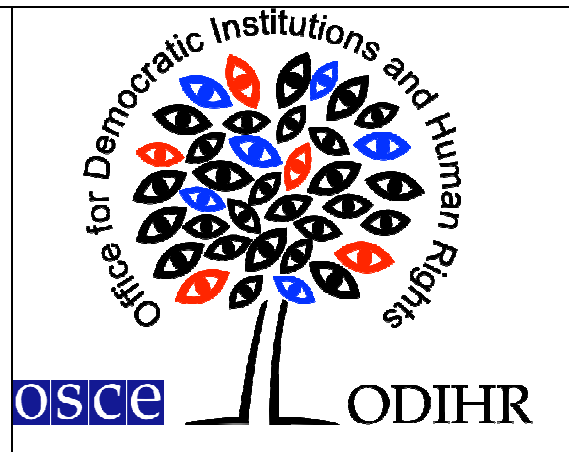


Warsaw, 7 November 2014

Opinion-Nr.: FOR-AT/264/2014 [RJU]

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OPINION

ON THE DRAFT FEDERAL LAW OF AUSTRIA AMENDING THE LAW ON THE RECOGNITION OF ADHERENTS TO ISLAM AS A RELIGIOUS SOCIETY

based on an unofficial English translation of the draft Law

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I. INTRODUCTION

1. *On 17 October 2014, the Permanent Representative of Austria to the Organization for Security and Co-operation in Europe (OSCE) requested the OSCE's Office for Democratic Institutions and Human Rights (OSCE/ODIHR) to provide an opinion that would review the draft Federal Law of Austria amending the Law on the Recognition of Adherents to Islam as a Religious Society (hereinafter "the draft Law").*
2. *By letter of 21 October 2014, the Director of the OSCE/ODIHR confirmed the OSCE/ODIHR's readiness to review the draft Law for compliance with OSCE commitments and international standards.*
3. *This Opinion has been prepared in response to the above-mentioned request.*

II. SCOPE OF REVIEW

4. This Opinion analyzes the provisions of the draft Law against the background of its compatibility with relevant international human rights standards and OSCE commitments.
5. The Opinion is based on an unofficial English translation of the draft Law and errors may therefore result.
6. In view of the above, the OSCE/ODIHR would like to make mention that this Opinion is without prejudice to any written or oral recommendations and comments to the draft Law or other laws in the area of the freedom of religion or belief or freedom of association that the OSCE/ODIHR may make in the future.

III. EXECUTIVE SUMMARY

7. At the outset, OSCE/ODIHR welcomes the desire to update and modernize the 1912 Law on the Recognition of Adherents to Islam as a Religious Society. The aim of the draft Law, which is to clearly regulate the legal status of Islamic religious in Austria, is to be viewed positively. At the same time, certain provisions of the draft Law may need to be amended to bring the draft Law into line with international standards. In particular, conditions for the recognition of Religious Societies would need to be eased, and the wide range of grounds contained in the draft Law for the withdrawal of recognition of such Societies, and for the withdrawal of legal personality of their constituent communities of worship, should be significantly reduced. The draft Law should also provide more protection for the autonomy of the Religious Societies that it seeks to regulate. In addition, provisions on the automatic dissolution of existing associations spreading religious doctrine should be removed from the draft Law, and the prohibition on foreign funding should either be removed or narrowly worded. Provisions affecting the freedom of peaceful assembly should likewise be removed and such questions should rather be dealt with under other, generally applicable legislation. Finally, additional data protection guarantees should be provided in the recognition process.

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Based on the above, OSCE/ODIHR recommends the following amendments to the current version of the draft Law:

1. Key Recommendations:

- A. To consider amending Articles 15 and 16 of the Basic Law to more closely reflect the definition of freedom of religion or belief contained in international human rights instruments ratified by the Republic of Austria [par 12-16];
- B. To remove provisions on the blanket dissolution of associations with the purpose of spreading Islam [par 37-43];
- C. To remove or significantly reword provisions of the draft Law which fail to respect the autonomy of Islamic Religious Societies [par 44-55];
- D. To remove the ban on foreign funding of Islamic Religious Societies, or to replace it with a significantly more targeted provision [par 56-58];

2. Additional Recommendations:

- E. To remove or clarify provisions on a positive attitude towards the state and society, and on disruptions in the relationship between Islamic Religious Societies and other religious communities [par 17-21];
- F. To reduce and/or substantially amend the grounds upon which denial of recognition of Islamic Religious Societies may be based [par 22-30];
- G. To reduce and/or substantially amend the grounds upon which recognition of Islamic Religious Societies may be revoked, or the legal personality of their constituent communities of worship may be withdrawn [par 31-36];
- H. To clarify provisions of sanctions in the draft Law as to the authority imposing such sanctions, which actions they apply to, and their limitations [par 59-60];
- I. To remove provisions regulating the freedom of peaceful assembly from the draft Law [par 61]; and
- J. To include provisions on data protection in the recognition process [par 62].

IV. ANALYSIS AND RECOMMENDATIONS

1. International Standards

- 8. This Opinion analyses the draft Law from the viewpoint of its compatibility with international standards that Austria has undertaken to uphold relating to the freedom of religion or belief and the freedom of association, as well as important OSCE commitments in this area.

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9. Key international obligations in this area are contained in the International Covenant on Civil and Political Rights¹ (hereinafter “ICCPR”), in particular Articles 18 (freedom of thought, conscience and religion) and 22 (freedom of association) and, in connection with these two rights, Article 2 (obligation to respect and ensure rights without distinction of any kind). Moreover, the European Convention on Human Rights² (hereinafter “the ECHR”) is likewise applicable, in particular Article 9 (freedom of thought, conscience and religion) and Article 11 (freedom of assembly and association) and, in connection to both these rights, Article 14 (prohibition of discrimination). Austria is also bound by the Charter of Fundamental Rights of the European Union,³ in particular by Article 10 (freedom of thought, conscience and religion) and Article 12 (freedom of assembly and of association) as well as Article 21 (non-discrimination).
10. In addition, Austria has entered into numerous commitments related to the freedom of religion or belief in various OSCE documents, notably in par 16 of the 1989 Vienna Document, which sets out key rights such as the right of communities of believers to recognition of their legal personality, the right to maintain freely accessible places of worship, and the right to religious education and training. Moreover, par 9.4 of the 1990 Copenhagen Document contains the general State obligation to respect the right to manifest one’s religion or belief, either alone or in community with others, in public or in private, through worship, teaching, practice and observance, and obliges participating States to ensure that the exercise of these rights may be subject only to such restrictions as are prescribed by law and are consistent with international standards. Also, par 9 of the 2003 Maastricht Document emphasizes the obligation to uphold the principle of non-discrimination in the area of religion or belief and the duty of the State to facilitate the freedom of religion or belief through effective national implementation measures. These commitments were recently reaffirmed in a 2013 OSCE Ministerial Council Decision.⁴ The freedom of association is also protected in key OSCE commitments (see, *inter alia*, the 1990 Copenhagen Document, par 9.3).⁵
11. The ensuing recommendations will also make reference, as appropriate, to other documents of a non-binding nature, such as the 2004 OSCE/ODIHR-Venice Commission Guidelines on Legislation pertaining to Religion or Belief⁶ (hereinafter “the Freedom of Religion or Belief Guidelines”), the 2014

¹ The International Covenant on Civil and Political Rights (adopted by General Assembly resolution 2200A (XXI) on 16 December 1966). The Covenant was ratified by Austria on 10 September 1978.

² The Council of Europe’s Convention for the Protection of Human Rights and Fundamental Freedoms, entered into force on 3 September 1953. The Convention was ratified by Austria on 3 September 1958.

³ Charter of Fundamental Rights of the European Union, Official Journal of the European Communities, OJ/2000/C364/01, available at http://www.europarl.europa.eu/charter/pdf/text_en.pdf

⁴ Kyiv 2013, MC Decision 3/13, Freedom of Thought, Conscience, Religion or Belief, available at <http://www.osce.org/mc/109339>.

⁵ For an overview of these and other OSCE Human Dimension Commitments, see OSCE/ODIHR, Human Dimension Commitments, 3rd Edition, available at <http://www.osce.org/odihr/76894>

⁶ Guidelines for Review of Legislation Pertaining to Religion or Belief, prepared by the OSCE/ODIHR Advisory Panel of Experts on Freedom of Religion or Belief in Consultation with the European Commission for Democracy through Law (Venice Commission) (‘the 2004 Guidelines’), adopted by the Venice Commission at its 59th Plenary Session in June 2004, CDL-AD (2004)028.

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OSCE/ODIHR-Venice Commission Joint Guidelines on the Legal Personality of Religious or Belief Communities⁷ (hereinafter the “Joint Guidelines on Legal Personality”), the 1981 United Nations (UN) Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief (hereinafter “the 1981 UN Declaration”)⁸; UN Human Rights Council resolutions, General Comments of the UN Human Rights Committee and reports of the UN Special Rapporteur on Freedom of Religion or Belief.

2. Preliminary Remarks

12. For those seeking to obtain legal personality for a religious or belief community, the Austrian legal system affords three types of legal personality. The first and most basic form of such legal personality is the association (*Verein*)⁹ under the 2002 Associations Act (*Vereinsgesetz*), which is open to all types of associations, including religious or belief communities. The second is the Registered Religious Community (*Religiöse Bekenntnisgemeinschaft*) which is available under the conditions set forth by the Act on the Legal Status of Registered Religious Communities (*Bundesgesetz über die Rechtspersönlichkeit von religiösen Bekenntnisgemeinschaften*), which will be referred to hereinafter as the “1998 Religious Communities Act”. The third is the Religious Society (*Religionsgesellschaft*) which finds its basis in Article 15 of the 1867 Basic Law.¹⁰ The legal framework for recognition of such Religious Societies is provided by the 1874 Act concerning the Legal Recognition of Religious Societies (*Gesetz betreffend die gesetzliche Anerkennung von Religionsgesellschaften*) which will be referred to hereinafter as the “1874 Recognition Act”.¹¹ Such Religious Societies generally have communities of worship (*Kultusgemeinde*) as their constituent elements, and shall have at least one such community of worship in accordance with Section 1, subsection 2 of the 1874 Recognition Act.¹²

⁷ Joint Guidelines on the Legal Personality of Religious or Belief Communities, adopted by the Venice Commission at its 99th Plenary Session in June 2014, CDL-AD(2014)023 available at [http://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD\(2014\)023-e](http://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD(2014)023-e)

⁸ Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief, UN General Assembly 25 November 1981, UN Doc. A/RES/36/55, available at <http://www.un.org/documents/ga/res/36/a36r055.htm>

⁹ For Austrian legal terms, this Opinion uses the English-language translations used by the European Court of Human Rights in its case-law; see e.g. European Court of Human Rights (ECtHR) 31 July 2008, *Religionsgemeinschaft der Zeugen Jehovas and Others v. Austria*, application no. 40825/98.

¹⁰ Basic Law on the General Rights of Nationals in the Kingdoms and Länder represented in the Council of the Realm, available at http://www.ris.bka.gv.at/Dokument.wxe?Abfrage=Erv&Dokumentnummer=ERV_1867_142

Article 15 provides that recognised churches and religious communities have the right to manifest their faith collectively in public, to organise and administer their internal affairs independently, to remain in possession of acquired institutions, foundations and funds dedicated to cultural, educational and charitable purposes, however, they are, like all other societies, subordinated to the law.

Article 16 entitles the supporters of non-recognised religious communities to domestic manifestation of their faith unless it is unlawful or *contra bonos mores*.

¹¹ RGBI (Reichsgesetzblatt, Official Gazette of the Austrian Empire) 1874/68.

¹² It is noted here that the manner of citation of Austrian legislation will follow the approach taken by the European Court of Human Rights in ECtHR 31 July 2008, *Religionsgemeinschaft der Zeugen Jehovas and Others v. Austria*, application no. 40825/98.

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13. Each of these types of legal personality carries with it a different status in national law. The Religious Society offers many privileges, such as the right to sit on regional education boards; the presumption that the Religious Society possesses the necessary qualifications to operate private schools and the exemption from military service for certain individuals involved in spiritual care or involved in religious teaching, as well as for students of theology who are preparing to assume a pastoral function and who belong to a recognised religious society. It also provides for the exemption of religious ministers from jury duty, deduction of income tax up to a certain amount for contributions, and exemption from real-estate tax for real property used for religious purposes.¹³ The status in national law of “associations” and “Registered Religious Communities” is similar, but Registered Religious Community status additionally involves specific recognition as a religious community.
14. As to the conditions which must be fulfilled for recognition, these are also different for each of the three forms of legal personality open to religious or belief communities in Austria. Under Section 1 of the 2002 Associations Act, a minimum of two persons may set up a non-profit association, provided that certain formalities are complied with, such as giving the name of the association, its address, and an outline of the rights and duties of members. Under Section 3, subsection 2 of the 1998 Religious Communities Act, those entities seeking to obtain the status of a Registered Religious Community must comply with largely similar formalities, and, also set out the main principles of the religious community’s faith and demonstrate that they have a membership of at least 300 individuals residing in Austria. These individuals may not be members of another Registered Religious Community or another legally recognized Church or Religious Society. Under Section 1 of the 1874 Recognition Act, in order to be recognized as a Religious Society, the teaching, services and internal organisation of an aspiring association, as well as the name it chooses, may not be unlawful or morally offensive and the establishment and existence of at least one community of worship satisfying the statutory criteria shall be ensured. Moreover, the respective constituent instrument must contain provisions on the liquidation of the Religious Society, which shall also ensure that the assets acquired are not used for ends contrary to religious purposes.¹⁴
15. This Opinion does not purport to comment on the general legal framework in the area of religious or belief communities in Austria. It should be noted, however, that the current system of recognition of religious or belief communities has certain features which appear worthy of wider consideration and amendment. In particular, the system of recognition as a “Religious Society” appears legally necessary only because of Article 16 of the Basic Law, which states that “[t]he members of a legally not recognized confession may practice their religion at home, in so far as this practice is neither unlawful, nor offends common decency”. This provision, in combination with Article 15 of the Basic Law, which grants the right of public and collective manifestation of the freedom of religion or belief only to Religious Societies, would not appear

¹³ Ibid., at par 55.

¹⁴ Ibid., at par 48; it is the understanding of OSCE/ODIHR that the legal situation in Austria in respect of these issues has not changed since.

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to be in line with the subsequent treaty obligations entered into by Austria, such as the ECHR and ICCPR.

16. In essence, the starting point of the two provisions in the Basic Law appears to be that state recognition is a pre-condition for being allowed to practice religion in public. International human rights law, by contrast, takes as its starting point that the freedom of religion or belief may be exercised by everyone in public and in community with others, and permits state restrictions to these rights only if justified under strict conditions (cf. Article 9 ECHR and Article 18 ICCPR). International standards recognize that neither the collective nor the public exercise of the freedom of religion or belief in public is, or should be subject to prior recognition or permission by the State.¹⁵ If this basic standard were transposed into the Basic Law, then it would consequently not appear necessary to legally recognize Religious Societies (or Recognized Religious Communities), since all religious groups and communities could then exercise their rights freely and in public without prior State permission. Specific legal acts could then still grant certain privileges to particular religious communities, e.g. tax benefits, or exemptions from certain state duties (as does the draft Law in question), while ensuring that all religious communities fulfilling certain pre-determined criteria have equal opportunities to obtain such privileges.¹⁶ Consideration should thus be given to amending Articles 15 and 16 of the Basic Law to more closely reflect the definition of the freedom of religion or belief as contained in international instruments, such as, for example, Article 9 of the ECHR.

3. Recognition and Denial or Revocation of Recognition of Islamic Religious Societies

3.1 Grounds for Recognition of Islamic Religious Societies

17. The draft Law regulates the creation of Islamic Religious Societies and communities of worship in Austria. It grants a series of privileges to Islamic Religious Societies, including the provision of Islamic spiritual care (*religiöse Betreuung*) for members of the federal armed forces, individuals in penitentiary institutions, as well as individuals in hospitals and care homes (Section 11), protection of the observance of dietary requirements (Section 12), the creation of an Islamic studies section at Vienna University (Section 15) and the protection of Islamic cemeteries and burial sites (Section 16).
18. In its transitional provisions (Section 23, subsections 1 and 2), the draft Law specifies that those Islamic Religious Societies that already exist at the time when the Law is adopted (there are currently two) shall continue to be recognized as such, but that the changes in their constituent instruments required by the then passed Law shall be made in time for the next elections of

¹⁵ See the Joint Guidelines on Legal Personality, par 10, and the sources cited therein.

¹⁶ See relevant ECtHR judgments pertaining to equal treatment of religious communities: judgment of 25 September 2012, *Jehovas Zeugen in Österreich v. Austria*, appl. no. 27540/05; judgment of 10 December 2009, *Koppi v. Austria*, appl. No. 33001/03; judgment of 9 December 2010, *Savez Crkava "Riječ Života" and others v. Croatia*, appl. no. 7798/08; see also the Freedom of Religion or Belief Guidelines, par F (2); Joint Guidelines on Legal Personality, pars 38-42.

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their elected bodies. It is also possible for new Islamic Religious Societies to be created.

19. The draft Law places the recognition of Islamic Religious Societies under the authority of the Federal Chancellor (Section 3). In order for an entity to obtain recognition as a Religious Society, the draft Law sets out a number of requirements. A Religious Society must have a secure and lasting continuing existence and should be economically self-sufficient (Section 4, subsection 1). The elements of security and lasting continued existence are considered to be in place where the applicant society is a Recognized Religious Community and where at least 2/1000 (two in one thousand) of the population of Austria belong to the confession in question, i.e. around 17.000 individuals.¹⁷ In addition, it must use its income and capital only for religious purposes, including charitable purposes (Section 4, subsection 2), it must have a positive basic attitude (*positive Grundeinstellung*) towards society and the State (Section 4, subsection 3) and there may be no unlawful disruption of the society's relationship to existing Churches and Religious Societies and to other religious communities (Section 4, subsection 4).
20. Some comments may be made regarding the requirements for recognition as a Religious Society under Section 4. First, the requirement of having a basic positive attitude towards society and the State and (subsection 3) appears to be rather vague. Such a generally worded provision is open to a variety of interpretations as to when such an attitude will be considered to exist, and thus risks being applied in an inconsistent manner. Moreover, it is not clear whether the provision refers to the attitude of the entire applicant society (which would be difficult to determine in practice), or part of it, or merely to the attitude of its leaders. It is recommended to clarify this provision further, in particular by stating how such a positive basic attitude shall be demonstrated, or to remove it from the draft Law as a requirement for recognition.
21. Second, the requirement that there be no unlawful disruption of the relationship to existing Churches and Religious Societies, and to other religious communities (subsection 4) is also not clear. It is difficult to see when such a disruption would be considered to exist, and in particular what type of disruption would be deemed significant enough to deny recognition as a Religious Society (seeing as such denial would need to be necessary in a democratic society to protect other vested interests of the State, such as public order, or the rights and freedom of others). Moreover, it is not apparent what would be considered a lawful disruption, and what would qualify as an unlawful disruption. Given the difficulties in defining these elements of Section 4, subsection 4, the current wording of this provision would likewise risk being applied in an arbitrary manner. It is recommended to remove, or to substantially clarify this ground for denial of recognition.

¹⁷ The population of Austria in the 2013 census was 8.477.230; see http://www.statistik.at/web_de/statistiken/bevoelkerung/index.html.

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3.2 Grounds for Denial of Religious Society Status

22. Under Section 5, subsection 1 (1), the Federal Chancellor shall deny the request for recognition as an Islamic Religious Society where this is, in relation to its doctrine or the application thereof, necessary in a democratic society for the protection of public security, public order, health or morals or for the protection of the rights and freedoms of others. The same subsection goes on to note that these grounds will be considered to exist in cases of incitement to illegal behavior; an impediment to the psychological development of minors; a violation of psychological integrity, or where psychotherapeutic methods are used, especially for the purposes of religious indoctrination. Additionally, subsections 2 and 3 provide that recognition as a Religious Society shall also be denied where the applicant society's constituent instrument does not meet the requirements of Section 4 or violates Section 6, which lists a range of issues that must be covered in the constituent instrument (such as the society's name, seat, acquisition and loss of membership, rights and duties of members, its doctrine, internal organization, traditions, etc.).
23. The grounds for denial to recognize an Islamic Religious Society mentioned in Section 5, subsection 1 (1) appear to be worded as examples of measures which may be considered necessary in a democratic society in the interests of, e.g., public (or national) security, public order, or the rights and freedoms of others.¹⁸ Violations of the psychological integrity of individuals in general, and of minors in particular, as well as the use of psychotherapeutic measures for the purposes of religious indoctrination, certainly appear to be of legitimate concern, and would be relevant in deciding whether a measure is 'necessary in a democratic society'. At the same time, it is difficult to ascertain what type of behaviour would be considered grave enough to constitute such violations, or measures in practice, which may also be difficult to prove (or disprove, depending on where the burden of proof lies). Moreover, it may be difficult to determine whether such violations or measures are undertaken by individual members of an applicant society, or by the society as a whole. There is a risk that such refusal of recognition, a measure affecting many different individuals, would be targeting an entire community, rather than those individuals engaging in these practices.¹⁹ The provision as it stands now would appear to be insufficiently clear to meet the international principle of legality, which requires that laws shall be clear and foreseeable, and that any interference with the right to freedom of religion or belief shall be narrowly and clearly worded.²⁰ It is thus recommended to remove, or to substantially revise the referenced examples of grounds for denial of legal personality contained in subsection 1 of Section 5, subsection 1.
24. Under Article 5 subsection 1 (2), recognition as a Religious Society shall also be denied if the requirements set out under Article 4 of the draft Law are not met. Given the unclear nature of these requirements, and the wide range of

¹⁸ It is noted here that these provisions mirror the content of Section 5, subsection 1 of the 1998 Religious Communities Act.

¹⁹ Cf. Joint Guidelines on Legal Personality, par 34.

²⁰ cf. ECtHR 26 October 2000 *Hasan and Chaush v Bulgaria*, appl. no. 30985/96, par 84.

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possible interpretations of what they mean (see pars 20-21 *supra*), the relevant provisions in Article 4 should be substantively amended or deleted.

25. Under Section 5, subsection 1 (3), denial of recognition is also possible if the constituent instrument of an applicant society does not meet the requirements of Article 6 of the draft Law. This provision, in its subsection 1 (5), requires that a Religious Society's constituent instrument must contain a statement of its doctrine, including a text with the core source of its religious faith, which shall be in the German language, and must be separate from existing legally recognized religious societies, confessional societies, or religious societies covered by the draft Law. The draft Law specifies the core source of the Islamic faith as the Qur'an.
26. With regard to this particular provision, the relevant explanatory note attached to the draft Law specifies that the translation of the religious text "represent(s) an important source of clarification for future questions concerning whether a religious teaching is distinct from pre-existing teaching". However, it is questionable whether a state body, in this case the Federal Chancellor, is able to, or should be involved in determining the nature of a religious teaching, and whether such teaching is the same or different from other teachings or doctrines.
27. In this context, it is recalled that, at the international level, "there is a trend towards extricating the State from doctrinal and theological matters".²¹ A State should be very reluctant to involve itself in any matters regarding issues of faith, belief or the internal organization of a religious group.²² Moreover the European Court of Human Rights has recently reaffirmed that "the State's duty of neutrality and impartiality is incompatible with any power on the State's part to assess the legitimacy of religious beliefs or the ways in which those beliefs are expressed."²³ It is thus not up to the State, but rather up to the religious entity itself to determine the nature of its religious teachings, and interpret them accordingly. In light of the above, it would not appear appropriate for the Federal Chancellor to determine whether the religious teaching of an applicant society is distinct from pre-existing teaching or not. Any such determination would constitute an interference with the essence of the right to freedom of religion or belief, which would not be justifiable under international law standards.
28. In addition, the various legal acts on recognition of other Religious Societies in Austria do not contain a similar provision. To introduce such a requirement only for Islamic Religious Societies appears, therefore to constitute potentially discriminatory treatment of these societies, and would require very compelling reasons in order to be justified under international law.
29. It is also noted here that Islamic Religious Societies are already recognized (under the currently applicable 1912 Law on Islamic Religious Societies, and, with respect to the Alevi community, by a Law of 22 May 2013). To impose

²¹ The Freedom of Religion or Belief Guidelines, at D; cf. ECtHR 26 October 2000 *Hasan and Chaush v Bulgaria*, appl. no. 30985/96, par 62; *Metropolitan Church of Bessarabia v. Moldova*, appl. no. 45701/99, pars 118 and 123.

²² The Freedom of Religion or Belief Guidelines, at D.

²³ ECtHR 1 July 2014, *S.A.S. v. France*, appl. no. 43835/11, par 55.

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this new requirement on them constitutes a change in their existing legal position. As the Joint Guidelines on Legal Personality note, where laws operate retroactively or fail to protect vested interests of religious or belief organizations, the state is under a duty to demonstrate what objective reasons would justify a change in existing legislation, and show that the proposed legislation does not interfere with the freedom of religion or belief more than is strictly necessary in light of those objective reasons.²⁴ Since the draft Law already foresees the continued existence of two recognized Islamic Religious Societies, it is difficult to see why, with regard to these Religious Societies, it would be necessary for them to translate the Qur'an, and submit the translated text to the scrutiny of the Federal Chancellor.

30. Given the concerns raised above, it is therefore recommended to remove the provision requiring the submission of a German translation of the Qur'an from Section 6, subsection 1 (5).

3.3 Grounds for Revocation of Religious Society Status

31. Section 5, subsection 2 of the draft Law regulates the revocation of the recognition of Islamic Religious Societies and their constituent communities of worship. It provides that the Federal Chancellor shall revoke the recognition of a Religious Society, or the legal personality of a community of worship, where they no longer fulfill the criteria for such recognition under Sections 4 or 8 respectively (Section 5, subsection 2 (1)). The Federal Chancellor may also revoke recognition where a ground for denying recognition continues to exist despite his/her request to end this situation, and where the constituent instrument of the religious society or the statute of a community of worship is violated, or where obligations related to recognition are not fulfilled, despite the request to do so (subsection 1 (2) and (3)).
32. The reference to Section 4 applies to religious societies, and means that the Federal Chancellor shall withdraw recognition of legal personality of a Religious Society where its membership falls below the threshold of 2/1000 citizens. It would also apply if the Religious Society is not able to finance itself independently (subsection 1); where income and capital are used for purposes other than religious ones (religious purposes includes charitable giving for religious purposes) (Section 4, subsection 2); in the absence of a positive attitude towards society and the State (Section 4, subsection 3) or where there exists an unlawful disruption in the relationship to existing Churches and Religious Societies or other religious communities (subsection 4). The reference to subsection 8 applies to the constituent communities of worship, and would mean that the Federal Chancellor would have to order their dissolution if they were no longer able to support themselves financially (Section 8, subsection 3) or if the community of worship's membership falls below 300 members (Section 8, subsection 4).
33. The provisions aimed at revocation of legal personality appear excessively broad in nature. International standards provide that the withdrawal of legal

²⁴ ECtHR 8 April 2014, *Magyar Keresztény Mennonita Egyház and Others v. Hungary*, application no. 70945/11, pars 84 and 104; Joint Guidelines on Legal Personality, par 34, and the sources cited there.

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personality should be a measure of last resort.²⁵ However, as they are currently phrased, revocation of a Religious Society's status, or revocation of the legal personality of a community of worship, may also occur in circumstances which would fall short of this threshold.

34. In relation to the latter, it appears that 300 persons is a fairly high threshold for a community of worship. Considering the relatively small size (in terms of population) of some municipalities in Austria, the relatively low percentage of Muslims in some areas, particularly outside the larger cities, and the wide variety of backgrounds of Muslims within Austria, many Islamic communities in Austria (including within the capital itself) may be smaller than this. Since they may not, under the draft Law, form any associations separate from recognized Religious Societies if they spread the religious doctrine of these Societies (*Verbreitung der Religionslehre*), this would mean that such smaller communities would have to operate without legal personality. In this context, it is noted that according to international standards, obtaining legal personality should not be contingent on a religious or belief community having a large minimum number of members.²⁶ It is therefore recommended to significantly reduce the minimum number of members required for legal personality of communities of worship. Moreover, Section 8, subsection 4, lists the preparation of a positive prognosis on the future development (presumably of the community of worship) through the Religious Society as one of the requirements for obtaining legal personality. While this could be a mere formality, such prognosis could at the same time be quite difficult to conduct; Section 8 also does not provide any indications of what such prognosis shall entail. It is recommended to clarify, or delete this point.
35. It is also noted that the grounds which are mentioned for revocation of Religious Society status may occur entirely inadvertently. The provisions of the constituent instrument of a Religious Society on the election of leaders may be violated, for example, when deadlines for their elections are missed by a day or two, or where other relatively minor or technical violations occur. Such minor infractions, which have no real negative effect, should not lead to the revocation of recognition of a Religious Society.
36. Finally, it is noted here that comparable legislation, such as, for example, the Law on the Israelite Religious Society, the Law on the Recognition of the external legal conditions for the Evangelical Church, or the Law on the Greek-Oriental Church, does not appear to contain any comparable provision which would result in revocation of legal personality. The restrictions placed on Islamic Religious Societies, and their constituent communities of worship, therefore appear not only disproportionate, but also greater than those placed on other, existing Religious Societies and could therefore be potentially discriminatory in nature. It is therefore recommended to reconsider the wide

²⁵ Joint Guidelines on Legal Personality, par 33; cf. also ECtHR case law relating to the dissolution of religious associations: ECtHR 8 October 2009, *Tebieti Mühafize Cemiyeti and Israfilov v. Azerbaijan*, appl. no. 37083/03, para. 82; ECtHR 10 June 2010, *Jehova's Witnesses of Moscow and others v. Russia*, Application no. 302/02, para. 159.

²⁶ Joint Guidelines on Legal Personality, par 27. See also the Venice Commission's *Opinion on act ccvi of 2011 on the right to freedom of conscience and religion and the legal status of churches, denominations and religious communities of Hungary*, CDL-AD(2012)004, par 49.

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range of grounds for revocation of the legal personality of Religious Societies, and communities of worship in the draft Law, and to draft more targeted, narrowly worded provisions.

4. Dissolution of Existing Associations

37. Under the draft Law, the Federal Chancellor is, when issuing the decision to recognize Islamic Religious Societies, required to order the dissolution of all those associations whose purpose is to spread the religious doctrine of the recognized Religious Societies (Section 3, subsection 4). Moreover, the draft Law provides that such associations are to be dissolved by the Federal Interior Minister within six months of the entry into force of the draft Law (Section 23, subsection 3).²⁷
38. Dissolution has significant consequences for the status of these existing associations and their ability to engage in activities. For this reason, dissolution should be a matter of last resort under international standards.²⁸ Dissolution of religious communities may therefore take place only in case of grave and repeated violations endangering the public order, or other protected interest, if no other sanctions can be applied effectively, and when the principles of proportionality and subsidiarity are complied with.²⁹
39. With regard to the current draft Law, it is difficult to see how this would be the case. The measure appears to be general in nature, and does not seem to apply to the specific, individualized circumstances of existing associations which spread religious doctrine covered by Islamic Religious Societies. In particular, it is not clear why all such associations should automatically be dissolved; this would appear to lead to a situation where only (larger) Islamic Religious Societies retain legal personality status, which would fail to recognize the diversity within the Islamic Community, and would essentially mean that the State decides that certain (larger) religious groups may spread Islam, and others may not. If a group of Muslims wishes to be organized in the form of an association in order to spread Islamic doctrine, then, based on international religion or belief standards, they should be permitted to do so. Only very weighty reasons could be adduced for, in individual cases, not allowing this, including imminent threats of violence, or of violations of the rights and freedoms of others. Such blanket dissolution measures would not appear to be, per se, necessary in a democratic society for the protection of public safety and order, or for other reasons adduced by international standards. It is therefore recommended to review this provision, and, ultimately, to remove it from the draft Law.
40. Moreover, it is assumed here that the provision also means that future applications for association status by groups seeking to spread Islam outside of

²⁷ The provisions aimed at dissolution of Islamic societies not forming a part of recognized Islamic societies appears to mirror Section 2, subsection 4 of the 1998 Religious Communities Act, which requires dissolution of associations in the case of recognition of religious confessional communities under that Act.

²⁸ See above, footnote 25.

²⁹ Ibid.

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recognized religious societies shall be refused. If this is the case, it is noted that a refusal by the state to accord legal personality status to an association of individuals, based on a religion or belief, likewise amounts to an interference with the exercise of the right to freedom of religion or belief, in connection with the general right to freedom of association.³⁰ In order to justify a restriction to the right to access to legal personality, it must be shown under Article 9 of the ECHR and Article 18 of the ICCPR that an interference is prescribed by law; has the purpose of protecting public safety, (public) order, health, or morals or the fundamental rights and freedoms of others; is necessary for the achievement of one of these purposes and proportionate to the intended aim; and is not imposed for discriminatory purposes or applied in a discriminatory manner.³¹

41. Based on these criteria, and also the grounds already raised with regard to the dissolution of associations under pars 38-39 supra, it is difficult to see how a future refusal to grant association status to those seeking to spread Islam would be justifiable. The spreading of religious doctrine is clearly protected by international standards, and a very high threshold needs to be met before a refusal to seek legal personality status for this purpose can be justified. The measure contemplated in the draft Law would apply to all such associations, without any individualized justification, and regardless of potential violations of law. It is also noted that the measure may be discriminatory in nature, as it applies only to requests to grant association status for Islamic associations, and not for other associations.
42. It could be argued that under current Austrian law, those wishing to spread Islam could seek Registered Religious Community status, or that they could apply for Religious Society Status. However, as noted above, applications for status as a Religious Society would require membership of two in 1000 individuals residing in Austria (i.e. around 17.000 individuals) whereas applications for status as a Registered Religious Community would still require 300 members. This places higher thresholds on those seeking status as an association for the purposes of spreading Islam, than on those seeking to associate for other purposes, which could constitute discrimination on the grounds of religion. In the absence of any justification for this, such treatment would violate Article 14 of the ECHR (prohibition of discrimination) in connection with Article 9 ECHR (freedom of thought, conscience and religion). Moreover, since the measure is a wholesale measure affecting all associations wishing to spread Islam, it is difficult to see how this provision could be

³⁰ ECtHR 1 October 2009, *Kimlya and Others v. Russia*, appl. nos. 76836/01 and 32782/03, par 84; ECtHR 10 June 2010, *Jehova's Witnesses of Moscow and others v. Russia*, appl. No. 302/02, par 101; ECtHR 17 February 2004, *Gorzelik and Others v. Poland*, Appl. No. 44158/98, par 52 and ECtHR 1 July 1998, *Sidiropoulos and Others v. Greece*, appl. No. 26695/95, par 31; *Opinion on Legal Status of Religious Communities in Turkey and the Right of the orthodox Patriarchate of Istanbul to use the adjective "Ecumenical"* (12-13 March 2010), CDL-AD(2010)005, pars 6 & 9; *Joint opinion on the draft law on freedoms of conscience and religion and on the laws making amendments and supplements to the criminal code, the administrative offences code and the law on the relations between the Republic of Armenia and the Holy Armenian Apostolic Church of the Republic of Armenia by the Venice Commission and the OSCE/ODIHR*, CDL-AD(2011)028, par 64; *Freedom of Religion or Belief Guidelines*, par 8.

³¹ *Joint Guidelines on Legal Personality*, pars 5 and 19 and the sources cited there.

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considered proportionate to a legitimate aim, or necessary in a democratic society. Such blanket prohibition negatively affects, in particular, smaller groups within Islam which may wish to seek legal personality status, who are placed at a disadvantage vis-à-vis larger groups; this could potentially amount to discrimination of minority communities.

43. More generally, the provisions on dissolution of existing association, as well as the provisions of Section 6 requiring the communities of worship to be accounted for as part of Religious Societies, albeit with respect for their diverse traditions (see in particular Section 6, subsection 1 (6) and (7)), appear to combine all Muslims in Austria under a single leadership, or at least under the leadership of certain larger Religious Societies recognized under the draft Law (see in particular section 7, subsection 1, which makes the Religious Society the religious community's "highest authority"). This fails to recognize the diversity which may arise within religious communities, including the Islamic community. In this context, it is noted that Islam is not a centrally organized hierarchical religion, and that many smaller groups exist which, in addition to the difficulties posed by acquiring legal personality status, would perhaps not even opt for such status, for example because they do not feel represented by the larger Religious Societies. Although the draft Law requires respect for diverse traditions to be anchored in the founding instruments, this still does not take into consideration that not all associations wishing to spread Islamic doctrine may want to exist within the framework of an existing Religious Society. For the above reasons, it is recommended to remove the provisions on the dissolution of associations with the purpose of spreading Islam from the draft Law.

5. Autonomy of Islamic Religious Societies

44. International human rights law provides for the autonomy of religious or belief communities.³² States should ensure that national law leaves it to the religious or belief community itself to decide on its leadership³³, its internal rules³⁴, the

³² ECHR 9 July 2013, *Sindicatul "Păstorul cel Bun" v. Romania*, appl. no. [2330/09](#), par 136-138; ECtHR 12 June 2014, *Fernández Martínez v. Spain*, appl. no. [56030/07](#), par 127-130; Joint Guidelines on Legal Personality, par 31; *Joint Opinion on the Law on Freedom of Religious Belief of the Republic of Azerbaijan by the Venice Commission and the OSCE/ODIHR, adopted by the Venice Commission at its 92nd Plenary Session (Venice, 12-13 October 2012)*, CDL-AD(2012)022, par 72; *Opinion on the Draft Law regarding the Religious Freedom and the General Regime of Religions in Romania adopted by the Venice Commission at its 64th plenary session (Venice, 21-22 October 2005)*, CDL-AD(2005)037, par 20; *Opinion on the Draft Law on the insertion of amendments on Freedom of Conscience and Religious Organisations in Ukraine adopted by the Venice Commission at its 68th Plenary Session (Venice, 13-14 October 2006)*, CDL-AD(2006)030, par 30; Freedom of Religion or Belief Guidelines, section D.

³³ ECtHR 22 January 2009, *Case of Holy Synod of the Bulgarian Orthodox Church (Metropolitan Inokentiy) and others v. Bulgaria*, appl. nos. 412/03 and 35677/04, par 118-121; see ECtHR 14 March 2003, *Serif v. Greece*, appl. no. 38178/97, pars 49, 52 and 53; ECtHR 26 October 2000, *Hasan and Chaush v Bulgaria*, appl. no. 30985/96, pars 62 and 78; ECtHR 13 December 2001, *Metropolitan Church of Bessarabia v. Moldova*, appl. no. 45701/99, pars 118 and 123; and ECtHR 16 December 2004, *Supreme Holy Council of the Muslim Community*, appl. No. 39023/97, par 96.

³⁴ *Joint Opinion on the Law on Freedom of Religious Belief of the Republic of Azerbaijan by the Venice Commission and the OSCE/ODIHR, adopted by the Venice Commission at its 92nd Plenary Session (Venice, 12-13 October 2012)*, CDL-AD(2012)022, par 76.

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substantive content of its beliefs³⁵, the structure of the community and methods of appointment of the clergy³⁶ and its name and other symbols.³⁷ In particular, the State should refrain from a substantive as opposed to a formal review of the statute and character of a religious organization.³⁸

45. The draft Law foresees that Islamic Religious Societies shall be independent and enjoy autonomy in their own affairs (cf. e.g. Section 2). However, Section 2, subsection 3 of the draft Law also notes that such entities may not invoke their doctrine to avoid implementing State law, except where the State law in question foresees this possibility. The need for this provision may be questionable, given that all individuals are held to abide by the law of their country, and that Section 2 does not specify or make explicit references to the exceptions that it refers to. Consideration may thus be given to either making this provision more explicit, or to deleting it.
46. Under Section 17, subsection 1 of the draft Law, the constituent instruments of religious societies, as well as the statutes of their communities of worship and procedural documents based on these instruments and statutes, require, both for their valid adoption and amendment, the approval of the Federal Chancellor. Any such amendments only enter into force on the day on which the Federal Chancellor approves them (Section 17, subsection 3).
47. These measures constitute a very significant interference with the autonomy of Islamic Religious Societies in Austria, as it means that such societies will not be able to introduce even minor or essentially technical changes to their constituent instrument without the approval of the Federal Chancellor. The same applies to the statutes of their constituent communities of worship. As noted above, under international standards, the internal rules of religious communities are a matter for those communities themselves³⁹, except in cases where interference in the autonomy of a religious community is necessary in a democratic society and proportionate to a legitimate aim.
48. It is reiterated here that the draft Law under review aims to provide Islamic Religious Societies with certain privileges, which, as mentioned earlier, even go beyond the privileges granted to Religious Societies in general according to the 1874 Recognition Act. For this reason, it may be legitimate to subject prospective Religious Societies to somewhat more intensive scrutiny than other such societies. However, the measures contemplated in Section 17 do not appear to limit the scrutiny of the Federal Chancellor in any way, and there is

³⁵ *Interim joint opinion on the law on making amendments and supplements to the law on freedom of conscience and religious organisations and on the laws on amending the criminal code; the administrative offences code and the law on charity of the Republic of Armenia by the Venice Commission and OSCE/ODIHR*, CDL-AD(2010)054, paras. 54 & 90. *Opinion on the draft law on the legal status of a church, a religious community and a religious group of "The former Yugoslav Republic of Macedonia"*, adopted by the Venice Commission at its 70th Plenary Session (Venice, 16-17 March 2007), CDL-AD(2007)005, par 46.

³⁶ Report of the UN Special Rapporteur on Freedom of Religion or Belief on Freedom of Religion or Belief and Recognition Issues, UN Doc. A/HRC/19/60, 22 December 2011, par 56.

³⁷ Joint Guidelines on Legal Personality, par 31.

³⁸ *Joint opinion on the law on freedom of religious belief of the Republic of Azerbaijan by the Venice Commission and the OSCE/ODIHR*, CDL-AD(2012)022, par 80.

³⁹ See the ECtHR's caselaw on general respect for the autonomy and internal organization of religious communities, e.g. ECtHR 26 October 2000 Hasan and Chaush v Bulgaria, appl. no. 30985/96, par 62.

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no indication that this scrutiny is merely formal in nature.⁴⁰ No reference to the principles of proportionality or necessity is contained in Section 17, nor does this provision mention what shall happen if the Federal Chancellor should refuse to approve (changes to) constituent instruments of Religious Societies or statutes of communities of worship.

49. In addition, none of the laws by which other Religious Societies are recognized, appear to contain similar provisions. This means that prospective Islamic Religious Societies are subject to greater State control than others, and places them at a distinct disadvantage towards other recognized Religious Societies.
50. It is therefore recommended to remove the power of the Federal Chancellor to approve of (changes to) constituent instruments of Islamic Religious Societies or the statutes of their constituent communities of worship. While the draft Law may require the Islamic Religious Societies to submit their constituent instruments to the Federal Chancellor, he/she should not have any influence over the contents of such by-laws, which should acquire effect based on an internal procedure of the Religious Society, but not based on the Chancellor's consent. The same applies to statutes of communities of worship.
51. Similarly, the draft Law appears to foresee the involvement of the Federal Chancellor in confirming the results of elections; he/she also serves as a final complaints body under Article 20 in such cases. This creates a very significant involvement by the Government in the election of a Religious Society's leadership, which is difficult to justify under the principle of autonomy. It is recommended to reconsider the respective provisions in Article 20.
52. Furthermore, Section 11, while welcome as such, contains quite explicit requirements for those persons wishing to exercise spiritual care. It should be noted that in principle, it is for a religious community itself to decide who may exercise spiritual care. Under Section 11, prospective individuals shall have at least 3 years of relevant professional experience and knowledge of the German language at the university-qualifying level [*Reifeprüfung*], and shall also have their main and actual residence in Austria. This restricts the scope of persons who will qualify for such tasks, and to an extent reduces the autonomy of the Religious Societies to select such persons themselves. The situation is slightly different here, as subsection 3 specifies that "the material and personnel expenditure for the provision of services under subsection 1 [of Section 11] shall be financed by the federal government". To the extent that this signifies that the State also funds the care-givers themselves, higher requirements for candidates may be more legitimate. Nevertheless, the requirements listed in Section 11 still appear to be unnecessarily restrictive (and may prevent individuals from obtaining spiritual care from the care-giver of their choice), and should thus be reviewed, and ideally amended, or removed in their entirety.
53. Another interference with the principle of autonomy contained in the draft Law is the automatic dismissal of religious functionaries provided by Section 14 of the draft Law in case they have committed criminal acts, or have otherwise jeopardized public safety or order, health and moral, or the rights and freedoms of others. This constitutes a serious limitation of the right of religious

⁴⁰ See above, footnote 38.

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communities “to select, appoint and replace their personnel in accordance with their respective requirements and standards” (Principle 16.4, Vienna Document).⁴¹ Although this provision arguably pursues a legitimate aim, automatic dismissal would nevertheless constitute a disproportionate interference with the autonomy of Religious Societies, since the societies themselves should decide on the appointment or dismissal of their functionaries. This provision should thus be reconsidered, and ideally deleted.

54. Similar arguments may be made regarding Section 21, subsection 2, which provides for court-appointed trustees in cases where an appointed leader of a Religious Society or a community of worship has exceeded his/her term of office by more than six months, or is otherwise not able to function as such. As stated in the previous paragraph, it should be up to a Religious Society itself to decide on its leadership, and not up to a court, or the Federal Chancellor (who may institute such proceedings before court). The current provision would thus not appear to be in line with the principle of autonomy of religious or belief communities. It is recommended to consider deleting it from the draft Law. At a minimum, should such provision be maintained, previous consultations with remaining religious leaders, as well as the community in question, should be ensured to the maximum extent possible, so that the process of selecting a trustee fully reflects their needs and wishes.
55. Finally, it is noted that the draft Law foresees a curriculum for Islamic-theological studies at Vienna University (Section 15) to be taught by professors at that University, which is in principle a very welcome step. It is noted here that in principle, religious communities are free to set up their own religious education facilities in line with their autonomous status.⁴² It appears, however, that the relevant curriculum would not be determined by the religious community itself, but would ultimately be controlled by the University. To ensure a wider autonomy over the curriculum, in line with international freedom of religion or belief standards, it is recommended to ensure that Section 15 allows for greater involvement of the Religious Societies, and other Islamic religious communities, in establishing the curriculum of Islamic-theological studies at the University, while taking into account the diversity of the Islamic community and teaching. This could be achieved, for example, by requiring wider consultations on the staff and the curriculum to be taught with relevant Religious Societies, and other Islamic religious entities. In addition, it is recommended to consider creating a proper faculty, rather than just a curriculum, on the issue of Islamic theology.

6. Foreign Funding

56. Section 6, subsection 2 provides that the means for normal activities aimed at satisfying the religious needs of its members shall be obtained by the Religious Society, its communities of worship, or its members from within the country. This would appear to ban Islamic Religious Societies from obtaining financial means from outside Austria.

⁴¹ Cf. also Joint Guidelines on Legal Personality, par 34.

⁴² UN Human Rights Committee General Comment 22, par 4; Vienna 1989, par 16.8, Joint Guidelines on Legal Personality, par 15.

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57. International standards protect the right of religious communities to solicit and receive voluntary financial and other contributions from individuals and institutions.⁴³ This right is not absolute, however. Limitations may be justified, if it is shown that the measure in question is necessary, proportionate to a legitimate aim, and non-discriminatory in nature.⁴⁴
58. It is of course possible to imagine individual scenarios where a ban on specific forms of foreign funding may be justified, for example when such funding is being transmitted for the purpose of committing a criminal offence. However, the measure contemplated by the draft Law contains no limitation as to its scope, and applies to all foreign funding, whether it is given or received for lawful purposes or not. It is difficult to see how such a blanket ban could be justified as being ‘necessary in a democratic society’, considering how important it is for religious entities to receive a wide range of funding, including legitimate foreign funding (from charitable giving to funds to construct religious edifices, etc.). It is therefore recommended to either remove the ban on foreign funding, or to replace it with a more targeted provision, which specifies in detail which types of foreign funding shall be impermissible. This should be limited to cases where the receipt of such funding would constitute a criminal act, or where it would involve imminent dangers to national security, public order or the rights and freedoms of others.
59. Violations of this provision may, like other violations of the draft Law, be subject to various legal sanctions, including monetary fines under Section 22 of the draft Law. This provision states that the competent public authority may ensure implementation of decisions under the draft Law by annulling decisions that are in violation of the law, constituent instruments or organizational statutes of Religious Societies or their constituent communities of worship. The authority may then impose monetary fines at the appropriate level, or impose other measures foreseen by law. This provision does not include references to particular articles of the draft Law, and it is thus somewhat unclear which situations it applies to concretely, and which violations will lead to which levels of sanctions.
60. Considering the need for legal clarity and certainty in the draft Law, it is recommended to clarify in the draft Law which public authority may impose such sanctions, and which sanctions shall be imposed for which precise infractions. This latter addition could be achieved by including references to specific other provisions of the draft Law.

7. Freedom of Peaceful Assembly

61. The draft Law provides special regulation for public assemblies in two cases: Section 13, subsection 4 provides for a ban on public assemblies on certain Islamic holidays, banning “all avoidable activities that cause noise, and that

⁴³ Vienna 1989, par 16.4; *UN Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief*, par 6 (f); CDL-AD(2006)030 *Opinion on the Draft Law on the insertion of amendments on Freedom of Conscience and Religious Organisations in Ukraine adopted by the Venice Commission at its 68th Plenary Session (Venice, 13-14 October 2006)*, par 34.

⁴⁴ Joint Guidelines on Legal Personality, par 5, and the sources cited there.

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could detract from the festivities, as well as public assemblies, parades and processions”. Section 19 mandates public authorities to prohibit assemblies and events for cultural purposes, “should they involve an immediate threat to the interests of public security, order, health, national security, or the rights and freedoms of others.” It is not clear why the draft Law regulates public assemblies in these particular cases, instead of leaving these cases to general legislation on public assemblies. In any event, any restrictions to the freedom of peaceful assembly should go no further than is prescribed by law and necessary in the interest of national security or public safety, for the prevention of disorder or crime, for the protection of health or morals or for the protection of the rights and freedoms of others. (Article 11 ECHR, Article 21 ICCPR), as also specified in Section 19 of the draft Law. Especially in the case of Section 13, subsection 4, it is questionable whether any of the above apply, as this provision provides for a general ban on all avoidable activities which cause noise, which is a very broad restriction to the freedom of peaceful assembly, and may not always be considered ‘necessary’ in an individual, particular case. It is recommended to remove these provisions from the draft Law and to regulate matters pertaining to freedom of peaceful assembly through general laws regulating public assemblies, so as to ensure that all cases are dealt with individually, based on the specific circumstances of each case.

8. Privacy and Data Protection

62. The draft Law requires publication on the internet of various parts of the recognition process of Islamic Religious Societies. In particular, Section 3, subsection 2 requires publication of the receipt of applications for Religious Society status. Although this would certainly serve to enhance the transparency of the process, it does not appear to exclude the publication of personal data, such as the names and addresses of members and other personal information. This may constitute an excessive interference with Article 8 of the European Convention on Human Rights, which requires States to respect private and family life, home and correspondence. While it may be legitimate to publish some of this information, such as, for example, the names of leaders of the community seeking recognition, or the contact information of the prospective Religious Society, no limitation clause is provided in the draft Law as to the extent of the personal information which may be published in the recognition process. It is recommended to include provisions on protection of privacy and personal data in the provisions on publication of information on the recognition process on the internet, or to make explicit reference to applicable data protection legislation in those provisions.

[END OF TEXT]

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Annex 1:

69/ME XXV. GP – Ministerial Draft – Legal text

Draft

Federal Law of Austria amending the Law on the Recognition of Adherents to Islam as a Religious Society Federal law amending the Law referring to the recognition of the adherents of Islam as a religious society shall be amended

The National Assembly of Austria has resolved:

The Law referring to the recognition of the adherents of Islam as a religious community, Imperial Legal Gazette [RGL.] No. 159/1912, last amended by the Federal Ministerial Amendment (*Bundesministeriengesetz-Novelle*) 2014, Federal Legal Gazette I [BGL. I] No. 11/2014, shall be amended as follows:

Articles §§ 1 to 8, and Article II shall be replaced by the following provisions:

Chapter 1

Legal Status

Legal Personality under Public Law

§1. Islamic religious societies in the Republic of Austria are recognized religious societies within the meaning of Article 15 of the Austrian Basic Law [*Staatsgrundgesetz*] regarding the general rights of citizens. They have legal personality under public law.

Autonomy

§2. (1) Islamic religious societies organise and administer their own internal affairs autonomously.

(2) As such, Islamic religious societies enjoy the same legal protection as other statutory religious societies, both in respect to the exercise of their religion as well as their religious functionaries. Their teachings, their institutions, and their customs enjoy the same legal protection, provided that they do not exist in contradiction to legal regulations.

(3) Religious societies, communities of worship [*Kultusgemeinden*], or other subdivisions as well as their members may not take recourse to internal provisions or teachings of their

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religious societies in relation to their duty to observe general norms of the state, to the extent that such possibility has not been foreseen by the federal law applicable to the respective case.

Acquisition of Legal Personality

§3. (1) In accordance with this federal law, Islamic religious societies acquire their legal personality by means of an application and corresponding decision of the Federal Chancellor of the Republic of Austria. In accordance with § 8 of the Austrian Code of Administrative Court Procedure [VwGVG], the running of the respective time limit shall be suspended during the period of time required to supplement the application or to conduct a hearing of the respective parties, extending from the date on which the improved application has been dispatched or on which the parties have been summoned to the hearing, until the improved application or official declaration [of the parties] has been received, or the respective time limits have expired.

(2) The Federal Chancellor shall make the receipt of applications according to subsection 1 accessible to the general public on an Internet homepage installed for the sector „Kultusamt“ [Ministry of Cultural Affairs].

(3) A declaratory decision shall be issued regarding the acquisition of legal personality, which shall contain the name of the Islamic religious society as well as the general designations of all organs authorised to represent it.

(4) By the same declaratory decision described by subsection 3, the Federal Chancellor shall order the dissolution of all those associations whose purpose consists in spreading the religious doctrine attributed to the respective religious society.

(5) Should a religious society undergo re-establishment as a result of the dissolution of an association which acted in support of the religious confession in question, it may be presumed, for the purposes of taxation, that a mere change of legal form has taken place and that the selfsame tax-paying organ (legal entity) has continued to exist.

Prerequisites for the Acquisition of Legal Status

§4. (1) In accordance with this federal law, Islamic religious societies require a secure and lasting continued existence as well as economic self-sufficiency in order to acquire legal personality. Secure and lasting continued existence is given, if the applicant party is a publicly registered religious community (*Bekennnisgemeinde*), and if the number of its members reaches at least 2 per thousand of the total population of Austria according to the last census. The applicant party must provide evidence of the latter.

(2) Earnings and assets [of the religious society] may be used exclusively for

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religious purposes, which also include non-profitable and charitable purposes based on their religious orientation.

(3) [The religious society must have] a positive basic attitude in relation to society in general and in relation to the state.

(4) There shall be no unlawful disruption of the relationship to existing churches, religious societies, and other religious communities.

Denial and Revocation of Legal Personality

§5. (1) The Federal Chancellor shall deny the acquisition of legal personality if

1. With respect to the religious teaching and its application, this is deemed necessary in a democratic society to protect the interests of public security, public order, health and morals essential to a democratic society, or to protect the rights and freedoms of others; this is especially the case in connection with the incitement to punishable and unlawful behaviour, where the normal psychological development of minors is curtailed, where [a person's] psychological integrity is violated, and where psychotherapeutic methods techniques are applied, in particular for the purposes of disseminating religious doctrines;

2. a prerequisite according to § 4 is lacking;

3. a constituent instrument does not correspond to § 6.

(2) The Federal Chancellor shall revoke the recognition of the religious society or the legal personality of a community of worship by declaratory decision, if

1. a decisive prerequisite for obtaining legal status in accordance with § 4 or § 8 no longer exists,

2. a reason for denial in accordance with subsection 1 exists, to the extent this reason persists despite [the applicant party having been] requested to obviate this reason for denial,

3. unconstitutional conduct or conduct in violation of relevant statutes persists, despite a request to end this conduct, or

4. duties related to the recognition have not been fulfilled, despite the request to do so.

(3) The denial or revocation of legal status shall be made accessible to the general public on an Internet homepage installed for the sector „Kultusamt“ [Ministry of Cultural Affairs].

Chapter 2

Organisation and Tasks

Constituent Instruments of Islamic Religious Societies

§ 6. (1) The constituent instrument of an Islamic religious society created within the framework of [this society's] internal affairs, shall contain the following information in order to acquire legal force within the public sector:

1. the name and abbreviated designation, through which the religious society becomes clearly identifiable and confusion with other churches or religious societies, associations, institutions, and other legal forms is necessarily excluded;
2. the main seat of the religious society;
3. acquisition and loss of membership status;
4. the rights and duties of members;
5. a presentation of teachings, including a text of essential sources of faith (Quran), which renders the content in the German language; this content shall be distinguishable from existing legally recognized religious societies, publicly registered religious communities, or other religious associations acknowledged by the state in accordance with this federal law;
6. the internal organisation, whereby at least communities of worship [*Kultusgemeinden*] must be provided for;
7. the appropriate consideration of all traditions existing within the religious community;
8. the manner of appointing, length of tenure, and dismissal of its organs;
9. the manner of providing religious instruction and its corresponding supervision, which shall foresee the participation of communities of worship [*Kultusgemeinden*];
10. provision of financial means, their administration and accounting;
11. the arbitration of disputes within the religious society;
12. [the procedure for] drafting and amending the constituent instrument.

(2) The religious society, communities of worship, or their respective members shall provide financial means for the customary duty of satisfying the religious needs of their members within domestic borders. .

Tasks of a Religious Society

§ 7. In particular, a religious society is obligated

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1. to represent the interests of its members, to the extent that these interests exceed the scope of influence attributable to a community of worship; the religious society functions as the highest authority for the religious community in general;

2. to submit the constituent instrument of the religious society as well as statutes of the communities of worship, amendments to the latter, and report changes in the composition of its organs to the Federal Chancellor.

Communities of Worship

§ 8. (1) Communities of worship are part of the Islamic religious community and are at the same time bodies with legal personality under public law. They shall act to satisfy the religious needs of their members and make available the respective institutions to accomplish this.

(2) Communities of worship may establish or administer institutions in order to fulfil the tasks put forth in subsection 1, or declare existing institutions to be under the administration of the community of worship. Institutions jointly administered by several communities of worship may only be founded with their mutual consent and the approval of the religious society.

(3) Communities of worship may only be established, if their continued existence and capability for economic self-sufficiency are ensured.

(4) The new establishment of a community of worship requires at least 300 members or 100 adult members and a positive prognosis concerning its future development by the religious society.

(5) Every community of worship must formulate its own statute which, in order to acquire effect within the public sector [shall contain]:

1. The name and abbreviated designation of the community of worship, whereby the religious society shall be clearly identifiable and confusion with other churches or religious societies, associations, institutions, communities of worship and other legal forms shall be excluded;

2. the main seat of the community of worship;

3. acquisition and loss of membership status;

4. the rights and duties of members;

5. regulations concerning the internal organisation, especially an index of members and the manner of participating in religious instruction;

6. regulations concerning the manner of appointing, length of tenure, and dismissal of its organs;

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7. regulations concerning the provision of financial means, their administration and accounting;
 8. regulations concerning the arbitration of disputes within the community of worship; and
 9. [the procedure for] drafting and amending the statute.
- (6) In the event that the community of worship is dissolved, the organs which were last active within the community must administer its assets in agreement with the religious society.

Chapter 3

Rights and Duties of Religious Societies

Naming Rights and Protection of Religious Designations

- § 9. (1) A religious society may exercise its right to choose a name within the parameters put forth by § 6 subsection 1 (1).
- (2) The names of a religious society and of its communities of worship, as well as all notions derived from them, may only be used with the approval of the religious society or community of worship.
- (3) Designations which are capable of leading external third parties to assume a legal connection to specific institutions of a religious society, a community of worship, or similar institutions outside of Austria, may only be used with the approval of the religious society.
- (4) In case these provisions are violated, the religious society as well as every affected community of worship may exercise the right to apply to the Federal Chancellery to initiate measures to terminate the illegal situation, provided that criminal law provisions are not applicable. Such application shall be decided within four weeks.

Right of Expert Assessment

- §10. (1) Islamic religious societies are authorised to submit to legislative organs and administrative organs at all levels expert assessments, official statements, reports, and proposals regarding issues which concern legally recognized churches and religious societies in general, as well as Islamic religious societies in particular.
- (2) Lawmaking measures and decrees, which affect the external legal relations of

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Islamic religious societies, shall be submitted to the religious societies for their official comment within an appropriate time limit, prior to their adoption or issuance respectively.

Right to Religious Ministry in Special Institutions and Youth Education

§ 11. (1) Religious societies shall have the right to provide spiritual care to those members, who

1. are members of the national armed forces, or
2. are detained in prison or detention facilities, or
3. have been committed to public health institutions or to care, or similar institutions.

(2) With respect to the matters described in subsection 1, only such persons may be considered who, based on their training and due to having their main and general residence in Austria, are professionally and personally suitable to conduct such activities. In all confessional matters, these persons are subordinate to the religious society and in all other matters, they are subordinate to the respective management of the institution. Professional qualification is only considered to exist in cases where the respective individuals have successfully completed studies in Islamic theology in compliance with § 15, or comparable educational training. Personal qualification requires at least 3 years of relevant professional experience and knowledge of the German language at the university-qualifying level [*Reifeprüfung*]. Furthermore, authorisation from the respective Islamic religious society is required.

(3) The material and personnel expenditure for the provision of services described in subsection 1 (1) shall be financed by the federal government.

(4) Islamic religious societies and their members are authorised to guide their children and youth through all traditional customs and to educate them in accordance with religious doctrines.

Dietary Regulations

§12. (1) Religious societies shall have the right to organise the production of meat products and other food items in accordance with the internal regulations of their religious community.

(2) With respect to meals for members of a religious community in the armed forces, in detention and prison facilities, public hospitals, nursing or care, or similar institutions, as well as public institutions of learning, consideration must be shown

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for the internal dietary regulations of religious societies.

Holidays

§13. (1) Islamic holidays shall be granted state protection. Their dates shall be determined in accordance with the Islamic calendar. Days begin at sunrise and continue until the sunset of the following day.

(2) Holidays of the Islamic religious community in Austria are

- a) Ramadan (Eid al-Fitr),
- b) Feast of the Sacrifice (Eid al-Adha),
- c) Ashura.

(3) Islamic- Alevi holidays are

- a) fasting days and holidays in commemoration of the Holy Hizir (Day of Hizir),
- b) birth of the Holy Ali (Nevruz Holiday),
- c) Proclamation of Ali as Muhammad's successor (Gadir l'Hum)
- d) Feast of the Sacrifice (Eid al-Adha/Kurban Bayrami),
- e) Ashura (mourning and fasting period in commemoration of the martyrdom of the Holy Husayn).

(4) On the days specified in subsections 2 and 3, all avoidable activities that cause noise, and that could detract from the festivities, as well as public assemblies, parades and processions, are forbidden in the vicinity of places of worship and other spaces and facilities used for religious services of communities of worship.

Dismissal of Functionaries

§14. A religious society and a community of worship shall dismiss its functionaries, including religious functionaries who have been convicted by Austrian courts and sentenced to more than one year of imprisonment for having committed one or several punishable activities with intent, or who, by their actions, endanger public security, order, health and morals, or the rights and freedoms of others in a lasting manner.

Studies in Islamic Theology

§15. (1) From 1 January 2016, the federal government shall create for Islamic religious societies regular studies in Islamic theology at the University of Vienna to ensure the academic education of young clergy and for the purpose of theological research and teaching, which shall provide up to six positions for teaching staff. In accordance with § 108 subsection 3 of the Austrian University Act [*Universitätsgesetz*] as a collective agreement regarding the employment of university personnel, university professors, university lecturers [*Dozenten*], private lecturers [*Privatdozenten*], as well as associate professors are eligible to be part of the teaching staff.

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(2) Prior to filling the positions described in subsection 1, religious societies shall be informed about the person under consideration and shall have the chance to submit an official declaration [concerning this candidate] within a time limit of at least four weeks, prior to the execution of the personnel decision.

Islamic Cemeteries

§16. (1) Islamic cemeteries, or sections of cemeteries, are established on a long-term basis. Their dissolution, closure, or the exhumation of individual graves is not permissible. Exceptions require the approval of the responsible religious community.

(2) Burials at Islamic cemeteries, or sections of cemeteries, may only be carried out with the consent of the responsible religious community.

Chapter 4

Cooperation between Religious Societies and the State

Legal Validity of Internal Decisions of Religious Societies

§17. (1) The constituent instrument of a religious society, the statutes of communities of worship, as well as rules of procedure based upon the latter, such as the religious tax regulation and election procedures in particular, and their amendments, require the approval of the Federal Chancellor to acquire legal force.

(2) Information on organs which possess representational authorisation on the basis of constituent instruments or statutes, as well as persons officially employed by religious entities, shall be submitted to the Federal Chancellor without undue delay following their election or appointment by the religious society (§ 7 no. 2).

(3) Amendments to regulations in compliance with subsection 1, as well as appointments of representational organs, acquire legal force on the same day on which the Federal Chancellor confirms them. He/she shall make this information accessible to the general public on an Internet homepage installed for the sector „Kultusamt“ [Ministry of Cultural Affairs].

Duties of Disclosure

§18. The religious society and the Republic [of Austria] are obligated to inform one another about events that affect matters regulated by this federal law. This applies especially to the initiation and termination of procedures, the imposition of prison

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sentences for the group of persons listed in § 14, as well as the internal legal remedies of religious societies against elections within that religious society or a community of worship.

Prohibition of Events

§19. Public authorities may prohibit assemblies and events for cultural purposes, should they incur an immediate threat to the interests of public security, order, health, national security, or the rights and freedoms of others.

Elections

§20. (1) In the event that representational organs and persons officially employed by religious entities are appointed following an election, the electoral process must be adequately defined in the respective constituent instrument, the statutes, or rules of electoral procedure, so as to ensure verification of the electoral process.

(2) In the event that representational organs and persons officially employed by religious entities are appointed by election, every person authorised to actively exercise his/her voting rights based on election regulations under subsection 1, also has the right to submit a formal complaint regarding the conduct of the election to the Federal Chancellor, once internal legal remedies within the religious community have been exhausted.

(3) Should no communication concerning legal proceedings within the religious community, or should no complaint on the basis of subsection 2 be received within 14 days after receipt of the election announcement, then the Federal Chancellor shall take note of the election result and issue a declaration to confirm the election announcement.

Appointment of Trustees

§21. (1) Should the official term of office for representational organs of a religious society or community of worship be exceeded by at least six months, or should these organs be incapable for other reasons, public authorities shall call upon the respective religious society or community of worship to carry out the requisite elections within a time limit of one to six months, or to reinstate these powers of representation in another manner consistent with its constituent instrument or its statutes.

(2) If the religious society or community of worship does not respond to such request, and if neither the religious society nor the community of worship have submitted an

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application to appoint a trustee to the competent court, the Federal Chancellor shall submit such an application to the competent court.

Enforcing the Decisions of Public Authorities

§ 22. In order to enforce decisions arising from this federal law, public authorities may repeal resolutions which exist in contradiction to law, constitutions, and statutes by means of a decree, and also impose monetary penalties of an appropriate amount or take other legally viable measures.

Chapter 5

Final Provisions

Existing Religious societies, Communities of Worship, Constituent Instruments, and Statutes

§23. (1) The continued existence of the Islamic Religious Community in Austria, Federal Law Gazette No. 466/1988 (BGBl.) and the Islamic-Alevi Religious Community in Austria, Federal Law Gazette II No. 133/2013 (BGBl. II), as well as that of their subgroups with their own legal personality, shall remain unaffected. They are religious societies according to this federal law. Within fourteen days after this federal law has acquired legal force, declaratory decisions [confirming this] shall be issued in accordance with § 3 subsection 3.

(2) Constituent instruments, statutes, and elected organs remain in force. They must be made compliant with the provisions of this federal law. Necessary adjustments shall be made in due time, to ensure that they are in force for the next scheduled elections.

(3) Association whose purpose consists in spreading religious doctrine espoused by a religious society in accordance with this federal law, and which exist at the time when this federal law acquires legal force, shall be dissolved by formal declaratory decision of the Federal Minister of the Interior within six months after the entry into force of this federal law. § 3 subsection 5 shall then apply to such associations accordingly.

Entry into and Termination of Legal Force

§ 24. This federal law enters into force at the end of the day on which it has been officially published in the Federal Law Gazette [*Bundesgesetzblatt*].

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Executive Clause

§ 25. The Federal Chancellor is entrusted with the execution of this federal law, insofar as another federal minister is not competent based on individual provisions of law.