

# Study to support the preparation of an EU instrument on to help improve the resilience of our democracies and address the threats of interference in elections through greater transparency in political advertising, and other measures to promote resilient democracy in the EU

## Mapping of national legislation – Austria

Research question	Legal source (Article and full name of the source, including hyperlink) <u>May include legal acts, practices, self-/co-regulatory codes or guidelines</u>	Summary of the rules
<b>I. General information about the national legal framework</b>		
<b>National legal act(s)</b> governing political advertising	Art.13 Staatsgrundgesetz - Constitution § 2 Nr 2 and 40 Audiovisuelle Mediendienste-Gesetz (AMD-G) – Law on audio-visual media Art I Abs. 2 BVG-Rundfunk – Federal Law on public broadcasting Bundesgesetz über den Österreichischen Rundfunk (ORF-Gesetz) – Federal law on the Austrian broadcasting Grundsätze für die publizistische Arbeit (Pressekodex)	<p><b>Please provide an overview of how political advertising is regulated in your Member State:</b></p> <p><i>Which legal act(s) is the principal piece of legislation governing political advertising (e.g. national elections act, specific act on political advertising, media act etc.)? How are they interlinked (e.g. via definitions or other common provisions)?</i></p> <p><i>Please, specify the principal piece of legislation or other regulations, (self-/co-regulatory codes or guidelines) governing <b>online</b> political advertising, if applicable. Please, provide any other relevant legislation and self-regulatory/co-regulatory instruments applicable to political advertising, political campaigning and parties/candidates funding.</i></p> <p>The legal basis for political advertising (and advertising in general) is Art. 13 Staatsgrundgesetz (Constitution) that guarantees freedom to express any opinion in any form. The same provision limits this right by prohibiting public agitation/ incitement (Hetze), especially based on skin colour, religion, language or gender. Also prohibited are public insult and knowingly giving false information about people or institutions. This means that political advertising needs to respect these restrictions.</p>

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		<p>The AMD-G provides general rules on advertising (including political) in all broadcasting. It requires a clear separation of advertising from editorial content. Public broadcasters (ORF-G) must ensure the objectivity and impartiality of the reporting, the consideration of diversity of opinion, the balance of the programs.</p> <p>The Press Code by the Austrian Press Council (Presserat) is a self-regulation for Austrian journalists, publishers, broadcasters. It establishes the standards (guidelines) for editorial content, news and journalist research. The highest priorities for the press are freedom to report and comment, conscientiousness and correctness in research, reporting news and comments.</p>
Legal and/or statutory <b>definition</b> of the notion of “ <b>political advertising</b> ” and “ <b>online political advertising</b> ” (if applicable)		<p><i>Does your national legislation or regulations define political advertising? No</i></p> <p><i>Does your national legislation or regulations define <b>online</b> political advertising? No</i></p>
If not applicable, provide <b>other definitions/terms used in the legislation close to the notion of “political advertising”</b>	§ 2 Nr 2 and 40 Law on audio-visual media	<p><i>Examples: “partisan advertising”, “campaign advertising”, “elections advertising and issues based advertising” etc.</i></p> <p>Austrian law does not contain the legal definition of “political advertising”. It uses the term “commercial communication” that encompasses “advertising” (Werbung) and also covers political advertising (because commercial communication may serve “the support of a cause or idea”.</p> <p><i>Please, specify whether the available definitions apply towards specific actors/persons. (e.g. political parties/candidates, media, civil society, online intermediaries or other service providers etc.). This definition would apply to any natural or legal person.</i></p>
<b>Evaluation of the current legislative framework and draft legislations on political</b>		<p><i>Has an evaluation of the rules and practices in place for political advertising and/or online political advertising already been carried out and if so, what are the results? No</i></p>

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advertising and/or online political advertising		<i>Further to that, is there any draft legislation currently discussed in your Member State relevant for political advertising and/or online political advertising? If so, please provide a brief overview. N/A</i>
<b>II. Political advertising rules during pre-election campaigns</b>		
Definitions of pre-election campaigns in the Member State (if applicable)		<i>Are pre-election campaigns defined in your Member State? If so, how? No</i>
National rules on paid political advertising during pre-election campaigns		<i>Is paid political advertising during pre-election campaigns prohibited or allowed in your Member State? There is no regulation on this, so should be presumed allowed. If prohibited, what is the scope of the ban of paid political advertising? In the opposite case, to which extend is paid political advertising allowed? What are the limitations applicable? There is a maximum limit of 7 mln euros for advertising spending during the electoral campaign. Please, specify whether such rules during pre-election campaigns are also applicable and enforceable online and whether they apply to actors registered outside the jurisdiction. This includes all online advertising.</i>
National rules on financing of political parties/candidates in relation to political adverts		<i>Please, provide a brief description of the national rules on financing of political parties/candidates in relation to political adverts (e.g. earmarking donations and contributions for advertising or specific campaigns, bank loans obtention for sponsoring advertising campaigns, entities or categories of actors not entitled to purchase or finance political adverts). N/A</i>
National rules on free political advertising (or free airtime) during pre-election campaigns		<i>Are political parties in your Member State allocated free political advertising during pre-election campaigns? If so, on which media is free political advertising granted? No</i>

Research question	Legal source (Article and full name of the source, including hyperlink) <u>May include legal acts, practices, self-/co-regulatory codes or guidelines</u>	Summary of the rules
National rules on political advertising on <b>broadcast media</b> during pre-election campaigns (incl. public service and private broadcasters)	§ 4 Abs. 1 Satz 1 and § 13 Federal law on the Austrian broadcasting § 31 Law on audio-visual media	<i>Please, provide a brief description of the national rules on political advertising on broadcast media during pre-election campaigns.</i> The public broadcaster has a general obligation to provide comprehensive information about political issues, which means to provide information about all political parties. This is not linked to any specific time related to elections. All broadcasters must always clearly indicate commercial communication as such (including political advertising).
National rules on political advertising in <b>print media</b> during pre-election campaigns	§ 26 Federal law on the press and other publishing media	<i>Please, provide a brief description of the national rules on political advertising in print media during pre-election campaigns.</i> All press must always clearly indicate commercial communication as such (including political advertising).
National rules on political advertising on <b>online media applicable to political parties</b> , during pre-election campaigns		<i>Data protection and privacy rules, rules applicable to political parties for addressing electronic political communication...</i> N/A
Particular rules <b>applicable to online platforms and intermediaries</b> , such as social media, for political advertising during pre-election campaigns		<i>Are there any particular rules to online platforms during pre-election campaigns in your Member State?</i> N/A
Specific rules relating to <b>“false information”, fake news” or “disinformation campaigns”</b> during pre-election campaigns	§ 13 Federal law on the Austrian broadcasting § 31 Law on audio-visual media § 264 Criminal Code	<i>Are there specific provisions in your Member State about the dissemination of “untrue information”, “false information”, “fake news” or “disinformation campaigns” during pre-election campaigns?</i> All advertising, including the political one, shall not violate human dignity, contain or encourage discrimination, promote behaviour that endangers health and safety, promotes illegal practices or misleads consumers. Spreading of false news in the context of an election or referendum is prohibited under the threat of criminal punishment. Anyone who publicly disseminates false news about a circumstance that is likely to

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		prevent voters from voting or to induce them to vote in a certain sense (and this cannot be disproved any more due to the lack of time) is punishable by imprisonment of up to 6 months or a fine of up to 360 daily rates.
<b>III. Political advertising rules during elections period</b>		
Definitions of <b>elections period in the Member State (if applicable)</b>		<i>How is the elections period defined in your Member State?</i> Campaigning may begin at any time and continue up to and on election day. There is no clear delimitation with the election period begins in national law.
National rules on <b>paid political advertising</b> during elections period	§ 4 in conjunction with § 14 Federal Law on the financing of political parties	<i>Is paid political advertising during election period prohibited or allowed in your Member State?</i> Allowed <i>If prohibited, what is the scope of the ban of paid political advertising?</i> N/A <i>In the opposite case, to which extend is paid political advertising allowed? What are the limitations applicable?</i> No party is allowed to spend more than 7 mln euros for an election campaign for a general election or for the European Parliament election. In this, all individual candidates' campaign expenditures are included, which means that the theoretical spending limit of a candidate is also 7 million Euro. If, however, a candidate spends 15,000 Euro or less, this will not count toward the party's limit. <i>Please, specify whether such rules during elections period are also applicable and enforceable online and whether they apply to actors registered outside the jurisdiction (e.g. enforcement of 'silence periods' online)</i> This maximum amount includes also costs for online campaigns and social media.
National rules on <b>financing of political parties/candidates in relation to political adverts</b>		<i>Please, provide a brief description of the national rules on financing of political parties/candidates in relation to political adverts (e.g. earmarking donations and contributions for advertising or specific campaigns, bank loans obtention for sponsoring advertising</i>

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		<i>campaigns, entities or categories of actors not entitled to purchase or finance political adverts). N/A</i>
National rules on <b>free political advertising (or free airtime)</b> during elections period		<i>Are political parties in your Member State allocated free political advertising during elections period? No</i>
National rules on political advertising on <b>broadcast media</b> during elections period (incl. public service and private broadcasters)	§ 4 Abs. 1 Satz 1 and § 13 Federal law on the Austrian broadcasting § 31 Law on audio-visual media	<i>Please, provide a brief description of the national rules on political advertising on broadcast media during elections period.</i> The public broadcaster has a general obligation to provide comprehensive information about political issues, which means to provide information about all political parties. This is not linked to any specific time related to elections. All broadcasters must always clearly indicate commercial communication as such (including political advertising).
National rules on political advertising in <b>print media</b> during elections period	§ 26 Federal law on the press and other publishing media	<i>Please, provide a brief description of the national rules on political advertising in print media during elections period</i> All press must always clearly indicate commercial communication as such (including political advertising).
National rules on political advertising on <b>online media applicable to political parties</b> , during elections period		<i>Examples: Data protection and privacy rules, rules applicable to political parties for addressing electronic political communication... N/A</i>
Particular rules <b>applicable to online platforms and intermediaries</b> , such as social media, for political advertising during elections period		<i>Are there any particular rules to online platforms during elections period in your Member State? No</i>
Specific rules relating to <b>“false information”, “fake news” or “disinformation campaigns”</b> during elections period	§ 13 Federal law on the Austrian broadcasting § 31 Law on audio-visual media § 264 Criminal Code	<i>Are there specific provisions in your Member State about the dissemination of “untrue information”, “false information”, “fake news” or “disinformation campaigns” during elections period?</i> All advertising, including the political one, shall not violate human dignity, contain or encourage discrimination, promote behaviour that

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		endangers health and safety, promotes illegal practices or misleads consumers. As noted before, spreading false information in the context of a electoral campaign is prohibited by criminal law.
<b>IV. Political advertising rules outside of elections period</b>		
National rules on <b>paid political advertising</b> outside of elections period		<i>Is paid political advertising during elections period prohibited or allowed in your Member State? There is no regulation on this, so should be presumed allowed.</i> <i>If prohibited, what is the scope of the ban of paid political advertising?</i> <i>If allowed, are there restrictions on paid political advertising? N/A</i> <i>Please, specify whether such rules outside of elections period are also applicable and enforceable online and whether they apply to actors registered outside the jurisdiction.</i>
<b>National rules on financing of political parties in relation to political adverts</b>		<i>Please, provide a brief description of the national rules on financing of political parties/candidates in relation to political adverts (e.g. earmarking donations and contributions for advertising or specific campaigns, bank loans obtention for sponsoring advertising campaigns, entities or categories of actors not entitled to purchase or finance political adverts). N/A</i>
National rules on <b>free political advertising (or free airtime)</b> outside of elections period		<i>Are political parties in your Member State allocated free political advertising outside of elections campaigns? No</i>
National rules on political advertising on <b>broadcast media</b> outside of elections period (incl. public service and private broadcasters)	§ 4 Abs. 1 Satz 1 and § 13 Federal law on the Austrian broadcasting § 31 Law on audio-visual media	<i>Please, provide a brief description of the national rules on political advertising on broadcast media outside of elections period</i> The public broadcaster has a general obligation to provide comprehensive information about political issues, which means to provide information about all political parties. This is not linked to any specific time related to elections. All broadcasters must always clearly indicate commercial communication as such (including political advertising).



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National rules on political advertising in <b>print media</b> outside of elections period	§ 26 Federal law on the press and other publishing media	<i>Please, provide a brief description of the national rules on political advertising in print media outside of elections period</i> All press must always clearly indicate commercial communication as such (including political advertising).
National rules on political advertising on online media <b>applicable to political parties</b> , outside of elections period		<i>Examples: Data protection and privacy rules, rules applicable to political parties for addressing electronic political communication...</i> N/A
<b>V. Rules and obligations applicable to online platform operators and intermediaries of political advertising</b>		
Particular rules <b>applicable to online platforms and intermediaries</b> such as social media for political advertising		<i>Are there any particular rules applicable to online platforms in your Member State (e.g. disclosure requirements to users, record-keeping requirements, reporting requirements)?</i> No <i>If so, which are the online platforms operators and other intermediaries concerned by the legislation/guidelines/self-regulatory code?</i> N/A <i>Are there any particular rules applicable to online platforms to set up means to fight disinformation?</i> No, all on the level of political discussions.
<b>VI. Transparency rules for political parties/candidates funding</b>		
Rules on <b>direct public funding<sup>1</sup> to political parties and/or candidates</b>	§ 3 Federal Law on the financing of political parties § 1 and § 2 Federal law on the public funding of political parties by the federal government	<i>Are there provisions for direct public funding to political parties in your Member State? Please give a brief description.</i> Yes, public funding can be allocated to political parties by the federal government, federal states and municipalities annually for their work in helping to shape the political will. Only the political parties that are represented in a representative body can receive public funding. The funding is calculated as follows: at least 3.10 euros per person entitled to vote for the respective general representative body, but no more than 11 euros.

<sup>1</sup> Public funding refers to funds or resources provided by the State/Government to political parties and/or candidates. Depending on the form in which public resources are made available, public funding is divided into direct public funding or indirect public funding. Direct public funding corresponds to the allocation of direct public funds to political parties and/or candidates in the form of money, usually as bank transfers but at times in cash or cheque. See more information at: <https://aceproject.org/ace-en/topics/pc/pca/pca02/pca02a/default>



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		<p>The federal states can legislate a higher funding to ensure participation in the formation of political will at the district and municipal level.</p> <p>No additional public funding to political parties and campaigning parties is allowed to cover election costs in elections.</p> <p>A separate law (Parteien-Förderungsgesetz) regulates federal funding for political parties. It contains three possibilities of public funding to political parties:</p> <ol style="list-style-type: none"> <li>1. Annual funding for political parties represented in the National Council – to promote their work in the formation of the political will at the federal level,</li> <li>2. One-off funding for political parties that are not represented in the National Council but have received more than 1% of the valid votes in an election to the National Council – this is funding for their activities in the election year,</li> <li>3. One-off funding for political parties that succeeded in the European elections and are represented by members in the European Parliament. After the election, these political parties can claim funding for the expenses actually incurred during the elections.</li> </ol>
Rules on <b>indirect public funding<sup>2</sup> to political parties and/or candidates</b>		<p><i>Are there provisions for indirect public funding for electoral campaigns in your Member State? Please give a brief description and specify transparency provisions.</i> No - § 3 PartG states that no additional funding is allowed to cover election costs.</p>

<sup>2</sup> Indirect public funding is when resources with a monetary value are provided by the Government to political parties and/or candidates. Such resources may be, for instance, granting of media access (free advertising slots in publicly owned media), interest-free loans for paying registration fees or mounting a basic election campaign, free printing and distribution of ballot papers, use of Government buildings for meetings and rallies, tax-free donations etc. . See the list of indirect public funding of parties and candidates at: <https://aceproject.org/ace-en/topics/pc/pca/pca02/pca02a/pca02a4>

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Rules on free or subsidised <b>access to media for political parties and/or candidates</b>		<i>Are there provisions for free or subsidized access to media for political parties in your Member State? Please give a brief description and specify transparency provisions.</i> No
Rules on <b>foreign contributions to political parties and political campaigns</b>	§ 6 Abs. 6 Nr 6 Federal Law on the financing of political parties	<i>Is there a ban on contributions from foreign interests (i.e. foreign countries and governments, foreign companies, foreign organisations, foreign private persons) to political parties and/or to candidates during political campaigns in your Member State?</i> Yes, donations from foreign natural or legal persons are not allowed.
<b>VII. Monitoring and enforcement of national rules on political advertising by national authorities</b>		
National (or regional/local if applicable) <b>authority or body responsible</b> for monitoring national rules on political advertising	§ 10, § 11 and § 11a Federal Law on the financing of political parties	<i>Who is responsible for monitoring national rules on political advertising, (e.g. political communications and advertisement messages, the balanced presence and equity of all political candidates)?</i> The limit of 7 mln euros on spending during the electoral campaign is monitored by the Federal Court of Auditors (Rechnungshof). It sends relevant reports to the Independent Party Transparency Senate (UPTS), which can fine parties for having spent more than the admissible limit. The UPTS is in general responsible for the accompanying analysis of the expenses for election campaigns and for the control of the election advertising expenses as well as the election advertising reports.
Particular measures for <b>supervising online political advertising</b> within and outside elections periods	§ 5 Abs. 2, 3 and 7 Federal Law on the financing of political parties § 6 Abs. 2 Satz 3 Federal Law on the financing of political parties	<i>How are national rules on political advertising, including online, ensured in your Member State, if these exist? What are the enforcement powers of the relevant authority/body, as well as procedural safeguards?</i> Each political party is obliged to submit an annual accountability report (statement of account - Rechenschaftsbericht) on its income and expenditure. In this annual report, donations to members of parliament and candidates who have stood as candidates for an election should be listed in a separate annex.

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		<p>In the election year, this report must include a separate section on election advertising expenditure that demonstrates the compliance with the spending limit.</p> <p>This statement of accounts must be submitted for the examination to two independent auditors who are appointed by the Court of Auditors for five years (they are especially appointed for this purpose). Then the complete report is submitted to the Court of Auditors.</p>
<b>Sanctions, penalties and remedy measures</b> applicable in violation of the law	§ 10 Abs. 8 Federal Law on the financing of political parties	<p><i>How are national rules on political advertising enforced in your Member State and what sanctions and remedy measures are applicable?</i></p> <p>If the party exceeds the maximum amount that can be spent on electoral advertising, the UPTS applies the following fines:</p> <ul style="list-style-type: none"> <li>• Excess up to 10% - a fine of up to 15% of the excess amount,</li> <li>• excess from 10% to 25% - an additional fine of up to 25% of this second excess amount,</li> <li>• excess from 25% to 50% - a further fine of up to 100% of this third excess amount,</li> <li>• excess over 50% - an additional fine of up to 150% of this fourth excess amount.</li> </ul>

## Annex – List of relevant legislation

- In this Annex, please list all the sources provided in the second column of the table

Name of the sources	Link to the sources	Sources translated into EN
Staatsgrundgesetz vom 21. December 1867, über die allgemeinen Rechte der Staatsbürger für die im Reichsrathe vertretenen Königreiche und Länder	<a href="https://www.ris.bka.gv.at/GeltendeFassung.wxe?Abfrage=Bundesnormen&amp;Gesetzesnummer=10000006">https://www.ris.bka.gv.at/GeltendeFassung.wxe?Abfrage=Bundesnormen&amp;Gesetzesnummer=10000006</a>	Constitution
Bundesgesetz über die Finanzierung politischer Parteien (Parteiengesetz – PartG)	<a href="https://www.ris.bka.gv.at/GeltendeFassung.wxe?Abfrage=Bundesnormen&amp;Gesetzesnummer=20007889">https://www.ris.bka.gv.at/GeltendeFassung.wxe?Abfrage=Bundesnormen&amp;Gesetzesnummer=20007889</a>	Federal Law on the financing of political parties
Bundesgesetz über Förderungen des Bundes für politische Parteien (Parteien-Förderungsgesetz– PartFörG)	<a href="https://www.ris.bka.gv.at/GeltendeFassung.wxe?Abfrage=Bundesnormen&amp;Gesetzesnummer=20007891">https://www.ris.bka.gv.at/GeltendeFassung.wxe?Abfrage=Bundesnormen&amp;Gesetzesnummer=20007891</a>	Federal law on the public funding of political parties by the federal government
Bundesverfassungsgesetz über die Sicherung der Unabhängigkeit des Rundfunks	<a href="https://www.ris.bka.gv.at/Dokumente/Erv/ERV_1974_396/ERV_1974_396.pdf">https://www.ris.bka.gv.at/Dokumente/Erv/ERV_1974_396/ERV_1974_396.pdf</a>	Federal Constitutional Act on Guaranteeing the Independence of Broadcasting
Bundesgesetz über den Österreichischen Rundfunk (ORF-Gesetz)	<a href="https://www.ris.bka.gv.at/GeltendeFassung.wxe?Abfrage=Bundesnormen&amp;Gesetzesnummer=10000785">https://www.ris.bka.gv.at/GeltendeFassung.wxe?Abfrage=Bundesnormen&amp;Gesetzesnummer=10000785</a>	Federal law on the Austrian broadcasting

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Bundesgesetz über audiovisuelle Mediendienste (Audiovisuelle Mediendienste-Gesetz – AMD-G)	<a href="https://www.ris.bka.gv.at/GeltendeFassung.wxe?Abfrage=Bundesnormen&amp;Gesetzesnummer=20001412">https://www.ris.bka.gv.at/GeltendeFassung.wxe?Abfrage=Bundesnormen&amp;Gesetzesnummer=20001412</a>	Federal law on audio-visual media
Bundesgesetz über die Presse und andere publizistische Medien (Mediengesetz – MedienG)	<a href="https://www.ris.bka.gv.at/GeltendeFassung.wxe?Abfrage=Bundesnormen&amp;Gesetzesnummer=10000719">https://www.ris.bka.gv.at/GeltendeFassung.wxe?Abfrage=Bundesnormen&amp;Gesetzesnummer=10000719</a>	Federal law on the press and other publishing media
Grundsätze für die publizistische Arbeit (Pressekodex)	<a href="https://www.presserat.at/show_content.php?sid=3&amp;reload=1">https://www.presserat.at/show_content.php?sid=3&amp;reload=1</a>	Austrian Press Code
Bundesgesetz über die mit gerichtlicher Strafe bedrohten Handlungen (Strafgesetzbuch – StGB)	<a href="https://www.ris.bka.gv.at/GeltendeFassung.wxe?Abfrage=Bundesnormen&amp;Gesetzesnummer=10002296">https://www.ris.bka.gv.at/GeltendeFassung.wxe?Abfrage=Bundesnormen&amp;Gesetzesnummer=10002296</a>	Criminal Code