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**ECRI CONCLUSIONS  
ON THE IMPLEMENTATION OF THE RECOMMENDATIONS  
IN RESPECT OF AUSTRIA  
SUBJECT TO INTERIM FOLLOW-UP**

*Adopted on 29 June 2022<sup>1</sup>*

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<sup>1</sup> Unless otherwise indicated, this analysis does not take into account any developments that occurred after 10 May 2022, the date on which the response of the Austrian authorities to ECRI's request for information on measures taken to implement the recommendations chosen for interim follow-up was received.

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## FOREWORD

As part of its sixth round of monitoring work, ECRI has renewed its process of interim follow-up with respect to two specific recommendations made in each of its country reports.

In line with the Information Document on ECRI's sixth monitoring cycle brought to the attention of the Ministers' Deputies on 9 May 2018<sup>2</sup>, not later than two years following the publication of each report, ECRI addresses a communication to the Government concerned asking what has been done in respect of the specific recommendations for which priority follow-up was requested.

At the same time, ECRI gathers relevant information itself. On the basis of this information and the response from the Government, ECRI draws up its conclusions on the way in which its recommendations have been followed up.

It should be noted that these conclusions concern only the specific interim follow-up recommendations and do not aim at providing a comprehensive analysis of all developments in the fight against racism and intolerance in the State concerned.

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<sup>2</sup> [CM/Del/Dec\(2018\)1316/4.1](#); [CM\(2018\)62-add10](#).

*In its report on Austria (sixth monitoring cycle) published on 2 June 2020, ECRI recommended that the authorities place an increased emphasis on the institutional and structural independence of the future Federal Agency for Care and Support and ensure that free legal aid and advice is provided to asylum seekers by a fully independent structure.*

The state authorities informed ECRI that the Act<sup>3</sup> establishing the Federal Agency for Care and Support Services (hereafter the BBU), which is a limited liability company (GmbH) owned by the Federal Ministry of Interior, provides for independent and instruction-free legal counselling. A framework agreement was also concluded between the Federal Ministry of Interior, the Federal Ministry of Justice and the BBU, which, according to authorities, includes safeguards to ensure full independence of the BBU.<sup>4</sup> ECRI notes however that this framework agreement is not publicly available.

A Quality Advisory Board, consisting of eight experts, was also set up to support the management of the BBU as well as its Legal Aid Division and the Federal Government in an advisory and recommendatory capacity.<sup>5</sup>

In its 2021 annual report,<sup>6</sup> the Quality Advisory Board expressed concerns about the level of transparency due to the non-disclosure of the framework agreement concluded between the BBU and the federal authorities. Furthermore, the chosen legal form for the designation of the BBU as a limited liability company, which is in the exclusive ownership of the Federal Government, was not regarded as per se guaranteeing the independence of legal aid provided by the BBU. ECRI understands that the BBU commissioned an external evaluation on the very same issue. Although this evaluation was not published by the BBU, the Quality Advisory Board referred in its 2021 annual report,<sup>7</sup> to criticism made in the external evaluation which seem to confirm the concerns shared by the Board about transparency and the independence of legal aid.

Whilst ECRI welcomes the steps taken for strengthening the independence of the BBU, it considers that the current system does not fully ensure both institutional and structural independence. Responsibility for ensuring effective independence relies too heavily on the persons in charge of legal aid as well as on the leadership in the Agency and the federal government. In ECRI's view, the adoption of legislation or by-laws at the federal level is necessary to provide further legal safeguards with a view to consolidating the independence of the BBU and to secure independent legal aid in a sustainable manner. In this context, ECRI strongly encourages the authorities to take due account of the recommendations made by the Quality Advisory Board.

In view of these considerations, ECRI concludes that the recommendation has been partially implemented.<sup>8</sup>

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<sup>3</sup> BBU-Errichtungsgesetz ([BBU-G](#)), § 13 paragraph 1 and 5.

<sup>4</sup> See reply to question 34 of the [Parliamentary Question No. 3759/J](#) of 14 December 2020 given by the Federal Minister of Justice: 13-14.

<sup>5</sup> The Quality Advisory Board ([Qualitätsbeirat](#)), the Office of the United Nations High Commissioner for Refugees (UNHCR), the Austrian Bar Association, the Association of Austrian Judges, the Vienna-based Ludwig Boltzmann Institute of Human Rights, the Austrian Human Rights Institute of the University of Salzburg, the Federal Minister of Justice and the Federal Minister of the Interior are entitled to nominate members.

<sup>6</sup> [Jahresbericht Qualitätsbeirat](#)

<sup>7</sup> Ibid: 8-9. See similar Council of Europe, Commissioner for Human Rights, [Report](#) following her visit to Austria from 13-17 December 2021, CommDH (2022)10, 12 May 2022: paragraphs 13 and 48.

<sup>8</sup> In its report (sixth monitoring cycle), ECRI had made a second interim follow-up recommendation according to which the authorities should revise the relevant provisions of the new Social Welfare Act, which would have required greater language proficiency in German or in English, as a condition for receiving the higher level of social benefit. ECRI's recommendation was made with a view to preventing discrimination and social inequality in the provision of social benefits. In the time between the drafting of the report and its adoption, the Austrian Constitutional Court found these provisions to be unconstitutional. ECRI therefore considered that this recommendation had already been implemented.