NAVIGATING THE MAZE: STRUCTURAL BARRIERS TO ACCESSING PROTECTION IN AUSTRIA

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The visit to Austria was conducted as part of the Asylum Information Database (AIDA) project (www.asylumineurope.org) which provides up-to-date information and analysis of the legal framework and practice with regard to asylum procedures, reception conditions and detention in 16 European Union Member States, as well as Switzerland and Turkey. This report complements and should be read together with the AIDA Country Report on Austria.

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GLOSSARY

Acquis	Accumulated legislation and jurisprudence constituting the body of European Union law.
Arbeitsmeinschaft Rechtsberatung	Legal aid providing organisation, encompassing organisations Diakonie and Volkshilfe Oberösterreich
Asylum seeker(s) or applicant(s)	Person(s) seeking international protection, whether recognition as a refugee or subsidiary protection beneficiary.
Betreuungstelle	Reception centre
Bundesamt für Fremdenwesen und Asyl	Administrative authority competent (among other things) for applications for international protection. It consists of a headquarters in Vienna and 9 regional headquarters (*Regionaldirektionen*, 1 in each province), and the 3 *Erstaufnahmestellen*.
Dublin system	System establishing the criteria and mechanisms for determining the Member State responsible for examining an asylum application.
Erstbefragung	First interview of the asylum seeker with the police after filing an application for international protection.
Erstaufnahmestellen	Before 20 July 2015, the only subdivisions of the BFA dealing with admission procedures upon applications for international protection. As of 20 July 2015, the nine regional headquarters may also deal with admission procedures. There are three *Erstaufnahmestellen* in Austria: **West** in Thalham (connected with the reception centre "West"); **East** in Traiskirchen (connected with the reception centre "East") and **Airport** at Vienna International Airport.
Grundverordnung	Primary Care i.e. reception conditions granted to asylum seekers
Mitteilung under Article 29(3)(3)-(5) Asylum Act	Notice of intention to deliver a first instance decision on an asylum application in the admission procedure.
Recognition rate	Rate of positive asylum decisions, including refugee status, subsidiary protection status or humanitarian protection status.
Status decision (Statusentscheidung)	First instance decision on an asylum application, which may either grant refugee status or subsidiary protection or reject the application.
Vienna Refugee Aid	Registration document issued by the City Vienna for asylum seekers. This is distinct from registration of the asylum application.
Verteilerquartier / Verteilerzentrum	Distribution centre i.e. reception centre for asylum seekers at the federal level. There are seven centres in Austria, including **Bad Kreuzen**.

LIST OF ABBREVIATIONS

AIDA	Asylum Information Database
AMIF	Asylum, Migration and Integration Fund
ARGE	Arbeitsgemeinschaft Rechtsberatung (non-governmental organisation)
BFA	Federal Agency for Immigration and Asylum
CEAS	Common European Asylum System
CJEU	Court of Justice of the European Union
EASO	European Asylum Support Office
EAST	Erstaufnahmestelle | Initial reception centre
ECHR	European Convention on Human Rights
ECtHR	European Court of Human Rights
ECRE	European Council on Refugees and Exiles
ELENA	European Legal Network on Asylum
EU	European Union
Eurodac	European fingerprint database
Eurostat	European Commission Directorate-General for Statistics
Frontex	European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the European Union
GVG-B	Basic Care Act | Grundversorgungsgesetz - Bund
NGO(s)	Non-governmental organisation(s)
ORS	Private company providing reception services for asylum seekers
UNHCR	United Nations High Commissioner for Refugees
VMÖ	Verein Menschenrechte Österreich (non-governmental organisation)
VfGH	Verfassungsgerichthof | Constitutional Court
VwGH	Verwaltungsgerichthof | Administrative High Court
VQ	Verteilerquartier | Distribution centre

Living Unit, Asfinag Transit Centre, Salzburg

INTRODUCTION

The unprecedented number of refugees and migrants arriving in Europe in search of protection in 2015 has exposed the challenges and shortcomings of the Common European Asylum System (CEAS). In the absence of a concerted, protection-oriented approach at European Union (EU) level, countries affected by large-scale arrivals have taken reactive measures aimed at limiting or even preventing access to protection on their territory. The welcoming stance towards refugees manifested by states such as Germany and Austria over the summer of 2015 is now being revisited through increasing restrictions in protection space.[1] On the other hand, Hungary's closure of borders and overhaul of its asylum system has barred those in need of protection from finding refuge on its territory, as documented during a previous fact-finding mission by the Asylum Information Database (AIDA).[2]

A paradigm delicately situated between transit and destination, Austria has faced equally demanding challenges in view of the large number of arriving asylum seekers. As a 'last stop before Germany', the country has witnessed hundreds of thousands travelling from East to West to cross its borders, with over 500,000 persons entering since August 2015.[3] At the same time, over 68,000 persons had registered applications for international protection in Austria until the end of October, while more are facing obstacles to formally accessing the asylum procedure. In light of the challenges faced by the country, the European Commission visited Austria in September 2015 and announced the disbursement of €5,030,000 in emergency assistance under the Asylum, Migration and Integration Fund (AMIF).[4]

At the same time, however, the volume of arrivals and applications seems to have exposed and exacerbated deeper shortcomings in the Austrian asylum system. The procedural complexity of asylum registration and the pressing issues of homelessness, housing in inadequate conditions and obstacles to accessing protection including the application of the Dublin III Regulation,[5] leave many asylum seekers in a state of legal limbo and intensify risks of destitution. To that end, as part of AIDA, the European Council on Refugees and Exiles (ECRE) has sought to gain an in-depth understanding of challenges to access to protection in Austria, examined through the lens of procedural barriers and the application of the Dublin Regulation, as well as shortcomings in the reception system leaving asylum seekers at risk of destitution.

This report presents the findings of a fact-finding visit to Austria conducted between 30 November and 2 December 2015 by ECRE. During this visit, the ECRE delegation visited:[6]

1. For an overview, see e.g. AIDA Country Report Germany: Fourth Update, November 2015, available at: http://bit.ly/1OKvtyW.
2. ECRE, *Crossing Boundaries: The new asylum procedure at the border and restrictions to accessing protection in Hungary*, AIDA Fact-Finding Visit, October 2015, available at: http://bit.ly/1KD4Wyf.
3. Information provided by the Ministry of Interior, Vienna, 30 November 2015.
4. European Commission, *Remarks by Commissioner Avramopoulos following his visit to Austria*, SPEECH/15/5605, 7 September 2015. See also European Commission, *Managing the refugee crisis*, COM(2015) 490, 29 September 2015, Annex IV.
5. Regulation (EU) No 604/2013 of the European Parliament and of the Council of 26 June 2013 establishing the criteria and mechanisms for determining the Member State responsible for examining an application for international protection lodged in one of the Member States by a third-country national or stateless person (recast), *OJ* 2013 L180/31.
6. For a detailed schedule of interviews, see Annex I.

- » Vienna, where it interviewed the Dublin Unit and the Director's Office of the Federal Agency for Immigration and Asylum (BFA), the Basic and Federal Care Department of the Ministry of Interior, non-governmental organisations (NGOs) Asylkoordination Österreich, Diakonie and Caritas Vienna, as well as volunteers in the *Westbahnhof* train station;
- » The "Old Asfinag" transit centre in Salzburg and the border-crossing point to Germany, where it interviewed the Aliens Police Department of the Ministry of Interior and Caritas Salzburg;
- » The initial reception centre (EAST) West in Thalham, with the assistance of NGO Volkshilfe Upper Austria; and
- » The distribution centre (VQ) North in Bad Kreuzen with the assistance of NGO Volkshilfe Upper Austria.

Support and assistance throughout the visit was provided by Asylkoordination Österreich (an ECRE member and AIDA partner organisation), the Austrian ELENA Coordinator at Caritas Austria, Volkshilfe Upper Austria, as well as the Austrian Ministry of Interior. Interpretation during the visits to Thalham and Bad Kreuzen was provided by Volkshilfe Upper Austria.

Primary data gathered from interviews and observation of the sites visited is complemented by desk research on the situation of asylum in Austria. To that end, this report makes reference to a number of authoritative sources on asylum procedures and reception conditions in the country, including Asylkoordination Österreich and Amnesty International.[7] The findings of the present report are to be read in conjunction with the AIDA Country Report on Austria.[8]

This report is structured into three chapters, covering:

1. Statistical information – or gaps in its provision – on the operation of the Austrian asylum system, as well as an overview of current and pending reforms;
2. Obstacles to accessing the asylum procedure, as examined through barriers to the registration of applications, and the operation of the Dublin Regulation;
3. The reception system and challenges to providing accommodation to the higher number of arriving asylum seekers in Austria.

7. Amnesty International Austria, *Quo vadis Austria? Die Situation in Traiskirchen darf nicht die Zukunft der Flüchtlingsbetreuung in Österreich werden*, 13 August 2015, available in German at: http://bit.ly/1JgEAbd.
8. AIDA Country Report Austria: Fourth Update, December 2015 (Forthcoming).

CHAPTER I. UNLOCKING THE ASYLUM 'BLACK BOX'

1. Statistical collection and the 'information gap'

In January 2014, the former Federal Asylum Office (*Bundesasylamt*) and certain competences[9] of the Aliens Police (*Fremdenpolizei*), as well as few competences of regional administrative authorities concerning residence titles on "humanitarian grounds"[10] and the competence for procedures in relation to reception on a federal level,[11] were merged into a single authority, the Federal Agency for Immigration and Asylum (BFA). As NGOs explain,[12] this institutional restructuring process has introduced a number of difficulties which have an ongoing impact on the challenges faced by Austria to date. The combination of asylum and certain aliens police affairs under the responsibility of the BFA was promoted as a measure that would ensure quicker decision-making and better coordination of files. The idea of a dedicated caseworker who would handle all matters pertaining to a third-country national, be they police- or asylum-related, was also put forward in this context; however, this idea has now been abandoned as inefficient.

The 2014 reform of the asylum system involved the establishment of a new advanced asylum database. However, nearly two years later, this database is yet to operate. Austria is the sole Member State that has not provided Eurostat with statistics on first instance decisions in 2014 and 2015,[13] thereby systematically failing to comply with its obligations under the Migration Statistics Regulation.[14] At the national level, while the Ministry of Interior publishes comprehensive monthly statistical reports on the number of applications registered in the country,[15] up-to-date information on pending applications, decisions and recognition rates remains almost non-existent. The most recent information on decisions provided by the Ministry at the time of writing dates back to 2014.[16]

To date, the BFA has only made available a one-page statistical sheet on 2014 and one on the first half of 2015.[17] These summaries do not offer detailed information on specific nationalities or even the exact number of decisions granting refugee status or subsidiary protection or rejecting an asylum application. By way of example, the 2014 BFA statistical report refers to a total of 27,178 decisions taken by the Federal Office on asylum applications, among which:[18]

- 18,196 were "status decisions" (*Statusentscheidunge*);
- 7,125 were extensions of subsidiary protection permits;
- 1,857 were residence permits on humanitarian grounds.

The concept of "status decision" is particularly unclear in asylum statistics. This is a newly created statistical category which may include any decision relating to the status of a specific third-country national; for example, one applicant that was refused refugee status but granted subsidiary protection is subject to two status decisions. The use of "status decisions" as a statistical reference could lead to double-counting of BFA decisions.[19]

Against the backdrop of scarce and often incomprehensible asylum data, there is extreme difficulty in getting accurate and reliable information on the operation of the BFA, to the point where even NGOs working on a daily basis in the Austrian asylum system have no knowledge of the exact number of decisions taken at the BFA level.[20] This creates the appearance of an information 'black box', whereby details on the operation of the asylum system are extremely hard to access.

2. Unforeseen numbers? Key asylum figures in 2015

Similar to other European countries, Austria has witnessed a sharp rise in arrivals of refugees and migrants throughout 2015. Between January and October 2015, Austria received 68,589 asylum applications.[21] This number substan-

9. Article 3(2)(3)-(6) BFA Procedures Act, as applicable on 20 July 2015.
10. Article 3(2)(2) BFA Procedures Act, as applicable on 20 July 2015 (so called residence permissions on grounds deserving of consideration /*Aufenthaltstitel aus berücksichtigungswürdigen Gründen*.
11. Article 3(2)(7) BFA Procedures Act, as applicable on 20 July 2015 (procedures under the Federal Government Basic Welfare Support Act).
12. Information provided by Diakonie, Vienna, 30 November 2015 and Volkshilfe, Linz, 2 December 2015.
13. See Eurostat, *First instance decisions on applications by citizenship, sex and age Quarterly data (rounded)*, migr_asydcfstq. Data for Austria is marked as non-available (:).
14. Regulation (EC) No 862/2007 of the European Parliament and of the Council of 11 July 2007 on Community statistics on migration and international protection, *OJ* 2007 L199/23, namely Article 4(2) and (3)(b).
15. See Ministry of Interior, *Asylwesen, Statistiken*, available in German at: http://bit.ly/1IfugJL.
16. See Ministry of Interior, *Jahresstatistik 2014*, available in German at: http://bit.ly/1OAseHF.
17. BFA, *Statistiken*, available in German at: http://bit.ly/1XKnnsy.
18. BFA, *Jahresbilanz 2014*, available in German at: http://bit.ly/1JSBRQt.
19. Information provided by Diakonie, Vienna, 30 November 2015.
20. Information provided by Diakonie, Vienna, 30 November 2015 and Volkshilfe, Linz, 2 December 2015.
21. Ministry of Interior, *Asylum Statistics October 2015*, available in German at: http://bit.ly/1OhJiCf.

tially exceeds the number of claims received in 2014 (28,027) and 2013 (17,503).[22] The three main countries of origin of asylum seekers coming to the country between January-October 2015 were Syria (20,441), Afghanistan (16,549) and Iraq (11,190).[23]

2.1. Decisions and recognition rates

Data on decisions by the BFA, however, are very scarce, as explained above.[24] Between January and October 2015, the BFA had issued "29,520 decisions under asylum law".[25] This number concerns the aforementioned category of "status decisions", while no further information was provided as to the number of grants of refugee status or subsidiary protection or the number of rejections of asylum applications. While the BFA mentioned that asylum was granted in approximately 36% of the 29,520 decisions,[26] it is not clear on what basis this percentage is calculated.

2.2. The application of the Dublin Regulation

Austria is one of the principal "sending countries" in the operation of the Dublin system in Europe. The main countries at the receiving end of transfers from Austria over 2014 and 2015 have been Hungary, Bulgaria and Italy.

Outgoing requests and transfers: 2014-2015

• Number of outgoing requests in 2014:		6,066
» Top 3 receiving countries	Hungary	1,891
	Italy	1,306
	Bulgaria	1,115
• Number of outgoing transfers in 2014:		1,076
	Hungary:	238
	Italy:	250
	Bulgaria:	48
• Number of outgoing requests in 2015	(January-November):	15,594
» Top 3 receiving countries	Hungary	Not available
	Bulgaria	Not available
	Italy	Not available

In 2014, Austria made 6,066 outgoing requests – mainly to Hungary (1,891), Italy (1,306) and Bulgaria (1,115) – and performed 1,076 transfers.[27] The conduct of Dublin procedures rose exponentially in 2015, given that in the period January-November 2015 Austria issued 15,594 outgoing requests. The main countries to which requests were addressed remained Hungary, Bulgaria and Italy.[28] The number of outgoing transfers was not made available by the BFA.

However, in the light of recently introduced restrictions in the Hungarian asylum system, documented in the previous AIDA fact-finding visit report,[29] Austrian courts ruled against Dublin transfers to Hungary in several individual cases; the Federal Administrative High Court (VwGH) did so in September 2015, on the ground that asylum seekers may not have effective access to the asylum procedure upon return.[30] Accordingly, given that the EU Member States transited by the majority of applicants entering Austria are Greece and Hungary, the latter being considered as unsafe for asylum seekers in several individual cases, the application of the Dublin Regulation in most cases is liable to be precluded by requirements of legality. Responsibility for those applicants is therefore likely to remain with Austria under the Regulation.

22. Ministry of Interior, *Asylum Statistics December 2014*, available in German at: http://bit.ly/16FjhxT.
23. Ministry of Interior, *Asylum Statistics October 2015*, available in German at: http://bit.ly/1OhJiCf.
24. Note that data on decisions in Austria for 2014 and 2015 are not available on Eurostat.
25. Information provided by the Director's Office, BFA, Email, 9 December 2015.
26. *Ibid*.
27. Eurostat, migr_dubdo, migr_dubto.
28. Information provided by the Director's Office, BFA, Email, 9 December 2015.
29. ECRE, *Crossing Boundaries: The new asylum procedure at the border and restrictions to accessing protection in Hungary*, October 2015.
30. Federal Administrative High Court, Decision Ra 2015/18/0113 bis 0120-11, 8 September 2015, available in German at: http://bit.ly/1UQQ5q3. See EDAL, 'Austria: Statutory presumption that Hungary is safe for asylum seekers rebutted in an individual case', 8 September 2015, available at: http://bit.ly/1NEdziN.

Incoming requests and transfers: 2014-2015

• Number of incoming requests in 2014:		2,398
» Top 3 sending countries	Germany:	1,035
	France:	275
	Sweden:	257
• Number of incoming transfers in 2014:		Not available
• Number of incoming requests in 2015 (January-November):		4,078
» Top 3 sending countries	Germany	Not available
	Sweden	Not available
	France	Not available
• Number of incoming transfers in 2015 (January-November):		405
» Top 3 sending countries	Germany	Not available
	Sweden	Not available
	Switzerland	Not available

The number of incoming Dublin requests and transfers to Austria has also increased in 2015, compared to the previous year. Whereas in 2014 Austria received 2,398 requests,[31] mainly from Germany, France and Sweden, in January-November 2015 the number of incoming requests addressed to Austria was 4,078.[32] While the number of actual transfers to Austria for 2014 is not available on Eurostat, 405 transfers were carried out between January and November 2015, principally from Germany, Sweden and Switzerland.[33]

3. Reaction and further reform

3.1. The 20 July 2015 reform

The Austrian asylum system underwent another substantial reform which took effect on 20 July 2015 through the Aliens Law Amendment Act 2015 (*Fremdenrechtsänderungsgesetz* 2015 – FrÄG).[34] The main amendments are the following:[35]

Under the amended laws, the initial reception centres (*Erstaufnhamestellen*, EAST) are no longer the only subdivisions of the BFA to conduct the admission procedures but the BFA's regional headquarters may also do so. Thus not all asylum seekers have to come or be transferred to the EAST anymore after seeking asylum with an agent of the public security service or a security authority (in practice the police) in order to formally lodge an application for international protection. Instead they may also travel by themselves[36] or be transferred to one of the seven *Verteilerquartiere*.[37] Under the new regulations the police has to conduct the *Erstbefragung*, send a report to the BFA and the BFA would then have to issue (without delay) an order,[38] basically stating whether the asylum seekers have to be transferred or be provided with free-of-charge travel to the EAST or a *Verteilerquartier*.[39] While waiting for this order from the BFA, the police may detain asylum seekers for up to 48 hours.[40]

As of 20 July 2015, the suspensive effect of an appeal against a dismissal decision on an application for international protection as inadmissible may also be disallowed by the BFA where the applicant poses a threat to national security

31. Eurostat, *Incoming Dublin requests by submitting country, type of request and legal provision*, migr_dubri.
32. Information provided by the Director's Office, BFA, Email, 9 December 2015.
33. Information provided by the Director's Office, BFA, Email, 9 December 2015.
34. Official Gazette (BGBl.) Nr I 70/2015, 18 June 2015, available in German at: http://bit.ly/1SzV6Du.
35. Please note that not all amendments of law under the FrÄG 2015 are mentioned here.
36. The applicants have to be granted the free of charge journey to one of the state reception centres: Article 43(1)(2)(b) BFA Procedures Act, as applicable on 20 July 2015.
37. The concept as agreed between the federal and the provincial governments in November 2014 behind this reform was to end by way of an *Automatismus* the long lasting frictions between the state government and several provincial governments as to several provinces' failure to fulfil the quota (determined in the 2004 Basic Care Agreement, as mentioned in Chapter III, Section 1). According to the Federal Government this failure of some provincial governments to fulfil their reception quota was responsible for the lack in reception capacities. It is understood that under this concept the competent *Verteilerquartier* was to be determined depending on the place of application for international protection in Austria and/or whether this province fulfilled its quota. Once admitted to the merits procedure asylum seekers should have been transferred "automatically" to primary care institutions in the province where they had been housed in the *Verteilerquartier.* See Die Presse.com, "'Historisch': Länder beschließen Asyl-Verteilerzentren", 18 November 2014, available in German at http://bit.ly/1UUJlZZ; and Bundesministerium für Inneres, "Flexible Steuerung bei Aufnahme und Betreuung von Asylwerbern. Konzept. Grundlage für Gespräche mit den Ländern", available in German at http://diepresse.com/Konzept%20lang.pdf.
38. The so called *Anordnung zur weiteren Vorgehensweise* (Article 43 BFA Procedures Act, as applicable on 20 July 2015).
39. Articles 42 and 43 BFA Procedures Act, as applicable on 20 July 2015.
40. Article 40(3), (2), (4) BFA Procedures Act, as applicable on 20 July 2015.

or public order or refuses to give fingerprints. As already before 20 July 2015, the same applies if the applicant comes from a safe country of origin; has misled the authorities on his or her identity or nationality or authenticity of his or her documents; has not put forward any reasons for persecution; presents statements concerning his or her situation of danger that clearly do not correspond with reality; was issued an enforceable return decision, an enforceable expulsion order or an enforceable residence ban prior to the filing of the application for international protection.[41]

In these cases the BFA may now apply an "accelerated" procedure, i.e. decide within five instead of the generally applicable six months on applications for international protection.[42] Applicants in the abovementioned cases where the BFA had disallowed the suspensive effect and where the Federal Administrative Court (BVwG) had not allowed suspensive effect upon appeal lose their right to federal primary care since 20 July 2015. Only access to health care and a dignified standard of living as defined under Article 20(5), last sentence, of the recast Reception Conditions Directive shall be ensured for all applicants. Their right is reinstated if they cooperate in voluntary return.[43]

The July 2015 reform expanded the rights to free legal assistance and representation,[44] namely in cases concerning subsequent applications for international protection or orders for removal from the country,[45] or where benefits under the Federal Government Basic Welfare Support Act (*Grundversorgungsgesetz-Bund*, GVG-B) are withdrawn or reduced. In appeal procedures on return decisions, orders for removal from the country, or withdrawal or reduction of benefits under the Federal Government Basic Welfare Support Act the legal advisors under Article 52 BFA Procedures Act have to represent aliens upon their requests.[46] In appeal procedures on applications for international protection or detention pending deportation these legal advisors have to participate in the oral hearing before the Federal Administrative Court upon the applicant's request thereto.[47]

Additionally, a mandatory advice on voluntary return was introduced.[48]

3.2. The reintroduction of border controls

On various occasions throughout 2015, Austria has reinstated border controls on its Schengen frontiers with other Member States. This was the case when Austrian authorities stopped foreign nationals, mainly Eritreans, at the Italian Alps in May-June 2015, and reintroduced police controls on traffic at Austria's Eastern borders on 30 August 2015 for an indefinite period of time;[49] the first border controls started on 16 September.[50] On 20 October, the Austrian government notified the European Commission of its intention to prolong those controls for another 20 days.[51] The measures were deemed to be in compliance with the Schengen Borders Code[52] by the Commission,[53] yet through an opinion seemingly lacking adequate justification of how a threat to public policy or internal security was established by the mere large number of arrivals of third-country nationals.[54] The Commission's reasoning was as follows:

> "While in 2013 the legislators agreed that the migratory flows cannot per se justify the reintroduction of checks at internal borders, in the opinion of the Commission the sheer number of persons entering the territory of Austria in view of transiting and seeking international protection would indeed appear to have led to a threat to public policy and internal security and would thus appear to have justified the application of the extraordinary measures available under the Schengen Borders Code. The provided information regarding the daily influx of persons into Austria confirms this."[55]

Further tensions with the Schengen *acquis* were raised in October 2015 by alleged plans of the Austrian government

41. Article 18(1) BFA-Procedures Act, as applicable on 20 July 2015.
42. Article 27 Asylum Act taken in conjunction with Article 18 (1) BFA Procedures Act, as applicable on 20 July 2015.
43. Article 2 (7) Federal Government Basic Welfare Support Act (*Grundversorgungsgesetz-Bund*).
44. The organisations VMÖ and ARGE Rechtsberatung are mandated with legal advice as defined in Articles 50 (legal advice in admission procedures) and 52 (legal advice before the Federal Administrative Court) BFA Procedures Act.
45. "Orders for removal from the country" under Art 61 Aliens Police Act, as applicable on 20 July 2015, are basically return decision in Dublin cases.
46. Article 52(2), second sentence BFA Procedures Act, as applicable on 20 July 2015.
47. Article 52(2), last sentence BFA Procedures Act, as applicable on 20 July 2015.
48. Article 52a(2) BFA Procedures Act, as applicable on 20 July 2015. In the provinces of Vienna, Styria, Upper Austria, Salzburg and Vorarlberg Caritas and VMÖ are jointly entrusted with this mandatory advice on voluntary return, in Tyrol and Lower Austria VMÖ alone.
49. Kleine Zeitung, 'Schlepper-Kontrolle sorgt für 30-Kilometer-Stau', 31 August 2015, available in German at: http://bit.ly/1T5CkUX.
50. Der Standard, 'Grenzkontollen bis 4. November verlängert', 19 October 2015, available in German at: http://bit.ly/1QQWyCv.
51. AIDA, *Common asylum system at a turning point: Refugees caught in Europe's solidarity crisis*, Annual Report 2014/2015, available at: http://bit.ly/1ighgPs, 60-61.
52. Regulation (EC) No 562/2006 of the European Parliament and of the Council of 15 March 2006 establishing a Community Code on the rules governing the movement of persons across borders (Schengen Borders Code), *OJ* 2006 L105/1.
53. European Commission, *Opinion of 23 October 2015 on the necessity and proportionality of the controls at internal borders reintroduced by Germany and Austria pursuant to Article 24(4) of Regulation No 562/2006 (Schengen Borders Code)*, C(2015) 7100, 23 October 2015.
54. See Recital 5 Regulation (EU) No 1051/2013 of the European Parliament and of the Council of 22 October 2013 amending [the Schengen Borders Code] in order to provide for common rules on the temporary reintroduction of border control at internal borders in exceptional circumstances, *OJ* 2013 L295/1, which provides that: "Migration and the crossing of external borders by a large number of third-country nationals should not, per se, be considered to be a threat to public policy or internal security".
55. European Commission, *Opinion of 23 October 2015*, para 40.

to build a fence on the Austrian-Slovenian border, in an attempt to stem the flow of persons coming to the country from Slovenia after Hungary effectively shut both its Serbian and Croatian borders.[56] Despite assurances that the Austrian border controls would not resemble Hungary's fence, barbed wire has been put up at the Spielfeld border crossing point with Slovenia as of November 2015 to prevent persons from accessing the highway and railway for security purposes.[57] Until the end of 2015 a fence of approximately 3.7km length will reportedly be put up at this border.[58]

3.3. Plans for further reforms

In an effort to respond to these challenges, the Austrian government has sought to further tighten up its asylum regime by restricting the rights of recognised beneficiaries of international protection. The legislative reform, submitted in November 2015, includes a lowering of refugees' right of residence to 3 years, as well as additional barriers on family reunification.[59] These plans, aimed at decreasing Austria's attractiveness to asylum seekers, have been met with strong criticism from the United Nations High Commissioner for Refugees (UNHCR)[60] and civil society organisations in the country.[61] Beyond highlighting the negative impact of the proposed measures as to excluding a lot of family members from legally reuniting with their family in Austria and thus forcing them to risk their lives on clandestine routes, as well as on refugees' integration prospects in the country, NGOs have stressed that the time-limitation on the protection status will not only expose beneficiaries of international protection and their family members abroad to more precariousness, significantly interfering with their integration in Austria, but will also put even greater pressure on Austria's asylum authorities, which currently encounter significant difficulties in handling caseloads, as they will be required to more frequently review or renew residence permits.[62] This is therefore likely not only to place beneficiaries of protection under precariousness but also to cause more severe delays in the asylum procedure, to the detriment of newly arriving asylum seekers.

56. See e.g. Wall Street Journal, 'Austria to build fence on Slovenia border to slow flow of migrants', 28 October 2015, available at: http://on.wsj.com/1jQSdDj; BBC, 'Migrant crisis: Austria plans Slovenia border fence', 28 October 2015, available at: http://bbc.in/1LC8nJs.
57. The Guardian, 'Austria puts up barbed wire at border despite chancellor's pledge', 4 November 2015, available at: http://bit.ly/1HrxkDu.
58. See e.g. Die Presse.com, 'Flüchtlinge: Zaun in Spielfeld wird heuer fertig', 27 November 2015, available in German at http://bit.ly/1S3T54v.
59. Refugees will have to obtain a residence and a stable income so as to not rely on the state financial assistance system before being able to reunite with family members. See Reuters, '"Asylum is something time-limited": Austria moves to toughen refugee laws', 3 November 2015, available at: http://bit.ly/1GSsJQ4.
60. UNHCR Austria, 'UNHCR gegen Einschräkung bei Familienzusammenführung', 3 November 2015, available in German at: http://bit.ly/1PcJW8V.
61. See Asylkoordination Österreich, 'Asylkoordination zeigt sich bestürtz über Entwurf zur Verschärfung des Asylgesetzes', 3 November 2015, available in German at: http://bit.ly/1HpFD8i; Diakonie Austria, 'Diakonie zu Asyl auf Zeit – Verschärfung auf Kosten der Familieneinheit', 3 November 2015, available in German at: http://bit.ly/1lf1RQr; Caritas Austria, 'Stellungnahme zum Entwurf eines Bundesgesetzes, mit dem das Asylgesetz 2005 geändert wird', 27 November 2015, available in German at: http://bit.ly/1UUKCAe.
62. Asylkoordination Österreich, Diakonie, Integrationshaus, SOS Mitmensh & Volkshilfe, *Stellungnahme Agenda Asyl*, Doc. BMI-LR1330/0024-11I/1/c/2015, 25 November 2015, available in German at: http://bit.ly/1QJmTUc.

CHAPTER II. DUBLIN & PROCEDURAL BARRIERS TO ASYLUM

1. The conundrum of registration of asylum applications

1.1. Delays in 'factual' registration with the police

The BFA and Ministry of Interior explained that a person can make an application for asylum before any police officer. He or she should then be directed to one of the competent police stations for registering applications.[63] There, the asylum seeker would have a first interview (*Erstbefragung*) with the police, who would collect his or her details, information on travel route and on possible family members in other countries.[64]

On the basis of the *Erstbefragung*, the BFA would receive a report from the police and issue without delay an order for the police stating whether the alien is to be transferred to the EAST or a regional headquarter of the BFA in order to secure the execution of measures to terminate the residence (e.g. where the Dublin Regulation is probably applicable), or whether he or she is to be provided with free-of-charge travel to a specific federal reception centre.[65] The police may arrest applicants for international protection for up to 48 hours while awaiting the BFA's order for further action.[66] The law allows for the BFA to dispense with such an order for further action if the alien is detained, or if the asylum seeker cannot be provided with federal primary care owing to extraordinary, unforeseeable circumstances.[67]

As of 20 July 2015, Dublin or other cases where a rejection of the application in the admission procedures is likely to be dealt with by the *Erstaufnahmestellen* (EAST) in Thalham or Traiskirchen. According to the new law the same applies for unaccompanied asylum seeking children.[68] Other cases should principally be transferred to one of the 7 distribution centres, *Verteilerquartiere* (VQ), across the Austrian territory.[69] The application for international protection is generally deemed formally lodged upon the issuance of the BFA's order for further action.[70] Applications for international protection by unaccompanied minor asylum seeking children younger than 14 are only deemed formally lodged if the filing of the application is repeated in the presence of the legal representative in the initial reception centre.[71] Furthermore, in cases where the BFA was allowed to dispense with an order for further action due to the applicant's detention, or extraordinary, unforeseeable circumstances making a reception in federal reception centres impossible, applications shall be deemed submitted upon completion of the *Erstbefragung* by the police.[72] When the person has been transferred or travelled to the EAST or VQ, he or she should receive a "green procedure card" while in the admission procedure, e.g. in a Dublin case, and a "white procedure card" if admitted to the in-merit procedure, e.g. Austria deems itself responsible for the application.

The Asylum Act and the BFA Procedures Act therefore draw a temporal distinction of no more than 48 hours between the "making" of an asylum application from its formal "lodging", yet one which was not considered so problematic before the rise in applications during the summer of 2015. Currently, however, this time-lag has been unduly exacerbated by the lack of capacity of the police to promptly conduct an *Erstbefragung* and the BFA's failure to promptly submit the orders for further action with the higher numbers of persons who wish to apply for asylum.

In Vienna,[73] the first "factual registration" happens mainly at Lindengasse, an emergency shelter situated in the city centre where the Red Cross and Caritas are also active. There, the police issues persons with an invitation to an appointment (*Ladung*) to conduct the *Erstbefragung* at a specific date and place. As reported by NGOs, persons currently expressing the wish to apply for asylum in Vienna are given appointment dates for the *Erstbefragung* in February 2016.[74] Unaccompanied children experience even greater delays, with some cases being called for an appointment as late as May or June 2016.[75]

Until that point, the asylum seeker has no documentation certifying his or her status and cannot have access to basic services as a result. Lately, thanks to a "Vienna Refugee Aid" card, a document with a social insurance number issued by the City of Vienna – unrelated to registration by the BFA, asylum seekers in Vienna can access health care

63. Information provided from the Dublin Unit, BFA and the Primary Care Department, Ministry of Interior Vienna, 30 November 2015.
64. Article 17(1) and Article 19(1) Asylum Act, as applicable on 20 July 2015.
65. Articles 42 and 43 BFA Procedures Act, as applicable on 20 July 2015.
66. Article 40(3), (2), (4) BFA Procedures Act, as applicable on 20 July 2015.
67. Article 43(2) BFA Procedures Act, as applicable on 20 July 2015.
68. Article 10(3), (6) BFA Procedures Act, as applicable on 20 July 2015.
69. See Chapter I, Section 3.1.
70. Article 17(2) Asylum Act, as applicable on 20 July 2015.
71. Article 10(6) BFA Procedures Act, as applicable on 20 July 2015.
72. Article 17(6) Asylum Act taken in conjunction with Article 43(2) BFA Procedures Act, as applicable on 20 July 2015. The green or white procedure card for the asylum seeker shall be issued within three days in this case.
73. Information provided by Caritas Vienna, Vienna, 2 December 2015.
74. Information provided by Caritas Vienna, Vienna, 2 December 2015. This was confirmed by Volkshilfe, Linz, 2 December 2015, based on information communicated by NGOs in the *Asylforum* held in Vienna on 13-14 November 2015.
75. *Ibid*.

and other services.[76] However, this has not been witnessed in other regions in Austria at the time of writing.

1.2. The nexus of 'legal' registration and accommodation

Beyond severe delays in the conduct of the *Erstbefragung*, access to the asylum procedure is also hindered by the unavailability of accommodation places in federal primary care and hence, the BFA's failure to submit without delay an order for further action allocating to asylum seekers a place in federal primary care, and the pressing problem of homelessness or inadequate housing in temporary accommodation centres, discussed in detail in Chapter III, Section 3 and Chapter III, Section 6 below. According to the law, an asylum application is only considered to be lodged in general once the BFA has submitted an order for action telling the person to travel or be transferred to an EAST (and its respective reception centre) or a regional headquarters of the BFA (and its respective VQ).

Therefore applications cannot always be formally registered because the person cannot be accommodated in one of the federal reception facilities managed by the Ministry of Interior. During the *Erstbefragung*, asylum seekers are informed by the police that the authorities have been notified of their wish to apply for international protection but that there are no places available to host them. This often takes the form of a general information sheet or even an informal individualised decision,[77] entitled "Accommodation Assignment: Admission" (*Quartierzuweisung: Zulassung*) in some cases or "Confirmation: Information on Distribution Centre" (*Bestätigung / Information Verteilungsquartier*) in others.[78] Asylum seekers who cannot be hosted in the state reception system are requested to provide the BFA with a residence address in which they may be contacted when the BFA wants to interview them or a reception place becomes available for them.[79]

The impossibility of registering an application is all the more problematic given that the aforementioned document handed to asylum seekers following the first interview with the police is not a formal and appealable decision. Moreover, as the police has no duty to provide the person with a copy of the *Erstbefragung* report unless upon request, most people do not have access to the first interview report in practice. The NGO Volkshilfe has appealed to the Administrative Court in order to challenge these informal decisions on homelessness.[80]

The circularity of the registration procedure, whereby an asylum seeker left homeless by the unavailability of reception places in practice cannot lodge an application until he or she communicates a registered address, poses a critical obstacle to access to protection in most parts of Austria.[81] NGOs such as Volkshilfe make efforts to fill this protection gap by allowing their office to be used as a registered address for newly arriving asylum seekers.

> In line with the principle of good administration, an applicant cannot be penalised as a result of non-compliance with procedural rules when this non-compliance arises from the behaviour of the administration itself.[82] ECRE calls on the BFA to facilitate the registration of asylum applications by refraining from requiring a registered address as a condition for lodging an application where the person cannot be provided an accommodation place.

1.3. Erstbefragung and the question of detention

The process of only allowing asylum seekers to apply for international protection with the police (and not directly with the EAST anymore)[83] and the key role of the *Erstbefragung* for the further proceedings was introduced by the 20 July 2015 reform. Asylum seekers may be held for a period of up to 48 hours while awaiting the BFA's order for further action.[84] The exact scale of the practice is not fully known, as the *Erstbefragung* may occur in police stations, detention centres and other locations. Nevertheless, this form of detention, when applied, even in detention centres such as Vordenberg, the main Immigration Removal Centre operating since January 2014, is imposed without an arrest or detention order.[85] The NGO Diakonie has challenged this 48-hour detention before the Administrative Court since July 2015, but litigation is still pending as the Court's jurisdiction on the issue is contested.

EU law permits detention on the ground of determining an applicant's identity or nationality,[86] if necessity, proportion-

76. Information provided by Diakonie, Vienna, 30 November 2015 and Caritas Vienna, Vienna, 2 December 2015.
77. It is questionable whether this may be described as a binding administrative decision, since the police is not competent for delivering those.
78. Copies of such decisions issued in Lower Austria and Upper Austria were shared with ECRE. See Annex II. More cases from Linz on file with the author.
79. Information provided by Asylkoordination Österreich and Diakonie, Vienna, 30 November 2015; Volkshilfe, Linz, 2 December 2015; Caritas Vienna, Vienna, 2 December 2015.
80. Information provided by Volkshilfe, Linz, 2 December 2015.
81. In Upper Austria, the BFA has been able to provide a white card to asylum seekers without proof of a registered address in Thalham but not in Linz: Information provided by Volkshilfe, Linz, 2 December 2015.
82. CJEU, Case C428/05, *Firma Laub GmbH & Co. Vieh & Fleisch Import-Export v Hauptzollamt Hamburg-Jonas*, 21 June 2007, para 25.
83. Article 17(1) Asylum Act, as applicable on 20 July 2015.
84. Article 40(3), (2), (4) BFA Procedures Act, as applicable on 20 July 2015.
85. Information provided by Diakonie, Vienna, 30 November 2015.
86. Article 8(3)(a) Directive 2013/33/EU of the European Parliament and of the Council of 26 June 2013 laying down standards for the reception of applicants for international protection (recast) (hereafter recast Reception Conditions Directive), *OJ* 2013 L180/96.

ality and alternatives to detention have been considered in an individualised assessment.[87] However, this ground for detention is not provided for in Austrian law. According to Diakonie, the 48-hour detention imposed on asylum seekers upon expression of the wish to apply for international protection amounts to Dublin detention pursuant to Article 28 of the Dublin III Regulation,[88] given that the *Erstbefragung* before the police is aimed at ascertaining whether the person falls under a Dublin procedure. The Regulation only allows the use of detention in the existence of a "serious risk of absconding", following an individualised assessment of necessity, proportionality and unavailability of less coercive alternatives.[89]

The "risk of absconding" must be defined with reference to objective criteria prescribed by law.[90] Due to the absence until 20 July 2015 of such criteria in Austrian law, detention for the purpose of applying the Dublin system had been sanctioned as unlawful by the Administrative High Court (VwGH).[91] The amended Article 76 of the Aliens Police Act now defines the "risk of absconding" on the basis of a number of wide-ranging criteria, namely whether:[92]

(a) The person does not cooperate in the procedure for the imposition of a measure to terminate residence or evades or obstructs the repatriation or deportation;
(b) The person has re-entered the federal territory in contravention of a valid entry ban or of a valid residence ban or during the validity of an order for removal from the country;
(c) An enforceable measure to terminate residence exists or the alien has already evaded a procedure for the imposition of a measure to terminate residence or a procedure concerning an application for international protection;
(d) In the case of a subsequent application, *de facto* protection against deportation has been terminated or the alien does not enjoy such protection;
(e) At the time of filing an application for international protection, an enforceable measure to terminate residence had been imposed on the alien, in particular if, at that time, he was already in detention pending deportation or was being held in custody pursuant to Article 34 (3)(1)-(3) BFA Procedures Act;
(f) It can be assumed, on the basis of the results of the interview, search or identification procedures, that another Member State is responsible under the Dublin Regulation, in particular if: the alien has already filed two or more applications for international protection in the Member States or has made false statements in connection therewith; the alien has attempted to travel onward to a third Member State or; on the basis of the results of the interview, search, identification procedures or previous conduct of the alien, it is likely that he intends to travel onward to a third Member State;
(g) The alien fails to fulfil his or her obligation arising from the adoption of a more lenient measure;
(h) Any conditions, obligations to cooperate, territorial restrictions or reporting obligations have not been complied with, in particular in the case of the existence of a measure to terminate residence which is enforceable currently or when an application for international protection is filed;
(i) The extent of social integration in Austria, in particular the existence of family ties, the pursuit of a lawful occupation or the possession of sufficient means of subsistence and the existence of a guaranteed abode.

However, beyond the wide-ranging scope of the criteria listed above, the non-exhaustive nature of Article 76(3) of the Aliens Police Act in itself leaves undue discretion to the authorities with regard to identifying a "risk of absconding" and applying detention. This issue remains litigated before the Court.[93]

The lack of formal decisions ordering 48-hour detention in the context of the *Erstbefragung* could be a factor behind the absence of these cases from the Ministry of Interior's detention figures. While the Ministry of Interior was not able to provide statistics on detained asylum seekers,[94] it was highlighted that detention is very rarely used.[95]

ECRE calls on the Austrian authorities to refrain from any systematic use of detention or "arrest" for the purpose of conducting the *Erstbefragung*. Detention should only be imposed as a last resort measure, to pursue an aim prescribed in law, and based on an individualised assessment of necessity, proportionality and less coercive alternatives.

87. Article 8(2) recast Reception Conditions Directive.
88. See Article 76(2) Aliens Police Act.
89. Article 28(2) Dublin III Regulation.
90. Article 2(n) Dublin III Regulation.
91. VwGH, Decision 2014/21/00755, 19 February 2015.
92. Article 76(3) Aliens Police Act, as applicable on 20 July 2015.
93. Information provided by Diakonie, Vienna, 30 November 2015.
94. Information provided by the Director's Office, BFA, Email, 9 December 2015.
95. Information provided by Dublin Unit and Director's Office, BFA, Vienna, 30 November 2015.

2. The prioritisation of Dublin cases

According to the Ministry of Interior, in terms of reception capacities and conditions there is no prioritisation of Dublin cases over those falling under the regular procedure. However, on 12 June 2015, the Minister of Interior announced that the BFA would suspend the processing of new asylum applications, with a view to prioritising pending cases under the Dublin Regulation.[96]

The reform of the asylum system taking effect on 20 July 2015 seems in fact to have reoriented emphasis towards Dublin procedures. The two *Erstaufnahmestellen* (EAST) in Traiskirchen and Thalham, formerly operating as initial reception centres where applications were lodged,[97] are now reported to deal mainly with Dublin cases and admissibility procedures for unaccompanied minors. The EAST handle outgoing Dublin requests, while incoming requests are dealt with by the BFA Headquarters in the Department of Dublin and International Relations.[98] In addition, staff members of the BFA Regional Directorates assist the EAST in the handling of Dublin cases, thereby implying a prioritisation of human resources towards the application of the Regulation.[99] This also seems to be illustrated by the increased duration of regular asylum procedures as a result of the low number of in-merit decisions delivered by the BFA, as discussed in Chapter I, Section 1. In cases handled by Volkshilfe and Diakonie, applicants – even from Syria – have been waiting for periods of 6 months or even 12 months for a substantive decision by the BFA.[100] For children, waiting periods can even reach 18 months.[101]

2.1. The ineffectiveness of the Dublin procedure

Between January and October 2015, Austria has issued nearly 16,000 outgoing Dublin requests to other countries, the main Member States being Hungary, Italy and Bulgaria.[102] The BFA continues to conduct procedures for Hungary. For Italy, the duty to obtain individualised guarantees on the reception conditions available to the individual applicant following the European Court of Human Rights (ECtHR)'s ruling in *Tarakhel v Switzerland*[103] is considered to have been fulfilled by the BFA,[104] following the circulation of a letter by the Italian Ministry of Interior to all the Dublin Units, enumerating a list of projects for the accommodation of Dublin returnees.[105]

The BFA in fact issues applicants with a notice (*Mitteilung*) under Article 29(3)(4) of the Asylum Act of its intention to declare the application inadmissible,[106] mentioning in several cases that the responsible state is Hungary.[107] In recent cases seen in Vienna, Croatia or Slovenia have also been mentioned as the responsible countries in these notices.[108] However, while the BFA has not provided statistics on outgoing Dublin transfers for 2015, these requests do not seem to have led to actual transfers since the summer of 2015. Specifically in the case of Hungary, a ruling by the Administrative High Court has highlighted risks of *refoulement* upon return to the country,[109] yet this has not led to a change in the BFA's policy. In practice, asylum seekers are therefore channelled into the Dublin procedure even though they will most probably not be transferred, until the expiry of the 6-month time-limit for performing a transfer.[110] Effective access to the in-merit asylum procedure in Austria thus risks to be unduly delayed, often for periods as long as half a year, through a consciously ineffective application of the Dublin Regulation.

> In view of the risk of *refoulement* upon return to Hungary, as stressed also by Austrian case-law, ECRE urges the BFA to refrain from conducting Dublin procedures in respect of applicants coming through Hungary and to directly undertake responsibility for processing their asylum applications.

Return advice pending a Dublin decision

Under Austrian law, rejected asylum seekers are required to schedule an appointment with the return advice office after being served with a return decision.[111] However, the same obligation is now imposed on asylum seekers as soon

96. AIDA, 'Austria: Bundesasylamt "suspends" processing of new asylum applications', 15 June 2015, available at: http://bit.ly/1LmHxGj; Asylkoordination Osterreich, 'Asyl: Panikreaktion Verfahrensstopp', 12 June 2015, available in German at: http://bit.ly/1HId9XM.
97. Former Article 17 Asylum Act.
98. Information provided from the Dublin Unit, BFA, Vienna, 30 November 2015.
99. Information provided by Asylkoordination Österreich, Vienna, 30 November 2015.
100. Information provided by Diakonie, Vienna, 30 November 2015 and Volkshilfe, Linz, 2 December 2015.
101. Information provided by Caritas Vienna, Vienna, 2 December 2015.
102. Information provided by the Director's Office, BFA, Email, 9 December 2015.
103. ECtHR, *Tarakhel v Switzerland*, Application No 29217/12, Judgment of 4 November 2014.
104. Information provided by the Dublin Unit, BFA, Vienna, 30 November 2015.
105. Italian Ministry of Interior, *Circular Letter to all Dublin Units Re: Dublin Regulation Nr. 604/2013 – Guarantees for vulnerable cases: family groups with minors*, 8 June 2015, available at: http://bit.ly/1HI9cSM. On this issue, see ECRE/ELENA, *Information Note on Dublin transfers post-Tarakhel: Update on European case law and practice*, October 2015, available at: http://bit.ly/1Xz3XbV, 16-17.
106. Article 29(3) Asylum Act.
107. For Vienna: Information provided by Caritas Vienna, Vienna, 2 December 2015; for Upper Austria: Information provided by Volkshilfe, Linz, 2 December 2015.
108. Information provided by Caritas Vienna, Vienna, 2 December 2015.
109. VfGH, Decision Ra 2015/18/0113 bis 0120-11, 8 September 2015.
110. Article 29 Dublin III Regulation.
111. A copy of this form was shared by ECRE in Thalham. See Annex III, available in French.

as they enter the Dublin procedure, before a Dublin decision has been taken, let alone appealed.[112]

The aforementioned *Mitteilung*, notifying the asylum seeker that the BFA intends to apply the Dublin Regulation in his or her individual case, includes the contact details of Verein Menschenrecthe Österreich (VMÖ), a non-governmental organisation offering Dublin information and advice on assisted voluntary return to third-country nationals. This form of advice is also provided by Caritas in regions such as Upper Austria.[113]

VMÖ has offices in the premises of the EAST in both Thalham and Traiskirchen, where it provides both legal assistance to asylum seekers and advice on voluntary return, on condition that they are not provided by the same staff member.[114] Yet it is not clear how the two functions are distinguished in practice. As explained by the VMÖ return advisor in Thalham, her role entails explaining to asylum seekers why they are in the Dublin procedure, why Austria has made a request to a particular country, as well as discussing with them the prospect of returning voluntarily.[115]

ECRE raises serious concerns on the provision of return advice to asylum seekers who are still in the asylum process and may ultimately fall within the responsibility of Austria, as it runs the risk of giving misleading information and hampering the prospect of obtaining international protection.

2.2. Unaccompanied children and age assessment

The Dublin Unit explained that Austria does not subject unaccompanied minors to the Dublin procedure,[116] in line with the Court of Justice of the European Union (CJEU) ruling in *MA*.[117] The EAST in Traiskirchen, mainly dedicated to processing Dublin cases since 20 July 2015, now hosts approximately 1,250 unaccompanied children.[118] Post-July 2015 practice has introduced systematic medical age assessments for all unaccompanied children arriving in Austria, through which the authorities not only pronounce themselves on the minority or majority of an applicant but also determine a specific birthdate for him or her. The Dublin procedure is, however, applied pending the outcome of the age assessment, before the person has been confirmed to be an adult and therefore amenable to a Dublin transfer.[119] The outcome of the age assessment can only be challenged with the appeal against BFA's decision on the application for international protection, but appeals against Dublin decisions generally do not have suspensive effect, thereby questioning the effectiveness of this remedy. Unaccompanied children have therefore stayed in Traiskirchen for periods lasting up to 6 or 9 months, under particularly worrying conditions.[120]

ECRE is particularly concerned by the application of the Dublin procedure in respect of minors whose age is contested, which contravenes the principle of the 'benefit of the doubt' enshrined in Article 25(5) of the recast Asylum Procedures Directive.[121]

2.3. Informal returns: the situation at the German border

Another issue related to the Dublin Regulation concerns persons returned to Austria from Germany. On the borderline between Austria and Germany lie two bridges, one open for vehicles and one for pedestrians. Refugees and migrants cross the border on the pedestrian bridge. Similarly to the transit facility on the Austrian side described in Chapter III, Section 3, a complex of tents has been set up on the German side of the frontier, where people are received by the German police. As explained by the BFA,[122] persons may be returned from Germany to Austria either under the Dublin Regulation or, in rare cases where they have not applied for international protection in either country, under the Austria-Germany bilateral readmission agreement.[123] As this agreement provides that a duty to readmit third-country nationals without any further formality does not apply to persons who have applied for asylum in the requesting country,[124] the return of persons who have applied for international protection in either Austria or Germany should be governed by the rules and procedures of the Dublin Regulation.
In practice, however, upon arrival on German soil from the bridge, the German police conducts a short interview with the newly arrived, where it determines whether the person have protection needs or has come to the country solely

112. Information provided by Diakonie and Asylkoordination Österreich, Vienna, 30 November 2015; Volkshilfe, Linz, 2 December 2015; Caritas Vienna, 2 December 2015.
113. Information provided by Volkshilfe, Linz, 2 December 2015.
114. Information provided by Diakonie and Asylkoordination Österreich, Vienna, 30 November 2015; Volkshilfe, Linz, 2 December 2015; Caritas Vienna, 2 December 2015.
115. Information provided by VMÖ, Thalham, 2 December 2015.
116. Information provided by the Dublin Unit, BFA, Vienna, 30 November 2015.
117. CJEU, Case C-648/11 *MA v Secretary of State for the Home Department*, Judgment of 6 June 2013.
118. Information provided by Diakonie, Vienna, 30 November 2015 and Caritas Vienna, Vienna, 2 December 2015.
119. Information provided by Volkshilfe, Linz, 2 December 2015.
120. Information provided by Caritas Vienna, Vienna, 2 December 2015.
121. Directive 2013/32/EU of the European Parliament and of the Council of 26 June 2013 on common procedures for granting and withdrawing international protection (recast), *OJ* 2013 L180/60.
122. Information provided by the Dublin Unit, Vienna, 30 November 2015.
123. Agreement between the Federal Government of Austria and the Government of the Federal Republic of Germany on the readmission of persons at the border (Readmission Agreement), 10 January 1998, Official Gazette (BGBl.) Nr III 19/1998, available in German at: http://bit.ly/1OC9qME.
124. Article 2(3)(c) Austria-Germany Readmission Agreement.

for economic reasons. In the latter case, the person is returned to Austria following an arrangement between the two countries' police authorities at the border.[125] He or she is handed over to the Austrian police at the Austrian end of the bridge. There is no detailed information on the actual procedure taking place before the German police authorities, other than the fact that this occurs at the border. However, as the process of determining whether the person is entitled or not to international protection takes place at the border, it is likely that it entails a very quick screening process possibly based on the nationality of the person in question, similar to those performed at the border between Greece and the Former Yugoslav Republic of Macedonia (FYROM), but also the Serbian, Croatian and Slovenian borders.[126] This practice would contravene the rules laid down in the Dublin Regulation for receiving third-country nationals for which Austria may be responsible.[127]

125. Information provided by the Aliens Police Department, Ministry of Interior, Salzburg, 1 December 2015.
126. For a recent overview of nationality profiling, see ECRE, *Western Balkans News Brief*, 21-27 November 2015, available at: http://bit.ly/1QYmjC8.
127. See Article 18 Dublin III Regulation.

CHAPTER III. RECEPTION CHALLENGES AND DESTITUTION

1. Austria's reception crisis

1.1. The basic care system

In Austria, the Federal and the provincial governments concluded the Basic Care Agreement in 2004, stipulating the joint responsibility of the Federal Government and the nine provinces for the reception of asylum seekers and certain other aliens.[128] In theory, once an alien files an application for international protection he or she is entitled to basic care provided for by the Federal Government.[129] Once admitted to the in-merit procedure he or she should be granted basic welfare support by one of the nine provinces.[130] Basic care is only given to those who are unable to support themselves without such care.[131] As of December 2014, there were 700 different reception facilities for asylum seekers at both the federal and regional level.[132] According to the Ministry of Interior, the overall capacity of the Austrian reception system rose from approximately 30,000 places at the end of 2014 to 71,500 at the end of November 2015.[133]

A quota system requires the federal provinces to provide reception places according to their population size. Since the summer of 2015, many make-shift accommodation places have sprung up to try and accommodate the increasing numbers coming to and passing through Austria. While many of these facilities are well maintained and cater for asylum seekers as they navigate their way through the asylum procedure, increasing numbers find themselves in substandard housing or destitute, as a lottery seemingly dictates who gets care and who does not.

Since the summer of 2015, there has been a significant increase in the number of applicants applying for asylum in Austria, as discussed in Chapter I, Section 2, as well as those transiting through the country and moving onwards to Germany. This increase in numbers has put a significant strain on the Austrian reception system. In August, according to Amnesty International, the EAST of Traiskirchen was severely overcrowded, hosting up to 4,500 asylum seekers when it was built to hold a maximum of 1,800.[134] Although overcrowding is no longer a problem in this facility, many asylum seekers still face substandard accommodation, as well as destitution and homelessness as a result of the lack of accommodation places.

In theory, an applicant is first placed in a reception facility at the federal level for the admissibility procedure and, once admitted into the procedure, is then transferred to another facility which is based at the regional level. Before 20 July 2015, there were the existing three initial reception centres, *Erstaufnahmestellen* (EAST), and after this date, a number of 'distribution centres' *Verteilerquartiere* (VQ) have been opened up. These are connected to the nine branch offices of the BFA. Two EAST centres, Thalham and Traiskirchen, are now mainly used for persons who are subject to a Dublin transfer or not admitted to the in-merit procedure for other reasons, and are therefore not transferred to one of the nine provinces.[135] In addition to the centres managed at the regional level, there are now around 40 centres that largely provide the same level of care as the traditional regional centres but are regulated at the federal level.[136]

1.2. Transit centres, emergency accommodation and homelessness

Running in parallel to this system are transit centres which were designed for persons who do not want to claim asylum in Austria and who wish to continue on to Germany to claim asylum. There have been 15,000-20,000 places in transit centres.[137] These generally consist of a big halls or tents with rows and rows of beds with some sanitary facilities but are not meant for long-term use. However, according to NGOs, as a result of the shortage of basic care accommodation, more than 7,000 applicants for international protection reside in these transit centres for long peri-

128. Grundversorgungereinbarung – Article 15a B-VG, Official Gazette (BGBl.) I Nr. 80/2004, 15 July 2004.
129. Although Article 2 § 1 Federal Government Basic Welfare Support Act (*Grundversorgungsgesetz-Bund*) only entitles *Asylwerber* (under Article 2 § 1(14) Asylum Act asylum applicants who have formally lodged their application) to basice welfare support, Article 2 § 1(1) clearly covers *Asylwerber* understood as persons having filed an application for asylum. Furthermore the Recast Reception Conditions Directive or the Qualification Directive does no distinguish between filing or loding an application for international protection.
130. Grundversorgungereinbarung – Article 15a B-VG, Official Gazette (BGBl.) I Nr. 80/2004, 15 July 2014.
131. For a full explanation on who and how one can be granted Basic Care, see, AIDA Country Report Austria: Third Update, December 2014, 55-56.
132. AIDA Country Report Austria: Third Update, December 2014, 56.
133. Information provided by the Federal and Basic Care Department, Ministry of Interior, Vienna, 30 November 2015.
134. Amnesty International Austria, *Quo vadis Austria? Die Situation in Traiskirchen darf nicht die Zukunft der Flüchtlingsbetreuung in Österreich warden*, 13 August 2015, available in German at: http://bit.ly/1JgEAbd.
135. This practice not explicitly provided in law but has been agreed upon in November 2014 between the Federal Government and the provincial governments. See Die Presse.com, "'Historisch': Länder beschließen Asyl-Verteilerzentren", 18 November 2014, available in German at: http://bit.ly/1UUJlZZ; Ministry of Interior, "Flexible Steuerung bei Aufnahme und Betreuung von Asylwerbern. Konzept. Grundlage für Gespräche mit den Ländern", available in German at: http://bit.ly/1UUPOnN.
136. In 2014, there were 5 centres that provided this type of care and in 2015 this increased to 40: Information provided by the Dublin Unit, BFA and Basic and Federal Care Department, Ministry of Interior, Vienna, 30 November 2015.
137. Information provided by the Dublin Unit, BFA and the Basic and Federal Care Department, Ministry of Interior, Vienna, 30 November 2015.

ods of time. These conditions are not in compliance with the recast Reception Conditions Directive as they offer little if any privacy, no special provisions for vulnerable persons, no trained staff, and substandard sanitary conditions, for example in some of the centres there are no showers or one shower per every 400 people.[138]

Given the shortage of accommodation many people face and experience destitution and homelessness. The City of Vienna has opened emergency shelters (including the *Lindengasse*) for those who cannot find accommodation elsewhere. People can only stay here at night and need to leave during the day. There are also numerous efforts by NGOs throughout Austria to assist asylum seekers find short term accommodation, discussed in Section 6.

2. Reception conditions in initial reception centres

One initial reception centre (EAST) and one distribution centre (VQ) were visited as part of ECRE's study visit; a short description of each centre is set out below.

Living unit and main building, Federal Reception Centre West, Thalham

2.1. Federal Reception Centre West: Thalham

Thalham is the initial reception centre (EAST) West, situated in Upper Austria. The centre can hold up to 185 persons and on the date of our visit, 2 December 2015, 145 persons were in the centre. Theoretically the average duration of stay should be 14 days but there are people who have been there for two months or longer. Upon arrival they have a short interview with the police after which they are issued with a "green card" – for instance, as persons subject to the Dublin procedure – which is necessary to receive the services in the centre.[139]

Services in the centre

A private company (ORS) provides all reception services including food, health care, and cleaning. Living conditions seemed to be good, there is a laundrette and a clothes distribution centre for those who need it.[140] There is also a café for women, a place to play football, a fitness room and a prayer room.

People can cook for themselves if they have the resources to do so (asylum seekers receive €40 per month in such centres)[141] and there is a shop where they can buy limited products priced at the local supermarket prices. Food is generally provided by the centre where there is a detailed menu plan, which indicates calories per dish and the ingredients in the different meals. The resident doctor must sign off on all meal plans before being approved. Asylum seekers must scan their green card before receiving a meal. A doctor is generally always available and provides a first medical check when people arrive in the centre and is available for any medical needs during their stay.

138. Information provided by Diakonie and Asylkoordination Österreich, Vienna, 30 November 2015.
139. Information provided by the Basic and Federal Care Department, Ministry of Interior, Thalham, 2 December 2015.
140. Information provided by ORS, Thalham, 2 December 2015.
141. AIDA Country Report Austria: Third Update, December 2014, 56.

Legal assistance

Legal assistance and return advice is provided by Verein Menschenrecthe Österreich (VMÖ), who have offices in the centre, while legal advice is also provided by Volkshilfe Upper Austria on behalf of ARGE Rechtsberatung. The return and Dublin advisor for VMÖ explains to the asylum seeker how the Dublin procedure works and why Austria is making a request to another country as well as discussing with the applicant whether they wish to undertake voluntary return. As soon as the Dublin procedure is underway people are advised to seek return advice with VMÖ, as discussed in Chapter II, Section 2.

2.2. Distribution Reception Centre Upper Austria: Bad Kreuzen

The Federal Reception Centre of Bad Kreuzen now functions as a *Verteilerquartier* (VQ) as a result of the increase in numbers coming to Austria, while before 20 July 2015 it was used for long-term stays. The centre is generally used for families and the average length of time people reportedly stay in the centre is 14 days.[142] The centre has the capacity to house 200 people and as of 2 December 2015 it was at full capacity. On average, 15-20 people come to the centre a day. Most rooms in the facility are for families, generally a room has between two and four beds, but families can be accommodated in rooms for up to six persons. There is also a dormitory for 10 people and when a space opens up in one of the rooms they are moved from the dormitory.[143]

Services in the centre

People cannot cook for themselves, they have to collect their meals from a canteen window and eat in their rooms. A laundry service is also operated in the centre and clothes are distributed once a week for those who need them. There are no internet or computer facilities in the centre. There is a small playground and two small playrooms for children as well as a small television room. German classes are given a number of times a week but given the short time people spend in the centre full education is not possible. Medical treatment is also provided at the centre; the doctor provides a first medical check when people arrive in the centre and is available for any medical needs during their stay.[144]

Legal assistance

Legal advisors need to make an appointment before visiting the centre. Given that Dublin cases are generally not processed in the centre, there is no resident legal advisor. However, VMÖ provides advice about assisted voluntary return and legal advice twice a week.[145] Volkshilfe needs to make an appointment to visit an asylum seeker in the centre to provide legal advice as they were refused the option of providing weekly visits.[146]

3. Reception conditions in transit centres

To deal with the increase in numbers of people who wish to transit through Austria and onto Germany, the Austrian government began opening up transit centres which are aimed to provide shelter to people for a few hours or a few days before they continue with their journey onto Germany. Many of these were opened in the summer of 2015 in areas such as Salzburg where many people gathered before continuing their journey. Ad hoc measures such as using concert halls or shopping centres are also resorted to as makeshift accommodation to house such people.

However, given the increase in numbers claiming asylum in Austria, asylum seekers are now also being housed in transit centres. There are reportedly 7,100 people asylum seekers living in such centres as of November 2015.[147] ECRE visited one such centre near Salzburg.

3.1. The "Asfinag" Transit Centre

The Asfinag centre is an old car-repair facility that has been turned into a transit camp since September 2015. It is managed by the City of Salzburg. The centre has the capacity to hold 1,250 people. There is a constant turnover of people, with buses bringing people to and from the centre nearly every hour.[148] Both Caritas and the Austrian Red Cross are in the centre and provide clothes, mainly from donations, to people who need them. Muslim Hands UK, a not-for profit organisation, is in charge of cooking for everyone in the centre. There is no on-site legal aid available in the transit centre for asylum seekers, which is unlike centres under the reception system for asylum seekers.[149]

142. Information provided by Basic and Federal Care Department, Ministry of Interior, Bad Kreuzen, 2 December 2015.
143. *Ibid*.
144. *Ibid*.
145. *Ibid*.
146. Information provided by Volkshilfe, Linz, 2 December 2015.
147. See OE1ORF.at 'Notquartiere immer öfter fixe Asylquartiere' 20 November 2015, available at: http://oe1.orf.at/artikel/425867
148. Information provided by the Head of Operations in Asfinag, City of Salzburg, Asfinag, 1 December 2015.
149. According to the Head of Operations, they can make an appointment to see their legal representative instead.

Asylum seekers residing in Asfinag

According to the Head of Operations at Asfinag Transit Centre, on the date of visit, 1 December 2015, there were approximately 200 asylum seekers staying in the centre. They are housed in two separate buildings in the complex which are federally managed. According to ORF, as of 20 November, almost half of the places in Asfinag were being used to house asylum seekers.[150] Asylum seekers stay in the centre until a more appropriate reception place becomes available; however given the lack of suitable places, asylum seekers can end up staying in transit centres for the duration of the asylum procedure in wholly unsuitable conditions. Their accommodation is an old warehouse where there are rows and rows of bunkbeds.

Living unit, Transit Centre, German-Austrian border

3.2. The Austrian-German border-crossing point

There is also a transit centre at the Austrian-German border that is designed for very short stays. The centre is a former customs checkpoint that was transformed into a border-crossing point in September 2015. The facility is divided into three main halls, with a total capacity of 350. The first two halls are for waiting, the last for exit towards Germany.

People generally arrive at the centre by bus,[151] and those who wish to continue onto Germany, upon arrival to Salzburg, are given a wristband with a letter and a colour.[152] At the crossing point, the authorities arrange for transit according to the letters in alphabetical order. In early November 2015, the German and Austrian authorities negotiated an arrangement to allow 50 people per hour to cross from Salzburg, as a result approximately 1,250 people cross the border a day.[153]

There are separate tents for men and women/children and families. The tents have heating facilities, blankets and phone charger sockets. People can stay in these tents while waiting to cross the border. A local NGO comes daily and plays with the children. There are also sandwiches and tea prepared by Caritas. There is also a volunteers and interpreters' coordinator at the facility; languages include Arabic and Pashtu, but interpretation is also available for Albanians and Kosovars.

While recognising the difficulties the Austrian government faces in ensuring adequate accommodation for asylum seekers, access to adequate and dignified reception conditions for applicants for international protection are prerequisites for a fair and efficient asylum procedure.[154] While adequately designed for travel or short stays, a transit centre is an unsuitable place for those navigating their way through the asylum procedure. The Austrian authorities

150. See OE1ORF.at 'Notquartiere immer öfter fixe Asylquartiere' 20 November 2015, available at http://oe1.orf.at/artikel/425867
151. On 1 December 2015, ECRE was informed that in general 8 buses arrive during the day and another 8 during the night.
152. Colours are randomly chosen to indicate what day the person is given the wristband.
153. On 1 December 2015, at the time of ECRE's visit, (15:00) 683 people had passed across the border.
154. Article 17(1) recast Reception Conditions Directive. See also Article 31 European Social Charter (right to housing), Article 11 International Covenant on Economic, Social and Cultural Rights.

must ensure a dignified standard of living, adequate for the health of applicants and capable of ensuring their subsistence.[155] Access to legal assistance must also be properly ensured in reception facilities.

4. Special reception needs of vulnerable persons

Under the recast Reception Conditions Directive, Member States are obliged to assess whether an applicant for international protection has special reception needs.[156] The assessment needs to take place within a reasonable period of time and the special needs must be addressed even when they become apparent at a later stage in the asylum procedure. Member States shall provide the necessary medical or other assistance to applicants who have special reception needs, including appropriate mental health care where needed.[157] Persons who have been subjected to torture, rape or other serious acts of violence must receive the necessary treatment for the damage caused by such acts, in particular access to appropriate medical and psychological care.[158]

The BFA and the Ministry of Interior explained that in each of the distribution (VQ) and federal centres, a medical check is carried out usually within the first 24 hours of the applicant's arrival in the centre. Applicants are given a questionnaire with a number of medial questions including questions regarding their mental health. Applicants then sit down with social workers, first on a collective basis where they are explained the facility, house rules and relevant services, and following this they have a one on one meeting with the social worker. The social worker assesses whether the applicant has any psychological needs, with the assistance of a psychologist if need be.[159] Applicants will also meet with a doctor upon arrival at a distribution centre where they will undergo a medical exam and any special reception needs can also be identified during this meeting. When applicants are transferred to a reception centre at the regional level, their vulnerabilities can also be identified. However, at present, vulnerable persons are prioritised on the federal level as to who gets placed in centres at the regional level.

According to the NGOs, while this may be the case in theory, this does not happen in practice. While applicants for international protection do see a doctor, unless the applicant self-identifies any trauma experienced, it is very difficult to identify this given the short amount of time a doctor spends with a patient and given language difficulties.[160]

There are no special facilities for victims of torture or trafficking. Diakonie also provided examples whereby an applicant, who was confined to a wheelchair, was given a reception place in a centre that had no elevator. There were also instances during the summer of 2015 whereby families were given a bus to sleep in for five days and where pregnant women were left homeless.[161]

4.1. Unaccompanied children

The BFA and the Ministry of Interior stated that all unaccompanied children have been accommodated in reception facilities.[162] In Traiskirchen, an initial reception centre (EAST), there are 1,250 unaccompanied children. NGOs report the conditions for unaccompanied children in Traiskirchen as very worrying. The mere fact of having a facility that hosts over 1,000 children together means that the level of care given is not adequate. There is no education provided apart from German lessons, no official leisure activities and inadequate health care. Many voluntary activities have been organised to address the absence of any proper facilities in the centre. It is reported that unaccompanied children can stay in these centres for up to 9 months.[163]

ECRE calls on the Austrian authorities to ensure a standard of living adequate for a child's physical, mental, spiritual, moral and social development, in line with the recast Reception Conditions Directive. They should also ensure, in line with the Directive, that children have access to leisure activities appropriate to their age, and appropriate rehabilitation services.

4.2. Special reception services in Thalham and Bad Kreuzen

In Thalham, if the doctor identifies someone with particular mental health needs or a victim of torture, he or she will be referred to a psychologist or a psychiatrist. There is a psychologist on site that has office hours two days a week.

155. CJEU, Case C-79/13 *Federaal agentschap voor de opvang van asielzoekers v Saciri*, Judgment of 24 February 2014, para 40. This is also in line with the right to dignity found in Articles 1 and 24 of the Charter, as well as the Convention on the Rights of the Child, and the right to privacy under Article 8 ECHR.
156. Article 22(2) recast Reception Conditions Directive. There is no obligation on states to establish a specific procedure to identify vulnerable persons with special reception needs.
157. Article 19(2) recast Reception Conditions Directive.
158. Article 25(1) recast Reception Conditions Directive.
159. Information provided by the Dublin Unit, BFA and the Basic and Federal Care Department, Ministry of Interior, Vienna, 30 November 2015.
160. Information provided by Asylkoordination Österreich, Vienna, 30 November 2015. See also AIDA Country Report Austria: Third Update, December 2014.
161. Information provided by Diakonie, Vienna, 30 November 2015.
162. Information provided by the Dublin Unit, BFA and the Primary Care Department, Ministry of Interior, Vienna, 30 November 2015.
163. Information provided by Asylkoordination Österreich, Vienna, 30 November 2015 and Caritas Vienna, Vienna, 2 December 2015.

If they have immediate wounds that need to be dealt with, asylum seekers will be immediately referred to a hospital. In Bad Kreuzen, a psychologist visits the centre twice a week.

5. Reduction and withdrawal of reception conditions

Material reception conditions can be reduced or withdrawn under the Austrian federal and nine provincial laws, among others on the grounds set out in Article 20 of the recast Reception Conditions Directive.[164] Statistics were not available as to the number of persons with reduced or withdrawn care.[165] Any formal decision to reduce or withdraw conditions can be appealed to an Administrative Court.[166] However, a reported problem is the fact that conditions are often reduced or withdrawn without a formal written decision, so there is no way of challenging the decision.[167] Another issue facing applicants is the fact that the grounds under which someone can have his or her conditions reduced or withdrawn are interpreted in a very broad manner with little oversight. For example, NGOs reported a case of an unaccompanied child having conditions withdrawn for smoking inside the centre, thereby breaking house rules.[168] Legal aid should be available to challenge a decision to withdraw care, but there have been reported cases whereby legal assistance has not been provided.[169]

In accordance with EU law, decisions for reduction or withdrawal of material reception conditions shall be taken individually, objectively and impartially and reasons shall be given, taking into account the particular situation of the person concerned, as well as the principle of proportionality. If a decision is taken to reduce or withdraw conditions, states are still obliged to ensure access to health care and a dignified standard of living for all applicants.

The reduction or withdrawal of conditions in Thalham and Bad Kreuzen

In both Thalham and Bad Kreuzen, conditions can be reduced and withdrawn, mainly for breaking house rules and for leaving the centres for more than 48 hours. In Thalham, if people leave for more than 48 hours, conditions are withdrawn, however, if the person comes back within three days, conditions are re-instated. In Bad Kreuzen, if a person is gone for more than 48 hours he or she will lose his or her place, however it is reportedly very rare that someone would be absent for more than 48 hours. There is also a mandatory count on a Thursday morning and if people are not present for this count they can lose their place.

Given the extreme consequences of withdrawing reception conditions, the recast Reception Conditions Directive only allows for this in "exceptional and duly justified cases"; save from when the applicant has concealed financial resources. In line with the obligation to state the reasons for a decision under the recast Reception Conditions Directive and the general EU law principle on the right to good administration,[170] it is essential that reasons are given as some of the various provisions which allow for the reduction or withdrawal of material reception conditions could be considered as arbitrary and open to abuse.

> ECRE calls on the Austrian authorities to ensure that the withdrawal of reception conditions is only used in the most exceptional circumstances and, if used, that the person is presented with an official decision on the withdrawal of care has access to appropriate legal assistance to challenge it. Any decision to withdraw care must still ensure that the applicant has a dignified standard of living and access to emergency health care.

6. Homelessness and destitution in Austria

The most serious consequence of the increase in arrivals to Austria in 2015 is the increased risk of homelessness and destitution and, as a result, limited access to the actual asylum procedure itself as explained in Chapter II, Section 1. While recognition is given to the significant and difficult task of finding suitable accommodation for the arrivals, more needs to be done to combat the problem of people who are in need of protection sleeping on the streets, placing them in a very vulnerable position. As explained in Chapter II, Section 1, the unavailability of accommodation places in the Austrian federal reception system prevents asylum seekers from being able to formally lodge a claim, as the BFA requires them to provide a registered address where they may be contacted for interviewing them or when a place is made available. This poses an undue hindrance to access to the asylum procedure which is not in line with the general EU law principle of good administration.

According to some NGOs, the reception system is near collapse. There are not enough spaces for those who wish

164. Article 2(4)-(5) and Article 3 Federal Basic Welfare Support Act (*Grundversorgungsgesetz-Bund*), as applicable on 20 July 2015 (concerning primary care provided by the Federal government, the nine different provincial laws have their own respective provisions).
165. Information provided by the Dublin Unit, BFA and the Primary Care Department, Ministry of Interior, Vienna, 30 November 2015.
166. If the applicant was in Federal Care, when the conditions were reduced/withdrawn, he or she can appeal it to the Federal Administrative Court, or to the Administrative Court of the federal provinces in case of decisions of the provincial government.
167. Information provided by Asylkoordination Österreich and Diakonie, Vienna, 30 November 2015.
168. Information provided by Asylkoordination Österreich and Diakonie, Vienna, 30 November 2015.
169. Information provided by Volkshilfe, Linz, 2 December 2015. This was a case where legal assistance was not provided to challenge the withdrawal of conditions in EAST Thalham. In this instance, Volkshilfe assisted with the appeal.
170. CJEU, Case C-239/05, *BVBA Management, Training en Consultancy v Benelux-Merkenbureau*, Judgment of 15 February 2007, para 36.

to claim asylum in, or transit through, Austria. NGOs consider that the BFA is taking little action to remedy this situation.[171] In mid-November 2015, the NGO Volkshilfe sent the BFA a list of asylum seekers who had been left homeless, but as of the beginning of December no action had been taken to host them in reception structures.[172] Recognising the limitations on their reception services, the Ministry explained that persons who cannot be hosted in the reception system are accommodated in emergency shelters.[173] In the document issued by the authorities it states that no accommodation place is available and that applicants must provide a registered address. This is echoed the document issued by the authorities stating that the accommodation places are unavailable and that applicants must provide a registered address.[174]

Efforts of provincial governments

As a result of the increase in homelessness some provincial governments such as Vienna have come up with new and innovative solutions to solve the crisis. The municipality of Vienna has stepped in with an interim solution with a view to allowing asylum seekers to access basic services while awaiting the lodging of their application. The City of Vienna opened an emergency shelter known as the Lindengasse which is located in the city centre. At this shelter, people are given an appointment to make the first initial interview, which as mentioned in Chapter II, Section 1 can take months to receive. During this period, the City of Vienna has started issuing "Vienna Refugee Aid" cards while asylum seekers wait for their official green or white card; this is outside the official reception service. The "Vienna Refugee Aid" card includes a social insurance number which allows people access to essential services such as health care during this period.[175] The Lindengasse provides very basic accommodation with army mattresses and people generally cannot stay here during the day.[176]

Volunteer initiatives

There is a large collective effort being undertaken by civil society to address this situation by providing emergency shelter on a night by night basis. Churches and mosques open their doors and provide accommodation to those who need it on a nightly basis. There are also private initiatives such as "Shelter for one night" in Lower Austria where private individuals can take in asylum seekers for one night. Since September 2015, Caritas also have a shelter beside Vienna Westbahnhof train station where people can sit and rest during the day when staying at the Lindengasse. Clothes and food are also distributed but food supplies are dwindling at present.[177] There is also a 'kids' corner' at Vienna Westbahnhof train station where volunteers provide a space for children to relax and play during the day.[178] Volunteers however are now spending the majority of their time trying to find accommodation for the families that come to the kid's corner during the day.

> ECRE calls on the Austrian authorities to ensure that an applicant for international protection is not deprived, even for a temporary period of time, of the reception and accommodation standards set out in the recast Reception Conditions Directive.[179]

171. Information provided by Diakonie and Asylkoordination Österreich, Vienna, 30 November 2015.
172. Information provided by Volkshilfe, Linz, 2 December 2015.
173. Information provided by the Dublin Unit, BFA and the Basic and Federal Care Department, Ministry of Interior, Vienna, 30 November 2015.
174. "Information for asylum seekers during the admission procedure" (*Information für Asylwerber betreffend die Unterbringung während des Zulassungsverfahrens*). A copy of such a leaflet was shared with ECRE and is on file with the author.
175. Information provided by Diakonie and Asylkoordination Österreich, Vienna, 30 November 2015.
176. Information provided by Caritas Austria, Vienna, 02 December 2015.
177. Information provided by Caritas, Vienna, 30 November 2015.
178. Information provided by volunteers, Vienna Westbahnhof Train Station, 30 November 2015. See also UNHCR 'A Warm Austrian Welcome for Refugees', 13 October 2015, available at http://bit.ly/1NGsERD.
179. CJEU, Case C-179/11 *Cimade & GISTI*, Judgment of 27 September 2012, para 56.

CONCLUDING REMARKS

The observation of challenges in the Austrian asylum system raises a number of concerns regarding the effectiveness of protection in the country. This report details the problematic barriers to access the asylum procedure, stemming from severe delays in even the first stages of factual registration of applications (*Erstbefragung*), as well as from the design of legal registration, which may not be completed as long as reception places are unavailable. Even for those asylum seekers who succeed in lodging an application, however, access is granted to a dysfunctional asylum process, whereby Dublin procedures are initiated even where there is no prospect of transfer to another country, prolonging delays to their entry in the Austrian asylum procedure. The substantive processing of claims by the BFA is underpinned by lengthy examinations and scarce decisions, which may leave people waiting for over a year for a decision by the BFA. This state of legal limbo is coupled with an escalating phenomenon of homelessness and/or accommodation under inadequate conditions, as available accommodation places throughout the country are far from sufficient to meet the reception needs of asylum seekers in the country. Prolonged destitution therefore risks becoming part of the asylum system itself.

In view of the number of persons who have transited through Austria with a view to reaching other States, the above-mentioned issues in Austria create special duties for these countries as regards the removal of asylum seekers thereto, namely in relation to the application of the Dublin Regulation.

Dublin returns to Austria: risks of refoulement?

Both the substantial obstacles to accessing the asylum procedure and the unavailability of accommodation places for asylum seekers raise important questions in relation to the application of the Dublin Regulation for the purpose of transferring applicants to Austria. As clarified by Article 3(2) of the Regulation, an applicant may be exposed to risks of inhuman or degrading treatment under Article 3 ECHR due to the existence of systemic deficiencies in the asylum procedure and reception conditions upon transfer;[180] the notion of systemic deficiencies should be read as evidence of a risk of violation rather than a prerequisite thereof.[181]

Since the beginning of 2015, 405 persons have been returned to Austria under the Dublin Regulation.[182] Insight from the situation on the ground and from the experience of NGOs suggests that persons returning to Austria under the Dublin Regulation would not be treated more or less preferentially than other applicants in the country. The conditions facing returnees would also depend on whether the person in question have already had prior access to the asylum system in Austria, for instance by obtaining a white card and entering an accommodation structure at the regional level, or have not yet engaged with the asylum process. In any case, given the general deficiencies in access to the procedure and reception conditions documented in Chapter II and Chapter III, it is arguable that Dublin returnees would run risks of destitution and undue delays with regard to registering an asylum application in Austria. These risks need to be closely scrutinised by Member States issuing outgoing Dublin requests to Austria in order to ensure that the application of the Regulation does not result in exposing asylum seekers to risks of destitution.

As for Austria, the challenges arising as a result of the increase in arrivals of asylum seekers are undoubtable, as are the efforts of local authorities, NGOs and volunteers to provide assistance and accommodation to those left outside the reception system. Nevertheless, providing sufficient and adequate accommodation places is indispensable to affording appropriate and dignified protection to those in need. This must be accompanied by a system enabling effective access to a functioning asylum procedure, where applications are promptly examined and decisions are granted without undue delay. Currently, many asylum seekers in Austria face a state of prolonged legal limbo, due both to the unavailability of reception conditions and, among others, to the side-tracking of the asylum procedure by the BFA's prioritisation of unworkable Dublin procedures. These deficiencies are liable to deprive refugees from real and effective enjoyment of the fundamental right to asylum as well as their rights under the recast Reception Conditions Directive.

180. See also CJEU, *NS v Secretary of State for the Home Department*, Judgment of 21 December 2011, para 94.
181. ECtHR, *Tarakhel v Switzerland*, Application No 29217, Judgment of 4 November 2014, paras 103-104.
182. Information provided by the Director's Office, BFA, 9 December 2015.

ANNEX I: LIST OF INTERLOCUTORS

Name and Organisation	Date	Location
Austrian authorities		
Karoline Preiβer, Department of Basic and Federal Care, Ministry of Interior	30 Nov 2015	Vienna
Bettina Baumgartner, Acting Head, Dublin Unit, BFA	30 Nov 2015	Vienna
Nino Hartl, Director's Office, BFA	30 Nov 2015	Vienna
Bernhard Rausch, Salzburg Police Department, Ministry of Interior	1 Dec 2015	Salzburg
Georg Pöllmann, Head, Federal Reception Centre West, Ministry of Interior	2 Dec 2015	Thalham
Renate, Jetzinger, Deputy-Head, Federal Reception Centre West, Ministry of Interior	2 Dec 2015	Thalham
Leopoldine Wamprechtshammer, Head, Distribution Centre Upper Austria, Ministry of Interior	2 Dec 2015	Bad Kreuzen
Civil society organisations		
Anny Knapp, Asylkoordination Österreich	30 Nov 2015	Vienna
Christoph Riedl, Diakonie Austria	30 Nov 2015	Vienna
Christoph Steinwendtner, Diakonie Austria	30 Nov 2015	Vienna
Stefan Lechner, Caritas Salzburg	1 Dec 2015	Salzburg
Wolfgang Lindner, Caritas Austria	1 Dec 2015	Salzburg
Roya Öllinger Caritas Vienna	2 Dec 2015	Vienna
Maryam Aleni, Caritas Vienna	2 Dec 2015	Vienna
Thomas Grüner, Volkshilfe Upper Austria	2 Dec 2015	Linz
Kathrin Kessler, Caritas Austria	Ongoing	Email

ANNEX II. BFA NOTICE OF UNAVAILABILITY OF ACCOMMODATION

.LPD REPUBLIK ÖSTERREICH
LANDESPOLIZEIDIREKTION NIEDERÖSTERREICH

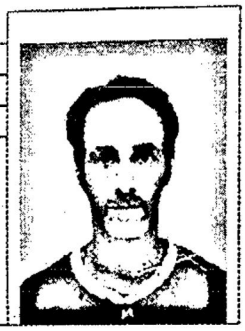
GZ: E1/80044 /2015 Schwechat, am 27.09.2015

Quartierzuweisung: Zulassung

Betreff:
ASYLANTRAGSTELLUNG

Nachname:
Vorname:
Geburtsdatum:
IFA-Zahl:
Antragsdatum:

Geschlecht: männlich



.BFA REPUBLIK ÖSTERREICH
BUNDESAMT FÜR FREMDENWESEN UND ASYL

Sehr geehrter/e Antragsteller/in!

Ihr Asylantrag wurde entgegengenommen und wird vom Bundesamt für Fremdenwesen und Asyl bearbeitet.
Bedauerlicherweise stehen derzeit nicht ausreichend Quartiere für Asylwerber zur Verfügung.
Geben Sie daher eine Adresse, Kontaktstelle oder sonst eine Möglichkeit, wie wir Sie erreichen können, schriftlich dem BFA, Regionaldirektion Niederösterreich, Otto Glöckel Straße 24, Haus 2, 2514 Traiskirchen, Mail.: BFA-RD-N-Einlaufstelle@bmi.gv.at bekannt, damit Ihnen eine Aufenthaltsberechtigungskarte ausgestellt und ihr Verfahren weitergeführt werden kann.
Danke für Ihr Verständnis.

تقاضای پناهندگی شما دریافت شده است و توسط اداره فدرال برای بیگانگان و پناهندگی پردازش شده است.

متاسفانه، نه مسکن به اندازه کافی برای پناهجویان در دسترس وجود دارد.
Strasse، اداره منطقه اتریش سفلی، BFA آدرس و نقطه تماس، یا روش های دیگر ما می توانیم به شما برسد، در نوشتن به
ه 24، هاوس 2، 2514 ترایزکیرشن، ایمیل: نقطه Otto Glöckel-
شناخته شده به طوری که یک کارت اجازه اقامت شما صادر شده و روند خود BFA-RD-N-Einlaufstelle@bmi.gv.at
را می توان ادامه داد.
با تشکر از شما برای درک خود را.

Уважаемый заявитель!
Ваше заявление об убежище было принято и будет обработано Департаментом по делам иностранцев и беженцев.

ANNEX III. BFA NOTICE FOR RETURN ADVICE APPOINTMENT

.BFA REPUBLIK ÖSTERREICH
BUNDESAMT FÜR FREMDENWESEN UND ASYL

ORDONNANCE DE PROCÉDURE

- Une décision de retour a été prononcée à votre encontre.
- La communication conformément au § 29 al. 3 Z 4 à 6 AsylG 2005 (loi sur l'asile de 2005) vous a été remise le .
- Dans votre cas, une procédure accélérée va être mise en œuvre conformément au § 27a AsylG (loi sur l'asile).

Conformément au § 52a Abs. 2 BFA-VG (loi de procédure du BFA), vous devez vous rendre à un entretien de conseil en vue du retour avant le.

L'organisation suivante peut vous conseiller et vous aider concernant les perspectives d'un retour volontaire pendant et après la conclusion de la procédure :

- **Verein Menschenrechte Österreich – VMÖ**, Alser Straße 20/5 (Mezzanin), 1090 Vienne, e-mail : rueckkehr@verein-menschenrechte.at Tél.+43(1)4090480, Fax+43(1) 4090480-4 ou
- **CARITAS Rückkehrhilfe** BLINDENGASSE 44/1er étage, 1080 VIENNE, téléphone : 897 52 21, Fax : 897 52 21/910, e-mail : rkh@caritas-wien.at

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