

2023 Rule of Law Report - targeted stakeholder consultation

Fields marked with * are mandatory.

Introduction

The annual Rule of Law Report lies at the centre of the European rule of law mechanism, which acts as a preventive tool, deepening multilateral dialogue and joint awareness of rule of law issues. So far, three editions of the Rule of Law Report have been published in 2020, 2021 and 2022.

In the preparation of the first three editions of the Rule of Law Report, the Commission has relied on a diversity of relevant sources, including from Member States, country visits, and stakeholders' contributions collected through the targeted stakeholder consultation [1]. The information provided has informed the Commission's country-specific assessments in preparing the Report. Building on the positive experience from the first three editions of the Rule of Law Report, the Commission is now inviting stakeholders to provide written contributions for the preparation of the 2023 Rule of Law Report through this targeted consultation.

The contribution to be provided should include (1) information on measures taken to implement the recommendations addressed to the Member State in the 2022 Rule of Law report, as well as developments with regard to the points raised in the respective country chapter and (2) any other significant developments since January 2022 [2] falling under the 'type of information' outlined in the next section.

The input should be short and concise and summarise information related to one or more of the areas referred to in the template. You are invited to focus on the areas that relate to the scope of work and expertise of your organisation. Existing reports, statements, legislation or other documents may be referenced with a link (no need to provide the full text). Stakeholders are encouraged to make references to any contributions already provided in a different context or to Reports and documents already published. Contributions should focus on significant developments both as regards the legal framework and its implementation in practice.

If you wish to submit information concerning several Member States, you will have to fill-in the questionnaire separately for each Member States (due to the size of the questionnaire). There is no limit to the number of contributions submitted by a single participant. In such cases, you are not required to repeat the information in the section "about you" that is non-mandatory nor the information on horizontal developments.

Please provide your contribution by **20 January 2023**. Should you have any requests for clarifications or encounter difficulties in filling in the questionnaire, you can contact the Commission at the following email address: rule-of-law-network@ec.europa.eu.

[1] For the consultation for the 2022 Report, see https://ec.europa.eu/info/publications/2022-rule-law-report-targeted-stakeholderconsultation_en

[2] Unless the information was already submitted in the consultation for the previous Rule of Law Reports.

Type of information

The topics are structured according to four pillars: I. Justice system; II. Anti-corruption framework; III. Media pluralism; and IV. Other institutional issues related to checks and balances. The replies could include aspects set out below under each pillar. This can include challenges, current work streams, positive developments and best practices:

Legislative developments

- Newly adopted legislation
- Legislative drafts currently discussed in Parliament
- Legislative plans envisaged by the Government

Policy developments

- Implementation of legislation
- Evaluations, impact assessment, surveys
- White papers/strategies/actions plans/consultation processes
- Follow-up to reports/recommendations of Council of Europe bodies or other international organisations
- Important administrative measures
- Generalised practices
-

Developments related to the judiciary / independent authorities

- Important case law by national courts
- Important decision/opinions from independent bodies/authorities
- State of play on terms, nominations and expired mandates for high-level positions (e.g. Supreme Court, Constitutional Court, Council for the Judiciary, heads of independent authorities included in the scope of the questionnaire[1])

Any other relevant developments

- Respondents are free to add any further information, which they deem relevant; however, this should be short and to the point.

If there are no changes, it is sufficient to indicate this and the information covered in the contributions for the previous Rule of Law Reports should not be repeated.

[1] Such as: media regulatory authorities and bodies, national human rights institutions, equality bodies, ombudsman institutions, supreme audit institutions and, where they exist, transparency authorities.

About you

* I am giving my contribution as

- ☐ Academic/research institution
- ☐ Business association
- ☐ Civil society organisation/NGO
- ☐ International organisation
- ☐ **Judicial association or network XXXXX**
- ☐ Media organisation or association
- ☐ Public authority or network of public authorities
- ☐ Other

If "Other", please specify

* Organisation name

AEAJ, Association of European Administrative Judges

Main Areas of Work

- ☒ **Justice System XXXXXX**
- ☐ Anti-corruption
- ☐ Media Pluralism
- ☐ Other

If "Other", please specify

Please insert an URL towards your organisation's main online presence or describe your organisation briefly:

500 character(s) maximum

www.aeaj.org and https://twitter.com/AEAJ2000

Transparency register number

Check if your organisation is in the transparency register. It's a voluntary database for organisations seeking to influence EU decision-making

622038240860-29

* Country of origin

Please add the country of origin of your organisation

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- ☐ Afghanistan
- ☐ Albania
- ☐ Algeria
- ☐ Andorra
- ☐ Angola
- ☐ Antigua and Barbuda
- ☐ Argentina
- ☐ Armenia
- ☐ Australia
- ☐ Austria
- ☐ Azerbaijan
- ☐ Bahamas
- ☐ Bahrain
- ☐ Bangladesh
- ☐ Barbados
- ☐ Belarus
- ☐ Belgium
- ☐ Belize
- ☐ Benin
- ☐ Bhutan
- ☐ Bolivia
- ☐ Bosnia and Herzegovina
- ☐ Botswana
- ☐ Brazil
- ☐ Brunei Darussalam
- ☐ Bulgaria
- ☐ Burkina Faso
- ☐ Burundi
- ☐ Cabo Verde
- ☐ Cambodia
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- ☐ Cyprus
- ☐ Czechia
- ☐ Democratic Republic of the Congo
- ☐ Denmark
- ☐ Djibouti
- ☐ Dominica
- ☐ Dominican Republic
- ☐ Ecuador
- ☐ Egypt
- ☐ El Salvador
- ☐ Equatorial Guinea
- ☐ Eritrea
- ☐ Estonia
- ☐ Eswatini
- ☐ Ethiopia
- ☐ Fiji
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- ☐ Haiti
- ☐ Honduras



Hungary
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- ☐ Niger
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- ☐ North Korea
- ☐ North Macedonia
- ☐ Norway
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- ☐ Palau
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- ☐ Papua New Guinea
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- ☐ Philippines
- ☐ Poland
- ☐ Portugal
- ☐ Qatar
- ☐ Republic of Moldova
- ☐ Romania
- ☐ Russian Federation
- ☐ Rwanda
- ☐ Saint Kitts and Nevis
- ☐ Saint Lucia
- ☐ Saint Vincent and the Grenadines
- ☐ Samoa
- ☐ San Marino
- ☐ Sao Tome and Principe

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- ☐ Sierra Leone
- ☐ Singapore
- ☐ Slovakia
- ☐ Slovenia
- ☐ Solomon Islands
- ☐ Somalia
- ☐ South Africa
- ☐ South Korea
- ☐ South Sudan
- ☐ Spain
- ☐ Sri Lanka Sudan
- ☐ Suriname
- ☐ Sweden
- ☐ Switzerland
- ☐ Syrian Arab Republic
- ☐ Tajikistan
- ☐ Tanzania
- ☐ Thailand
- ☐ Timor-Leste
- ☐ Togo
- ☐ Tonga
- ☐ Trinidad and Tobago
- ☐ Tunisia
- ☐ Turkey
- ☐ Turkmenistan
- ☐ Tuvalu
- ☐ Uganda
- ☐ Ukraine
- ☐ United Arab Emirates
- ☐ United Kingdom
- ☐ United States of America
- ☐ Uruguay
- ☐ Uzbekistan



Vanuatu





Venezuela

Viet Nam

Yemen

Zambia

Zimbabwe

First name

Edith

Surname

Zeller

Email Address of the organisation (this information will not be published)

*** Publication of your contribution and privacy settings**

You can choose whether you wish for your contribution to be published and whether you wish your details to be made public or to remain anonymous.

- ☒ Anonymous - Only your type of respondent, country of origin and contribution will be published. Organisation name, URL, transparency register number, first name and surname given above will not be published. **To maintain anonymity, please refrain from mentioning the name of your organisation and any details from which your organisation can be identified in the rest of your contribution.**

Xxx Public - Your personal details (name, organisation name, transparency register number, country of origin will be published with your contribution). XXXX

- ☐ No publication - Your contribution will not be published. Elements of your contribution may be referred to anonymously in documents produced by the Commission based on this consultation.

☐ I agree with the personal data protection provisions. **I agree**

[Specific privacy statement targeted stakeholder consultation 2023 rule of law report.pdf](#)

Questions on horizontal developments

In this section, you are invited to provide information on general horizontal developments or trends, both positive and negative, covering all or several Member States. In particular, you could mention issues that are common to several Member States, as well as best practices identified in one Member State that could be replicated. Moreover, you could refer to your activities in the area of the four pillars and sub-topics (an overview of all sub-topics can be found below), and, if you represent a Network of national organisations, to the support you might have provided to one of your national members.

Overview topics for contribution [list of topics 2023 Report.pdf](#)

Please provide any relevant information on horizontal developments here *5000 character(s) maximum*

Questions for contribution

The following four pillars (I.-IV.) are sub-divided into topics (A., B., etc.) and sub-topics (1., 2., 3., etc.). For each of the topics and sub-topics, you are invited to provide (1) information on measures taken to implement the recommendations addressed to the Member States in the 2022 Rule of Law report, as well as developments with regard to the points raised in the respective country chapter of the 2022 Rule of Law Report and (2) any other significant developments since January 2022^[1]. Please include a link to and reference relevant legislation/documents (in the national language and/or where available, in English) if relevant. Significant developments can include challenges, positive developments and best practices, covering both legislative developments or implementation and practices.

If there are developments you consider relevant under each of the four pillars that are not mentioned in the sub-topics, please add them under the section "other - please specify". Only significant developments should be covered.

Information provided in reply to the first question under each pillar, related to the follow-up to the recommendations, does not need to be repeated in subsequent parts of the questionnaire, but can be cross-referenced in the subsequent questions, where relevant. All other questions are not limited to the recommendations, but as in previous years, cover the entire scope of the Report.

^[1] Unless already covered in the input for the previous Rule of Law Reports.

Member State covered in contribution [only one choice possible]

If you wish to submit information concerning several Member States, please fill in the questionnaire separately for each Member State. There is no limit to the number of contributions submitted by a single participant.

Austria XXXX

- ☐ Belgium
- ☐ Bulgaria
- ☐ Croatia
- ☐ Cyprus
- ☐ Czechia
- ☐ Denmark
- ☐ Estonia
- ☐ Finland
- ☐ France
- ☐ Germany
- ☐ Greece
- ☐ Hungary
- ☐ Ireland
- ☐ Italy
- ☐ Latvia
- ☐ Lithuania
- ☐ Luxembourg
- ☐ Malta
- ☐ Netherlands
- ☐ Poland
- ☐ Portugal
- ☐ Romania
- ☐ Slovak Republic
- ☐ Slovenia
- ☐ Spain
- ☐ Sweden

I. Justice System

Please provide information on **measures taken to follow-up on the recommendations received in the 2022 Report** regarding the justice system (if applicable)

3000 character(s) maximum

Since last report:

Appointments of presidents and vice-presidents in the administrative judiciary

The 2022 Rule of Law Report held the lack of judicial involvement for appointments to high-level positions (presidents and deputy/vice-presidents) at the administrative courts (p 4 f).

An amendment to the Austrian Law on Judicial Service (RStDG) provides proposals for the positions of the president and deputy/vice-presidents at the Supreme Court of the ordinary judiciary by a special panel under the participation of judges elected by their peers. However, the situation in administrative judiciary remains unchanged.

The Federation of Administrative Judges had repeatedly demanded comparable improvements for the administrative judiciary, where not only three, but two dozens of high-level positions are appointed by the governments without any participation of judges. Politicians prefer to ignore this matter and it became even public that it is still a topic in so called ‚side-letters‘ (unofficial agreements to coalition-agreements) of political parties: also in the ‚side-letter‘ of the present governmental-parties (Conservative Party and Greens), the nomination for top positions of the two federal administrative courts and even of the Supreme Administrative Court are assigned to one of the political parties.

Nomination of further high level-positions

This present “side-letter” does not only cover the nomination (proposals) for top-positions and further members of the Constitutional Court, but also of the European Court of First Instance, the European Court of Justice and the European Court of Human Rights.

Prosecution of the representative of administrative judges by police

The joint spokesman of the four associations of administrative judges is prosecuted by the Vienna police authority competent for associations for having represented a non-existing association in public statements (e.g. concerning the lack of judicial involvement for appointments to high-level positions at administrative courts to the the expected workload for administrative courts by the execution of the Law on Compulsory Vaccination against COVID-19 (COVID-19-Impfpflichtgesetz).

The administrative authority intends to apply a penal provision, penalizing the representation of a founded, but not yet registered association (Art. 31 par. 1 of the Law on Associations - Vereinsgesetz), per analogiam on the given case were there was no foundation of an association.

The penal proceeding raises doubts whether the prosecution is a reaction against legitimate public critics of a representative of the civil society and shall cause a chilling effect on judges’ representatives in general.

A. Independence

Appointment and selection of judges, prosecutors and court presidents (incl. judicial review)

(The reference to ‘judges’ concerns judges at all level and types of courts as well as judges at constitutional courts)

3000 character(s) maximum

See above on follow up on recommendations!

a.\ selection and appointment of presidents of Austrian administrative courts:

No changes compared to the RoL Report of the EC of 2020 and 2021, see above.

The selection and appointment of all presidents of all administrative courts (including Supreme Administrative Court) remain in the full (discretionary) power of the executive power and at the same time court presidents have unchanged broad powers and duties in judicial administration matters.

- See the specific opinion CCJE-BU(2019)3 of 29/03/2019.
- See the recommendations of GRECO, GrecoEval4Rep(2016)1 on Austria, further evaluation round: GrecoRC4(2018)15 of 17/07/2019 and GrecoRC4 Interim (2020)7 of 01/03/2021.

Here some new references of 2022:

- <https://uvsvereinigung.wordpress.com/2022/11/10/dvvr-stellungnahme-zur-aktuellen-novelle-des-rdstg-forderung-nach-besetzungsvorschlaegen-richterlicher-personalsenate-auch-fuer-leitungsfunktionen-in-der-verwaltungsgerichtsbarkeit/>
- <https://uvsvereinigung.wordpress.com/2022/07/14/eu-rechtsstaatlichkeitsbericht-weiterhin-kritik-am-auswahlverfahren-der-gerichtspraesidenten/#more-18882>
- <https://www.krone.at/2900391> newspaper article on a recent vacancy of the position for a president of the administrative court of Styria: politically decided before the selection proceedings start (end of January 2023). In this context see as well : <https://uvsvereinigung.wordpress.com/2022/11/08/lvwg-steiermark-position-des-praesidenten-der-praesidentin-ausgeschrieben/> of 8 November 2022 (with preference criteria for covid-19-vaccinated applicants but lack of preference criteria to have judicial experience).

b.\ selection and appointment of judges of administrative courts first instance:

No changes compared to the AEAJ reports for Austria 2020-2022:

Generally, the general assembly of judges of a court (or a judicial committee, elected by the judges where the court president presides) can make non-binding proposals of three candidates per one vacant judicial post.

There is no uniform selection procedure: In Vienna, two different selection procedures are done – the first one by the administrative authority of the government of the province itself and the subsequent one of the judicial committee of the administrative court.

In all other administrative courts first instance the selection procedure is only done by (a kind of) judicial committee of the respective administrative court. Provisions vary considerably (e.g. the court president appoints judges of the court to be member of the selecting panel, in another regional administrative court the selection is done by a judicial senate, however, the local government has a right to give an opinion, in the two federal administrative courts the selection is done only by judicial committees of the respective court).

Neither exists a right for unsuccessful candidates to challenge the decision of these administrative authorities, nor are even reasoned decisions made available to applicants.

There are some (few) cases known where the governments did not follow the recommendations of the judicial committees: because not the first (out of three) proposed candidate is selected (but number two or three,

although the first choice would have been available), or because none of the proposed candidates (but someone else, not listed) was appointed.

See also the recent Interim Compliance Report of GRECO: GrecoRC4 Interim (2020)7 of 1 March 2021, points 27, 30, 33, 35 and 37 concerning concerns raised about the appointment procedures for judges.

Irremovability of judges, including transfers, (incl. as part of judicial map reform), dismissal and retirement regime of judges, court presidents and prosecutors (incl. judicial review)

3000 character(s) maximum

No changes.

In 2021 one dismissal of an administrative judge has taken place at the Administrative Court of Vienna - the evaluation system may automatically (!) lead to a dismissal of a judge (at the Federal Administrative Court and Federal Fiscal Court: obligatory retirement). No separate access to justice is guaranteed for dismissal procedures after two negative evaluations.

In January 2023 the complaint proceedings are still pending (complaint before SAC against the second negative evaluation).

Promotion of judges and prosecutors (incl. judicial review)

3000 character(s) maximum

No changes:

Practically no promotion within judiciary is available, except to apply for posts in the ordinary judiciary. Organizationally, the systems of administrative courts first instance and the Supreme Administrative Court are not linked. The Federal Constitution provides that one out of four judges of the Supreme Administrative Courts must have served in public administrations in the provinces before. Administrative judges can also apply and in these cases, the respective court presidents provide informal, non-formalized statements on judges to the Supreme Administrative Court (again, see opinion CCJE-BU(2019)3 of 29 March 2019).

Allocation of cases in courts

3000 character(s) maximum

The systems of allocation are different (some are automatized). The transparency of the system and the case file management system is not in all administrative courts at a high level.

Independence (including composition and nomination and dismissal of its members), and powers of the body tasked with safeguarding the independence of the judiciary (e.g. Council for the Judiciary) 3000 character(s) maximum

See also above, under “appointment and selection” and below under “accountability” and under “resources of judiciary”. Basically only few changes to reports of 2020, 2021 and 2022 (see specifically Tax Court below):

- In some of the Austrian provinces no legislation exists, that the president of the administrative court is not subordinated to orders of the government of the province, in these provinces (e.g. Vienna) justice administration is done by the governments of the provinces to a great extent (see opinion CCJE-BU(2019)3 of 29 March 2019). In those provinces where the court president is clearly not subordinated to orders, the president is obliged to report on all matters to the local government (which acts in its function as judicial administration authority).

- At the Austrian (Federal) Fiscal Court – which primarily does the legal control of administrative acts of the Minister of Finance – any invitation to tender for vacant judicial posts requires the approval of the Minister of Finance. This is not even in line with the national service rules for ordinary judges (which applies – in principle - also to all federal administrative judges). Thus, calls for vacancies do still not take place in a timely manner. Until 2022 the replacement period took about 12 months. Since the second half of 2022 calls for vacancies take place only once a year, replacing the judges who retired the year before. This practice leads still to a permanent reduction of about 10 % of the judiciary.

All personnel and material resources for the ongoing operation including judicial and non-judicial personnel as well as IT-hardware and software are provided by the Minister of Finance, thus the (legally controlled) administration decides on the equipment with personnel and material resources of the court (which is competent to do the legal control). This weakness combined with weaknesses enumerated above under “selection and appointment” turn out to be problematic. See also below under “resources of judiciary”.

Accountability of judges and prosecutors, including disciplinary regime and bodies and ethical rules, judicial immunity and criminal/civil (where applicable) liability of judges (incl. judicial review) 3000 character(s) maximum

No changes to prior reports.

- No code of ethics exist for administrative judges.

Compliance Guidelines, i.e. a code of conduct and issued by the Minister of Justice, apply to the Federal Administrative Court. These guidelines apply to all staff of the Ministry of Justice. This is not in line with European standards. Ethic rules should primarily be drafted by peers, see also CCJE Opinion 21(2018), point 31 and CCJE Opinion 3(2002), point 49).

- No body exists where judges can turn to when they have problems concerning possible infringements of their independence (see point 8 of the CM/Rec 2010(12). Furthermore, in many areas of judicial administration – which also affect independence of judges – no subjective right exists and thus many areas are not justiciable.

- All but one administrative courts first instance have an evaluation only in case of certain specific occasion system, done by a judicial senate of the respective court. Only the Vienna Administrative Court has repeatedly periodical evaluations of all judge (with the exception of the president of the court).

As the evaluation is processed by a judicial senate (which in most courts the president presides) either no or only a limited judicial control is available (as it is regarded to be an expertise. Thus, roughly spoken, the standards of judicial control by the Constitutional Court and Supreme Administrative Court are arbitrariness and violation of constitutional provisions/fundamental rights).

Remuneration/bonuses/rewards for judges and prosecutors, including observed changes (significant and targeted increase or decrease over the past year), transparency on the system and access to the information

3000 character(s) maximum

The situation concerning the Federal Administrative Court and the Fiscal Court of remains unchanged. See point 54. of the CM/Rec (2010)12. The maximum salary of a judge at the Federal Administrative Court of Austria and the Federal Fiscal Court adds up to € 9.011,20 pre-tax. The maximum retirement remuneration of a judge adds up to € 3.815,29 pre tax. Judges of that court are therefore entitled to a maximum pension of only 42 % of their previous salary.

The amount of the pension was previously calculated on the basis of the salary of the last month in the job. Now the amount of the pension is calculated on the basis of the earnings during the whole professional life including the periods of education and the early years of professional life with low income as well as the times of maternity or paternity leave. This leads to the shocking result that nowadays academics are not able to reach the maximum pension. On average, the pension of judges only adds up to 30 % of the previous salary. This fact violates point 54 of the CM/Rec (2010)12.

But the Austrian government does not fulfill this obligation: The salaries of retired judges of the Federal Administrative Court and the Federal Fiscal Court are evidently insufficient, as pointed out before. The Austrian legislator inappropriately reduced the income of retired judges through cutbacks to pension scheme especially by transferring judges from the previous pension scheme for civil servants into the general pension system which does not reflect the specifics of the working life of judges, e.g. the long periods of training and low wages at the beginning of the professional life which lead to an inappropriate reduction in retirement pension funds for judges compared to the previous system. The fact that this pension level is inappropriate for an office that should be attractive to highly qualified personnel shows when comparing remuneration packages of judges to the remuneration packages of equally qualified employees in the private sector. On the one hand, the salaries in the private sector are much higher compared to that of judges, especially in the early years of the professional life. On the other hand, private employers do substantially invest in supplementary private pension fund provisions for their employees to match their retirement pension to their working salary, whereas the investments in supplementary private pension fund provisions by the Austrian Government are by far not sufficient to match pension of judges to their working salary. This difference is aggravated by the fact that judges being civil servants do not enjoy severance packages as employees in the private sector do.

Independence/autonomy of the prosecution service

3000 character(s) maximum

Independence of the Bar (chamber/association of lawyers) and of lawyers 3000

character(s) maximum

Significant developments capable of affecting the perception that the general public has of the independence of the judiciary 3000 character(s) maximum

Reference to reports of 2020, 2021 and 2022 with some updates:

Already in the past, several public political statements against judges and judicial decisions were part of an open public debate, affecting the perception of the public (e.g. appointment of court president of admin court of Burgenland, admin court decision on third runway of airport, federal chancellor saying publicly that public prosecution service would be a network of red (i.e. social- democrats) public prosecutors which specifically would attack conservative politicians.

- In 2021 the anti-corruption public prosecution service (which is part of the Austrian ordinary judiciary) started investigations against the Minister of Finance and against the Federal Chancellor because of – in principle - corruption allegations. The Federal Chancellor not only wrote a public letter to the prosecution service warning the public prosecutors that they would ruin the Austrian reputation because of falsehoods and false assumptions but there were many non-objective allegations from his political party that the justice is a “network” against them.

For 2022, we can add: The investigations are manifold (also against other publicly known persons) and are still ongoing. Recently no more public attacks were launched against judiciary in the course of this “scandal”. However, the effects on public trust are indeed noteworthy up to reporting time (January 2023):

<https://orf.at/stories/3295578/>

<https://www.profil.at/oesterreich/umfrage-geringes-vertrauen-in-justiz/401959262>

<https://www.vienna.at/oecd-umfrage-geringes-vertrauen-der-oesterreicher-in-die-politik/7532470>

<https://www.tt.com/artikel/30820723/vertrauen-in-justiz-oesterreich-von-finnland-und-daenemark-ueberholt>

- In 2020, the Minister of Justice was appointed as judge at the Austrian Constitutional Court with no cooling off period. This has effects until 2022 in this respect: see the recent (not yet published) statement of GRECO, 5th Evaluation round:

<https://www.derstandard.at/story/2000142546440/euparat-stellt-oesterreich-schlechtes-zeugnis-bei-korruptionsbekaempfung-aus>

(This Constitutional Court judge has already resigned because of allegations that he has provided some inside information to his client – in his function as solicitor.)

- Several judges of the Constitutional Court also exercise (lawful!) sideline-activities as solicitors (lawyers).

To be added for 2022: In 2022, it was publicly discussed that another judge of the Constitutional Court at the same time is also active solicitor as legal council of the conservative political party. He acted as legal council for ÖVP in the parliamentary investigation committee (which investigates some of the above mentioned scandals) and at the same time he is substitute member of the Constitutional Court which has to decide on some procedural complaints in this parliamentary committee. See e.g.: <https://www.diepresse.com/6213257/keine-akteneinsicht-fuer-vfgh-ersatzmitglied-suppan>

- In the last years, also political influences for promotion and appointment procedures within ordinary judiciary have been made public. This perception affects also admin judiciary. See also above under “independence”.

B. Quality of justice

(Under this topic, you are not required to give statistical information but should provide input on the type of information outlined under section 2)

Accessibility of courts (e.g. court/legal fees, legal aid, language) 3000

character(s) maximum

Resources of the judiciary (human/financial/material)

(Material resources refer e.g. to court buildings and other facilities)

3000 character(s) maximum

a) The situation remains unchanged, see AEAJ reports 2020, 2021 and 2022: presidents enjoy broad and unbalanced powers concerning the court organization, infrastructure and management of court staff and material resources (see in detail opinion CCJE-BU(2019)3 point 25, 26 and 36). Judges have no consultation or participation rights in these main areas of judicial administration, which are exercised by the president. Concerning the specific situation of the Federal Fiscal Court for calls and tenders of selection, proceedings see also above under A.5.

b) A lack of human resources exists in some of the administrative courts first instance: specifically at the Courts situated in Vienna, i.e. the Federal Administrative Court, Administrative Court of Vienna Federal Fiscal Court.

Concerning the Federal Fiscal Court there is a remarkable lack of court staff, the number of vacant posts for court staff – which are scheduled in the budgetary plans for the court - have been reduced and transferred to the Minister of Finance and its budget. Judges have to perform many additional administrative tasks in order to administer justice. In addition, the Austrian Court of Auditors has openly monitored these deficiencies and issued specific recommendations for a better IT and staff support for the Federal Fiscal Court.

Training of justice professionals (including judges, prosecutors, lawyers, court staff) 3000
character(s) maximum

- a) Situation as reported in 2020, 2021 and 2022 remains unchanged: No independent authority exists, which ensures in-service training programs for the approximately 750 administrative judges.

The “Austrian Academy of Administrative Justice for Law, Management and Innovation” – founded by all presidents of the administrative courts (see again opinion CCJE-BU(2019)3) and two Austrian universities – does not have a legal foundation and is regarded to be an informal organization. This construction lacks basic standards to fulfil the criteria of a proper training institution for judges: not chaired by a judge and it is not an independent institution.

- b) no initial training at all is provided by law nor is such a training practically available for newly appointed administrative judges due to the lack of an independent training institution. For newly appointed administrative judges specific – voluntary – trainings organized by the above mentioned Academy are offered.

- c) Continuous trainings on the European level (EJTN):

Undoubtedly, trainings on the European level gain more and more importance in the multi-level legal regimes as well as needs to fulfil the tasks as a European judge. Due to the weaknesses of the Austrian system (lack of training institution and see above as well as federal structures in Austria), the Austrian Association of Administrative Judges (formerly Association of Members of Independent Administrative Tribunals) had signed an agreement with the Austrian Minister of Justice (who is member of EJTN) in 2006.

Since then it was agreed that Austrian administrative judges could fill “vacant places” in the continuous judicial training programs of EJTN (always being mediated by the Minister of Justice who is member of EJTN). This co-operation has worked well and all administrative judges were well informed on the programs with options to apply. Approximately 10% of the Austrian administrative judges have participated in seminars and exchanges until March 2020.

However, the Austrian Minister of Justice quit this agreement without a proper clarification beforehand and since December 2020 the presidents of the administrative courts organize the selection and ranking of candidates for European continuous EJTN trainings.

Since then the judges of several administrative courts first instance have not received any news, any information on ongoing seminar- programs of EJTN (for 2022: as well not for the new judges@europe forum organized in Siracusa in May 2022 for the first time) are cut off European trainings (only information on exchange program and study visits at European

courts/institutions is available). Judges of the Federal Fiscal Court have received the training schedule only recently so that some seminars could no longer be attended.

Digitalisation (e.g. use of digital technology, particularly electronic communication tools, within the justice system and with court users, including resilience of justice systems in COVID-19 pandemic) 3000 character(s) maximum

No changes:

Digitalization in general needs to be boosted within administrative judiciaries.

However, in fact on the level of administration measures to digitize administrative proceedings do not take into account that courts would review the administrative decisions later on. Administrative authorities do not adequately consider the needs to have an effective judicial protection. The different administrative courts apply different technological systems.

Several administrative courts use electronic file systems, but not all yet. Digitalization based on the pandemic requirements was only partly boosted.

Use of assessment tools and standards (e.g. ICT systems for case management, court statistics and their transparency, monitoring, evaluation, surveys among court users or legal professionals) 3000 character(s) maximum

Geographical distribution and number of courts/jurisdictions (“judicial map”) and their specialization, in particular specific courts or chambers within courts to deal with fraud and corruption cases 3000 character(s) maximum

No changes:

For the judges of two federal administrative courts first instance, the Federal Administrative Court and the Federal Fiscal Court, the same service rules apply as for ordinary judges (Service Act for Judges and Public Prosecutors). Greco recommended adequate measures to be taken so that administrative judges of the federal courts and of the provincial courts are subject to appropriate and harmonized safeguards and rules (see GrecoRC4 Interim (2020)7 of 1 March 2021 on Austria).

No such efforts have taken place so far. That the Federal Administrative Court functions as disciplinary court for judges of the Viennese Administrative Court does not constitute an adequate measure to make the rules more unified, transparent and clear. See point 19 of Greco Report 1 March 2021, recalling the need of reforms in the administrative judiciary because attempts of political interference in the judiciary remain a reality.

Although the Constitutional Court has pronounced that there is a homogenous notion “judge” in the understanding of the Austrian Constitution (see point 21 of Greco, 1 March 2021), neither the federal nor the provincial Austrian legislators have made further efforts. Greco, point 25 of the report of 1 March 2021, also confirmed this. Very often the specific service rules, specific organizational provisions are not transparent; it is hard work to find out about specific judicial structures of other administrative courts. The only joint provisions are the few provisions of the Austrian Constitution.

Concerning Federal Administrative Court and Federal Fiscal Court:

Even though the service rules applying for judges of the Federal Administrative Court and Federal Fiscal Court are unified with judges from ordinary judiciary, certain adverse exceptions exist (e.g. that the judicial association has no participation rights in the continuous training program and selection of new judges and e.g. that for the new tender for selection proceedings the president of the Federal Fiscal Court needs to get the approval of the Minister of Finance).

C. Efficiency of the justice system

(Under this topic, you are not required to give statistical information but should provide input on the type of information outlined under section 2)

Length of proceedings

3000 character(s) maximum

Other - please specify

3000 character(s) maximum

II. Anti-Corruption Framework

Where previous specific reports, published in the framework of the review under the UN Convention against Corruption, of GRECO, and of the OECD address the issues below, please make a reference to the points you wish to bring to the Commission's attention in these documents, indicating any relevant updates, changes or measures introduced that have occurred since these documents were published.

Please provide information on measures taken to follow-up on the recommendations received in the 2022 Report regarding the anti-corruption framework (if applicable)

3000 character(s) maximum

A. The institutional framework capacity to fight against corruption (prevention and investigation / prosecution)

List any changes as regards relevant authorities (e.g. national agencies, bodies) in charge of prevention detection, investigation and prosecution of corruption and the resources allocated to each of these authorities (the human, financial, legal, and technical resources as relevant), including the cooperation among domestic authorities. Indicate any relevant measure taken to effectively and timely cooperate with OLAF and EPPO (where applicable)

3000 character(s) maximum

Safeguards for the functional independence of the authorities tasked with the prevention and detection of corruption

3000 character(s) maximum

Information on the implementation of measures foreseen in the strategic anti-corruption framework (if applicable). If available, please provide relevant objectives and indicators 3000 character(s) maximum

B. Prevention

Measures to enhance integrity in the public sector and their application (including as regards incompatibility rules, revolving doors, codes of conduct, ethics training). Please provide figures on their application 3000 character(s) maximum

There is no uniform code of ethics for administrative judges (see also above under section A./, page 17). Only the judges of the Federal Administrative Court, as well as the civil and criminal judges, have the opportunity to participate in an online compliance tool as part of their professional training. The number of participants in this tool is also evaluated by a committee. In the course of a newly created (still informal) introductory phase for administrative judges, the "Fundamental Rights and Ethics" module at the above-mentioned "Austrian Academy of Administrative Justice" was extended to one and a half days (see above). However, see also the structural problems of this Academy above under section B./, page 20-21)

General transparency of public decision-making, including rules on lobbying and their enforcement, asset disclosure rules and enforcement, gifts policy, transparency of political party financing

3000 character(s) maximum

Rules and measures to prevent conflict of interests in the public sector. Please specify the scope of their application (e.g. categories of officials concerned) 3000 character(s) maximum

No changes: So far, rules exist for all administrative judges that prohibit holding a judicial office and an office in the executive or legislative branch at the same time. In addition, specific provisions to regulate the exercise of any sideline activities exist. However, recently the provisions for incompatibilities for justices at the Austrian Constitutional Court give rise to certain public negative perceptions concerning judiciary as such (see above).

Measures in place to ensure whistleblower protection and encourage reporting of corruption. 3000

character(s) maximum

List the sectors with high-risks of corruption in your Member State and list the relevant measures taken /envisaged for monitoring and preventing corruption and conflict of interest in these sectors (e.g. public procurement, healthcare, citizen investor schemes, risk or cases of corruption linked to the disbursement of EU funds, other), and, where applicable, list measures to prevent and address corruption committed by organised crime groups (e.g. to infiltrate the public sector) 3000 character(s) maximum

Covid-19-pandemic-measures:

State aid measures in pandemic:

The Federal Fiscal Court is not yet involved in state aid or tax law issues.

The emergency financial grant programs/subsidies are generally granted based on by-laws. There is no justiciable individual right to receive such a grant. In addition, there is no parliamentary control on the way of distribution of these grants. A specific company/agency was set up by the government to execute state aid measures (COFAG).

Recently the court of auditors has heavily criticised this specific agency: [CoV-Hilfen: Rechnungshof zerpflückt COFAG - news.ORF.at](#) or [Rechnungshof ortet Überförderung und empfiehlt Auflösung der COFAG | kurier.at](#)

Any other relevant measures to prevent corruption in public and private sector 3000

character(s) maximum

C. Repressive measures

Criminalisation, including the level of sanctions available by law, of corruption and related offences, including foreign bribery

3000 character(s) maximum

Data on investigation and application of sanctions for corruption offences, including for legal persons and high level and complex corruption cases and their transparency, including as regards to the implementation of EU funds
(Please include, if available the number of (data since 2019): indictments; first instance convictions; first instance acquittals; final convictions; final acquittals; other outcomes (final) (i.e. excluding convictions and acquittals); cases adjudicated (final); imprisonment / custodial sentences through final convictions; suspended custodial sentences through final convictions; pending cases at the end of the reference year)

3000 character(s) maximum

Potential obstacles to investigation and prosecution as well as to the effectiveness of criminal sanctions of high-level and complex corruption cases (e.g. political immunity regulation, procedural rules, statute of limitations, cross-border cooperation, pardoning)

3000 character(s) maximum

Information on effectiveness of non-criminal measures and of sanctions (e.g. recovery measures and administrative sanctions) on both public and private offenders *3000 character(s) maximum*

Other - please specify

3000 character(s) maximum

III. Media Freedom and Pluralism

Please provide information on measures taken to follow-up on the recommendations received in the 2022 Report regarding media freedom and pluralism (if applicable)

3000 character(s) maximum

A. Media authorities and bodies

(Cf. Article 30 of Directive 2018/1808)

Measures taken to ensure the independence, enforcement powers and adequacy of resources (financial, human and technical) of media regulatory authorities and bodies *3000 character(s) maximum*

Conditions and procedures for the appointment and dismissal of the head / members of the collegiate body of media regulatory authorities and bodies *3000 character(s) maximum*

Existence and functions of media councils or other self-regulatory bodies *3000*

character(s) maximum

B. Safeguards against government or political interference and transparency and concentration of media ownership

Measures taken to ensure the fair and transparent allocation of state advertising (including any rules regulating the matter)

3000 character(s) maximum

Safeguards against state / political interference, in particular:

- safeguards to ensure editorial independence of media (private and public) specific safeguards for the
- independence of heads of management and members of the governing boards of public service media (e.g. related to appointment, dismissal), safeguards for their operational independence (e.g. related to reporting obligations and the allocation of resources) and safeguards for plurality of information and opinions ●

information on specific legal provisions and procedures applying to media service providers, including as regards granting/renewal/termination of licenses, company operation, capital entry requirements, concentration and corporate governance

3000 character(s) maximum

Transparency of media ownership and public availability of media ownership information, including on direct, indirect and beneficial owners, as well as any rules regulating the matter

C. Framework for journalists' protection, transparency and access to documents

Rules and practices guaranteeing journalist's independence and safety, including as regards protection of journalistic sources and communications *3000 character(s) maximum*

Law enforcement capacity, including during protests and demonstrations, to ensure journalists' safety and to investigate attacks on journalists

3000 character(s) maximum

Access to information and public documents (incl. transparency authorities where they exist, procedures, costs/fees, timeframes, administrative/judicial review of decisions, execution of decisions by public authorities, possible obstacles related to the classification of information)

3000 character(s) maximum

Lawsuits (incl. SLAPPs - strategic lawsuits against public participation) and convictions against journalists (incl. defamation cases) and measures taken to safeguard against manifestly unfounded and abusive lawsuits

3000 character(s) maximum

Other - please specify

3000 character(s) maximum

IV. Other institutional issues related to checks and balances

Please provide information on measures taken to follow-up on the recommendations received in the 2022 Report regarding the system of checks and balances (if applicable) *3000 character(s) maximum*

A. The process for preparing and enacting laws

Framework, policy and use of impact assessments and evidence based policy-making, stakeholders'[1] /public consultations (particularly consultation of judiciary and other relevant stakeholders on judicial reforms), and transparency and quality of the legislative process

[1] This includes also the consultation of social partners

3000 character(s) maximum

No change of reported facts, see report AEAJ 2020 and report 2021. See also point 9 of the recent Greco report, 1 March 2021. participation rights or other consultation mechanisms would be important in order to balance the broad powers of court presidents.

Rules and use of fast-track procedures and emergency procedures (for example, the percentage of decisions adopted through emergency/urgent procedure compared to the total number of adopted decisions)

3000 character(s) maximum

Regime for constitutional review of laws

3000 character(s) maximum

COVID-19: provide update on significant developments with regard to emergency regimes/measures in the context of the COVID-19 pandemic

- judicial review (including constitutional review) of emergency regimes and measures in the context of COVID-19 pandemic
- oversight (incl. ex-post reporting/investigation) by Parliament of emergency regimes and measures in the context of COVID-19 pandemic
- processes related to lessons learned/crisis preparedness in terms of the functioning of checks and balances

3000 character(s) maximum

We refer to the report of 2022:

The Austrian system of constitutional control provides for the Constitutional Court to be the only and central “negative legislator”. Thus, also in COVID-19-cases the administrative courts must not leave unconstitutional provisions unapplied but have to refer the question of constitutionality (legality) of a legal norm to the Constitutional Court.

Unlike in Germany, administrative courts are not involved in the direct legal control of ordinances/by-laws, because also the control of legality of by-laws/ordinances lies only in the hands of the Constitutional Court.

Due to the fact that legal provisions change, are adapted, or they are newly issued approximately all 10 days, the question of constitutionality (legality) of each legal norm in each single version needs to be referred to the Constitutional Court. For the time being, administrative judges are involved to adjudicate in administrative criminal cases as well as some compensation proceedings.

No procedural framework for a kind of urgent proceedings or interim relief exists for proceedings pending before the Constitutional Court. Before the Constitutional Court the proceedings to review the proportionality of these measures (under certain conditions a direct application can be made before the Constitutional Court without making the detour via administrative court proceedings) took and takes months without any procedural possibility to suspend these measures or parts of them by an interim order in case they are unproportioned. The Constitutional Court has quashed several ordinances topic-wise which had been in force in spring 2020.

No effective – namely timely at most in order to protect fundamental rights - remedy exists (like “urgent procedures”) to challenge the lawfulness of such measures. The need to provide individuals with effective recourse in the event that the government violates their human rights has also been stressed by the Venice Commission (CDL-AD(2020)014 of 19 June 2020, point 87). Also the Associations of Austrian Administrative Judges have openly demanded that urgent proceedings should be established. This is even more relevant as the administrative measures (had to) exclude or widely limit fundamental freedoms and fundamental rights of the citizens. The executive power knew about this fact but did not show concern or initiated any legislative proposals to fill this legal gap (e.g. by providing urgent procedures, involving other courts to do the legal control).

Since autumn 2020, changes of the emergency by-laws/ordinances are subject to approval of the main committee of the Austrian National Council.

B. Independent authorities

Independence, resources, capacity and powers of national human rights institutions (‘NHRIs’), of ombudsman institutions if different from NHRIs, of equality bodies if different from NHRIs and of supreme audit institutions

(Cf. the website of the European Court of Auditors: <https://www.eca.europa.eu/en/Pages/SupremeAuditInstitutions.aspx#>)

3000 character(s) maximum

Statistics/reports concerning the follow-up of recommendations by National Human Rights Institutions, ombudsman institutions, equality bodies and supreme audit institutions in the past two years *3000 character(s) maximum*

C. Accessibility and judicial review of administrative decisions

Transparency of administrative decisions and sanctions (incl. their publication and rules on collection of related data)

3000 character(s) maximum

Transparency of administrative decisions and sanctions and judicial review

/a. Publications of decisions:

No changes since 2020, 2021 and 2022. Lack of public access to all court decisions in many administrative courts first instance and if so it often still lies still in the discretionary powers of a court president which decisions to be published.

b.\scope of judicial review: no changes to 2020, 2021 and 2022

Judicial review of administrative decisions:

- short description of the general regime (in particular competent court, scope, suspensive effect, interim measures, and any applicable specific rules or derogations from the general regime of judicial review)

3000 character(s) maximum

No changes to 2020, 2021 and 2022, same procural framework

Judicial review of admin courts first instance (including administrative criminal cases) is very broad. Seeing it in a European-wide comparison, the scope of review might be one of the deepest and broadest:

In cases of complaints against admin decisions, generally there is full scope of review by courts and there is no differentiation of a scope of review by way of certain sets of proceedings. The admin judge is a truly investigative judge and must establish all facts and investigate all evidence needed. By law and by jurisprudence of the Supreme Admin Court (SAC) it is hardly possible to simply quash and refer a case back to the admin authority. See General Advocate opinion in C-685/15 of 09/03/2017.

Only when the admin authority has the right to exercise discretion, judicial control might be limited, but when facts have not been fully established by the admin authority, the Austrian admin judge also investigates and exercises the discretion instead of the admin authority (by law the admin authority has only the right to object to a judicial decision in the merits of the case at the time when the appeal is lodged before the court; this hardly ever happens and generally not all relevant facts are established by the admin authorities).

When expert evidence is needed, judges are generally required to have recourse primarily to experts belonging to one of the national admin services (who are likely to be a part of the same institution that is a party to the proceedings before the national court). See Opinion GA C-685/15, para. 59-60! Under certain conditions the judge can have recourse to a private expert (costs!). Although the judge has the last say (investigative and full powers) in the proceedings – namely to decide if the expertise is logical and coherent – and can, if the judge deems it necessary have recourse to another expert from the admin service or in the final end to private experts, in practice

this rarely happens. By law experts need to act independently once they are appointed as experts in court proceedings and would also face criminal charges in case of (proven) false expertise.

The Admin Court first instance also decides instead of the administrative authority upon complaint when the administrative authority has not decided in a case within certain period of time.

Access to SAC is quite restricted and in minor administrative criminal cases there is no access to SAC at all. The scope of review of the SAC is limited; a complaint to the SAC against decisions of the administrative courts first instance are only possible, if it is admissible (i.e. if the solution depends from a legal question of essential importance (in particular because the ruling departs from the case-law of the SAC, because a case-law of SAC does not yet exist in this question of law or because this question has not yet been answered uniformly by SAC in previous cases). SAC is not competent to decide in those where a competence of the constitutional court.

Follow-up by the public administration and State institutions to final (national/supranational) court decisions, as well as available remedies in case of non-implementation

3000 character(s) maximum

D. The enabling framework for civil society

Measures regarding the framework for civil society organisations and human rights defenders (e.g. legal framework and its application in practice incl. registration and dissolution rules) *3000 character(s) maximum*

Rules and practices having an impact on the effective operation and safety of civil society organisations and human rights defenders. This includes measures for protection from attacks – verbal, physical or online –, intimidation, legal threats incl. SLAPPs, negative narratives or smear campaigns, measures capable of affecting the public perception of civil society organisations, etc. It also includes measures to monitor threats or attacks and dedicated support services. *3000 character(s) maximum*

Organisation of financial support for civil society organisations and human rights defenders (e.g. framework to ensure access to funding, and for financial viability, taxation/incentive/donation systems, measures to ensure a fair distribution of funding)

3000 character(s) maximum

Rules and practices on the participation of civil society organisations and human rights defenders to the decision-making process (e.g. measures related to dialogue between authorities and civil society, participation of civil society in policy development and decision-making, consultation, dialogues, etc.) *3000 character(s) maximum*

E. Initiatives to foster a rule of law culture

Measures to foster a rule of law culture (e.g. debates in national parliaments on the rule of law, public information campaigns on rule of law issues, contributions from civil society etc.) *3000 character(s) maximum*

Other - please specify

3000 character(s) maximum