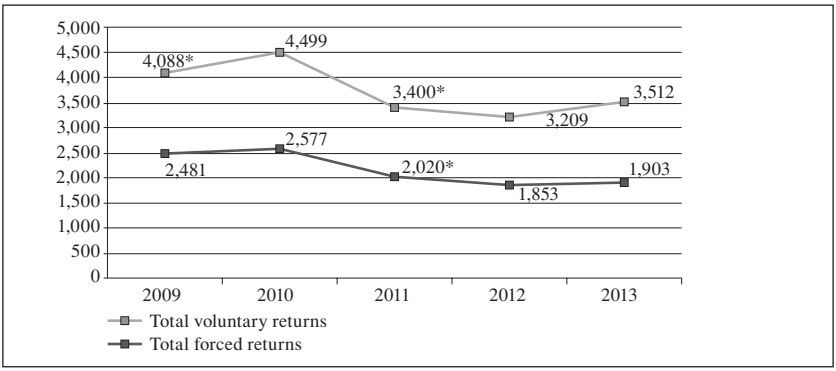
What can be observed is that over the last five years, the number of voluntary returns including voluntary departures was on average 1.7 times higher than the number of forced returns (excluding Dublin cases). This is a good reflection of Austria's established preference for voluntary return as an important alternative to forced return.[143] It has to be noted, however, that not all people who decided to return voluntarily could have been forced to do so, i.e. the eligibility criteria for forced and voluntary return only match partly.

141 For the definition of the terms see chapter 1.1.

142 For the definition of the terms see chapter 1.1.

143 Saskia Koppenberg, *Austria – Annual Policy Report 2013*, 2014, p. 41, available at www.emn.at/images/2014/APR_2013/APR_2013_National_Report_Austria_Part_2_FINAL.pdf (accessed on 10 June 2014).

Figure 3: Total number of forced and voluntary returns[144], 2009–2013

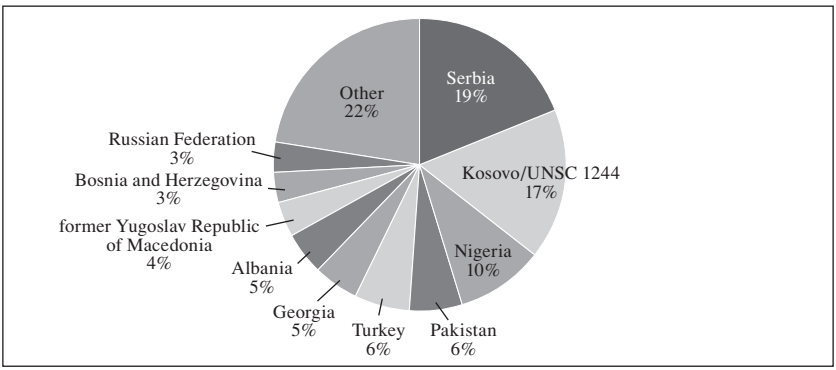


Source: Federal Ministry of the Interior, Aliens Police and Visa Statistics (2012, 2013), Aliens Statistics (2009, 2010); * Reply to parliamentary request from 5 February 2014.

6.1 Forced returns

Of the 1,903 forced returns in 2013, 512 (or around 27 per cent) were third-country nationals (i.e. other than citizens of the EEA and Switzerland). Among the third-country nationals forcibly returned in 2013, the majority had Serbian citizenship (19 %), followed by Kosovo/UNSC 1244 (17 %) and Nigeria (10 %; see Figure 4).

Figure 4: Number of forced returns of third-country nationals by citizenship, 2013

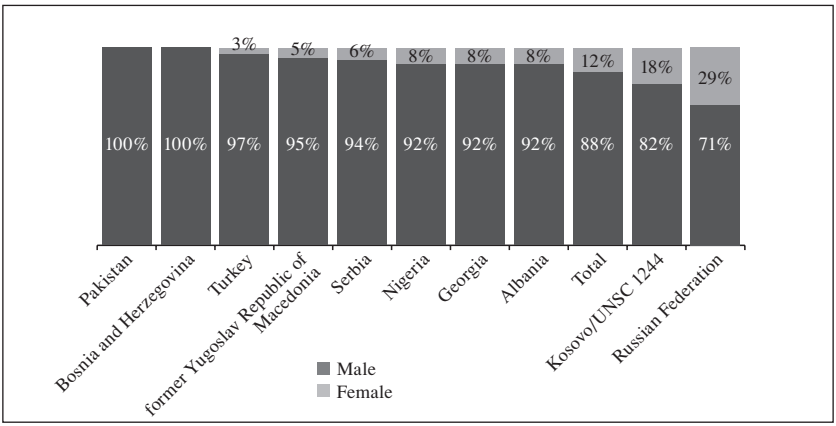


Source: Federal Ministry of the Interior.

144 The term "voluntary returns" includes both "voluntary return" and "voluntary departure" according to the European Migration Network, Asylum and Migration Glossary 2.0., (Publications Office of the European Union, Luxembourg, 2012).

Looking at the sex of the forced returnees with third-country citizenship in 2013, they were predominantly male (88 % compared to 12 % females). Females only made up between 0 per cent (Pakistan, Bosnia and Herzegovina) and 29 per cent (Russian Federation) of the top-ten third-country citizenships (see Figure 5).

Figure 5: Number of forced returns of third-country nationals by citizenship (top-ten and total) and sex, 2013



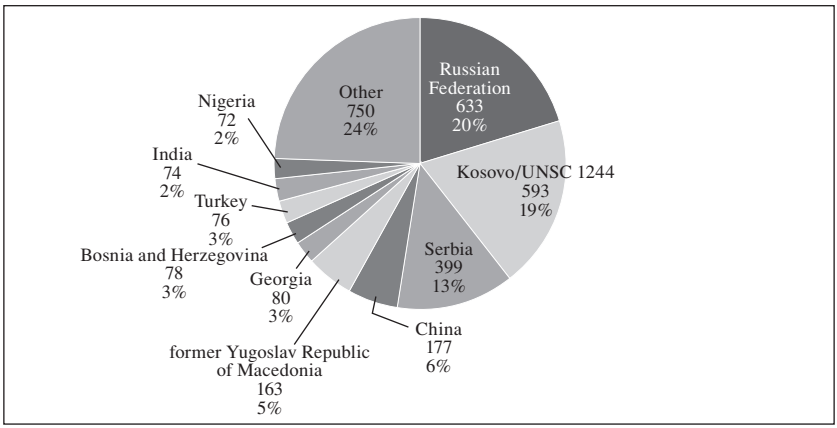
Source: Federal Ministry of the Interior.

6.2 Voluntary returns

Of the 3,512 voluntary returns and voluntary departures[145] in 2013, 3,098 (or around 88 per cent) were third-country nationals (i.e. other than citizens of the EEA and Switzerland). The third-country nationals who returned or departed voluntarily in 2013 were mainly citizens of the Russian Federation (20 %), followed by Kosovo/UNSC 1244 (19 %) and Serbia (13 %, see Figure 6). As regards the latter two, there is an analogy with the main third-country citizenships of forced returns in 2013 (see chapter 6.1).

145 Regarding the terms see chapter 1.1.

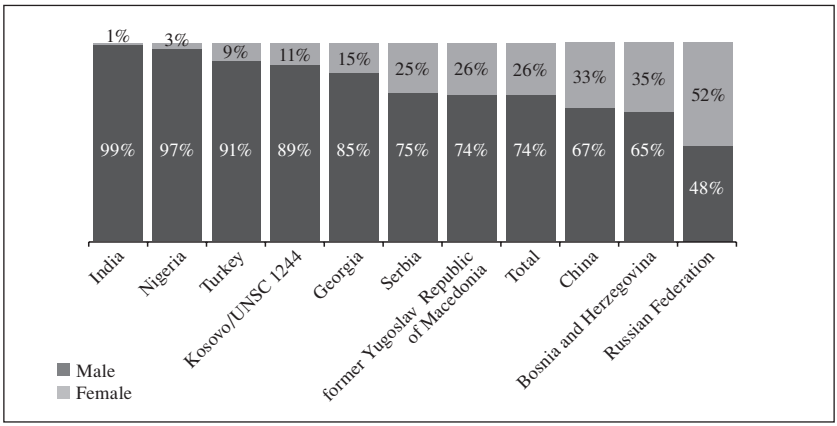
Figure 6: Number of voluntary returns and voluntary departures of third-country nationals by citizenship, 2013



Source: Federal Ministry of the Interior.

With regard to sex, the voluntary returnees with third-country citizenship in 2013 were predominantly male (74 % compared to 26 % females). Compared to the forced returnees in 2013 (see chapter 6.1), the total share of females was higher. Female returnees made up between 1 per cent (India) and 52 per cent (Russian Federation) of the top-ten countries citizenships (see Figure 7).

Figure 7: Number of voluntary returns and voluntary departures of third-country nationals by citizenship (top-ten and total) and sex, 2013

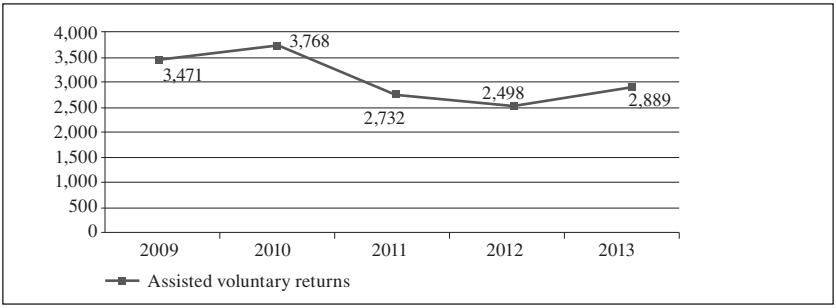


Source: Federal Ministry of the Interior.

6.3 Assisted voluntary returns

Those who return voluntarily can receive return assistance from the Federal Ministry of the Interior. Over the past five years, between 2,498 and 3,768 voluntary returnees were assisted per year. Between 2009 and 2010 the number slightly increased from 3,471 to 3,768. It followed a decrease by 34 per cent, reaching 2,498 assisted voluntary returns in 2012. Between 2012 and 2013, the number started to increase again (+ 16 %; see Figure 8).

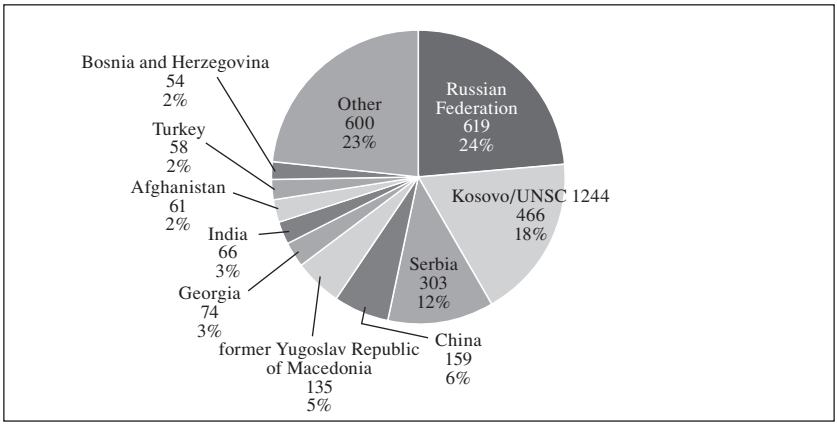
Figure 8: Number of assisted voluntary returns 2009–2013



Source: Federal Ministry of the Interior.

Of the 2,889 assisted voluntary returns in 2013, 2,595 or 90 per cent were third-country nationals (i.e. other than the EEA and Switzerland). The three main third-country citizenships of the assisted voluntary returns in 2013 match the top three third-country citizenships of the voluntary returns (see chapter 6.2), namely the Russian Federation (24 %), followed by Kosovo/UNSC 1244 (18 %) and Serbia (12 %).

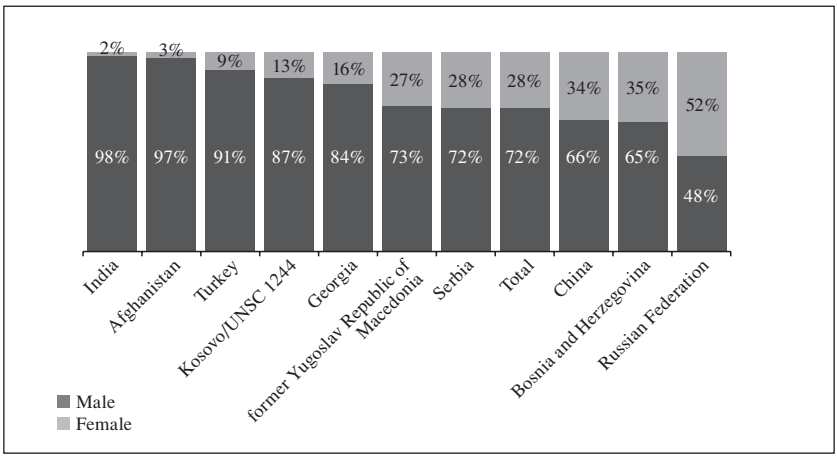
Figure 9: Number of assisted voluntary returns of third-country nationals by citizenship, 2013



Source: Federal Ministry of the Interior.

The sex of the assisted voluntary returnees with third-country citizenship in 2013 was predominantly male (72 % compared to 28 % females), similar to the voluntary returnees in 2013 (see chapter 6.2). Female returnees made up between 1 per cent (India) and 52 per cent (Russian Federation) of assisted voluntary returns in 2013 to the top-ten third-country citizenships (see Figure 10).

Figure 10: Number of assisted voluntary returns of third-country nationals by citizenship (top-ten and total) and sex, 2013



Source: Federal Ministry of the Interior.

7. SUMMARY

The aim of this study is to understand the extent to which Austria uses entry bans and readmission agreements to enhance its national return policy. It also attempts to verify possible synergies existing with reintegration assistance. The Study took a practical approach by exploring how entry bans and readmission agreements are applied in practice.

The current **aliens' law** underwent significant change in relation to the connection between return decisions and entry bans. The old regulation, before the transposition of the return directive, prescribed an automatic imposition of entry bans on all return decisions without providing any space for the execution of discretionary power. In 2014 the Aliens Police Act was modified to the current legal regulation. The new legal regulation provides the possibility to combine a return decision with an entry ban under certain conditions.

In regard to the **grounds for imposing entry bans**, Austrian law differs according to the length of the imposed entry ban. Entry bans with duration of up to five years can be imposed if the stay of the third-country national endangers public peace and order, or is contradictory to the other public interests outlined in Art. 8 para 2 ECHR. In light of this, the previous behaviour of the third-country national is taken into account. Entry bans with a duration of up to ten years or with indefinite duration can be imposed in cases where such facts exist that would lead to the assumption that the stay of a third-country national constitutes a serious danger of public peace and order. The responsible authority for the decisions on the length of an entry ban, and the execution of discretionary power with regards to compliance with the requirements, is with the Federal Office for Immigration and Asylum.

Scrutinizing if there are higher-order grounds which might prevent the imposition of an entry ban, although the requirements for its imposition would be given, requires in Austria to undertake a further step. Due to the fact that in the Austrian law the imposition of an entry ban is inextricably linked with a return decision, the requirements for the issuance of a return decision need to be considered as well. A return decision must, generally speaking, be weighed against the private or family life of the

third-country national. Health conditions would thereby be of particular consideration. Due to the described link between entry ban and return decision, those grounds hindering the release of a return decision also impede the issuance of an entry ban according to the law.

The total number of entry bans issued increased slightly between the years 2012 and 2013, from 1,854 to 2,132, which is an increase of 15 per cent.

The Austrian regulations relating to entry bans also include the **right to appeal** against such a decision. The appeal procedure against entry bans contains some administrative particularities in comparison to ordinary appeal procedures against administrative decisions. Consequently, criticisms have been raised that the so-called "prohibition of new pleas" significantly limits the opportunities to bring forward new facts and evidences against a decision.

Despite those deviations from the ordinary administrative procedure when appealing an entry ban decision, the general right to appeal is granted, although with some limitations.

The possibility to **withdraw or shorten an entry** ban depends on the length of the entry ban imposed according to the Austrian framework. The concerned third-country national can file an application to shorten an entry ban imposed with a duration up to five or ten years. However, the law does not foresee any possibility to shorten, suspend or withdraw an entry ban of indefinite duration. This irreversibility of this regulation raises concerns for some stakeholders, from a legal perspective, with regards to its constitutionality due to the lack of consideration of personal interests.

With regards to measuring the **effectiveness of entry bans**, in Austria no systematic evaluations have been conducted thus far. On this note, during the interviews, it was mentioned that due to the fact that this group of people would often stay irregularly in the country the collection of reliable data was difficult. Further information on indicators used to measure the effectiveness of entry bans – like for instance, the number of persons with entry ban being re-apprehended inside the country – are not available in Austria.

Concerning the aim of this EMN study to gain an understanding of the extent to which European Union Member States use entry bans and readmission agreements to enhance their national return policies, first Austria's policy in signing **readmission agreements** was looked at.

Austria has eight bilateral readmission agreements in place with third countries, although some of them have later been replaced with EU readmission agreements. Negotiations for concluding further agreements do, however, continue but with a different sense of intensity. Only one of those agreements, the agreement with Nigeria, includes an article encouraging both parties to promote the use of voluntary return.

During the expert interviews the following **challenges** for the implementation of readmission agreements were identified:

One major challenge mentioned by institutional stakeholders in Austria, constitutes the different level of evidence required by different countries with regards to accepting persons without valid travel documents as nationals of their country. In many cases the necessary identification documents are missing, and consequently the identification of third-country nationals as nationals of the country concerned constitutes a big challenge in the practice.

A further challenge is that the ways in which institutions communicate with each other differ a lot, also in regard to the deadlines. The practical obstacles encountered when implementing readmission agreements vary dramatically depending on the countries involved.

Measuring the effectiveness of readmission agreements is similarly difficult to evaluating the effectiveness of entry bans. So far, no written evaluations have been produced.

Unfortunately, there are no further estimates available on indicators to measure the effectiveness of entry bans, on the number of readmission applications under EU Readmission Agreements such as the number of readmission applications under bilateral readmission agreements. Also, the statistical data that would enable the effectiveness of such readmission agreements to be gauged does not exist.

The possible **synergies** between entry bans and readmission agreements, on the one hand, and reintegration assistance, on the other hand, were investigated.

According to the competent Austrian authorities' own statement, they are very engaged in developing mutually beneficial, cooperative relationships with the non-EU countries of origin of a third country national. An intensive dialogue with the respective embassies and authorities of the third-country is ongoing.

When considering possible synergies between the decision makers in charge of issuing entry bans and those responsible for administering reintegration assistance, one must first note that returnees with an entry ban are, in general, not excluded from applying for re-integration assistance. There are target-group specific projects that offer reintegration assistance to voluntary returnees, but also persons who returned in the framework of a readmission agreement. The Austrian government does not, as a rule, offer re-integration assistance for returnees who have been removed.

Statistical data shows that between 2009 and 2013, the number of forced returns in Austria decreased by 23.3 per cent to 1,903 in 2013. Those who return voluntarily can receive return assistance from the Federal Ministry of the Interior. Over the past five years, between 2,498 and 3,768 voluntary returnees were assisted each year.

The total number of entry bans issued increased between 2012 and 2013 from 1,854 to 2,132, (which is an increase of 15 per cent).

The actual numbers on indicators to measure the effectiveness of entry bans and on the number of readmission applications are difficult to assess. The existence of further detailed data in that regard would contribute to a clearer picture of the numbers and hereby support the further elaboration of a national policy. However, what can be observed is that over the last five years, the number of voluntary returns was, on average, 1.7 times higher than the number of forced returns. This is a good reflection of Austria's established preference for voluntary return as an important alternative to forced return.

ANNEX

A.1 List of translations and abbreviations

English term	English Abbreviation	German term	German Abbreviation
Administrative High Court	-	Verwaltungsgerichtshof	VwGH
Administrative offence	-	Verwaltungsübertretung	-
Aliens Police	-	Fremdenpolizei	-
Aliens Police Act	-	Fremdenpolizeigesetz	FPG
Appeal	-	Beschwerde	-
Asylum Act 2005	-	Asylgesetz 2005	AsylG
Austrian Ombudsman Board	-	Volksanwaltschaft	-
Branch office	-	Außenstelle	-
Constitutional Court	-	Verfassungsgerichtshof	-
Departure	-	Ausreise	-
District Commission	-	Bezirkshauptmannschaften	-
European Commission	EC	Europäische Kommission	EK
European Convention on Human Rights	ECHR	Europäische Menschenrechtskonvention	EMRK
European Migration Network	EMN	Europäisches Migrationsnetzwerk	EMN
European Union	EU	Europäische Union	EU
Exclusion order	-	Aufenthaltsverbot	-
Expulsion	-	Ausweisung	-
Federal Administrative Court	-	Bundesverwaltungsgericht	-
Federal Asylum Office	-	Bundesasylamt	-
Federal Government	-	Bund	-
Federal Ministry for Europe, Integration and Foreign Affairs	-	Bundesministerium für Europa, Integration und Äußeres	BMEIA
Federal Ministry Law	-	Bundesministeriengesetz	-
Federal Ministry of the Interior	FMI	Bundesministerium für Inneres	BMI
Federal Office for Immigration and Asylum	-	Bundesamt für Fremdenwesen und Asyl	BFA
Federal Office for Immigration and Asylum Procedures Act	-	BFA-Verfahrensgesetz	BFA-VG
Forcible return	-	Zurückschiebung	-

Independent Administrative Senate	-	Unabhängiger Verwaltungssenat	UVS
International Organization for Migration	IOM	Internationale Organisation für Migration	IOM
Irregular stay	-	Irregulärer Aufenthalt	-
National Contact Point	NCP	Nationaler Kontaktpunkt	NKP
Privileged third-country nationals	-	begünstigte Drittstaatsangehörige	-
Prohibition of new pleas	-	Neuerungsverbot	-
Province	-	Bundesland	-
public peace and order	-	Öffentliche Sicherheit und Ordnung	-
Reintegration assistance	-	Reintegrationsunterstützung	-
Removal	-	Abschiebung	-
Residence Act	-	Aufenthaltsgesetz	-
Return decision	-	Rückkehrentscheidung	-
(Forced) return	-	Zwangsweise Rückführung	-
Return travel certificate (laissez-passer)	-	Heimreisezertifikat	-
Schengen Borders Code	-	Schengener Grenzkodex	-
Schengen Information System	SIS	Schengener Informationssystem	SIS
Settlement	-	Niederlassung	-
Settlement and Residence Act	-	Niederlassungs- und Aufenthaltsgesetz	NAG
Transposition of a directive into national legislation	-	Umsetzung einer Richtlinie in nationales Recht	-
Weighing of interests	-	Interessenabwägung	-

A.2 Bibliography

Literature

Agenda Asyl, Asylkoordination Österreich

2011 *Stellungnahme von AGENDA ASYL betreffend ein Bundesgesetz, mit dem das Niederlassungs- und Aufenthaltsgesetz, das Fremdenpolizeigesetz 2005, das Asylgesetz 2005 das Staatsbürgerschaftsgesetz 1985 geändert werden (251/ME)*, available at www.integrationshaus.at/cgi-bin/file.pl?id=631 (accessed on 13 March 2014).

Austrian Ombudsman Board

2014 *Missstandsfeststellung und Empfehlung des Kollegiums der Volksanwaltschaft*, VA-BD-I/0205-C/1/201328, March 2014, available at http://volksanwaltschaft.gv.at/downloads/ftvke/missstand.pdf (accessed on 25 June 2014).

Böckmann-Winkler, S.

2014 § 20 BFA-VG. In: *Fremdenpolizei- und Asylrecht mit umfassendem Kommentar und höchstgerichtlicher Judikatur I*, Teil I B (A. Schrefler-König, W. Szymanski, eds). MANZ'sche, Vienna.

Caritas Austria

2012 *Stellungnahme der Caritas Österreich zum Entwurf eines Bundesgesetzes, mit dem ein BFA-Einrichtungsgesetz und ein BFA-Verfahrensgesetz erlassen sowie das Asylgesetz 2005, das Fremdenpolizeigesetz, das Niederlassungs- und Aufenthaltsgesetz, das Staatsbürgerschaftsgesetz 1985, das Grundversorgungsgesetz - Bund 2005 und das Einführungsgesetz zu den Verwaltungsverfahrensgesetzen geändert werden*, available at www.parlament.gv.at/PAKT/VHG/XXIV/SNME/SNME_11087/imfname_284624.pdf (accessed on 13 March 2014).

EMN

2012 *Asylum and Migration Glossary 2.0*. Publications Office of the European Union, Luxembourg.

2013 *Practical Measures to Reduce Irregular Migration. Synthesis Report*. Publications Office of the European Union, Luxembourg.

EMN NCP Austria
2012 *Establishing Identity for International Protection – Challenges and Practices in Austria and the EU.* Study of the National Contact Point Austria in the European Migration Network, IOM, Vienna.
2014 *Annual Report 2013 on Asylum and Migration Policy in Austria – Contribution to Commission and to EASO Annual Reports (1 January – 15 December 2013).* IOM, Vienna.

European Commission (ed.)
2011 *Comparative Study on Best Practices in the Field of Forced Return Monitoring*, prepared by Matrix Insight Ltd and ICMPD, available at http://ec.europa.eu/home-affairs/doc_centre/immigration/docs/studies/Forced%20Return%20Monitoring%20Study%20Final%20Report.pdf (accessed on 8 August 2014).
2012 *Comparative Study on Best Practices to Interlink Pre-departure Reintegration Measures Carried Out in Member States with Short- and Long-term Reintegration Measures in the Countries of Return*, prepared by Matrix Insight Ltd, ICMPD and ECRE, available at http://ec.europa.eu/home-affairs/doc_centre/immigration/docs/studies/ECHOMEREINTEGRATION_Final-January_2012.pdf (accessed on 8 August 2014).

Federal Ministry of the Interior
2014 Heikle Mission in Islamabad, *Öffentliche Sicherheit 3–4/2014*, p. 81.

Halm-Forsthuber, S., M. Höhl and P. Nedwed
2014 Besonderheiten im fremden- und asylrechtlichen Verfahren vor dem Bundesverwaltungsgericht, *Österreichische Juristen Zeitung 50*, p. 293–299.

Koppenberg, S.
2014 *Austria – Annual Policy Report 2013*. IOM, Vienna.

Kratzmann, K.
2014 *Unterstützte Rückkehr: Alternative zur Abschiebung?* available at www.oeaw.ac.at/kmi/Jahrestagung%20Abstracts/Papers%202014/Kratzmann_Vortrag_KK_Unterstuetzte%20Rueckkehr%20als%20Alternative%20zur%20Abschiebung.pdf (accessed on 4. November 2014).

Kratzmann, K. and A. Reyhani
2012 *Practical measures for reducing irregular migration in Austria.* Study of the National Contact Point Austria in the European Migration Network, IOM, Vienna.

Kratzmann, K., E. Petzl and M. Temesvári
2010 *Programmes and Strategies in Austria fostering Assisted Voluntary Return to and Re-Integration in Third Countries.* Study of the National Contact Point Austria in the European Migration Network, IOM, Vienna.

Lutz, F.
2010 *The Negotiations of the Return Directive, comments and materials.* Wolf Legal Publishers, Nijmegen.

Muzak, G. and C. Pinter (eds.)
2013 *Fremden- und Asylrecht*, Band 2. Verlag Österreich, Vienna.

Panizzon, M.
2012 Readmission Agreements of EU Member States: A Case for EU Subsidiarity or Dualism?, *Refugee Survey Quarterly 31* (4), p. 101–133.

Schmied, G.
2011 Die aufenthaltsbeendenden Maßnahmen im Fremdenpolizeigesetz nach dem Fremdenrechtsänderungsgesetz 2011 – eine Bankrotterklärung der Fremdenrechtslegistik, ZUV 2011, p. 149–158.

Szymanski, W.
2014 § 53 FPG. In: *Fremdenpolizei- und Asylrecht mit umfassendem Kommentar und höchstgerichtlicher Judikatur I*, Teil III A1 (A. Schrefler-König, W. Szymanski, eds). MANZ'sche, Vienna.

Vogl, M. (ed.)
2014 *Fremdenrecht. 6. Aktualisierte Auflage.* Neuer Wissenschaftlicher Verlag, Vienna.

Legislation, case law and treaties

International and European legislation, case law and treaties

Agreement between the European Union and the Republic of Turkey on the readmission of persons residing without authorisation, 7 May 2014, OJ L. 134/3 – 134/27.

Charter of Fundamental Rights of the European Union, 26 October 2012, OJ 2012/C 326/02.

Consolidated Version of the Treaty establishing the European Community, 29 December 2006, OJ C. 321 E/37 – E/324.

Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, 10 December 1984, United Nations, Treaty Series, vol. 1465, p. 85.

Convention Relating to the Status of Refugees, 28 July 1951, United Nations, Treaty Series, vol. 189, p. 137.

Court of Justice of the European Union, *Régina v. Pierre Bouchereau*, 27 October 1977, C-30/77.

Directive 2008/115/EC of the European Parliament and of the Council of 16 December 2008 on common standards and procedures in Member States for returning illegally staying third-country nationals, 24 December 2008, OJ L. 348/98 – 348/107.

European Convention for the Protection of Human Rights and Fundamental Freedoms, as amended by Protocols No. 11 and 14, 4 November 1950, ETS 5.

Protocol Relating to the Status of Refugees, 31 January 1967, United Nations, Treaty Series, vol. 606, p. 267.

Regulation (EC) No 1987/2006 of the European Parliament and of the Council of 20 December 2006 on the establishment, operation and use of the second generation Schengen Information System (SIS II), 28 December 2006, OJ L. 381/4 – 381/23.

Universal Declaration of Human Rights, 10 December 1948, United Nations Resolution 217 A(III).

Austrian legislation

Act Governing the Employment of Foreign Nationals, FLG No. 218/1975.

Aliens' Law Amendment Act 2011, FLG I No. 38/2011.

Aliens Police Act, FLG I No. 100/2005 in the version of FLG I No. 68/2013.

Aliens Police Act Implementing Decree, FLG II No. 450/2005 in the version of FLG II No. 188/2008.

Asylum Act, FLG I No. 100/2005 in the version of FLG I No. 87/2012.

Border Control Act, FLG No. 435/1996.

Driving License Law, FLG No. 120/1997 in the version of FLG I No. 15/2005.

Federal Ministries Act, FLG No. 76/1986.

Federal Office for Immigration and Asylum Procedures Act, FLG I No. 87/2012 in the version of FLG I No. 68/2013.

Penitentiary System Act, FLG No. 144/1969 in the version of FLG No. 424/1974.

Code on Administrative Procedure, FLG I No. 33/2013 in the version of FLG I No. 122/2013.

Registration Act, FLG No. 9/1992 in the version of FLG I No. 33/2006.

Road Traffic Regulations, FLG No. 159/1960.

Security Police Act, FLG No. 566/1991 in the version of FLG I No. 43/2014.

Settlement and Residence Act, FLG I No. 100/2005, in the version of FLG I No. 40/2014.

Trade, Commerce and Industry Regulation Act, FLG No. 194/1994.

Transportation of Dangerous Goods Act, FLG I No. 145/1998 in the version of FLG I No. 50/2012.

Austrian case law

Administrative High Court, 15 May 2012, 2012/18/0029.
Administrative High Court, 22 May 2013, 2013/18/0021-3.
Administrative High Court, 22 January 2014, 2013/21/0175.
Asylum Court, 7 January 2009, E13 237600 – 2/2008.
Constitutional Court, 10 October 1994, B1382/93.
Constitutional Court, 15 October 2004, G237/03.
Constitutional Court, 20 September 2011, B760/11.
Constitutional Court, 3 December 2012, G74/12.
Federal Administrative Court, 4 June 2014, G306 2008113-1.
Independent Administrative Senate, 14 November 2011, FRG/46/12805/2011.

Austrian bilateral readmission agreements

Agreement on readmission between the Austrian Federal Government and the Council of Ministers of Bosnia and Herzegovina, FLG III No. 100/2007, 31 August 2007, available at www.ris.bka.gv.at/Dokumente/BgblAuth/BGBLA_2007_III_100/COO_2026_100_2_363706.pdf (accessed on 24 March 2014).

Agreement on readmission between the Austrian Federal Government and the Council of Ministers of Serbia and Montenegro, FLG III No. 66/2004, 18 June 2004, available at www.ris.bka.gv.at/Dokumente/BgblAuth/BGBLA_2004_III_66/BGBLA_2004_III_66.pdf (accessed on 24 March 2014).

Agreement on readmission between the Austrian Federal Government and the Government of the Federal Republic of Nigeria, FLG III No. 116/2012, 16 August 2012, available at www.ris.bka.gv.at/Dokumente/BgblAuth/BGBLA_2012_III_116/COO_2026_100_2_778706.pdf (accessed on 24 March 2014).

Agreement on readmission between the Austrian Federal Government and the Government of the Republic of Kosovo, FLG III No. 21/2011, 2 February 2011, available at www.ris.bka.gv.at/Dokumente/BgblAuth/BGBLA_2011_III_21/COO_2026_100_2_652966.pdf (accessed on 24 March 2014).

Agreement on readmission between the Austrian Federal Government and the Government of the Republic of Macedonia, FLG III No. 11/2007, 30 January 2007, available at www.ris.bka.gv.at/Dokumente/BgblAuth/BGBLA_2007_III_11/COO_2026_100_2_319613.pdf (accessed on 24 March 2014).

Agreement on readmission between the Austrian Federal Government, the Swiss Federal Council and Principality of Liechtenstein, FLG III No. 1/2001, 5 January 2001, available at www.ris.bka.gv.at/Dokumente/BgblPdf/2001_1_3/2001_1_3.pdf (accessed on 24 March 2014).

Exchange of notes concerning the conclusion of an agreement between Austria and Tunisia on returning home Tunisian and Austrian nationals, FLG 255/1965, 13 August 1965, available at www.ris.bka.gv.at/Dokumente/BgblPdf/1965_255_0/1965_255_0.pdf (accessed on 24 March 2014).

Political and policy documents

Austrian Parliament

2011 *Aliens' Law Amendment 2011*, Preamble, Government Proposal, Explanatory Notes, available at www.parlament.gv.at/PAKT/VHG/XXIV/I/I_01078/fname_206974.pdf (accessed on 27 March 2014).

2013 *Act Amending the Aliens Authorities Restructuring Act*, Preamble, Government Proposal, Explanatory Notes, available at www.parlament.gv.at/PAKT/VHG/XXIV/I/I_02144/imfname_285862.pdf (accessed on 28 May 2014).

European Commission

2014 Communication from the Commission to the Council and the European Parliament of 28 March 2014 on EU Return Policy, COM (2014) 199 final, 28 March 2014, available at http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2014:0199:FIN:EN:PDF (accessed on 24 June 2014).

Federal Ministry of the Interior

2013 *Mehrjahresprogramm 2008–2013, Member State Austria*, available at www.bmi.gv.at/cms/BMI_Fonds/rueckkehrf/programme/files/RF_MJP_ffentlich_neu.pdf (accessed on 20 March 2014).

Statistics

Federal Ministry of the Interior

2010 *Aliens Statistics 2010*, available at www.bmi.gv.at/cms/BMI_Niederlassung/statistiken/files/Fremdenstatistik_Jahr_2010.pdf (accessed on 9 July 2014).

2011 *Aliens Police and Visa Statistics 2011 (second half of the year)*, available at www.bmi.gv.at/cms/BMI_Niederlassung/statistiken/files/2011/FrP_Massnahmen_2_Halbjahr_2011.pdf (accessed on 10 July 2014).

2012 *Aliens Police and Visa Statistics 2012*, available at www.bmi.gv.at/cms/BMI_Niederlassung/statistiken/files/2013/FrP_Massnahmen_Jahr_2012.pdf (accessed on 9 July 2014).

2013 *Aliens Police and Visa Statistics 2013*, available at www.bmi.gv.at/cms/BMI_Niederlassung/statistiken/files/2013/FrP_Massnahmen_2013_Dezember.pdf (accessed on 9 July 2014).

Interviews, surveys and information requests

Dietmar Hudsky, Federal Ministry of the Interior. Interview carried out by IOM Country Office for Austria, 10 June 2014.

Dietmar Hudsky, Federal Ministry of the Interior. Data provided via E-mail, 10 June 2014.

Maria M. Markovics, Federal Ministry of the Interior. Data provided via E-mail, 8 August 2014.

Thomas Mühlhans, Federal Ministry of the Interior. Interview carried out by IOM Country Office for Austria, 6 May 2014.

Thomas Neugschwendtner, Lawyer. Interview carried out by IOM Country Office for Austria, 29 April 2014.

Gerhard Reischer, Federal Ministry of the Interior. Interview carried out by IOM Country Office for Austria, 10 April 2014.

Manuel Scherscher, Federal Ministry of the Interior. Interview carried out by IOM Country Office for Austria, 6 May 2014.

Christian Schmaus, Lawyer. Explanation during the Seminar "Einführung Asylrecht" held by the Asylkoordination, Vienna, 10 and 11 February 2014.

Christoph Steinwendtner, Diakonie Flüchtlingsdienst. Interview carried out by IOM Country Office for Austria, 25 April 2014.

Maria Ziniel, Federal Ministry of the Interior. Data provided via E-mail, 27 March 2014.

Newspaper articles and press releases

APA
2012 *Pirker: Rückübernahmeabkommen mit Türkei zur Bekämpfung illegaler Einwanderung beschlossen*, Press Release, 22 January 2014.

Delegation of the European Union to Georgia, *The European Union supports Georgia in reinforcing migration and border management policies*, Press Release, 22 January 2014, available at www.iom.ge/pdf/PR_MoreforMore.pdf (accessed on 12 August 2014).

Der Standard
2011a *Auch für Europa schädlich*, 1 July 2011, p. 32.
2011b *Abschiebungspraxis: EU-Kommission droht Österreich mit Klage*, 30 September 2011, p. 5.
2013 *Türkei glaubt an 2017*, 6 December 2013, p. 6.

Die Presse
2012 *EU öffnet der Türkei die Tür für eine schrittweise Aufhebung der Visumspflicht*, 21 June 2012, p. 5.
2013 *Von neuen Offensiven – in Afghanistan und auch in Österreich*, 20 June 2013, p. 27.

European Commission, *An effective and humane return policy: 8 Member States have yet to comply with the Return Directive*, Press Release, 29 September 2011, available at http://europa.eu/rapid/press-release_IP-11-1097_en.htm (accessed on 26 March 2014).

Federal Criminal Intelligence Service, *Presseunterlage zum Hintergrundgespräch "Schengener Informationssystem der zweiten Generation (SIS II)"*, 5 April 2013, available at www.bmi.gv.at/cms/BK/presse/files/542013_SIS_II.pdf (accessed on 21 March 2014).

Federal Ministry of European and International Affairs, *Spindelegger in Kabul: Rücknahme abgewiesener Asylwerber thematisiert*, Press Release, 16 February 2013, available at www.bmeia.gv.at/aussenministerium/pressenews/presseaussendungen/2013/apa-spindelegger-in-kabul-ruecknahme-abgewiesener-asylwerber-thematisiert.html (accessed on 2 May 2014).

Federal Ministry of the Interior, *BMI Delegation zu Migrationsgesprächen in Afghanistan*, Press Release, 16 April 2013, available at www.bmi.gv.at/cms/BMI/_news/BMI.aspx?id=44434631646B74624A38413D&page=55&view=1 (accessed on 2 May 2014).

Kurier

2012 *Türkei will Visafreiheit für mehr Grenzschutz*, 9 March 2012, p. 5.

2013 *Rücknahme von Flüchtlingen*, 17 December 2013, p. 6.

Wirtschaftsblatt

2011 *EU-Kommission mahnt Österreich wegen Rückführungsrichtlinie*, 29 September 2011, available at http://wirtschaftsblatt.at/home/nachrichten/oesterreich/1206825/index (accessed on 3 June 2014).

Internet sources

IOM

Reinforcing the Capacities of the Government of Georgia in Border and Migration Management, available at http://informedmigration.ge/cms/sites/default/files/pdf/publications/Project%20Leaflet.pdf (accessed on 12 August 2014).

Reintegration assistance after return to Georgia – Mobility Centre, available at http://informedmigration.ge/cms/sites/default/files/pdf/publications/ENG%20Leaflet%20-%20Reintegration.pdf (accessed on 28 July 2014).

SIREADA, Support to The Implementation of EU Readmission Agreements with the Republic of Moldova, the Russian Federation and Ukraine: Facilitation of Assisted Voluntary Return and Reintegration, available at http://moscow.iom.int/activities_techcoop_SIREADA.html (accessed on 12 August 2014).

IOM Country Office for Austria
Assistance for the Voluntary Return and Reintegration of Returnees to the Russian Federation / the Chechen Republic, available at www.iomvienna.at/en/aktivitaeten/reintegrationsunterstuetzung/laufende-projekte/545-assistance-for-the-voluntary-return-and-reintegration-of-returnees-to-the-russian-federation-the-chechen-republic (accessed on 12 August 2014).