

# **European Rule of Law Mechanism: 2022 Rule of Law Report**

## Austrian Input

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# I. Justice System

## A. Independence

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

Regarding the ordinary jurisdiction, the Federal Ministry of Justice has prepared draft amendments to the Service Act for Judges and Public Prosecutors (*Richter- und Staatsanwaltschaftsdienstgesetz, RStDG*) revising the appointment procedure for candidate-judges for the ordinary courts. As a result, it is foreseen that the decision-making power to make proposals for the appointments is transferred from the Presidents of the Higher Regional Courts to the respective External Senate at the Higher Regional Court (*Außensenat beim Oberlandesgericht*). The Senate is composed of the President and the most senior Vice President as ex-officio members, and three elected members of the judiciary.

Thus, the same judicial body that already submits proposals for the appointments of judges will have the power to make proposals for the appointments of candidate-judges. In any case, the power to appoint judges remains with the Federal Minister of Justice or the Federal President. The draft amendments still have to be adopted by the Parliament. The date of the entry into force of these amendments cannot be predicted yet.

There is no legal entitlement for the appointment as a judge – a judicial review of the procedure is therefore ruled out.

#### Administrative Courts of 1st instance:

The European Court of Justice has already held that the mere fact that legislative or executive authorities play a part in the process for appointing a judge does not give rise to a relationship of subordination to those authorities or to doubts as to the judge's impartiality, if, once appointed, he or she is not subject to any pressure and does not receive any instruction in performing the duties of his or her office (see judgement of 9 July 2020, VQ vs Land Hessen, C-272/19, paragraph 54 with – to that effect – reference to judgment of 19 November 2019, A. K. and Others, C-585/18, C-624/18 and C-625/18, paragraph 133 and the case-law cited).

As to the calls for harmonising recruitment requirements, it has to be underlined that Austria is a federal state. According to the distribution of legislative power, the Federation (*Bund*) as well as the nine provinces (*Länder*) are bearers of Administrative Courts of 1st instance and different legislators have power to pass legislation on these matters.

There is no judicial review of the appointment and selection of the President and the Vice-President as well as the judges of the Administrative Courts of 1st instance.

#### Supreme Administrative Court:

The statutory provision of Sec. 2a of the [Supreme Administrative Court Act \(Verwaltungsgerichtshofgesetz - VwGG\)](#) expired on 30 June 2021. The current statutory provision of Sec. 2 para. 2 VwGG, regulates the appointment of justices as well as the President of the Supreme Administrative Court: In general, the President and Vice President of the Supreme Administrative Court are sworn-in by the Federal President, whereas new members are sworn-in by the Plenary Assembly of the Supreme Administrative Court. If exceptional circumstances

prevent the Plenary Assembly to convene within a reasonable period of time, the swearing-in of the new members takes place before the President of the Supreme Administrative Court.

There is no judicial review of the appointment and selection of the President and the Vice-President as well as the justices of the Supreme Administrative Court.

***2. 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)***

Ordinary jurisdiction and Administrative Courts of 1st instance:

No further update available.

Supreme Administrative Court:

Appeals against disciplinary decisions of first-instance administrative courts may be filed with the Supreme Administrative Court. As of now, there was only one case concerning the dismissal of an administrative judge in Austria in 2021. The judgement by the Federal Administrative Court ruling on the dismissal in question was, however, annulled by the Austrian Constitutional Court for lacking sufficient reasoning (see [judgements by the Constitutional Court from 24 February 2021, E 2470/2020](#), and [judgements by the Supreme Administrative Court from 8 April 2021, Ra 2020/09/0047](#), and [23 April 2021, Ra 2020/12/0070](#)).

Disciplinary matters regarding justices of the Supreme Administrative Court and their involuntary retirement are regulated by the rules in force for judges (Service Act for Judges and Public Prosecutors (*Richter- und Staatsanwaltschaftsdienstgesetz*, RStDG)), and decided upon by the Plenary Assembly functioning as an independent disciplinary tribunal. The disciplinary consequence of removal from office may only be imposed if at least two thirds of the members of the disciplinary court vote in favour of it (see Sec. 7 para. 2 VwGG).

***3. Promotion of judges and prosecutors (incl. judicial review)***

No further update available.

***4. Allocation of cases in courts***

Ordinary Jurisdiction and Administrative Courts of 1st instance:

No further update available.

Supreme Administrative Court:

The statutory provision of Sec. 10 para. 1a VwGG expired on 30 June 2021. The current statutory provisions of Sec. 10 para. 1 and Sec. 15 para. 7 VwGG state that the allocation of business may be enacted by means of telecommunication or via circulating letter when exceptional circumstances prevent the Plenary Assembly to convene within a reasonable period of time. More than two thirds of the members of the Supreme Administrative Court must participate in the decision-making process by means of telecommunication or via circular letter in order to constitute a quorum.

**5. 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)**

No further update available.

**6. 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)**

No further update available.

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

Besides the legally determined salary (judges: Sec. 66 RStDG, prosecutors: Sec. 190 RStDG), judges and public prosecutors do not receive additional benefits, neither financial nor in-kind.

Section 19 “Gehaltsgesetz” (GehG) provides that rewards may be granted to a civil servant (this includes judges and public prosecutors), subject to available funds, for special services not compensable under other provisions. Rewards are awarded by the respective service authority. It is not possible to assess the amount of rewards granted to judges and prosecutors on the basis of the budgetary accounts, especially since the rewards of other employees are also recorded under the corresponding financial item.

In any case, the evaluation of the payments under this financial item in recent years has not revealed any significant deviations in the course of the year and no fundamental changes have been undertaken in this area.

**8. Independence/autonomy of the prosecution service**

Independent Federal Prosecution Service:

A working group was set up, consisting of representatives of the doctrine of criminal and constitutional law, of representatives of various ministries and of various professional associations, as well as of all four Chief Senior Public Prosecutors, the head of the Central Public Prosecutor’s Office for the Prosecution of Economic Crimes and Corruption (WKStA) and the head of the Vienna Public Prosecutor's Office. So far, six meetings of the working group have taken place, which were devoted in particular to the topics of independence, reporting system, instructions, the tasks of an independent Prosecutor General and constitutional aspects. An interim report has been submitted to Parliament after the fourth meeting. A final result of the working group is expected by the end of the first half of 2022.

See also question 10.

**9. Independence of the Bar (chamber/association of lawyers) and of lawyers**

No further update available.

## **10. Significant developments capable of affecting the perception that the general public has of the independence of the judiciary**

Within the existing legislative framework, a comprehensive revision of the Decree on reporting obligations entered into force on 1 August 2021. The new Decree on reporting obligations fully takes into account proposals raised by the professional representation of Austrian public prosecutors (StAV) and provides for a substantial simplification and reduction of reporting obligations. In order to further relieve public-prosecutor's offices of reporting obligations the Federal Ministry of Justice is planning amendments to the Public Prosecutors Act in 2022.

## **B. Quality of justice**

### **11. Accessibility of courts (e.g. court/legal fees, legal aid, language)**

#### Court fees:

The draft law "*Zivilverfahrensnovelle 2021*" ("Amendments to the civil procedure 2021") is on its way to being adopted. It provides for fee reductions in the area of guardianship proceedings and digital file copying. In the "*Restrukturierungs- und Insolvenz-Richtlinie-Umsetzungsgesetz*" ([Federal Law Gazette I No. 147/2021](#)), which has been adopted on 7 July 2021, court fees for remedies in insolvency proceedings were reduced from EUR 948 to EUR 350. In addition, it was provided that children seeking enforcement of their maintenance claims are exempt from court fees.

#### Compensation for legal aid services provided by lawyers:

##### *- General compensation (Allgemeine Pauschalvergütung)*

The Federal Government is required to pay an adequate annual compensation to the Austrian Bar Association (*Österreichischer Rechtsanwaltskammertag*) for the services provided by lawyers in legal aid cases. Lawyers registered in the list of one of the nine Austrian Bars (*Rechtsanwaltskammern*) are entitled to have a proportionate amount of the general remuneration credited to their pension, invalidity and survivorship pension funds. For the year 2021 and subsequent years, the amount of the general remuneration has been raised from EUR 18 to EUR 21 million per year ([Federal Law Gazette II No. 556/2020](#)).

##### *- Special compensation (Sonderpauschalvergütung)*

In some legal aid cases, the individual lawyer's workload exceeds the average workload of a legal aid case by far. In such "exceedingly lengthy proceedings", lawyers who provide legal aid shall be entitled to adequate compensation (*Sondervergütung*) by the Bar for their additional services. Any proceeding that exceeds 10 days or 50 hours of trial within a trial year is deemed exceedingly lengthy. Upon the lawyer's request, the Bar Associations may grant an appropriate advance payment. The Bar Association may request compensation from the Federal Government. Therefore, the Federal Government enacts a regulation for the overall special compensation (*Sonderpauschalvergütungsverordnung*).

### **12. Resources of the judiciary (human/financial/material)**

After a substantial increase of resources for the judiciary in the budgets for 2020 and 2021, there was another significant increase of funds in the budget for the year 2022 (plus EUR 76 429 million, i.e. a plus of 4.25 % compared to the year 2021).

The additional funds primarily cover the higher personnel costs due to wage increases and

structural effects as well as the new calculation of the salary reference date. Further costs arise from the filling of vacant positions, an allowance for “Home Office” expenses (since July 2021) and the increased unit value of the “Sodexo” food coupons.

Furthermore, the costs resulting from the implementation of new regulations, especially the Counterterrorism-Act and a set of measures combating violence against women and strengthening the prevention of violence, have to be borne.

Further expenses arise from an additional demand for health-related measures (for prisoners after conditional release), experts in legal matters and legal counselling for refugees. Moreover, security-related construction and maintenance measures as well as higher rents and operating costs have to be covered by the 2022 budget.

In addition, the further increased financial demand in the area of probationary services, protection of adults, victim support as well as the family and juvenile court assistance (*“Familien- und Jugendgerichtshilfe”*) will have to be financed with the budget for the year 2022.

Compared to a decrease in earnings as a result of the COVID-19 pandemic in the year 2020, there was a significant increase in the year 2021, especially within the land register fees (caused by increased property sales/real estate prices due to the COVID-19 pandemic), also leading to a higher prognosis of earnings in the 2022 budget.

Concerning the material resources in the area of the judiciary, necessary renovations of individual court buildings as well as safety-related adaptations will be carried out in the year 2022. The construction of a new court building (District court Seekirchen in Salzburg) will be completed and the renovation of the jury courtroom of the Regional court for criminal matters in Graz will begin in 2022.

The human resources for the judiciary have been slightly increased. Additional positions for court staff were achieved.

#### Situation at the Administrative Courts of 1st instance:

- 708 judges
  - 731 administrative staff
  - approved budget 2020: EUR 158 703 600
- (Please note: figures as of 2020; data for 2021 not available yet)

#### Situation at the Supreme Administrative Court:

- 68 justices (President, Vice President, 12 Panel Presidents, 54 Justices)
- 130 administrative staff, of whom 45 are research associates
- approved budget 2021: EUR 22 284 000

### ***13. Training of justice professionals (including judges, prosecutors, lawyers, court staff)***

#### Training of judges and prosecutors:

Given the on-going pandemic situation, a system of multi-tiered hygiene measures was introduced, in order to guarantee the implementation of face-to-face training activities in the safest possible manner. At the same time, the range of online trainings was further expanded.

#### Training of court staff:

In the course of 2021, the EJTN has started to open a selection of their training activities (exchanges as well as seminars) to court staff.

#### Administrative Courts of 1st instance:

Depending on the infection rates of the COVID-19 pandemic, trainings have been taking place in person and online via webinar tools, such as Zoom or Microsoft Teams.

The Austrian Academy for the Administrative Judiciary was about to put in place a workshop on 3 December 2021, which covers in particular integrity-related elements. Due to the epidemical situation in Austria, the workshop had to be postponed.

#### Supreme Administrative Court:

Depending on the infection rates of the COVID-19 pandemic, trainings have been taking place in person and online via webinar tools, such as BigBlueButton, Zoom or Microsoft Teams.

### ***14. 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)***

As of December 2021, civil-proceedings at 68 courts and investigation proceedings at 15 public prosecutor's offices as well as certain types of proceedings at the Supreme Court and the General Procurator's Office are conducted completely digitally using "Justice 3.0" ("*Justiz 3.0.*"). More than 230 000 files were processed exclusively digitally and more than 89 000 hearings were held digitally. Over 300 courtrooms are equipped and available for conducting hearings digitally (touch screens, media control and digital interrogation stand).

The Administrative Courts of 1st instance are using Zoom or Microsoft Teams for hearings, deliberations and meetings.

The Supreme Administrative Court is using BigBlueButton for deliberations and meetings.

### ***15. 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)***

Since the reporting year 2019, the security report devotes a separate chapter to corruption statistics.

In Austria, the manifold eJustice applications cover the entire area of responsibilities of the justice sector. This provides a comprehensive nationwide data warehouse, which offers an enormous advantage when preparing statistics.

Using synergies with the digital initiatives, especially "Justiz 3.0" (referenced above), the production and presentation of key data by means of modern, interactive and mobile-friendly dashboards are extended and enhanced and access to the data of the published reports to fulfill advanced requirements (self-service business intelligence) is provided.



***16. Geographical distribution and number of courts/jurisdictions (“judicial map”) and their specialisation, in particular specific courts or chambers within courts to deal with fraud and corruption cases.***

In Austria, there are no special courts that deal exclusively with fraud and corruption cases. However, some court divisions of the Regional Court for Criminal Matters in Vienna deal exclusively with white-collar crime. This is not required by law, but can be determined by the courts as part of their process of allocating cases.

**C. Efficiency of the justice system**

***17. Length of proceedings***

No further update available.

## II. Anti-corruption framework

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

**18. 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).**

As already stated on page 27 of the Austrian Input for the 2020 Rule of Law Report, the Central Public Prosecutor's Office for Combating Economic Crimes and Corruption (*Wirtschafts- und Korruptionsstaatsanwaltschaft, WKStA*) is responsible for filing charges and representing the prosecution in court in corruption cases in which the value is above a certain threshold. At present (as of 1 December 2021), 44 public prosecutors are employed at the WKStA.

Council Regulation (EU) 2017/1939 implementing enhanced cooperation on the establishment of the European Public Prosecutor's Office ('the EPPO') was implemented by the Act to implement the European Public Prosecutor's Office, Federal Law Gazette Part I, No. 94/2021. It entered into force on 29 May 2021. Section 12 of the Act explicitly sets out that the EPPO may request assistance from any public body in Austria in the same way as national prosecution services. Art. 117 of the Council Regulation (EU) 2017/1939 requires the Member States participating in the enhanced cooperation on the establishment of the EPPO to submit information on the designated authorities that are competent for the purposes of implementing the Regulation. Austria submitted its notifications on 23 July 2021.

The resources at the Federal Bureau of Anti-Corruption (*Bundesamt zur Korruptionsprävention und Korruptionsbekämpfung, BAK*) have remained largely stable. As mentioned in last year's input, the budget resources of the BAK have increased since 2014 and the implementation of projects and activities has been consistently assured. Compared to 2020, the BAK had an almost constant expenditure budget in 2021 (2020: EUR 9 120 432,86; 2021: EUR 9 188 210,24). As of 31 December 2021, the BAK counted 123 employees, thirteen of whom are on maternity leave or work in other organizational units.

As of 1 December 2021, 154 women and 151 men were employed in the Austrian Court of Audit (*Rechnungshof, ACA*). The percentage of women in the ACA (over 50 %) is thus significantly higher than the percentage of women in the public service as a whole of 42 %. At the section management level, the rate is exactly 50 %. The annual budget of the ACA, which is adopted by the National Council, amounts to EUR 36.5 million in 2021.

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

The Federal Bureau of Anti-Corruption (BAK) is an institution of the Austrian Federal Ministry of the Interior. Organizationally speaking, it is established outside the Directorate-General for Public Security (see section 1 of the Federal Law on the Establishment and Organization of the Federal Bureau of Anti-Corruption [BAK-G]) but within Directorate-General III (Law). Instructions to the Federal Bureau of Anti-Corruption to deal with facts in a specific case must be in writing and must be substantiated. An oral instruction given for special reasons, in particular due to imminent

danger, must be followed up in writing without delay. This is regulated by the BAK-G. The BAK also has extensive personnel and financial autonomy (see also under question no. 18.).

The ministerial proposal from 22 February 2021 is still undergoing the consultation procedure (*Begutachtungsverfahren*). The aim of this ministerial proposal is to expand the auditing competence of the ACA with regard to the financial management of enterprises in which the Federation (*Bund*) alone or jointly with other legal entities, which are subject to audit by the ACA, holds shares (drop from 50 % to 25 %). Regarding the ACA's own code of conduct, please refer to the input of the ACA for the 2021 Rule of Law Report.

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

Austria's National Anti-Corruption Strategy (NACS) has previously been mentioned in the Austrian input to the 2020 Rule of Law Report on page 30, in 2021 on page 15 and in the country visit follow-up on pages 7-8.

The national Coordinating Body on Combating Corruption (*Koordinationsgremium zur Korruptionsbekämpfung*) has decided that an evaluation of the NACS action plan will take place after the completion of the first cycle. The proposal for quantitative and qualitative indicators developed by the BAK will subsequently be used as a basis for evaluating the implementation of the NACS action plans. The BAK coordinates the activities around the evaluation of the action plans under the NACS.

The approach for an evaluation based on indicators was presented to the participating institutions in July 2021. The assessment of the operationalization of each measure is built on two indicators, a qualitative and a quantitative one. The combination of these two indicators allows for an objective and targeted evaluation of the implementation of the action plan.

The qualitative indicators make it possible to describe the content of the activities carried out and provide objective information for evaluating the content of the measures. The activities are described in terms of strategies, goals or desired end results. The quantitative indicators allow for an assessment based on figures and values in order to clearly measure the performance of a given action. Participating institutions are also invited to reflect on the results of their respective measures and to provide a brief statement on their key findings. The BAK team supported the participating institutions in the development of the indicators, the data collection and the actual evaluation. By the end of 2021, they had delivered 95 % of the evaluation reports. As soon as the remaining contributions are received at the BAK, all contributions will be compiled in a final evaluation report and submitted to the Coordinating Body on Combating Corruption.

## **B. Prevention**

***21. 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.***

Since the last Rule of Law report, a network of regional Compliance Officers has been established. It comprises 57 officers from all levels and different types of judicial bodies. The first meeting of the network took place in November 2021, where the Federal Ministry of Justice addressed the newly nominated Compliance Officers and presented them with their appointment decrees. In

December 2021 and January 2022, these Compliance Officers have received or will receive training on compliance issues. In addition, a Compliance Committee was established, which together with the Chief Compliance Officer (situated within the Federal Ministry of Justice) will meet for the first time on 31 January 2022. The aim is to run a risk analysis on compliance issues as well as to draw up and discuss the annual compliance programme.

The National Anti-Corruption Strategy (NACS) is intended to contribute to identifying targets for corruption prevention, setting priorities and implementing effective measures. Its aim is to promote and ensure integrity and transparency in administration, politics and the economy in the long term. As the evaluation of the NACS action plan is not yet completed, detailed figures on their application are not yet available.

Integrity management is one of six main targets within the NACS. Along this target, civil servants are particularly well informed, made aware and trained on the promotion of correct behaviour through holistic, target-group specific and coordinated measures. Integrity officers hold a key function in this regard. Integrity measures are also a relevant component within the framework of the other targets.

In 2021, the BAK continued to run and promote the Network of Integrity Officers (NIO) and provided individual consultancy by email and telephone regarding all inquiries received from network members. Equally, the BAK, which runs the website of the Network of Integrity Officers (NIO), continued its information campaign on corruption prevention and promotion of compliance and integrity on the NIO website ([www.integritaet.info](http://www.integritaet.info)).

Please find below the statistics of the Code of Conduct trainings completed by employees of the Federal Ministry of the Interior in 2021:

- E-learning module “Code of Conduct of the Austrian Federal Ministry of the Interior (Mol) – ‘OUR VALUES. OUR APPROACH’”: 7884 employees completed the module with a certificate.
- E-learning module “Code of Conduct of the Civil Service: The RESPONSibility rests with me – a question of ethics”: 7098 employees completed the module with a certificate.

Please find below the statistics of the education and training programmes of the Federal Academy of Public Administration (*Verwaltungsakademie des Bundes*), that have a focus on measures to enhance integrity in the public sector and their application as well as on ethics and the prevention of corruption:

Education and training programmes	Years in which the programme took place	Number of participants
Basic training: The civil service	since 2011	3046
Apprenticeship training: quality in civil service	since 2018	45
Ethics and professional ethics: What can we contribute to the common good	since 2013	163
Internal control systems and risk management	since 2014	172

Prevention of corruption - compliance - integrity	since 2014	118
Compliance in public administration: basics	since 2017	79
Prevention of corruption - compliance - integrity: in-house training	since 2017	465
Compliance risk analysis	since 2021	21
Riskmanagement course (8 modules; certificate by Austrian Standards according to ONR 49003)	since 2021	13
Integrity and value management in the public sector	Newly included in the education and training programme	Did not take place because of the COVID-19 situation
Compliance from a psychological point of view	Newly included in the education and training programme	Did not take place because of the COVID-19 situation
E-Learning tool "The RESPONSibility rests with me – A QUESTION OF ETHICS"	since November 2020	<a href="https://www.oeffentlicherdienst.gv.at/moderner-arbeitgeber/korruptionspraevention/verhaltenskodex-e-Learning/Verhaltenskodex_e-Learning.html">https://www.oeffentlicherdienst.gv.at/moderner-arbeitgeber/korruptionspraevention/verhaltenskodex-e-Learning/Verhaltenskodex_e-Learning.html</a> 14.351 IP-addresses (status: June 2021) Electronic Education Management EL-001: 471 (status: 16 December, 2021)

In general, the principles of independence, objectivity and impartiality are reflected within the internal standards of the ACA, which are beyond common rules as provided by the Federal Employment Law to avoid conflicts of interests:

Staff members of the ACA are not allowed to engage in the management and administration of enterprises, which are subject to the control of the ACA. Likewise, they do not engage in the management and administration of other profit-making enterprises.

***22. General transparency of public decision-making (e.g. public access to information, including possible obstacles related to the classification of information, transparency authorities where they exist, and framework rules on lobbying including the transparency of lobbying, asset disclosure rules, gifts and transparency of political party financing)***

By the publication of all audit reports of the ACA, insight into public decision-making processes is also given to individuals and groups outside the public sector and the awareness of the public regarding the danger of corruption is raised. By this method, public decision processes are to be made more transparent and the participation of the public is to be increased. Furthermore, this transparency of the recommendations of the ACA guarantees that the public has in fact access to information.

The ACA publishes about 60 audit reports per year, as well as the following documents:

- Guidelines (e.g. Guideline for Auditing Corruption Prevention Systems (CMS))
- Consultation on legislation
- Income reports
- Report on the Federal Financial Statements
- Annual Report
- Progress Reports on other public authorities

Regarding rules on lobbying, the ACA also emphasized the importance of taking sufficient awareness-raising measures in connection with the instrument lobbying in the audit of the “Lobbying and Interest Representation Register”<sup>1</sup>. The ACA participated in the Federal Ministry of Justice's working group to amend the rules on lobbying, which presented an interim report.

In October 2021, the ACA made a proposal to enhance and strengthen its audit rights in terms of political parties, aiming to obtain a better view of donation, sponsoring and other political party spending. End of December 2021 and just recently mid of January 2022, the parliamentary group chairwoman and the club chairman of the two political parties forming the government declared concordantly that the discussions and negotiations about a future proof amendment to the Political Parties Act have entered into a final phase. These discussions also concentrate on introducing an obligation for the political parties to present a financial balance sheet and on improving the system of the declaration about the compliance with the campaign expenses limits as well as tightening the financial sanctions in case of an infringement of the relevant obligations. Concrete results also taking into account the ideas of the ACA about rights for disclosure and auditing to assess the integrity and correctness of the statement of accounts can therefore be expected for the first half of 2022. It can already be stated at this stage that the role of the ACA will be adapted according to the requirements resulting from the public interest in the transparency of political party financing. It is also very probable that there will be changes to the system of proof with regard to the restriction on campaign expenses and to the sanctions for exceeding the relevant limits. All changes to the role of the ACA will make it necessary to also find the consent of the opposition in parliament as the constitutional provisions need a 2/3 majority. As can be seen on the website of the Independent Political Parties Transparency Panel this panel has imposed financial sanctions in many points of the previous submissions of the ACA, while also dismissing several points raised by the ACA. The amendment of the Political Parties Act in July 2019 has brought further tightenings (especially) with respect to the admissible amount of donations, which are a matter in the two actual proceedings (initiated by the ACA) before the panel.

***23. 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)***

So far, more than a quarter of all members of the judiciary have completed the e-learning programme „Compliance“. As a next step, a further e-learning programme on data security issues is being implemented. Furthermore, a compliance monitoring workflow is being set up to enable the proper monitoring of the effectiveness of the different steps and measures taken with regard to compliance.

The prevention of conflicts of interests is an essential element of the audits of the ACA and is

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<sup>1</sup> Lobbying- und Interessenvertretungs-Register, Reihe BUND 2019/45

included in the “Guideline for Auditing Corruption Prevention Systems (CMS)”. The principles of independence, objectivity and impartiality are reflected within the internal standards such as the Code of Conduct.

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

As of 15 December 2021, the introductory page of the electronic whistleblower system had been accessed over 775 419 times. In total, 13 069 (potential) criminal offences were reported, of which 4.31 % were found to have been reported without any justification. 8 242 of all reports involved the installation of a secure mailbox. 27.14 % of the reports fell under the jurisdiction of other fiscal authorities, whereas 11.75 % fell under the jurisdiction of other public prosecutor offices; all of those reports were forwarded accordingly.

**25. 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).**

As already stated on page 17 and 18 of the Austrian Input for the 2021 Rule of Law Report, the BAK, in accordance with its legal mandate, advises public administration units on the development and implementation of corruption prevention and compliance management systems as well as on individual measures of corruption prevention and integrity promotion.

Health sector:

Since the second half of 2020, the BAK supports a regional healthcare association in the area of risk analysis and risk management. In 2021, the BAK also accompanied the implementation of a compliance management system in the organizational structure. This cooperation is focusing on integrity risks and will be completed in mid-2022. As a first step, a practicable compliance risk management system was designed.

Banking/finance sector:

In 2021, the BAK continued its compliance advisory services in line with the agreement signed with the Austrian Financial Market Authority (FMA). In 2021, the BAK provided a final report on this consultation to the FMA project team, including more than 60 recommendations for a variety of integrity risk factors. These recommendations will be integrated into the existing organizational structures of the FMA. The FMA will now work on the monitoring of its compliance management system and report on the progress made.

**26. Measures taken to assess and address corruption risks in the context of the COVID-19 pandemic.**

Please refer to the Austrian input of the 2021 Rule of Law Report (page 18) regarding the public audits related to the COVID-19 pandemic, fully aware of the special framework conditions and challenges of a crisis of this kind.

The following public audits related to the COVID-19 pandemic have already been published:

- Dealing with the COVID-19 pandemic required the public sector to quickly implement financial aid measures using considerable public funds and involving many organizational

units on the federal and local level. Against this background, the public audit “COVID – 19 pandemic - Structure and scope of the financial aid measures”<sup>2</sup> shall contribute to the transparency of the use of public funds in the context of the COVID-19 pandemic for citizens. This public audit offers a systematic overview of the structure and scope of the financial aid measures by the federal government and the regional states.

- In 2020, the ACA audited the Federal Ministry for Climate Protection, Environment, Energy, Mobility, Innovation and Technology to assess the status of implementation of recommendations from its preliminary public audit "Federal Transport Infrastructure - Strategies, Planning, Financing "(Bund 2018/33)<sup>3</sup>. In addition, the effects of the COVID-19 pandemic on the high-ranking road network of the Autobahn and highway financing stock cooperation were audited.
- The hardship fund (fund established to provide rapid financial assistance to micro-businesses, one-person businesses and independent contractors affected by the pandemic) was audited in the Federal Ministry of Finance and the Federal Ministry for Digitalization and Business Location as well as in the Austrian Chamber of Commerce, which handled this funding.<sup>4</sup> The aim of this audit was to assess the legal framework and the funding design, funding processing, the quality of the public service under the aspect of benefit to the public and the provision of financial resources.
- On 17 December 2021, the public audit „ Health data on coping with the pandemic in the first year of the COVID-19 pandemic”<sup>5</sup> was published. This public audit wants to be understood as “lesson learned” for future crisis management. The public auditors focused on the question of how to react in comparable situations in the future. The aim was to assess the availability, quality and processing of health-related data on the occurrence of an infection and for epidemiological control. An improved data situation - for example on the occupancy of hospitals and regular medical care -, the systematic use of all available data and uniform, quality-assured communication can make a significant contribution to combating the pandemic.

## ***27. Any other relevant measures to prevent corruption in public and private sector***

No further update available.

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<sup>2</sup> COVID–19 – Struktur und Umfang der finanziellen Hilfsmaßnahmen, Reihe BUND 2021/25, Reihe BURGENLAND 2021/4, Reihe KÄRNTEN 2021/2, Reihe NIEDERÖSTERREICH 2021/7, Reihe OBERÖSTERREICH 2021/4, Reihe SALZBURG 2021/3, Reihe STEIERMARK 2021/3, Reihe TIROL 2021/4, Reihe VORARLBERG 2021/3, Reihe WIEN 2021/7

<sup>3</sup> Verkehrsinfrastruktur des Bundes – Strategie, Planung, Finanzierung; Follow–up–Überprüfung und COVID–19–Auswirkungen, Reihe BUND 2021/33

<sup>4</sup> Härtefallfonds – Förderabwicklung, Reihe BUND 2021/29

<sup>5</sup> Gesundheitsdaten zur Pandemiebekämpfung: Lehren für die Zukunft, Reihe BUND 2021/43, Reihe OBERÖSTERREICH 2021/8, Reihe SALZBURG 2021



## C. Repressive measures

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

The level of sanctions is as follows:

**1. § 304 Criminal Code (Passive bribery) and § 307 Criminal Code (Active bribery):**

In principle, the sanction is imprisonment for up to three years. However, the sanction amounts to imprisonment for six months to up to five years, if a person commits the offence in relation to benefits exceeding a value of EUR 3 000 and imprisonment for up to ten years if the benefits exceed a value of EUR 50 000.

**2. § 305 Criminal Code (Accepting undue advantages), § 306 Criminal Code (Acceptance of benefits for the purpose of interference), § 307a Criminal Code (Giving undue advantages), § 307b Criminal Code (Giving undue advantages for the purpose of interference), § 308 Criminal Code (Unlawful intervention), § 309 Criminal Code (Acceptance of gifts and bribery of employees and representatives):**

In principle, the sanction is imprisonment for up to two years. However, the sanction amounts to imprisonment for up to three years, if a person commits the offence in relation to benefits exceeding a value of EUR 3 000 and imprisonment for six months to up to five years if the benefits exceed a value of EUR 50 000.

The sanctions for legal entities are laid down in Article 4 of the Federal Act on the Responsibility of Legal Entities (*Verbandsverantwortlichkeitsgesetz*), which reads as follows:

“Fine for the entity  
Section 4. (1) If an entity is responsible for a criminal offence, a fine shall be imposed.  
(2) The fine shall be assessed in the form of daily rates. The fine shall amount to at least one daily rate.  
(3) The number of daily fines shall be up to  
180  
- if the criminal penalty for the offence is a life sentence or imprisonment of up to twenty years,  
155  
- if the criminal penalty for the offence is imprisonment of up to fifteen years,  
130  
- if the criminal penalty for the offence is imprisonment of up to ten years,  
100  
- if the criminal penalty for the offence is imprisonment of up to five years,  
85  
- if the criminal penalty for the offence is imprisonment of up to three years,  
70  
- if the criminal penalty for the offence is imprisonment of up to two years,  
55  
- if the criminal penalty for the offence is imprisonment of up to one year,  
40  
- in all other cases.  
(4) The daily rate shall be assessed on the basis of the income situation of the entity by taking into account its other financial performance. The daily rate shall be equal to one 360<sup>th</sup> of the yearly proceeds or exceed or fall short of such amount by not more than one third; however, the daily rate shall amount to not less than 50 euros and not more than 10.000 euros. If the entity serves charitable, humanitarian or church purposes (Sections 34 to 47 Fiscal Code, BGBl. No. 194/1961) or is not profit-oriented, the daily rate shall be fixed at a minimum of 2 euros and a maximum of

Thus, the level of sanctions against legal entities is as follows:

**a. § 304 Criminal Code (Passive bribery) and § 307 Criminal Code (Active bribery):**

In principle, the sanction is a fine up to 85 daily rates (which corresponds to imprisonment up to three years). However, the sanction amounts to a fine up to 100 daily rates (which corresponds to imprisonment for six months to up to five years), if a person commits the offence in relation to benefits exceeding a value of EUR 3 000 and a fine up to 130 daily rates (which corresponds to imprisonment for up to ten years) if the benefits exceed a value of EUR 50 000.

The daily rate shall amount to not less than EUR 50 and not more than EUR 10 000. Thus, the maximum fines for the individual alternatives of the offence would be up to EUR 850 000, up to EUR 1 000 000 and up to EUR 1 300 000.

**b. § 305 Criminal Code (Accepting undue advantages), § 306 Criminal Code (Acceptance of benefits for the purpose of interference), § 307a Criminal Code (Giving undue advantages), § 307b Criminal Code (Giving undue advantages for the purpose of interference), § 308 Criminal Code (Unlawful intervention), § 309 Criminal Code (Acceptance of gifts and bribery of employees and representatives):**

In principle, the sanction is a fine up to 70 daily rates (which corresponds to imprisonment for up to two years). However, the sanction amounts to a fine up to 85 daily rates (which corresponds to imprisonment for up to three years), if a person commits the offence in relation to benefits exceeding a value of EUR 3 000 and a fine up to 100 daily rates (which corresponds to imprisonment for six months to up to five years) if the benefits exceed a value of EUR 50 000.

Taking into account that the daily rates shall not amount to more than EUR 10 000, the maximum fines for the individual alternatives of the offence would be up to EUR 700 000, EUR 850 000 and EUR 1 300 000.

***29. Data on investigation and application of sanctions for corruption offences<sup>9</sup>, including for legal persons and high level and complex corruption cases) and their transparency, including as regards to the implementation of EU funds.***

In 2021, the Federal Bureau of Anti-Corruption (BAK) recorded a total of 762 cases that fall under the BAK's exclusive jurisdiction. Thereof, the majority, namely 682 cases, concern alleged abuse of official authority (sec. 302 Austrian Criminal Code [*Strafgesetzbuch* – StGB]). Furthermore, the BAK recorded the following allegations: 11 cases of corruptibility (sec. 304 StGB), 11 cases of acceptance of an advantage (sec. 305 StGB), 5 cases of acceptance of an advantage for the purpose of exerting influence (sec. 306 StGB) and 4 cases of bribery (sec. 307 StGB). In addition, the Bureau registered 2 cases of offering an advantage (sec. 307a StGB), 7 cases of acceptance of gifts and bribery of employees or agents (sec. 309 StGB) and 29 cases of breaches of official secrecy (sec. 310 StGB). One case of breach of trust due to abuse of an official function or due to involvement of an office holder (sec. 313 StGB in conjunction with sec. 153 StGB).

The basis for these statistics is the “principal offence” of each case, i.e. the criminal act that determines the sentence. However, a criminal investigation case may also include other punishable acts. It should also be noted that the BAK statistics only take into account reports, allegations, etc. that were received by the BAK in the reporting year. Cases from previous reporting years where investigations have not yet been concluded are not considered in the statistics of the new reporting year. Furthermore, it should be noted that the data may still change slightly from the time of the query (5 January 2022) until all cases have been statistically

recorded.

The Bureau publishes a detailed annual report both online and in printed form, which contains, among other things, the statistics gathered by the BAK. In addition, the publication “Corruption phenomena in Austria from the perspective of the Federal Bureau of Anti-Corruption” was released in 2020 (in German). It was produced as part of the BAK project “Analysis of corruption and integrity in Austria”, which is co-financed by the EU Internal Security Fund and will be published every two years.

The following table contains convictions, diversions and acquittals with regard to offences pursuant to Sections 304 to 309 Criminal Code for 2021:

<b>2021:</b>	<b>Section 304</b>	<b>Section 305</b>	<b>Section 306</b>	<b>Section 307</b>	<b>Section 307a</b>	<b>Section 307b</b>	<b>Section 308</b>	<b>Section 309</b>
Convictions	4	-	-	33	2	5	-	4
Diversions	36	3	24	4	1	9	-	13
Acquittals	-	-	-	1	1	1	-	5

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

There has been no change in the legal situation regarding immunity. However, with regard to investigations against non-immune accomplices, in 2022, it will be clarified by decree that investigations against the latter are admissible after all (in deviation from the previously held legal opinion) and that evidence that also concerns the immune person – who cannot be prosecuted for the duration of immunity – may also be taken in proceedings initiated against the non-immune accomplices as long as investigations do not violate the immunity status of the immune person. Any applications for pardoning are subject to a case-by-case examination, taking into account the concrete wrongfulness or socially disruptive value of the underlying offence.

***31. Information on effectiveness of administrative measures and sanctions, in particular recovery measures and administrative sanctions on both public and private offenders.***

No additional information available.

# III. Media freedom and pluralism

## A. Media authorities and bodies

### ***32. Measures taken to ensure the independence, enforcement powers and adequacy of resources of media regulatory authorities and bodies***

No further update available.

### ***33. Conditions and procedures for the appointment and dismissal of the head / members of the collegiate body of media regulatory authorities and bodies***

No further update available.

### ***34. Existence and functions of media councils or other self-regulatory bodies***

No further update available.

## B. Transparency of media ownership and safeguards against government or political interference

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

In mid-January, the Federal Government entrusted the Federal Minister for Women, Family, Integration and Media with the preparation of the necessary measures concerning the restructuring of Austrian media funding and the practice of media cooperation.

### ***36. Safeguards against state / political interference, in particular:***

#### ***- safeguards to ensure editorial independence of media (private and public)***

Regarding general information about safeguards to ensure editorial independence of media, please refer to the information submitted in the Austrian Input for the 2020 Rule of Law Report (pages 47 to 48).

On December 7, 2021, the ECtHR reached a decision in an Austrian case (*Standard Verlagsgesellschaft mbH against Austria*, Appl. No. 39378/15) that has implications for the independence of media. The case concerned court orders for the applicant media company to reveal the sign-up information of registered users who had posted comments on its website, derStandard.at, the website of the newspaper *Der Standard*. This had followed comments allegedly linking politicians to, among other things, corruption or neo-Nazis, which the applicant company had removed, albeit refusing to reveal the information of the person who posted the comment in question. The Court found in particular that user data did not enjoy the protection of “journalistic sources”, and there was no absolute right to online anonymity. However, according to the Court’s judgement the domestic courts had not balanced the interests of the plaintiffs with the interests of the applicant company in keeping its users anonymous so as to help promote the free exchange of ideas and information as covered by Article 10. The court orders had thus not

been necessary in a democratic society. Hence, the Court held that *Der Standard* should not have been forced to reveal online commenters' personal information and that there had been a violation of Article 10 of the ECHR. In practice, this will most likely lead to a change in the Austrian Supreme Court's case law.

**- specific safeguards for the independence of governing bodies of public service media governance (e.g. related to appointment, dismissal) and safeguards for their operational independence (e.g. related to reporting obligations),**

Legal basis: [Section 19 et seq. of the Federal Act on the Austrian Broadcasting Corporation \(ORF Act – ORF-G\)](#)

The governing bodies of the Austrian Broadcasting Corporation (*ORF*) are the Director General, the Foundation Council (*Stiftungsrat*) and the Audience Council (*Publikumsrat*).

The management of the ORF rests with the Director General who represents the ORF to the public. He is elected by the Foundation Council for a period of 5 years by simple majority. The law provides for special qualification requirements for the office of the Director General. Accordingly, candidates must have adequate previous training or five years of experience in the same or a related profession. In addition, there are incompatibility rules, according to which employees of party fractions or of the cabinet of a federal minister, among others, cannot be appointed as Director General. The Director General sets the program guidelines, makes proposals to the Foundation Council on personnel decisions and supervises the activities of the other managers. He is not bound by any instructions or orders other than those arising from the law or the resolutions of the Foundation Council. The term of the Director General ends upon expiry of the five-year term of office. The Foundation Council may also dismiss the Director General at any time without providing special reasons with a two-thirds majority vote.

The Foundation Council consists of 35 members appointed by the Federal Government, the Federal provinces (*Länder*), the Audience Council and the Central Staff Council (*Zentralbetriebsrat*). The term of office of the Foundation Council is four years from the day of its first meeting until, at any rate, the day when the next newly appointed Foundation Council convenes. During a term of office, the members appointed by the Federal Government may be relieved of their duties only if the Federal President has appointed a new Federal Government, a member appointed by a province only if the provincial parliament (*Landtag*) has elected a new provincial government, and the members appointed by the Audience Council and the Central Staff Council only if these bodies constitute themselves anew. Only in the case of qualified non-action, the independent regulatory authority (*KommAustria*) may dissolve the Foundation Council.

With regard to operational independence, it is worth noting that there exists an annual reporting obligation to the Federal Chancellor and the regulatory authority (section 7 ORF Act). However, this obligation does not constrain the independence of the governing bodies, because its purpose is to provide an overview of the activities of the ORF and thus there is no risk of interference on the organizational structure laid down by law.

Additionally, section 32 ORF Act guarantees the independence of the programming staff as well as journalistic staff of the ORF: „(...) the Austrian Broadcasting Corporation and its subsidiaries shall pay due regard to the independence and self-responsibility of all programming staff as well as to the right of all journalistic staff to freely exercise the journalistic profession in discharging the functions assigned to them. In exercising their activities, journalistic staff must not in particular

be required to prepare or accept responsibility for anything, which contradicts the freedom of the journalistic profession. Justified refusal to do so shall not result in detrimental consequences for them.“ (section 32 para 1).

***- procedures for the concession/renewal/termination of operating licenses***

With regard to operating licenses, a distinction must be made: while the introduction of a state licensing requirement is constitutionally prohibited for the press ([Article 13 of Basic Law on the General Rights of Nationals](#)), a licensing system is not ruled out for broadcasting services.

The laws governing broadcasting activates in Austria provide for different levels of legal requirements depending on the legal form of a broadcaster and the technical method of transmission. For the ORF, the right to broadcast is already derived from the law (ORF Act). Hence, no further license or notification is required. The provision of television services and radio broadcasts via cable as well as certain audio-visual media services such as “Web-TV” are merely subject to notification, but do not require a licence prior to commencing operations (see section 6a of the [Private Radio Broadcasting Act](#) as well as section 9 of the [Federal Act on Audiovisual Media Services](#)).

Finally, the provision of television services by means of wireless terrestrial transmission, via satellite and in electronic communications networks as well as the provision of radio channels via wireless terrestrial transmission, in cable networks and via satellite requires a license (see section 3 et sub. of the [Private Radio Broadcasting Act](#) as well as sections 4 et sub. of the [Federal Act on Audiovisual Media Services](#)). Due to the significance of broadcasting for a democratic society and in the interest of media pluralism, these licenses are awarded on the basis of a public tender procedure among several applicants in accordance with certain content-related criteria. The decision is based on the diversity of opinion and the independence of the program under consideration. In addition, applicants must meet the following requirements (see in detail section 5 paragraph 3 and section 7 et seq. of the [Private Radio Broadcasting Act](#) as well as sections 4 and 10 et sub. of the [Federal Act on Audiovisual Media Services](#)):

- EEA citizenship
- Corporations and partnerships may not be more than 49 % owned by third parties
- Disclosure of the ownership and membership structure of the applicant company
- Certain state and state-related institutions (e.g., legal entities under public law, political parties and the ORF) are excluded from the provision of private broadcasting services.
- the regulations governing holdings by media owners must be adhered to (see below)
- Submission of a broadcasting program concept

A license issued under this procedure is granted for a period of ten years. Before the expiry of this period, however, the regulatory authority may revoke the license in the event of non-compliance with the approved program or the conditions of the license. Furthermore, a license can also be revoked in case broadcasting operations have been suspended for more than one year or in case the broadcaster fails to continue to meet certain prerequisites.

***- information on specific legal provisions for companies in the media sector (other than licensing), including as regards company operation, capital entry requirements and corporate governance***

The [Federal Act on the Press and other Publication Media](#) provides specific legal provisions for media owners as regards company operation. For one, media products have to indicate the name or the company of the media owner and of the producer as well as the business place of the publishing house and of the producer (section 24). Moreover, media owners of periodical media shall also disclose information such as the object of company, residential address or registered office and the names of the executive bodies as well as the ownership, shareholding, share and voting rights proportions (section 25).

***37. Transparency of media ownership and public availability of media ownership information, including on media concentration (including any rules regulating the matter)***

No further update available.

***C. Framework for journalists' protection***

***38. Rules and practices guaranteeing journalist's independence and safety***

No further update available.

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

No further update available.

***40. Access to information and public documents (incl. procedures, costs/fees, timeframes, administrative/judicial review of decisions, execution of decisions by public authorities)***

a) The right to access to information from the administration is guaranteed at a constitutional level by Art. 20 par. 4 Federal Constitutional Law (*Bundes-Verfassungsgesetz* - B-VG) which stipulates the obligation of the administration to impart information and by Art. 10 ECHR which is part of the constitutional law. Implementing provisions are contained in the Duty to Grant Information Act, Federal Law Gazette (FLG) n°287/1987, the Fundamental Act on the duty to grant Information, FLG I n°286/1987, and implementing laws of the provinces (*Länder*) and in sector-specific legislation (e.g. the Law on information on the environment - *Umweltinformationsgesetz* - UIG, FLG I n°495/1993, and laws of the provinces (*Länder*) concerning geodata and statistics).

Concerning the procedure, anyone is entitled to submit requests for information in writing, orally or by telephone. An E-mail request is to be considered as a written request (cf. § 2 Duty to Grant Information Act, FLG n°287/1987; § 4 Fundamental Act on the duty to grant Information, FLG n°286/1987).

If the contacted administrative authority considers itself incompetent, it shall forward the request without undue delay to the authority having jurisdiction or refer the applicant to such authority

(cf. § 6 par 1 General Administrative Procedure Act 1991 – GPA [AVG]).

The authority is obliged to give the information or decide not to give the information „without undue delay”, at the latest however, within 8 weeks after receipt of the request for information. If for special reasons such term cannot be complied with, the applicant shall be informed accordingly in writing (cf. § 6 Duty to Grant Information Act in conjunction with § 73 par 1 GPA; the laws of the provinces (*Länder*) provide for the same time limit; cf. § 5 Fundamental Act on the duty to grant information). A (negative) formal administrative decision (“*Bescheid*”) is to be issued on demand also „without undue delay”, however at the latest within six months after receipt (cf. § 73 par 1 GPA).

A (negative) administrative decision can be challenged before the locally competent administrative court within a time limit of four weeks („*Bescheidbeschwerde*”). If the administrative authority has not made a decision on the matter within the time limit provided by law, a complaint on the ground of a breach of the duty to reach a decision (complaint alleging breach of the duty to reach a timely decision) to the administrative court may be filed (“*Säumnisbeschwerde*”; cf. § 8 VwGVG in conjunction with Art. 130 para 1 sub-para 3 of the Federal Constitutional Law). The Administrative Court is obligated to decide on the complaint without undue delay, however, at the latest within six months after receipt of the complaint (cf. § 34 par. 1 Federal Act on Proceedings of Administrative Courts [Proceedings of Administrative Courts Act – VwGVG], FLG I n°33/2013).

The decision of the administrative court may be challenged before the Supreme Administrative Court (*VwGH*) or/and before the Constitutional Court (*VfGH*), depending basically on which infringement has been alleged (constitutional or other right). If the administrative court does not decide within the legal time limit, its default may be invoked before the Supreme Administrative Court by a request for a deadline (“*Fristsetzungsantrag*”; cf. § 38 Supreme Administrative Court Act 1985 – VwGG, FLG n°10/1985 in conjunction with Art. 133 par 1 sub-para 2 Federal Constitutional Law).

Both the Supreme Administrative Court – especially since two basic rulings in 2018 (VwGH 29.5.2018, Ra 2017/03/0083 and VwGH 24.5.2018, Ra 2017/07/0026) – and the Constitutional Court (VfGH 4.3.2021, E 4037/2020) expressly invoke the jurisdiction of the ECtHR concerning the fundamental right of access to information according to Art. 10 ECHR. These national highest courts are guided by this case law and recognise a right of access to information based directly on Art. 10 ECHR as a constitutional provision (in Austria). The applicable law has to be interpreted and applied according to these constitutional requirements. The administrative authorities have to weigh up all concerned interest in a proportionality test (harm test). Especially the function of journalists as „public watchdogs“ in a democratic society has to be taken into account. The administrative decision has to be based on established facts and must be well-founded. According to this jurisprudence, not only information about can be demanded, but under certain conditions direct access to the requested information is to be given. A general refusal to provide the requested information is not allowed as far as a partial access is possible.

Additionally, this jurisdiction clarified basic aspects of legal protection against administrative inactivity and also against private entities exercising official competences.

Concerning the implementation of judicial decisions, all administrative instances are bound by the courts decisions. They have to adhere to their legal opinion. As in general and all other legal matters, the general rules concerning the legal, disciplinary and political responsibilities of administrative bodies apply (e.g. the provisions of public liability law and disciplinary law).



Regarding the costs of requests of information formal requests for information and applications for an administrative decision may be chargeable, if only private interests are being pursued (EUR 14,30 according to § 14 TP 6 par. 1 Federal Fees Act – *Gebührengesetz 1957* – GebG, Federal Law Gazette No. 267/1957). When a journalist asks for information, there are regularly also public interests concerned, so that the request is regularly free of charge. When getting the information, depending of the circumstances and essentially also of pursued predominantly private interests, administrative taxes can be charged. In the case of journalistic requests for information, this is not very likely. The potential costs depend on the number of the pages (papers) given away (cf. in detail the Federal Administrative Tax Code – *Bundesverwaltungsabgabenverordnung 1983* – BVwAbgV, FLG n°24/1983, and the administrative tax codes of the Laender).

b) The Government Programme of the Austrian government mentions the establishment of “freedom of information” as one of the main policy aims for the period of 2020 to 2024 (cf. *Regierungsprogramm 2020–2024*, pages 19 to 20). To implement this aim, the Federal Ministry for EU and Constitution has prepared a legislative proposal after having heard a number of experts, institutions concerned, media representatives, Members of the Austrian Parliament and non-governmental organisations working in this field. On 22 February 2021, this ministerial proposal were allowed to submit to the consultation procedure (*Begutachtungsverfahren*), during which a number of institutions may comment on the draft. It was also published on the Parliament’s website ([https://www.parlament.gv.at/PAKT/VHG/XXVII/ME/ME\\_00095/index.shtml](https://www.parlament.gv.at/PAKT/VHG/XXVII/ME/ME_00095/index.shtml)) and at the website of the Legal Information System of the Republic of Austria (*Rechtsinformationssystem des Bundes, RIS*) ([https://www.ris.bka.gv.at/Dokument.wxe?ResultFunctionToken=72764fa1-f0c1-43c9-9e97-d8c6e84c81b8&Position=1&SkipToDocumentPage=True&Abfrage=Begut&Titel=&Einbringer=&DatumBegutachtungsfrist=23.02.2021&ImRisSeitVonDatum=&ImRisSeitBisDatum=&ImRisSeit=Undefined&ResultPageSize=100&Suchworte=&Dokumentnummer=BEGUT\\_COO\\_2026\\_100\\_2\\_183\\_6568](https://www.ris.bka.gv.at/Dokument.wxe?ResultFunctionToken=72764fa1-f0c1-43c9-9e97-d8c6e84c81b8&Position=1&SkipToDocumentPage=True&Abfrage=Begut&Titel=&Einbringer=&DatumBegutachtungsfrist=23.02.2021&ImRisSeitVonDatum=&ImRisSeitBisDatum=&ImRisSeit=Undefined&ResultPageSize=100&Suchworte=&Dokumentnummer=BEGUT_COO_2026_100_2_183_6568)).

The consultation procedure lasted until 19 April 2021 and involved a wide range of public and private institutions and interest groups, other entities likely to be affected, and expert groups such as NGOs. The opinions expressed during these consultations are published on the Parliament’s website. They are also published on the internet (cf. above cited website of Parliament). Because of these consultations, the ministerial proposal may be modified before it is submitted as a bill to the National Council, where it will be deliberated in the competent committees and in the plenary. As regards the substance of the legislative proposal, which shall repeal an existing law on the duty to grant information, a new constitutional, fundamental right to information (on demand) shall be granted to everybody. In addition, public institutions shall actively make information of general interest accessible for everyone on the internet in a central information register. Not only the public administration shall be obliged to give information on demand and by their own initiative, but also the judicial and the legislative branches. Even private enterprises that are subject to review by the Austrian Court of Audit (*Rechnungshof*) shall be obliged to give information on demand.

In general, according to the proposal, the (informal) demands for information shall be fulfilled in lesser time (usually within four weeks at the latest, within eight weeks in special situations, e.g. if persons, whose rights are concerned, are to be heard before) and free of charge. If possible, direct access to the information is to be provided. Only certain public and very important private rights and interests provided by constitutional law (e.g. data protection) should limit the new fundamental right. Partial access to information shall be possible. The right to information shall be enforceable before the independent administrative courts and subsequently before the

Constitutional Court (*VfGH*). The Austrian Data Protection Authority shall support the institutions that are subject to obligations in the present matter.

Notably, the law making process will require an amendment of the Federal Constitution. This will allow making further legal details in a single Federal Law on the Freedom of Information (*Informationsfreiheitsgesetz*), instead of in eleven laws of the Federation (*Bund*) and the provinces (*Länder*). As competences of the provinces (*Länder*) are to be curtailed, the Federal Council (*Bundesrat*) will also have to approve the act by a qualified majority.

As mentioned above, the proposed law faced criticism from various sides. At the moment, further consultations are held to find a consensual solution.

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

No further update available.

## IV. Other institutional issues related to checks and balances

### A. The process for preparing and enacting laws

#### ***42. Framework, policy and use of impact assessments, stakeholders'/public consultations (particularly consultation of judiciary and other relevant stakeholders on judicial reforms), and transparency and quality of the legislative process***

Extension of the consultation procedure: As already reported in the Austrian Input for the 2021 Rule of Law Report (page 26), a motion to amend the Act on the National Council's Rules of Procedure (*Bundesgesetz vom 4. Juli 1975 über die Geschäftsordnung des Nationalrates [Geschäftsordnungsgesetz 1975]*) was introduced in Parliament in December 2020, according to which all legislative initiatives that are discussed in Parliament are to be subjected to an open consultation procedure. This motion was passed by the National Council unanimously in March 2021 and the “parliamentary consultation procedure” entered into force on 1 August 2021 (cf. Art. 23b para 1 of the National Council’s Rules of Procedure, Federal Law Gazette I no. 63/2021).

This extension of the scope of the consultation procedure now allows experts and citizens to submit comments not only on proposals submitted by the competent ministry (*Ministerialentwürfe*), but also on legislative proposals by members of Parliament and committees, finalized Federal Government Bills (*Regierungsvorlagen*), legislative proposals by the Federal Council (*Bundesrat*) and popular initiatives, for as long as the parliamentary legislative process has not been completed. While all comments received are to be published on the Parliament's website, those from private individuals are only published with their consent.

Moreover, no further update available. Please refer to the information submitted in the Austrian Input for the 2021 Rule of Law Report (pages 25 and 26).

#### ***43. 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)***

No further update available. Please refer to the information submitted in the Austrian Input for the 2021 Rule of Law Report (page 27) and in the Austrian Input for the 2020 Rule of Law Report (pages 50 to 52).

#### ***44. Regime for constitutional review of laws***

No further update available. Please refer to the information submitted in the Austrian Input for the 2021 Rule of Law Report (page 27) and in the Austrian Input for the 2020 Rule of Law Report (pages 52 to 53).

**45. COVID-19: provide update on significant developments with regard to emergency regimes 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**

The Constitutional Court (VfGH) has been reviewing measures related to the COVID-19 pandemic. Since April 2020, the VfGH has received applications and complaints against the protective measures taken in response to the pandemic. As of November 2021 there had been around 400 applications in total, out of which around 200 were completed (130 were completed in 2020; [https://www.vfgh.gv.at/medien/Dezember\\_2021\\_Covid\\_Vorschau.php](https://www.vfgh.gv.at/medien/Dezember_2021_Covid_Vorschau.php) [in German]).

The VfGH has declared a provision of the Epidemics Act 1950 to be unconstitutional (see below) and in some cases declared ordinances to be unlawful. However, it also deemed many provisions lawful because the relevant decision-making basis was substantiated and the regulations were proportionate in view of the epidemiological situation. In doing so, the VfGH has continued to follow its benchmark decisions of 14 July 2020 (G 202/2020; V 408/2020; V 411/2020; V 363/2020; [https://www.vfgh.gv.at/medien/Covid\\_Entschaedigungen\\_Betretungsverbot.de.php](https://www.vfgh.gv.at/medien/Covid_Entschaedigungen_Betretungsverbot.de.php) [in German and English]; please refer to the information submitted in the Austrian Input for the 2021 Rule of Law Report, page 28).

Specifically, the VfGH has decided on the following applications and complaints (this overview is arranged by topics):

Rulings of 10 March 2021 (V 574/2020 ao. and V 583/2020), 24 June 2021 (V 87/2021), 23 September 2021 (V 155/2021), 6 October 2021 (V 86/2021), 29 November 2021 (V 606/2020) and 30 November 2021 (V 31/2021 and V 47/2021):

The rules on location-independent lessons ("distance learning") and the face mask requirement (in combination with COVID-19 rapid tests) in school buildings had been legal. The Federal Minister for Education's decision-making basis was sufficiently substantiated and the regulations were – in view of the scientifically proven uncertainty about the spread of COVID-19, the epidemiologically proven situation at the time of the decision, the recommendation of the Corona Commission and so on – objectively justified and proportionate. The VfGH ruled that also the temporary measures, the entry ban to certain (parts of) cities, the test requirement for leaving a certain state or certain districts as well as the ban on entering cultural facilities and events, were lawful. The restriction on the right to freedom of movement brought about by the testing requirement on departure was proportionate to protect against the spread of certain viral variants of COVID-19 and the ban on entering cultural facilities and events was an appropriate means to achieve the goal of reducing personal contacts. The VfGH rejected applications concerning the entry ban to trade establishments in February 2021, exit restrictions and the entry ban to restaurants in January 2021 as well as exit restrictions for night hours from December 2020 onwards on the grounds of established case law. For more details:

[https://www.vfgh.gv.at/medien/Covid\\_Entscheidungen\\_Maerz\\_2021.php](https://www.vfgh.gv.at/medien/Covid_Entscheidungen_Maerz_2021.php),

[https://www.vfgh.gv.at/medien/Maerz\\_Covid\\_Teil\\_2.php](https://www.vfgh.gv.at/medien/Maerz_Covid_Teil_2.php),

[https://www.vfgh.gv.at/medien/Covid-Entscheidungen\\_Juni\\_2021.php](https://www.vfgh.gv.at/medien/Covid-Entscheidungen_Juni_2021.php),

[https://www.vfgh.gv.at/medien/Covid\\_Oktober\\_2021.php](https://www.vfgh.gv.at/medien/Covid_Oktober_2021.php)

and

<https://www.vfgh.gv.at/medien/COFAG.php> (in German)

Rulings of 8 June 2021 (V 587/2020), 10 June 2021 (V 35/2021) and 24 June 2021 (V 592/2020; V 593/2020 and V 2/2021):

Depending on the decision-making basis, the VfGH deemed the mandatory use of face masks in retail to be in compliance with the law (V 35/2021) or unlawful (V 587/2020). The ban on entering and driving into the customer area of retail premises, and thus the ban on click and collect, was proportionate given the epidemiological situation, the short time period and the possibility of online trade. The VfGH also considered the ban on entering (driving into) the customer area of permanent establishments for the use of body-related services (e.g. massages) to be objectively justified. On the other hand, the VfGH repealed a provision in the „2. COVID-19-Notmaßnahmenverordnung“ according to which the number of participants at funerals was limited to 50 persons: although the measure pursued legitimate aims and was also suitable for this purpose, paying their last respects to close deceased persons is neither repeatable nor substitutable and therefore constitutes a particularly serious interference with the right to private life (Art. 8 ECHR). For more details:

[https://www.vfgh.gv.at/medien/Covid-Entscheidungen\\_Juni\\_2021.php](https://www.vfgh.gv.at/medien/Covid-Entscheidungen_Juni_2021.php) (in German)

Rulings of 9 March 2021 (V 530/2020), 10 March 2021 (V 573/2020 and G 380/2020 ao.), 23 September 2021 (V 5/2021), 6 October 2021 (V 7/2021 ao.; V 17/2021 ao.; V 58/2021; V 74/2021 ao.), 3 December 2021 (V 617/2020; V 618/2020) and 15 December 2021 (V 560/2020 and V 229/2021):

The VfGH ruled that regulations prohibiting the collection of food and beverages from ski huts that were not accessible to the general public by motor vehicle via a public road were unlawful, because it could not see any objective reason for the regulations being based only on the criterion of the (non-)accessibility of a ski hut via a public road. The Court also repealed the entry ban for sports and leisure facilities as well as for sports grounds and children's playgrounds in Graz and a provision that required business establishments (such as restaurants) to provide certain personal data (e.g. of customers) to health authorities in the event of suspected COVID-19 cases. Regulations that food and beverages may only be consumed while seated and that groups of visitors may only be admitted to restaurants if a certain number of people is not exceeded were also repealed, in part because the Corona-Commission (an expert panel) was not heard. In addition, a provision of the Epidemics Act 1950 was repealed as unconstitutional because it did not indicate what exactly the subject of the district court's examination – and thus its jurisdiction – was. The obligation to wear a FFP2 mask in mountain railways (although in means of mass transport and in other public places in closed rooms only the wearing of a simple mouth-nose protection was prescribed) did not violate the principle of equality, especially because of the increased aerosol emission during sports. For more details:

[https://www.vfgh.gv.at/medien/Covid\\_Entscheidungen\\_Maerz\\_2021.php](https://www.vfgh.gv.at/medien/Covid_Entscheidungen_Maerz_2021.php),

[https://www.vfgh.gv.at/medien/Maerz\\_Covid\\_Teil\\_2.php](https://www.vfgh.gv.at/medien/Maerz_Covid_Teil_2.php),

<https://www.vfgh.gv.at/medien/Take-away-Verbot.de.php>

and

[https://www.vfgh.gv.at/medien/COVID\\_Dezember\\_2021.php](https://www.vfgh.gv.at/medien/COVID_Dezember_2021.php) (in German)

Ruling of 2 March 2021 (E 4202/2020):

The VfGH refused to deal with a complaint regarding compensation for a company that had continued to pay the remuneration due to an employee who, after returning from abroad, was required by the ordinance to take a 14-day home quarantine. The VfGH had no constitutional objections to the regulation of the Epidemics Act 1950, which is based on individual segregation measures. For more details:

[https://www.vfgh.gv.at/medien/Maerz\\_Covid\\_Teil\\_2.php](https://www.vfgh.gv.at/medien/Maerz_Covid_Teil_2.php) (in German)

Ruling of 15 December 2021 (G 233/2021 ao.):

The VfGH ruled that the regulations on the award and recovery of COVID-19 aid granted by the „COVID-19 Finanzierungsagentur des Bundes GmbH (COFAG)“ to Austrian companies do not

violate the principle of legality or principles of state organization. For more details: <https://www.vfgh.gv.at/medien/COFAG.php> (in German)

In the course of the past year, also the Administrative Courts have issued numerous decisions on COVID-19 measures. To name a few:

- The Supreme Administrative Court ruled that only closures of establishments under sec. 20 of the Epidemics Act 1950 (*Epidemiegesetz 1950* - EpiG, only available in German: <https://www.ris.bka.gv.at/GeltendeFassung.wxe?Abfrage=Bundesnormen&Gesetzesnummer=10010265>) can give rise to a claim for compensation under sec. 32 EpiG, but not closures of establishments under other legal provisions, such as the Law on COVID-19 measures (judgement from 24 February 2021, Ra 2021/03/0018, only available in German: [https://www.ris.bka.gv.at/Dokumente/Vwgh/JWT\\_2021030018\\_20210224L00/JWT\\_2021030018\\_20210224L00.pdf](https://www.ris.bka.gv.at/Dokumente/Vwgh/JWT_2021030018_20210224L00/JWT_2021030018_20210224L00.pdf)).
- The Supreme Administrative Court also ruled that compensation for loss of earnings under sec. 32 EpiG also includes any special payments granted under collective or individual agreements in addition to the basic remuneration, such as Christmas and holiday bonuses, which therefore must be included on a pro rata basis when calculating the remuneration to be paid for each day of segregation (judgement from 24 June 2021, Ra 2021/09/0094, only available in German: [https://www.ris.bka.gv.at/Dokumente/Vwgh/JWT\\_2021090094\\_20210624B00/JWT\\_2021090094\\_20210624B00.pdf](https://www.ris.bka.gv.at/Dokumente/Vwgh/JWT_2021090094_20210624B00/JWT_2021090094_20210624B00.pdf)).
- Administrative Courts of 1<sup>st</sup> instance ruled on administrative infractions e.g. concerning refusing to use a mask.
- Administrative Courts of 1<sup>st</sup> instance also ruled on compensation for loss of earnings.
- Furthermore, Administrative Courts of 1<sup>st</sup> instance ruled on isolation of persons.

***- oversight (incl. ex-post reporting/investigation) by Parliament of emergency regimes and measures in the context of COVID-19 pandemic***

In the Austrian Input for the 2021 Rule of Law Report (page 27), it has already been mentioned that the Main Committee of the National Council has a crucial role in the passing of regulations relating to the combat of the COVID-19 pandemic: in respect of some specific regulations issued by the Federal Minister of Social Affairs, Health, Care and Consumer Protection under Art. 11 of the COVID-19 Measures Act it is required to obtain the consent of the Main Committee of the National Council and to let such regulations expire at the latest after four weeks or ten days (as the case may be) after any such regulation has been issued. In order to extend the validity of such regulations it is thus required to once again obtain the Main Committee's consent. Against this background, the Main Committee met particularly frequently in 2021: the Main Committee had to give its consent to regulations issued by the Federal Minister of Social Affairs, Health, Care and Consumer Protection under the COVID-19 Measures Act a total of 22 times.

In addition, the Standing Sub-Committee of the Court of Audit Committee of the National Council was tasked in January 2021 with examining the conduct of the Federal Ministry of Social Affairs, Health, Care and Consumer Protection, the Federal Ministry of Digital and Economic Affairs, the Federal Ministry of Finance and the Federal Ministry of Defence as well as the state-owned Federal Procurement Ltd. (*Bundesbeschaffung GmbH*) with regard to the procurement processes and awarding of contracts in connection with the COVID-19-pandemic since March 2020 (i.a. with regard to the procurement processes and awarding of contracts for protective masks, protective suits and general protective equipment, for COVID-19 tests and for COVID-19 vaccines).

## B. Independent authorities

### ***46. 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***

No further update available. Please refer to the information submitted in the Austrian Input for the 2021 Rule of Law Report (pages 29 and 30).

### ***47. 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***

The Ombudsman Board (Volksanwaltschaft, AOB):

The AOB regularly prepares and publishes several reports, audit results and statements on its website. Once a year, the AOB submits a comprehensive report to Parliament. The AOB can also submit thematic special reports to Parliament at any time. In seven provinces (*Länder*), it also audits the entire administration at provincial and municipal level. Here, too, the AOB regularly summarises the results of its audit procedures in reports to the provincial parliaments. For worldwide partner organisations, it publishes international versions of the annual and Austrian National Preventive Mechanism (NPM) reports in English. Furthermore, it publishes findings of maladministration, statements on draft laws and legislative suggestions on its website. For more details:

<https://volksanwaltschaft.gv.at/berichte-und-pruefergebnisse#index-lead> (in German, certain documents also in English)

The Federal Disability Ombudsman:

For details on the reports, statistics and recommendations published by the Federal Disability Ombudsman please refer to: <http://www.behindertenanwalt.gv.at/downloads> (in German)

The CRPD Monitoring Committee (Monitoringausschuss), an independent mechanism for the promotion, protection and monitoring of the implementation of the Convention on the Rights of Persons with Disabilities (CRPD) at the federal level:

For details on the reports, statements and recommendations published by the CRPD Monitoring Committee please refer to: <http://www.monitoringausschuss.at> (in German, certain documents also in English)

Austrian Court of Audit (Rechnungshof, ACA):

All reports of the ACA are available on its website: [https://www.rechnungshof.gv.at/rh/home/home/home\\_3/Berichte\\_des\\_Rechnungshofes\\_im\\_Ueberblick.html](https://www.rechnungshof.gv.at/rh/home/home/home_3/Berichte_des_Rechnungshofes_im_Ueberblick.html) (in German)



## C. Accessibility and judicial review of administrative decisions

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

No further update available. Please refer to the information submitted in the Austrian Input for the 2021 Rule of Law Report (page 30) and in the Austrian Input for the 2020 Rule of Law Report (pages 58 to 60).

In general, administrative decisions are not published, but anyone with a legal title or legal interest regarding the activity of an authority has the right to partake in the respective procedure as a party. This guarantees that anyone (legally) affected by a decision can present his or her point of view in the procedure leading up to the decision and renders the procedure transparent for the parties. Furthermore, the administrative decision has to be issued to all parties.

### ***49. 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).***

No further update available. Please refer to the information submitted in the Austrian Input for the 2020 Rule of Law Report (pages 58 to 61).

#### Suspensive effect:

In the proceedings before the first instance administrative courts, a timely and admissible complaint grants the contested decision suspensive effect. However, there are exceptions to this general rule (see sec. 16 para. 2 Federal Office for Immigration and Asylum Procedures Act - BFA-Verfahrensgesetz). Also, an authority can exclude the suspensive effect if, after having considered the affected public interests and the interests of other parties, the early enforcement of the contested administrative decision or the exercise of the authorization granted by the contested administrative decision is urgently required because of imminent danger (sec. 13 Proceedings of Administrative Courts Act - VwGVG, only available in German: <https://www.ris.bka.gv.at/GeltendeFassung.wxe?Abfrage=Bundesnormen&Gesetzesnummer=20008255>).

In proceedings before the Supreme Administrative Court suspensive effect is only granted upon application. It shall be granted if there are no compelling public interests to the contrary and if, after weighing the public interests affected and the interests of other parties, the implementation of the contested decision or the exercise of the right granted by the contested decision would be disproportionately disadvantageous for the appellant (sec. 30 VwGG).

The Austrian legal system does not provide for precautionary measures other than the granting of suspensive effect. However, according to the case law of the Supreme Administrative Court (see judgment from 29 January 2015, Ro 2014/07/0028, only available in German: [https://www.ris.bka.gv.at/Dokumente/Vwgh/JWT\\_2014070028\\_20150129J00/JWT\\_2014070028\\_20150129J00.pdf](https://www.ris.bka.gv.at/Dokumente/Vwgh/JWT_2014070028_20150129J00/JWT_2014070028_20150129J00.pdf)), the appellant may request other provisional measures on the basis of directly applicable Union law. The appellant is then provisionally granted a legal position, the granting of which was refused by the challenged decision on the basis of a national legal provision (possibly in conflict with Union law).



**50. 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**

Regarding decisions of the Austrian Supreme Administrative Court and the Austrian Constitutional Court please refer to the information submitted in the Austrian Input for the 2021 Rule of Law Report (page 30), referring to the Austrian Input for the 2020 Rule of Law Report (pages 60 to 61).

As an additional note: some final court decisions can be enforced (see in detail for example Art. 146 B-VG regarding judgments of the Constitutional Court). Furthermore, non-implementation may lead to a liability for damages.

Regarding decisions of the European Court of Justice (ECJ), the autonomy and primacy of Union law as interpreted by the ECJ are well established and generally recognized principles in Austrian case law. Hitherto Austria has never been sentenced to penalty payments by the ECJ for non-compliance with ECJ's judgments or for failure to fulfil its obligation to notify measures transposing Union law.

Regarding decisions of the European Court of Human Rights (ECtHR), Austria performs very well in the implementation of judgments. In 2020 and 2021, six cases each could be closed. As of December 2021, 19 judgments in individual complaints are in the process of implementation. Comparative statistics ([Country Map – European Implementation Network \(einnetwork.org\)](https://www.einnetwork.org)) show that Austria has not yet implemented merely 11 % of the ECtHR judgments ("leading cases"), which puts it in the top league of the Convention states. Most of the cases that have not yet been implemented concern the excessive length of proceedings, the bias of a judge, equality of arms in proceedings and the lack of a public hearing.

#### **D. The enabling framework for civil society**

**51. Measures regarding the framework for civil society organisations (e.g. access to funding, legal framework incl. registration rules, measures related to dialogue between authorities and civil society, participation of civil society in policy development, measures capable of affecting the public perception of civil society organisations, etc.)**

No further update available. Please refer to the information submitted in the Austrian Input for the 2021 Rule of Law Report (pages 30 to 31) and in the Austrian Input for the 2020 Rule of Law Report (pages 61 to 62).

**52. Rules and practices guaranteeing the effective operation of civil society organisations and rights defenders**

Please refer to the answer to Point IV.D.51 („Measures regarding the framework for civil society organisations“) above.

## **E. Initiatives to foster a rule of law culture**

### ***53. 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, etc.)***

No further update available. Please refer to the information submitted in the Austrian Input for the 2021 Rule of Law Report (page 31) and in the Austrian Input for the 2020 Rule of Law Report (pages 61 to 62).