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

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¹ Unless otherwise indicated, this analysis does not take into account any developments that occurred after 5 April 2022, the date on which the response of the authorities of Belgium 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 2018², 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.

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

1) *In its report on Belgium (sixth monitoring cycle) published on 18 March 2020, in accordance with its General Policy Recommendation No. 16 on safeguarding irregularly present migrants from discrimination, ECRI recommended that the authorities ensure that no public or private service provider is required to report persons it suspects of being irregularly present for the purposes of immigration control and enforcement. This applies in particular to providers in the areas of labour protection and justice, the aim being to prevent any obstacles to the effective enjoyment by unlawfully resident workers of their right to recover back pay owed by their employers and to have full access to complaint mechanisms.*

ECRI regrets to note that no action has been taken to abolish the legal obligation of social and labour inspectors to ensure the enforcement of immigration law (as established under Article 81 of the Foreigners Act,³ as amended in 2018⁴). In the view of ECRI, such an obligation undermines their primary function, which consists of ensuring the protection of all workers, including those in an irregular situation.

ECRI also notes that the obligation not to discriminate on the basis of residence status imposed by the European Union Victims Directive (2012/29/EU) has not yet been transposed into Belgian law. Migrant victims of discrimination who are irregularly present on Belgian territory may still refrain from exercising their right to complain to the police out of fear of being detained or deported.

In addition, under the Social Penal Code (as amended in 2016⁵), an administrative fine may still be imposed on irregularly present migrant workers, due to their status, when they file complaints to recover back pay owed by their employers. This remains a major obstacle to wage recovery and is at odds with the principle of non-criminalisation of victims.

Lastly, ECRI notes that only Myria (the Federal Migration Centre) and trade unions are competent to take legal action in support of migrant workers, including those who are irregularly present on Belgian territory. ECRI learned that a royal decree under preparation is to provide civil society organisations with the power to take legal action to assist or represent irregularly present migrant workers. ECRI understands that it will soon be published.

In the light of the above, ECRI concludes that its recommendation has not been implemented.

2) *In its report on Belgium (sixth monitoring cycle), ECRI recommended that the authorities appoint new experts to the Committee to Evaluate Federal Anti-Discrimination Legislation as soon as possible, so that the committee can resume its activities; that the committee is given adequate resources to carry out its duties in an appropriate manner; and that civil society organisations be consulted as representatives of victims of discrimination. Finally, ECRI repeated its recommendation that the evaluation of anti-discrimination legislation at the federal level be combined with an evaluation of the relevant legislation at the federated entities' level so as to uncover possible gaps.*

ECRI is pleased to note that new experts (12 full members and 12 deputy members) were appointed to the Committee to Evaluate Federal Anti-Discrimination Legislation and that the Committee resumed its activities. ECRI notes that the Committee was provided with some financial resources, including secretarial support and simultaneous interpretation services, as well as payment of attendance fees (amounting to a daily allowance of € 50 per meeting) to the Chairperson, the Vice-Chairperson and the Rapporteur. Upon request, the travel expenses of the Committee members are also reimbursed. However, ECRI observes that the Committee does not have its own secretariat, as administrative support is provided by the Equal Opportunities Unit of the Federal Public Service Justice. In addition, its members were only able to devote a limited amount of time to the Committee's work (due to their other professional commitments). ECRI encourages the authorities to ensure that the Committee is provided with sufficient resources, including suitable secretarial support, to perform its functions properly.

ECRI notes with satisfaction that, starting from October 2019, the Committee held hearings with civil society organisations in various fields, such as health care and employment, to take into account the situation of victims of discrimination, including on grounds of "race", religion, sexual orientation and gender identity. The Committee completed its evaluation of the federal anti-discrimination legislation on 23 March 2022. ECRI encourages the authorities to disseminate the evaluation report to the relevant authorities and organise a broad discussion with all stakeholders, including parliamentarians of different

³ Article 81 of the Act of 15 December 1980: [LOI - WET \(fgov.be\)](#).

⁴ Law of 22 July 2018 amending the law of 15 December 1980 on access to the territory, residence, establishment and removal of foreigners: [LOI - WET \(fgov.be\)](#).

⁵ Article 183.1 of the Social Penal Code: [LOI - WET \(fgov.be\)](#).

entities, with a view to ensuring the effective implementation of the recommendations contained in the report.

At the same time, it appeared from the information gathered by ECRI that no combined evaluation of the federal and federated legal frameworks was initiated to prevent any gaps or inconsistencies. More specifically, it emerged that the evaluation of the anti-discrimination legislation at the level of each federated entity has not been coordinated with the evaluation of the federal anti-discrimination legislation. This entails higher risks of legal gaps and inconsistencies that may undermine the legal protection of all against discrimination. ECRI encourages the authorities to make every effort to ensure that a combined evaluation of the various legal frameworks is carried out without delay.

In the light of the above, ECRI concludes that the recommendation has been overall partially implemented.