Federal Chancellery
Republic of Austria

European Rule of Law Mechanism

Austrian Input

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Introduction

Respect for the rule of law in the Member States and the Union is an important foundation for the cooperation within the EU. There can be no compromises on European fundamental values. In its **2020–2024 programme, the Austrian Federal Government** emphasises the importance of respecting fundamental European values, advocates strengthening the instruments for safeguarding the rule of law at European level and provides for a number of initiatives at national level.

Austria strongly supports the new **Rule of Law Cycle** proposed by the European Commission in July 2019 and considers the regular and systematic review of all Member States to be an essential step towards strengthening the rule of law. Austria has advocated for the early and close involvement of the Member States in the preparation of the Rule of Law Report by the European Commission and therefore welcomes the opportunity to provide information on the legal framework and developments concerning the judicial system, anti-corruption, media pluralism and institutional issues related to checks and balances. Austria also supports the proposal for a Regulation on the protection of the Union's budget in case of generalised deficiencies as regards the rule of law in the Member States.

The **Austrian Constitution** is founded on **basic principles**, which can only be abolished or substantially amended by means of a "total revision" (*Gesamtänderung*) of the Federal Constitution. This special revision procedure requires a two third majority in the National Council (*Nationalrat*) and the approval in a referendum by Austrian citizens. One of these basic principles thereby protected is the **Rechtsstaatsprinzip**, a principle that guarantees **legality** and **legal certainty** and **legal protection**.

A central element of this basic principle is enshrined in Art. 18 of the Federal Constitutional Law (*Bundes-Verfassungsgesetz, B-VG*), which states that the **entire public administration can only act on the basis of law**. It provides for a **separation of powers** and requires that all state action complies with the existing constitutional and legal framework. In the event of non-compliance, access to an **efficient judicial remedy** is guaranteed by the Constitution.

The Austrian Constitution also provides comprehensive guarantees of **fundamental rights and freedoms**. A basic catalogue of fundamental rights (the so-called Fundamental Law concerning the general rights of citizens [*Staatsgrundgesetz*] of 1867) forms part of the Austrian Constitution since 1920, and there are several other fundamental rights enshrined in different legal provisions or international treaties with constitutional status. Moreover, the European Convention on Human Rights plays a particularly important

role in Austrian legislation and jurisprudence as another comprehensive fundamental rights catalogue and pillar of fundamental rights protection. It equally forms part of the Austrian Constitution since 1964. In addition, the EU-Charter of Fundamental Rights is broadly adopted and applied in Austria.

An efficient and high-quality justice system ensures legal certainty and is the cornerstone of every constitutional state and democracy. The Austrian justice system therefore makes a decisive contribution to the rule of law in Austria. Austria has also put in place a comprehensive **framework to address corruption**. As for any democratic society, **media freedom and pluralism** are core elements of the Austrian constitutional and legal framework and are effectively protected by the rule of law.

I Justice System

It is the task of courts and public prosecutors to ensure legal certainty and satisfaction with the legal system in Austria. They perform these duties with impartiality, fairness and in accordance with high quality standards.

Conformity of court decisions with the law and a reasonable length of court proceedings are crucial for the protection granted by the legal system. This requires an effective organisation that can handle its tasks efficiently, a balanced distribution of the workload among decision-makers as well as sustaining high rates of cost coverage based on service revenues.

Austrian courts are primarily responsible for civil-law cases (such as disputes in contractual matters, claims for damages, title disputes), labour and social law matters, non-litigious matters (such as inheritance cases, custody arrangements, maintenance claims of minor children), execution matters, bankruptcy and debt recomposition cases, as well as penal matters. Managing the land register and the company register, which are very important for Austria's quality as a business location, also fall within the responsibility of the courts.

All relevant legislation and the entire applicable law are available on the internet free of charge in the Legal Information System of the Republic of Austria (*RIS*) via the following link: http://www.ris.bka.gv.at.

Further information:

- GRECO Evaluation Report for Austria
  https://www.coe.int/en/web/greco/evaluations/round-4
- E-Justice Portal
  https://e-justice.europa.eu/content_legal_professions-29-at-en.do?init=true&member=1
- Brochure of the Federal Ministry of Justice about legal professions in Austria
  https://www.justiz.gv.at/home/justiz/berufe-in-der-justiz~380.de.html?highlight=true

A Independence

1 Appointment and selection of judges and prosecutors

Appointment and selection of judges

Persons wishing to become judges must apply for one of the established posts for trainee judges. Such vacancies are advertised by the presidents of the (four) Courts of Appeal. Pursuant to sec. 2 and 2a of the Service Act for Judges and Public Prosecutors *(Richter- und Staatsanwaltschaftsdienstgesetz, RStDG)*, the requirements for being admitted to the preparatory service as a trainee judge are: Austrian citizenship, full legal capacity, psychological aptitude, physical fitness and judicial ability, law degree as well as five month court internship. Tests have to be passed on the psychological aptitude, physical fitness and judicial ability. The preparatory service for becoming a judge generally takes four years. During this time, the trainee judges are assigned to judges of a District Court, a Regional Court, a Court of Appeal, to the Public Prosecutor's Office and to a prison. They also have to complete an internship with a lawyer or a notary public or with the Financial Procurator's Office and with a victim protection or public welfare institution. Finally, they have to take a written and an oral exam. Those having passed the exam and having completed the four years' traineeship may apply for a vacant established post.

The selection process can be found in detail in sec. 3 to 24 RStDG.

The appointment and every further promotion of judges is the responsibility of the Federal President. Vacant positions of judges and of managerial positions have to be advertised. The Federal President appoints the judges upon proposal by the Federal Minister of Justice who gets—non binding—proposals by staff panels (concerning the composition of the staff panels see point A.5.). For most of the judges' posts the Federal President has delegated the right of appointment to the Federal Minister of Justice. However, the appointment of certain higher managerial positions (Presidents and Vice-Presidents of the Regional Courts, Courts of Appeal, Supreme Court) remains with the Federal President. The Federal Chancellor *(Bundeskanzler)* has to agree to the appointment, except for the positions of the Vice-Presidents of the Courts of Appeal and Regional Courts.

The proposals of the staff panels shall consist of at least three candidates, who have applied for the vacant position. There are certain criteria for the listing of the candidates: range and current status of judicial ability, industriousness, perseverance, diligence, dependability, decisiveness, social skills, expressive abilities (both oral and in writing), general conduct in office, in particular towards superiors, co-workers and the public, any conduct outside the office with repercussions to the service as well as the accomplishments of the position and the formal periodical assessment. In case of equal qualification, women shall be preferred until a rate of 50 % is reached in a certain

group of positions. Should the criteria not enable the listing of the candidates, the seniority-principle is applied.

The appointment and career of judges can be found in detail in sec. 25 to 35 RStDG.

Appointment and selection of public prosecutors
In Austria, public prosecutors and judges form one single body of professionals who are regulated by the RStDG. They can move during their career from one profession to the other. The recruitment is the same for both and those interested in becoming a prosecutor after graduating at a law faculty, would need to pass the tests to become a judge. After that, the successful candidate must acquire at least one year experience as a judge before being entitled to apply for a vacancy in the prosecutorial service. However, there can be exceptions to this necessary in-service experience (sec. 174 RStDG).

According to sec. 177 RStDG, all posts of (senior) public prosecutors must be filled by an open tender procedure. Applications are examined by the competent staff commission. This commission consists of four members, comprising the Head of the General Procurators Office, his deputy (in case of the appointment of a Procurator General), respectively the Head of the Senior Public Prosecutors Office, the Head of the Public Prosecutors Office (in case of the appointment of public prosecutors) and two further public prosecutors, one of which representing the Union of Public Services and one of which representing the staff committee.

The relevant provisions concerning the appointment and career of public prosecutors can be found in sec. 173 to 189 RStDG.

2 Irremovability of judges, including transfers of judges and dismissal

Judges are preserved from rotation and protected against risks of abusive transfers by the fundamental principle of non-removability of judges (Art. 88 of the Federal Constitutional Law *[Bundes-Verfassungsgesetz, B-VG])*. In principle, the tenure of judges is guaranteed until the mandatory retirement age of 65 (sec. 99 RStDG). It starts with the permanent appointment to the post of a judge.

Judges are in office at the court they have been appointed to. They may only be moved to another court by a decision of the (judicial) staff panel in specific cases determined by law. Sec. 65a RStDG enables to nominate "substitute judges" *(Sprengelrichter)* for the jurisdiction of the Courts of Appeal (the number of which may not exceed 3% of the permanent judges appointed within the jurisdiction of the four Courts of Appeal). Substitute judges may be deployed at District Courts, Regional Courts and Courts of Appeal in case a judge is absent due to illness or an accident, or due to the suspension or dismissal. The substitute judge may also be deployed to the department of a court

where backlogs of cases exist or where a judge is unable to process pending cases in a reasonable time due to another highly complex case. A judge appointed as a substitute judge remains in this position as long as he/she does not apply for another judicial position.

If substitute judges cannot be deployed (because the number has already been exhausted) "deputy judges" *(Vertretungsrichter)* have to be deployed to District Courts and Regional Courts (sec. 77 RStDG). The pool of deputy judges comprises judges of the Regional Courts, whose first appointment as a judge is most recent (at least four judges) and the replacement judges who can be appointed to the Regional Courts and to larger District Courts in case another judge e.g. takes maternity/paternity leave or does civil service. The term of assignment of a deputy judge is usually determined by the time a judge has to be replaced. If a deputy judge is no longer part of the pool of deputies the assignment has to be cancelled and another deputy judge has to stand in.

Judges may apply for new posts. They may be moved to another judicial office only with their consent, except in cases of disciplinary sanctions (sec. 104 para. 1 lit c RStDG) or reform of the organisation of the judicial system.

Finally, with their consent judges may be assigned to the Federal Ministry of Justice, to a public prosecutors' office or another judicial body for administrative tasks (sec. 78 RStDG).

3 Promotion of judges and prosecutors

There is no promotion system as such. Judges and public prosecutors interested in a higher position must apply for a vacant position and follow the general procedure (see above under point 1).

4 Allocation of cases in courts

Pursuant to Art. 87 para. 3 B-VG and sec. 32 et seq. of the Law of Court Organisation *(Gerichtsorganisationsgesetz, GOG)*, all judicial duties have to be allocated amongst the judges of a court in advance for a period of one year (principle of fixed allocation). These fixed rules for the allocation of cases must also list the deputy judges assigned to the court. The rules for the allocation of cases are determined by the staff panels.

The parameters for the allocation of cases to judges have to be determined exactly by abstract rules. The allocation of cases is conducted by a random assignment of cases or according to alphabetical order determined beforehand. If the case allocation takes place randomly, a mathematical algorithm principle randomly selects a judge for a particular case.

According to Art. 87 para. 3 B-VG cases may be withdrawn from judges to a limited extent only. A case may only be withdrawn if a judge is unable to pursue his/her duties or he/she will not be able to deal with the case within a reasonable time because of an already existing caseload. The withdrawal can only be done by a decision of the staff panel.

5 Independence (including composition and nomination of its members), and powers of the body tasked with safeguarding the independence of the Judiciary (e. g. Council for the Judiciary)

Austria has not established Councils for the Judiciary. Pursuant to Art. 87 para. 2 and 3 B-VG, specific questions of court management and administration (allocation of cases, appointment and promotion of judges, deployment of assistance and deputy judges, assessment of judges) are dealt with by judicial staff panels who then act as independent judicial bodies. Staff panels are judicial bodies that are situated at all higher levels of the court system. There are staff panels at all 20 Regional Courts, at the four Courts of Appeal and at the Supreme Court. They comprise the President and the Vice-President of the courts and three to five judges elected by their peers every four years within the judicial constituency.

6 Accountability of judges and prosecutors, including disciplinary regime and ethical rules

Sec. 57 RStDG establishes certain fundamental obligations pertaining to the conduct of judges and prosecutors including loyalty to the country, professional dedication, commitment to self-improvement, effectiveness at work, not jeopardising (in professional or private life) the image of the judiciary and the reputation of the profession.

Judges and public prosecutors who are found guilty of violating their professional and ethical duties have to face disciplinary and possibly criminal law sanctions. Sec. 104 RStDG provides for the following disciplinary measures: a) a reprimand; b) a fine amounting to the equivalent of up to five months' earnings; c) transfer to another place of employment without entitlement to relocation fees; d) removal from office. Any disciplinary penalty must be entered into the official professional record. Under civil law, judges and prosecutors are only liable to the State. Parties suffering damages on account of any unlawful and culpable conduct of a judge or prosecutor may only assert their claims against the State pursuant to the law on official liability *(Amtshaftungsgesetz, AHG)*.

Sec. 111 RStDG determines the relevant authorities with regard to disciplinary measures: each of the four Courts of Appeal (Vienna, Graz, Linz and Innsbruck) also acts as a Disciplinary Court for the judges and public prosecutors appointed within the realm of one of the other Courts of Appeal. The Supreme Court is in charge of its judges, the presidents and vice-presidents of the Courts of Appeal, the members of the Procura-

tor General's Office and the Senior Public Prosecutors of the four Public Prosecutor's Offices (Vienna, Graz, Linz and Innsbruck). The disciplinary panels consist of senior judges and judges of the Court of Appeal. Furthermore, a disciplinary investigator has to be appointed among the judges of the Court of Appeal (sec. 112 RStDG). During the disciplinary proceedings, the Disciplinary Public Prosecutor upholds the interests of Public Service (sec. 118 RStDG). The Disciplinary Public Prosecutor is obliged to report to the Federal Ministry of Justice being the Supreme Administrative Body representing the interests of public service.

If disciplinary proceedings are pursued and the disciplinary panel finally decides the case (after an oral hearing), the decision of the disciplinary panel can be appealed to the Supreme Court by the disciplinary defendant and the Disciplinary Public Prosecutor. It has suspensive effect (sec. 139 RStDG).

The relevant provisions concerning the disciplinary law can be found in sec. 101 to 165 RStDG.

Regarding ethical rules see also point 10.

7 Remuneration/bonuses for judges and prosecutors

Beside the legally determined salary (judges: sec. 66 RStDG, prosecutors: sec. 189 RStDG), judges and public prosecutors do not receive additional benefits, whether financial or in-kind.

8 Independence/autonomy of the prosecution service

Art. 87 paras. 1 and 2 B-VG guarantees the judicial independence. In contrast to the courts, public prosecution offices are judicial authorities that are not independent. They have a hierarchical structure and are bound by instructions of senior public prosecution offices and ultimately of the Federal Minister of Justice. There are precise statutory rules for the right to issue instructions.

The staff members of the individual public prosecution office must comply with instructions given by the office director. However, if they consider an instruction to run contrary to the law, they may demand a written order concerning the instruction and may even ask to be released from dealing with the criminal matter in question. The public prosecution offices are therefore organised in subordinate and superordinate levels. This is also necessary because—contrary to court rulings—their decisions cannot be contested by any legal remedy. Basically, the organisational levels of the prosecution offices correspond to the levels of court organisation.

9 Independence of the Bar (chamber/associations of lawyers)

The material legislation can be found in the Austrian Lawyers' Code (Rechtsanwaltsordnung, RAO) as well as the Disciplinary Code for Lawyers and Trainee Lawyers (Disziplinarstatut für Rechtsanwälte und Rechtsanwaltsanwärter, DSt). The RAO regulates the local bar associations and their committees in Chapter III and the Austrian Federal Bar Association (*Österreichischer Rechtsanwaltskammertag, ÖRAK*) in Chapter V. Bar Associations are public-law corporations and autonomous, self-governing bodies. They have to fulfil government tasks and are governed by freely elected committees as well as a President who is elected by all members.

The nine local bar associations are formed by all lawyers and trainee lawyers registered in the respective federal province (*Bundesland*). The local bar associations have to perform their statutory tasks in their own purview. The Federal Minister of Justice shall only be entitled to receive information on the lawfulness of their administrative management; upon request the bar association must provide such information. The Federal Minister of Justice shall also be entitled to examine the rules of procedure of the bar associations and of their committees with regard to their compliance with the law.

The professional supervision is incumbent upon the committee of the bar association. Lawyers who breach their professional duties or harm the reputation of the profession must account for their action to a disciplinary board elected by the local bar association.

The umbrella organisation of the bar associations is the ÖRAK. The ÖRAK is in charge of drafting legislative proposals, assessing draft legislation, deciding upon measures to maintain independence, promoting training and further education of lawyers as well as representing lawyers vis-à-vis other professional organisations.

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

With regard to preventing corruption the Group of State against Corruption (GRECO) in its fourth evaluation round recommended to Austria to establish a code of conduct. In order to secure compliance with all obligations of conduct, and to prevent violation of rules, the Compliance Office (*Compliance-Stelle*) of the Federal Ministry of Justice has prepared a strategy to implement a Compliance-Management-System (CMS). It also aims at supporting public employees by providing clear and unambiguous guidelines, and at strengthening the trust of society. The Compliance-Guidelines (Compliance-Leitlinien) of the Federal Ministry of Justice entered into force by way of ministerial decree dated 28 March 2019.

Within the organisational structure of the General Procurator's Office, an advisory council with respect to instructions issued by the Federal Minister of Justice (*Weisungsrat*;

cf. sec. 29b et seq of the Public Prosecutor Act [*Staatsanwaltschaftsgesetz, StAG*]) was established by the Federal Ministry of Justice in early 2016. It is comprised of the Procurator General as chairperson and two additional members. It is the duty of the *Weisungsrat* to advise the Federal Minister of Justice in the following cases:

- Cases involving an instruction on how to proceed in a specific case,
- Criminal cases against the highest-levels of the executive branch (Art. 19 B-VG: the Federal President, Federal Ministers, Secretaries of State and members of Land Governments), members of the Constitutional Court, the Supreme Administrative Court, the Supreme Court in civil and criminal matters and the Procurator General,
- In cases where the Federal Minister of Justice considers it a necessity due to the extraordinary interest of the public in a criminal case, in particular in cases of repeated and superregional media reporting or repeated public criticism of the course of action taken by the Public Prosecutor's Office or the criminal police or for reasons of partiality.

Under such circumstances, the Federal Minister of Justice submits to the *Weisungsrat* the Public Prosecutor's report on its intended course of action (cf. sec. 8 para. 1 StAG), the opinion of the Senior Public Prosecutor's Office and a draft of its reasoned proposal on how to proceed. The Procurator General will convene a session of the *Weisungsrat* without delay, which includes, in addition to the Procurator General as the Chairperson, two more members with specific know-how and long-term experience in the field of criminal law and criminal procedure law. Any sessions and votes of the *Weisungsrat* take place in closed chambers. Its members are bound by confidentiality, exercise their office independently and are not bound by any instructions. The *Weisungsrat* submits a written opinion on the proposal by the Federal Minister of Justice. In case the Federal Minister of Justice does not uphold the opinion of the *Weisungsrat*, it is required to publish the opinion together with the reasons for not upholding it in a report submitted to the National Council (*Nationalrat*) and the Federal Council (*Bundesrat*) pursuant to sec. 29a para. 3 StAG. In cases where the *Weisungsrat* is involved and instructions to terminate preliminary criminal proceedings are subsequently issued, the Public Prosecutor's Office must inform the Legal Protection Commissioner (*Rechtsschutzbeauftragter*), who then has the right to submit an application to continue the preliminary criminal proceedings.

B Quality of justice

12 Accessibility of courts (e. g. court fees, legal aid)

Court fees

Since the establishment of the Court Fees Act in 1984 *(Gerichtsgebührengesetz, GGG)* general court fees and particularly fees for civil court proceedings are designed as a flat-rate system i.e. only one flat-rate fee must be paid for the entire civil court proceedings of first instance, irrespective of the duration of the proceedings and of the number of decisions to be taken. Although sec. 2 GGG provides for an advance payment of fees for the entire civil court proceedings, the commencement of activities by the courts—i. e. access to a court—does not depend on the payment of court fees. According to case-law of the European Court of Human Rights (ECtHR U 09.12.2010, *Urbanek vs Austria*, 35123/05) the Austrian system of court fees provides an adequate level of flexibility regarding legal aid as well as deferment and abatement through the option of exemption from fees pursuant to sec. 63 para. 1 of the Code of Civil Procedure *(Zivilprozessordnung, ZPO)* and sec. 9 para. 1 and 2 of the Judicial Contribution Act (*Gerichtliches Einbringungsgesetz, GEG*). Furthermore, fees of individual cases may be subject to administrative review and may also be monitored by courts of public law.

Legal aid in criminal proceedings

The right to be provided with a legal aid counsel is regulated in sec. 61 para. 2 of the Code of Criminal Procedure *(Strafprozeßordnung, StPO*). The legal aid counsel (sec. 61 para. 2 and 4 StPO) and the corresponding *ex officio* defence counsel (sec. 61 para. 3 StPO) have a double objective: On the one hand, also indigent defendants shall receive legal aid and, on the other hand, affluent defendants shall not be able to "circumvent" the statutory obligation to name a defence counsel. A stand-by defence counsel service for detained defendants was established by law on 1 January 2017 for the purpose of an efficient implementation of the right of detained defendants to establish contact with the defence counsel and to have such a counsel present during their hearing (sec. 59 para. 4 StPO). Detained defendants who have not selected a defence counsel, shall have the right to establish contact with a "stand-by" defence counsel until a decision on the imposition of pre-trial detention is taken. Moreover, an explicit right of the defence counsel to participate in the hearing of the defendant concerning the conditions to impose pre-trial detention by the court has been introduced (sec. 174 para. 1 StPO). The Austrian Federal Bar Association (*Österreichischer Rechtsanwaltskammertag, ÖRAK*) operates a nationwide free stand-by service telephone number, which is accessible 24/7 and allows for immediate contact with a defence counsel.

Legal aid in civil cases

Legal aid in civil cases is regulated in sec. 63 to 73 ZPO. The objective of such aid is to enable all defendants to pursue their claims or to defend their rights before a civil

court, irrespective of their individual financial situation. The expenses associated with conducting litigations should not constitute an obstacle when enforcing claims or when defending against accusations, even if a person lacks sufficient financial means. Thus, the option of being provided with legal aid shall remove differences resulting from personal economic situations, shall implement both the principle of equality but also the right to free and unimpeded access to court for all parties pursuant to Art. 6 para. 1 of the European Convention on Human Rights. Legal aid shall be provided by the court to parties if otherwise the participation in proceedings would lead to difficulties in meeting their livelihood.

Sign language interpreters

A further provision which is designed to facilitate court access for certain persons is provided in sec. 73a ZPO on sign language interpreters. Sec. 73a ZPO grants to deaf persons, highly hearing and speech impaired persons and other parties a right to a sign language interpreter *ex officio* and free of charge. Moreover, translation costs are publicly funded in case such persons have to contact their defence counsel. Sec. 73a ZPO contains no restrictions with regard to the financial situation of deaf, highly hearing and speech impaired persons.

Process support

Sec. 73b ZPO extends the criminal law service of psychosocial process support (sec. 66 para. 2 StPO) for victims to civil law proceedings. Upon request, they shall be granted psychosocial process support as required to safeguard their procedural rights taking into account their personal dismay to the largest extend. Psychosocial process support includes the preparation of the person affected for the proceedings and for related emotional strains as well as support during procedural hearings. A conviction in a criminal trial is not a precondition for process support in civil law proceedings. The psychosocial process supporter is comparable to a person of trust (sec. 174 ZPO).The costs for the psychosocial support is borne by the State (preliminarily up to EUR 800, in the case of granted legal aid up to EUR 1,200).

13 Resources of the judiciary (human/financial)

Important core services are jurisdiction, penal system, adult protection as well as probation and prison release support.

Almost half of the expenditure of the Federal Ministry of Justice (so far approximately EUR 1,658 billion per year in 2019) is staff expenditure (2019: approx. 49 %). Following a general tendency for 20 years, the services are increasingly provided not by its own staff (public servants and contract employees), but outsourced through service contracts, i.e. they are not registered as staff but material expenses. This includes e. g. cleaning, repairs and maintenance, winter service, security service, writing services, and—via

the Judicial Services Agency *(Justizbetreuungsagentur)*—support services in prisons, economic advisors, official interpreters and employees of the family and juvenile court assistance *(Familien- und Jugendgerichtshilfe)*.

14 Use of assessment tools and standards (e.g. ICT systems for case management, court statistics, monitoring, evaluation, surveys among court users or legal professionals)

Courts, public prosecutor's offices as well as the Federal Ministry of Justice have their established internal audits for their respective area of competence. The highest instance concerning internal audits is the Federal Ministry of Justice. Independent auditors examine organisational units of the judiciary in regular intervals and in an objective manner. These units are, together with their superior authorities, informed about the outcome of the audit and advised in terms of recommendations and proposals. If necessary, further implementation and improvement steps follow. The internal audits significantly contribute to the improvement of processes, such as use of resources or legal conformity, as well as to quality assurance and improvement.

The system enabling the "automated case management of the judiciary system" *(Verfahrensautomation Justiz, VJ)* supports all courts and public prosecutor's offices in managing 66 different types of cases. Certain cases, such as order for payment, are completed in a fully automated manner or court rulings are created automatically and distributed via a central mailing process, the electronic legal transaction system or through electronic delivery. The automated case management also supports the export of data for statistical purposes, such as statistics on civil and criminal proceedings or on individual aspects of the penal system. Linking statistical information with key performance indicators and checklists allows efficient monitoring and controlling of processes and the judicial employees. Through the available data, it is not only possible to monitor individual cases with regard to anomalies, such as procedural deadlocks, but also to conduct evaluations concerning courts, court districts, types of courts or to even perform nationwide evaluations. The latter allow for the evaluation of key developments, such as the number of cases arising, the cases completed or the average length of proceedings.

According to sec. 93 para. 1 Security Police Act (*Sicherheitspolizeigesetz, SPG*), the Federal Government has to report to the National and Federal Council (*National- und Bundesrat*) on internal security in Austria once per year. The report is jointly issued by the Federal Ministry of the Interior and the Federal Ministry of Justice. It contains information on statistical data on crimes, convictions and an overview on important developments from a criminal policy perspective. The contribution of the Federal Ministry of Justice is called "Report on Criminal Justice Activities".

C Efficiency of the justice system

16 Length of proceedings

As already mentioned above in point 14, lengths of proceedings are automatically analysed based on existing data from VJ and compared to results from previous analyses. Respective statistics on the length of proceedings showing various aspects of median and average duration for civil proceedings, criminal proceedings and guardianship matters, are accessible on the judicial Intranet and also include graphs showing the developments over the last ten years. The administrative supervision continually deals with current developments—through proactive support—primarily in the area of the length of proceedings in order to provide timely options to react to negative developments in their respective area of competence at an early stage. Moreover, within the Federal Ministry of Justice an annual evaluation takes place in form of an inventory as a basis for further actions of judicial management.

17 Enforcement of judgements

Civil law

The enforcement of civil law judgements (or the enforcement of executable claims) occurs upon application by the party concerned under the Austrian Enforcement Code (*Exekutionsordnung, EO*). For details, please refer to the information about the EO available on the European Justice portal. At present, a legislative proposal amending the Enforcement Code is being prepared by the Federal Ministry of Justice, which is intended to make the Enforcement Code even more efficient and to respond to the challenges of technical developments.

Criminal law

The Criminal Code *(Strafgesetzbuch, StGB)* distinguishes two types of punishments: imprisonment and fines. The Penal Services Act *(Strafvollzugsgesetz, StVG)* governs any penal conviction imposed by a court. According to sec. 20 of that Act, serving a prison sentence is intended to assist the convicted person to regain a righteous attitude towards life that is adapted to the needs of living in a community, as well as to prevent him/her from following criminal inclinations. Moreover, the enforcement of a sentence is to demonstrate the negative value of the conduct underlying the conviction. In addition, the StGB provides for preventive measures in connection with detention. These are determined by the particular danger posed by the offender. They are also used whenever they serve to obtain better results with regard to re-socialising the offender and protecting society, or when no punishment can be administered in the absence of guilt (e. g. for lack of criminal responsibility). The most important of these measures is the placement of persons in institutions for mentally disturbed offenders. This measure is imposed for an unlimited period. The court must examine, at least on an annual basis,

whether such placement is still necessary. Preventive measures are administered in prisons, specialised departments or in certain public psychiatric hospitals.

As of 1 April 2020, the 28 Austrian prisons accommodated 8,339 inmates (in addition, there are 12 prisons annexes). This corresponds to an occupancy rate of 93.91%. 6,005 (66.2%) are prisoners and 1,101 (12.14%) persons who are in a preventive measure. As of 1 April 2020, 314 inmates were under electronically monitored house arrest.

Every prisoner capable of pursuing work is obliged to work. The work environment is an important area of technical and social learning. Different workshops and enterprises are available in about 50 branches in Austrian prisons. For their work, prisoners earn a remuneration which they may use to buy basic daily necessities, but also to build up reserves, which are to help them to return to an orderly life after having served their prison term.

18 Other—please specify

Application of artificial intelligence (AI)

In the framework of "*Justiz 3.0*" increased efforts are made concerning the application of AI. The potential applications in the judiciary range from legal research related to specific circumstances, recognising metadata and statements in written documents, correctly allocating incoming mail, cognitively analysing investigative data to intelligent analysis of video data (such as recording of hearings) and predictive analytics of motion data in prisons. Since 2018, an AI service which is especially "trained" for the requirements of the judiciary is in use, which can be expanded step by step to other areas of application. Currently, AI is being applied in two sectors, using primarily algorithms from machine learning / deep learning: firstly, for analysing documents and related recommendations to designate such documents to facilitate data capture or automatically separating comprehensive pdf-files into individual documents (e.g. when paper files are scanned in their entirety); secondly, for recognising internal competencies in the judiciary. In addition, AI or content analytics are already being applied in large-scale proceedings with sometimes enormous quantities of data and multiple data sources: in such proceedings, IT support plus deployment of IT experts from the judiciary facilitates accelerated processing the matter and recognising relationships and connections relevant for the proceedings. For the purpose of publishing court decisions, anonymisation through artificial intelligence is forthcoming.

Supplementary information on: Administrative courts

It is important to note the complete separation of administrative authorities and courts – including administrative courts—in Austria. Another important distinction to keep in mind is the fact that Austria has two separate jurisdictional orders—the ordinary courts, ruling over civil and criminal law matters and the administrative courts, ruling over administrative matters. The administrative jurisdiction consists of three instances—firstly the administrative authorities, secondly the first instance administrative courts and finally the Supreme Administrative Court *(Verwaltungsgerichtshof, VwGH)*.

The Supreme Administrative Court has final jurisdiction in matters of administrative law. As such it is placed above the first instance administrative courts, which in turn ensures that administrative authorities such as tax offices, district authorities or the Federal Office for Immigration and Asylum *(Bundesamt für Fremdenwesen und Asyl)* act in conformity with the law.

The administrative courts and the Supreme Administrative Court therefore review the unlawfulness of administrative acts/decisions in relation to federal or provincial law.

The administrative court system is fairly new in Austria and was introduced in 2014. For more background information on this, please see point IV.C.41 below. The reform created eleven new administrative courts, the so called "9+2 model": one for each of the nine federal provinces *(Bundesländer)* and in addition two federal administrative courts were created; one for the review of the decisions of federal authorities, the Federal Administrative Court *(Bundesverwaltungsgericht)*, and one for the review of decisions in financial matters, the Federal Finance Court *(Bundesfinanzgericht)*.

The general rule is that the administrative courts of the provinces have jurisdiction regarding all complaints. However, there are exceptions—as already mentioned—concerning the Federal Administrative Court and the Federal Finance Court.

The competences regarding the Federal Administrative Court and the Federal Finance Court can be modified by federal legislation and the administrative courts of the provinces can have jurisdiction over these matters or the Federal Administrative Court may be granted jurisdiction in legal matters which are not directly executed by federal authorities.

Appointment and selection of judges

The President, the Vice-President and the other members of the administrative courts of the provinces are appointed by the respective Land Government *(Landesregierung)*. As to the appointment of the judges, the Land Government must gather the proposal for nominations (three candidates per position) of the plenary assembly or a committee, which is to be elected among the members of the court (Art. 134 para. 2 B-VG).

In case of the Federal Administrative Court and Federal Finance Court, the President, the Vice President and the other members are appointed by the Federal President based on a proposal by the Federal Government. As stated above, the Federal Government must gather the proposals for nominations (three candidates per position) of the plenary assembly or a committee of the respective court (Art. 134 para. 3 B-VG).

In case of the first instance administrative courts, the proposed nominations are non-binding. Contrary to that, the proposal for nominations for the Supreme Administrative Court (three candidates per position) are binding, however, not the order in which the candidates were ranked. No proposition from the plenary assembly or a committee is necessary for the appointment of the President and the Vice-President.

The judges of the aforementioned first instance administrative courts must have completed a law degree or legal and political science studies and have at least five years of professional legal experience. The competent service law legislators are free to specify the constitutionally standardised appointment prerequisites or to provide for further prerequisites, which the federal states have made use of (for example, the taking of an examination which is officially recognised for the exercise of a legal profession). The judges of the Federal Finance Court must have completed relevant studies and have at least five years of relevant professional experience.

Judges are appointed to the Supreme Administrative Court by the Federal President based on a proposal by the Federal Government. Unless the post to be filled is that of the President or the Vice-President, this proposal must correspond to a list of three candidates drawn up by the plenary assembly of the court. Each member of the Supreme Administrative Court must have completed a law degree or legal and political science studies and have at least ten years of practical legal experience. A quarter of all judges should be drawn from relevant institutions, preferably from administrative services, in Austria's nine provinces (Art. 134 para. 4 B-VG).

Irremovability of judges, including transfers of judges and dismissal

All administrative judges and all members of the Supreme Administrative Court are professional judges, who are not bound by any instructions, solely independent in exercising their judicial office and cannot be dismissed or transferred (Art. 87, 134 para. 7 B-VG).

Allocation of cases in courts

At the Supreme Administrative Court the cases are allocated in accordance with the allocation of business to the competent panel. For each case one member of the chamber is appointed as rapporteur by the President of the Supreme Administrative Court. At the first instance administrative courts all matters are assigned to a judge or a chamber in accordance with their respective allocation of business.

The allocation of business has to be decided in advance by the court itself. At the Supreme Administrative Court this allocation is enacted by the general Assembly of the Court; at the first instance administrative courts this is enacted by the plenary assembly or a committee (Art 135 para. 2 B-VG).

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

In the first instance administrative courts, the presidents—albeit to varying degrees—are not bound by instructions when it comes to providing the judicial administration agendas to which they are entitled (in some areas). This freedom of the president to issue instructions serves to ensure the independence of the first instance administrative courts. The president of the Supreme Administrative Court is not bound by any instructions.

Accountability of judges and prosecutors, including disciplinary regime and ethical rules

The disciplinary regime and ethical rules concerning judges at the Federal Administrative Court as well as the Federal Finance Court are stipulated in the Judges- and Prosecutors Service Law Act (sec. 209 RStDG).

Pursuant to sec. 7 of the Supreme Administrative Court Act *(Verwaltungsgerichtshofgesetz, VwGG),* the rules concerning judges with the Supreme Court in civil and criminal matters (RStDG) also apply to judges at the Supreme Administrative Court with the exception that the disciplinary court is the plenary assembly of the Supreme Administrative Court. The disciplinary measure of dismissal can only be taken if two thirds of the plenary assembly vote in favor of said action.

The disciplinary regime and ethical rules for judges of the administrative courts of the provinces are set forth in the various provincial laws. Since in certain disciplinary matters (in particular the removal from office) the decision must be made by means of a formal judicial decision, the deciding body must be a senate as defined in Art. 135 para. 1 B-VG, to which the business to be handled by the administrative court must be distributed in accordance with Art. 135 para. 2 B-VG. Other tasks related to employment law and dealt with collectively are typically assigned to committees, to which the President and the Vice-President belong as official members and a legally standardised number of judges elected by the general assembly from among its members as electoral members, whereby the electoral members must be in the majority. Insofar as organs of jurisdiction or of the collegial administration of justice are not competent, matters relating to employment law are dealt with in the monocratic administration of justice.

Since 2014, the Supreme Administrative Court is competent to review decisions on disciplinary measures concerning judges of administrative courts. The Supreme Court in civil and criminal matters is competent for judges of ordinary courts.

Remuneration/bonuses for judges and prosecutors

Judges at the Supreme Administrative Court (Art. 1) as well as judges at the Federal Administrative Court and the Federal Finance Court (sec. 210) are remunerated pursuant to the RStDG. Judges at the administrative courts of the provinces are remunerated according to provincial laws.

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

To file a petition for review with the Supreme Administrative Court as well as motions to set a deadline due to the breach of duty to issue a timely decision by an administrative court, a fee of EUR 240 has to be paid. There is the possibility of applying for legal aid, which has to be filed with the Supreme Administrative Court, if the administrative court held that a petition for review with the Supreme Administrative Court is not admissible. Otherwise, it has to be filed with the administrative court that issued the decision to be contested.

Unless provided otherwise, the filing fee to lodge a complaint before the administrative courts (except Federal Finance Court) amounts to EUR 30 (no fee is charged e.g. in proceedings concerning misdemeanour and in asylum cases, a higher fee is charged e.g. in public procurement). Parties unable to pay the costs of proceedings may apply for legal aid with the administrative court.

Resources of the judiciary (human/financial)

- Supreme Administrative Court: 68 judges (president, vice-president, 11 panel presidents, 55 judges), 47 research associates, 134 administrative staff; Budget 2019: EUR 20,525,000
- Federal Administrative Court: 218 judges; 382 administrative staff
- Federal Fiscal Court: 226 judges, 67 administrative staff
- Administrative Court of Burgenland: 10 judges, 7 administrative staff
- Administrative Court of Lower Austria: 50 judges, 39 administrative staff
- Administrative Court of Upper Austria: 37 judges, 53 administrative staff
- Administrative Court of Styria: 36 judges, 52 administrative staff
- Administrative Court of Carinthia: 21 judges, 20 administrative staff
- Administrative Court of Salzburg: 30 judges, 20 administrative staff
- Administrative Court of Tyrol: 34 judges, 32 administrative staff
- Administrative Court of Vorarlberg: 15 judges, 10 administrative staff
- Administrative Court of Vienna: 92 judges, 113 administrative staff
- Annual public budget allocated to the functioning of administrative courts (except Supreme Administrative Court) in 2018: EUR 157,826,000.

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

Each administrative court as well as the Supreme Administrative Court issue activity reports in which they present their annual situation (in some cases bi-annual or over a period of three years).

Length of proceedings

For the first instance administrative court timeframes in which a decision has to be taken are foreseen. If not stipulated otherwise, this timeframe is six months. If an administrative court does not conclude the proceedings within the foreseen timeframe, it is possible to call upon the Supreme Administrative Court to set a deadline for the administrative court to issue the decision. There is no timeframe for the Supreme Administrative Court.

In 2019, the average length of proceedings at the Supreme Administrative Court was 3.7 months. The average duration of proceedings at the first instance administrative courts is around 5 months.

Enforcement of judgements

Pursuant to sec. 63 of the Supreme Administrative Court Act, if the Supreme Administrative Court has granted a final complaint, the Administrative Courts and authorities are obliged to immediately establish, with the legal means available to them, the legal situation corresponding to the legal opinion of the Supreme Administrative Court in the relevant legal matter. In case the Supreme Administrative Court itself decided on the merits of the case, it shall also name the court or the administrative authority which will have to enforce the decision. The enforcement proceeding is governed by the provisions applicable in the specific case.

Decisions taken by the administrative courts (with the exception of the Federal Finance Court) are enforced pursuant to the Administrative Enforcement Act 1991 (*Verwaltungsvollstreckungsgesetz 1991, VVG*).

II Anti-corruption framework

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

Austria has put in place a comprehensive institutional framework to address corruption. Authorities involved in the fight against corruption include the Federal Ministry of Justice, the Central Public Prosecutor's Office for Combating Economic Crimes and Corruption *(Wirtschafts- und Korruptionsstaatsanwaltschaft; WKStA)*, the Federal Ministry of the Interior and its Federal Bureau of Anti-Corruption *(Bundesamt zur Korruptionsprävention und Korruptionsbekämpfung, BAK)* and Criminal Intelligence Service *(Bundeskriminalamt, BK)*.

Austria's legal framework against corruption includes provisions from the Constitution, the Criminal Code *(Strafgesetzbuch, StGB)* and the Code of Criminal Procedure *(Strafprozeßordnung, StPO)*. It also includes specific legislation such as the Federal Act on the Establishment and Organization of the Federal Bureau of Anti-Corruption *(Gesetz über das Bundesamt zur Korruptionsprävention und Korruptionsbekämpfung, BAK-G)*, the Federal Statute on Responsibility of Entities for Criminal Offences and the Federal Act on Extradition and Mutual Assistance in Criminal Matters *(Auslieferungs- und Rechtshilfegesetz)*[1].

19 List of relevant authorities (e.g. national agencies, bodies) in charge of prevention detection, investigation and prosecution of corruption

I: **Federal Ministry of Justice;** Central Public Prosecutor's Office for Combating Economic Crimes and Corruption
II: **Federal Ministry for Arts, Culture, the Civil Service and Sport**
III: **Federal Ministry of the Interior;** Federal Bureau of Anti-Corruption, Asset Recovery Office
IV: **Austrian Court of Audit**

The Federal Bureau of Anti-Corruption (BAK):
Legal Basis: The BAK was established with the entry into force of the BAK-G as of 1 January 2010. The Act is updated and further developed on certain occasions. The last amendment was in 2019 and related to the BAK's area of competence. In general, the Bureau has nationwide jurisdiction in security and criminal police matters concerning

1 https://www.unodc.org/documents/treaties/UNCAC/WorkingGroups/ImplementationReviewGroup/ExecutiveSummaries/V1402186e.pdf

certain criminal offences related to corruption, which are regulated in sec. 4 BAK-G. In the 2019 amendment, sec. 4 para. 1 fig. 9a BAK-G regarding the misuse of funds or assets to the detriment of the financial interests of the European Union (sec. 168d StGB) was added to the BAK's tasks. This led also to an amendment of sec. 4 para. 1 fig. 13 BAK-G. According to this provision, the BAK's operational unit is responsible for crimes related to money laundering (sec. 165 StGB) if the assets arise from certain offences including the ones in fig. 9a or if they intend to commit such offences. Further information can be found on the BAK website (https://www.bak.gv.at/).

Budget: Budget resources of the BAK have increased since 2014 and the implementation of projects and activities has been consistently assured. In 2017, the total expenditure was EUR 9,529,298.15, in 2018 EUR 9,375,397.78 and in 2019 EUR 9,150,925.16.

Staff: The BAK has 133 employees as of 1 December 2019, eleven of whom are on maternity leave or working in other organizational units. As of 1 December 2019, 20 persons are active in the Prevention, Education and International Cooperation Department. In the Operational Service about 70 investigators are investigating corruption offences as well as offences in regards to abuse of authority. The Unit for Prevention and Basic Research (BAK/2.1) has seven staff members and the Unit for Education (BAK/2.2) has six staff members as of 1 December 2019.

The Asset Recovery Office (ARO) of the BK: The Austrian ARO was established in 2003 with the creation of the Criminal Intelligence Service Austria (CIS) and has been notified to the European Commission according Council Decision 2007/845/JHA of 6 December 2007 concerning cooperation between Asset Recovery Offices of the Member States in the field of tracing and identification of proceeds from, or other property related to, crime.

At federal level, ARO is staffed with a Legal Adviser as Head of ARO and 6 criminal/financial investigators. The main tasks of the ARO are: support services and operative investigations to establish and seize property obtained through criminal acts; interrogation of suspects and witnesses, coercive measures, in particular participation in searches of premises, sorting and analysis of documents to be used as evidence; drawing up money flow analysis; control and coordination of national and international investigations in the field of asset recovery.

In every Provincial Criminal Investigation Department (Landeskriminalamt, LKA), one investigation unit fighting white-collar crime and one investigation unit fighting fraud among others are established. Investigations into white-collar crime include the fields of economic crime, money laundering, corruption, asset recovery, investment fraud and subsidy fraud.

The Federal Ministry of Justice: The Central Public Prosecutor's Office for Combating Economic Crimes and Corruption *(Wirtschafts- und Korruptionsstaatsanwaltschaft, WKStA)* was established in September 2011 and is responsible for filing charges and representing the prosecution in court in corruption cases in which the value is above a certain threshold. Moreover, it has an opt-in competence also below this threshold and is responsible for a catalogue of severe economic crimes. Moreover, the WKStA is responsible for procedures of mutual legal assistance and for criminal co-operation with the relevant bodies of the European Union, and of the justice authorities of the Member States of the European Union. It is the central national contact point for OLAF and Eurojust, insomuch as proceedings for such offences are involved.

According to their legal mandate, there is a close cooperation between the WKStA and the BAK.

At present (as of 1 August 2018), 40 public prosecutors are employed by the WKStA. A special feature of this public prosecutor's office are the experts from the financial, economic and IT sectors working there (currently 14 in total).

The Austrian Court of Audit *(Rechnungshof, ACA)***:** The Austrian Court of Audit is the Supreme Audit Institution of the Republic of Austria. It is responsible for auditing the financial management of the federation, the provinces, the municipalities (with 10,000 inhabitants and more), the municipal associations and other legal entities as foreseen by law. It acts as a body of both the National Council *(Nationalrat)* and the Provincial Parliaments *(Landtage)*.

Through performance audits, the ACA scrutinises whether resources available are being used economically, efficiently and effectively.

In addition to its core tasks—auditing, reporting and the provision of advisory activities—a number of special tasks have also been assigned to the ACA, like for example:

- Preparation of the Report on the Federal Financial Statements,
- Tasks pursuant to the Media Transparency Act (see Chap. on media pluralism), the Political Parties Act *(Parteiengesetz)* (formal review of the annual accountability reports of the political parties, publication of donations to parties exceeding EUR 2,500), the Incompatibility and Transparency Act *(Bundesgesetz über die Transparenz und Unvereinbarkeiten für oberste Organe und sonstige öffentliche Funktionäre, Unv-Transparenz-G)*,
- Disclosure of the adjustment factor to determine the income of public office holders,
- Preparation and publication of the General Income Report.

The ACA is independent of the Federal Government and the Land Governments *(Landesregierungen)*. It disposes of its own budget and selection of specialised staff based on Art. 121 and 122 B-VG. Subject to certain conditions set out by the B-VG, the National Council and the Provincial Parliaments can request the ACA to carry out specific audits which fall within its sphere of competence. Requests put forward by a minority of Members of Parliament are limited to a maximum of three audits at the same time (Art. 126b B-VG and Art. 99 of the Federal Act on the Rules of Procedure of the National Council 1975—*Geschäftsordnungsgesetz des Nationalrates, GOG-NR)*.

As of 1 December 2019, 150 women and 151 men were employed in the ACA. The percentage of women in the ACA 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 around EUR 35 Mio.

Since 1963, the ACA has been hosting the General Secretariat of the International Organization of Supreme Audit Institutions (INTOSAI).

B Prevention

In Austria, there are many employment law provisions regarding the federal civil service that serve to prevent corruption and ensure ethical behaviour, e. g. oath of office, general duties of civil servants, duties regarding respectful treatment of others ("ban on mobbing"), duties of civil servants to superiors, duties of superiors and the head of department, conflict-of-interest rules, reporting obligations, protection against prejudicial treatment, additional occupations, prohibition of the acceptance of gifts, termination of employment ("post public employment") and duties of retired civil servants. Culpable breaches of these (or further) duties are sanctioned by disciplinary, sometimes by criminal, law.

20 Integrity framework: asset disclosure rules, lobbying, revolving doors and general transparency of public decision-making (*including public access to information*)

The Federal Constitutional Law contains a provision on the duty to grant information (Art. 20 para. 4 B-VG). Furthermore, federal (cf. the Fundamental Act on the duty to grant Information *[Auskunftspflicht-Grundsatzgesetz]*) and provincial laws regulate the details how to obtain the information.

In general, federal civil servants are obliged to obey to general official duties especially provided by sec. 43 of the Civil Servants Employment Act 1979 *(Beamtendienstrechtsgesetz 1979, BDG 1979)*, in consideration of the general observance to the principles of

the rule of law and in order to ensure the integrity, transparency and accountability of the civil service. When performing their official duties, federal civil servants shall support and inform parties to an extent compatible with official interests and the impartial exercise of their office. Sec. 43 BDG 1979 is also applicable to federal contractual employees via sec. 5 of the Act on Contractual Public Employees *(Vertragsbedienstetengesetz 1948, VBG)*.

Public information platforms of the BAK: There are various BAK information platforms that keep the public informed about current corruption issues and in this way act both as information and prevention tools. The BAK homepage and its Facebook page provide information on current issues and legislation, innovations in the fight against corruption and current events and publications. In addition, print media in the form of publications such as the BAK's Annual Report, the Anti-Corruption Day Publication and event-related, topic-specific information folders and brochures (corruption prevention, compliance advisory services, National Anti-Corruption Strategy, newsletters, etc.) are produced at regular intervals and presented and distributed at various events.

Periodic reports of the BAK and the Federal Ministry of the Interior:

- Annual Report by the BAK: published annually in German and English on the BAK homepage.
- Corruption Situation Report: prepared every two years and published on the BAK homepage.
- Federal Ministry of the Interior Report: compiled annually and published on its homepage.
- Federal Ministry of the Interior Security Compliance Activity Report: drawn up annually and published on its homepage.
- Compliance Activity Report by the BAK: prepared every two years and published on the BAK homepage.

Publication of all audit reports of the Austrian Court of Audit: By the publication of all audit reports of the ACA, insight into decision processes is also provided to individuals and groups outside the public sector and the awareness of the public regarding the danger of corruption is raised. With this method, decision processes are to be made more transparent and the participation of the public is to be increased. Furthermore, transparency of the recommendations of the ACA guarantees that the public has in fact access to information. In its audit of the "Lobbying and Interest Representation Register", the ACA also emphasised the importance of taking sufficient awareness-raising measures in connection with the instrument of "Lobbying".

There is also the possibility for citizens to report their concerns to the ACA as the competent body for fighting corruption by phone, email and social media. Anonymous notifications are also possible. In summer 2019, the third campaign for promoting the participation of citizens was launched. In this way, citizens are invited to send sugges-

tions for audits. About a quarter of these suggestions was included in the 2019 Audit Program of the ACA.

With regard to the declaration of the income of high ranked public officials, the ACA has been assigned quasi-notarial tasks (disclosure of assets by certain public officials) by the Incompatibility and Transparency Act.

The Austrian National Anti-Corruption Strategy

The main objective of the Austrian National Anti-Corruption Strategy (NACS) is to increase and ensure integrity and transparency in administration, politics and business. The NACS was adopted by the Austrian Federal Government on 31 January 2018 and provides the framework for all measures to prevent and combat corruption. It consists of two parts: Prevention and Prosecution.

The action plan for the NACS was adopted in January 2019. It comprises measures in the field of prevention and prosecution which represent implementation goals set by the Federal Chancellery and the Federal Ministries for themselves. The aim is to implement the measures listed in the action plan in a binding manner or to initiate corresponding implementation steps at federal level between 2019 and 2020. In order to regularly supplement and update the action plan, it was conceived as a "living document". Furthermore, some authorities (e.g. the provinces / *Länder*) and organisations have decided to voluntarily participate in the implementation of the NACS by developing an action plan of their own. The voluntary participants will adhere to the structure and measures described in the initial action plan for the NACS. Their action plan was published on 1 May 2019.

In implementing the 2019 Action Plan, the BAK continued to focus on the development of the Network of Integrity Officers (NIO) in the area of integrity management. In the area of compliance management for public administration, the BAK provided support in setting up and implementing suitable systems as part of corruption prevention and compliance advisory projects. At European level, the BAK continued the activities of the "EU Integrity" working group set up within the framework of the European Partners against Corruption (EPAC) and European contact-point network against corruption (EACN) together with its international partners. The BAK also worked intensively on the implementation of the action plans in the area of raising public awareness through active public relations on the dangers of corruption and specific measures to prevent corruption. With the national and international dissemination of its very own board game entitled "Fit4Compliance—The game about values", the BAK continued to promote integrity and corruption prevention through playful communication.

21 Rules on preventing conflict of interests in the public sector

Outside activity: Sec. 56 of BDG 1979—also applicable for federal contractual employees via sec. 5 VBG—regulates that federal public servants may not engage in any additional occupation that hinders them to perform their official duties or might create the impression of bias or jeopardise official interests. If a public official acts in breach of these obligations, the competent personnel authority shall prohibit the pursuit of this occupation immediately. Moreover, federal public servants are obliged to report to the competent personnel authority any gainful occupation as well as any change in such an occupation. Furthermore, federal public servants must report any membership of a supervisory board, management board, board of directors or any other corporate body of a legal entity under private law operating for profit.

The provisions related to the avoidance of conflicts of interest (incompatibilities and outside employment) regarding the Director and Deputy Director of the Federal Bureau of Anti-Corruption are incorporated into sec. 2 BAK-G.

Sec. 63 of the Service Act for Judges and Public Prosecutors *(Richter- und Staatsanwaltschaftsdienstgesetz, RStDG)* contains regulations on the office of judges and prosecutors and the subsequent obligations and restrictions regarding further occupations. If a judge acts in breach of these obligations, the administrative authority (i.e. the President of the Court of Appeal) immediately has to forbid the occupation (sec. 63 para. 7). Sec. 79 concerns the ban of parallel activities in an executive and legislative function for judges as well as for prosecutors, but not for lay judges.

The provisions, some of them constitutional provisions, of the Federal Act on Transparency and Incompatibilities for the persons in the highest offices and other public officials regulate detailed reporting obligations, employment bans and restrictions to entrepreneurial activities of the highest executive organs (the Federal President, the Federal Ministers, the Secretaries of State and the members of the Land Governments / *Landesregierungen*), the mayors and their representatives and the members of the city senate in towns with their own charter and the members of the legislative bodies (National Council and Federal Council, Provincial Parliaments).

In March 2019, the Federal Ministry of Justice issued a code of conduct named "Compliance-Leitlinien" (compliance guidelines). It is since then in force for all persons being in service (judges, public prosecutors, prison staff etc.), accessible via intranet and each staff member received a printed copy. The guidelines deal—among other things—with passive bribery, forms for dealing with gifts (accepting undue advantages, acceptance of benefits for the purpose of interference) and professional secrecy. Setting also out the basic values of all justice officials/employees (e. g. independence of jurisdiction, integrity or transparency), these guidelines are both a reference work for

practising persons and a learning tool for newcomers. The guidelines support generally the shaping of compliance ideas and thus summarise the relevant existing rules of criminal law, public service law and disciplinary law. Furthermore, one can find numerous concrete examples of dos and don'ts inclusive references to other sources of information. They remind particularly of duties to report and describe the relevant reporting channels.

In order to prevent "partiality" and bias as well as to ensure that decisions are taken in accordance with the law and as objectively as possible, federal civil servants must not be involved in any conflict of interest or conscience. Reasons for bias for federal civil servants are laid down in the Administrative Procedure Act *(Allgemeines Verwaltungsverfahrensgesetz 1991, AVG*) in particular sec. 7. Accordingly, federal civil servants must abstain from exercising their office in cases of conflicts of interests and arrange for representation if there are important reasons, which cast doubt on their complete impartiality. Each member of staff must therefore judge for her- or himself whether there is a reason for bias. Even in cases of doubt, the existence of bias should be presumed in order to ensure the objectivity of the procedure. Where bias is presumed, federal civil servants must, in accordance with the law (sec. 47 BDG 1979) abstain from any official action and arrange for their representation. Only in the event of "imminent danger" they must, if representation by another federal civil servant is not immediately possible, take the necessary measures to prevent such danger. The conflict-of-interest rules are "catch-all rules" for all those areas of responsibility in which no special (procedural) conflict-of-interest rules apply (such as in the AVG as mentioned above).

The prevention of conflicts of interests and the compliance with regulations on secondary employment, gifts and benefits are also an essential element of the audits of the Austrian Court of Audit and are included in the "Guideline for Auditing Corruption Prevention Systems (CPS)". The principles of independence, objectivity and impartiality are reflected within the Internal Standards such as the code of conduct. The Internal Standards of the court 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 court. Likewise, they do not engage in the management and administration of other profit-making enterprises (Art. 126 B-VG). Further, in the second specialised audit on "Corruption Prevention Systems" in some Austrian cities, these issues were an integral part of the audit. In the audit report "Secondary Employment of University Professors", Reihe Bund 2019/20, notifications of secondary employments, their administrative procession and impact on the Universities have been audited.

Acceptance of gifts: Pursuant to sec. 59 BDG 1979, federal civil servants are prohibited to solicit, obtain or accept (promises of) gifts in connection with their official position or their official duties, this is also applicable to federal contractual employees via sec. 5 VBG. There are, however, exceptions:

Federal civil servants may keep customary gifts of minor value. Furthermore, they may accept "gifts of honour" but they are obliged to inform the competent personnel authority of such gifts immediately. The competent personnel authority decides whether the federal civil servant may keep such a gift or whether it has to be sold or otherwise realised. Federal civil servants may also accept certain benefits granted to them in the course of events in which their participation is justified by official interests.

Compliance with these regulations is also subject to special audits of the ACA and the competent internal audit division of a department.

Pursuant to sec. 59 RStDG, judges may accept neither gifts nor other personal benefits which are directly or indirectly offered to them or to their relatives in the context of exercising their office. Furthermore, they may neither obtain nor be promised gifts.

Moreover, the BAK represents the Austrian specialised body given responsibility to strengthen transparency and prevent conflicts of interest. On this account, the BAK also initiated a Network of Integrity Officers (NIO) whereby one of its aims is the prevention of conflicts of interest throughout the public sector. For further information on the latest activities of the NIO, please see the response under point 24.

Codes of Conduct: The general code of conduct "*Die VerANTWORTung liegt bei mir*"[2] ("The RESPONSibility rests with me")[3] that defines standards for public servants for their daily professional activities and explains examples of required behaviour, is currently under review by the coordinating body for combating corruption (*Koordinationsgremium zur Korruptionsbekämpfung*) involving all stakeholders under the lead of the Federal Ministry for Arts, Culture, the Civil Service and Sport. It is applicable across all government departments and local authorities. The reprint of the code of conduct shall include new examples building upon sensitive relevant cases. As a result of the evaluation and revision of the general code of conduct to prevent corruption, the Federal Academy of Public Administration is currently developing an e-learning module.

In addition to the general code of conduct, several federal ministries have developed their own, more specific codes of conduct for their employees. Recently, regarding the Federal Ministry of the Interior's Code of Conduct (CoC) an e-learning module has been offered. From July 2018 to December 2019, this e-learning course was attended by 3,359 employees. It is intended to ensure online training in this field for the entire staff of the Federal Ministry of the Interior.

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2 https://www.oeffentlicherdienst.gv.at/moderner_arbeitgeber/korruptionspraevention/infos/VerhaltenskodexDeutsch_2012_barrierefrei.pdf?3shqic

3 https://www.oeffentlicherdienst.gv.at/moderner_arbeitgeber/korruptionspraevention/infos/VerhaltenskodexDeutsch_2012_druck.pdf?63hw0x

22 Measures in place to ensure Whistle-blower protection and encourage reporting of corruption

Reports are an important source of information for anti-corruption authorities. Whistle-blowers can help to remedy abuses and thus limit or even prevent damage caused by corruption. Therefore, Austria considers the protection of whistle-blowers as essential in order to effectively prevent and combat corruption. Regarding the Directive (EU) 2019/1937 of the European Parliament and of the Council of 23 October 2019 on the protection of persons who report breaches of Union law, Austria will implement the Directive accordingly. On national level, Austria has several measures for protecting whistle-blowers in place.

Sec. 53a of the BDG 1979—also applicable for federal contractual employees via sec. 5 of the VBG—entered into force on 1 January 2012 and regulates a better protection for federal civil servants, especially towards their employer, against retaliation or disadvantages in their employment relationship, when they report in good faith certain moments of reasonable suspicion or cases of corruption.

A reporting party can contact the BAK via the Single Point of Contact (SPOC) at any time (24/7) by telephone, post, fax or e-mail. Staff from the various departments/authorities have the opportunity to report (anonymously) suspicious facts relating to the offences listed in sec. 4 of the BAK-G directly to the BAK, without having to go through the official channels (right to report). The BAK guarantees to treat data of persons who report suspicious circumstances as confidential as possible. In this regard, the BAK will obviously endeavour to cooperate with the competent judicial authorities. In some cases, especially if the suspicion is based solely on information from an informant, the relevant criminal law provisions may make it imperative to disclose the source of the suspicion in court.

Since 20 March 2013, wrongdoings may also be reported anonymously via a portal (www.bkms-system.net/wksta), which is operated by the WKStA. The portal can also be accessed via a link on the website of the Federal Ministry of Justice[4]. The whistle-blower (or "discloser") may report anonymously any suspicion that a crime in the general remit of the WKStA pursuant to sec. 20a StGB has been committed. Such verified reports can lead to the opening of investigations or raise specific suspicions requiring the initiation of preliminary investigations. As of 30 June 2019, the introductory page of the electronic whistle-blowing system had been accessed over 643.209 times. 7,882 (possible) criminal offences were reported, 5.2% of which were found to be completely without justification. 5,289 of all reports involved the installation of a secured mailbox. About

4 https://www.justiz.gv.at/web2013/html/default/2c9484853d643b33013d8860aa5a2e59.de.html

42.88 % of the reports fell within the jurisdiction of other (especially fiscal) authorities and were forwarded accordingly.

23 List the sectors with high-risks of corruption in your Member State and list the relevant measures taken/envisaged for preventing corruption in these sectors. (e. g. public procurement, healthcare, other)

Already at the International Congress of Supreme Audit Institutions (INCOSAI) in Montevideo in 1998 the INTOSAI defined certain areas as highly vulnerable to corruption, such as public procurement or subsidy management, because large sums of public money are involved. For this reason, the ACA is applying a preventive and risk-oriented approach. When selecting the topic of its audits, the ACA is paying special attention to areas with high risk potentials and high levels of expenditure, which are particularly sensitive to corruption.

During emergencies, the risk of corruption increases, especially in the above mentioned areas. In areas like public procurement that are traditionally sensitive to corruption, the solution must be greater transparency in public procurement and contracting to prevent misuse of resources. It is essential that transparency, accountability, openness of information, including open data and integrity are preserved. Therefore, the ACA is more determined than ever to engage in the INTOSAI Working Group for the Fight against Corruption and Money Laundering (WGFACML) to finalise the INTOSAI Guidance for the Audit of Corruption Prevention in Public Procurement. The ACA also pays attention to this issue by conducting audits with an anti-corruption focus.

Compliance and corruption prevention advisory services provided by the BAK in the risk area of healthcare in 2019

In 2017, the European Commission published a report on a study on corruption in the healthcare sector. According to this study, the public healthcare system is considered particularly vulnerable to corruption. Based on the results of the study, conclusions can be drawn regarding potential corruption risks in the Austrian healthcare system as well. Against this background, the BAK advised two actors of the Austrian healthcare sector in 2019 at their request. In May 2019, a corruption prevention and compliance consultation was concluded with the Vienna Hospital Association (KAV) on selected risk areas identified within KAV. The focus of the consultation was the analysis of conflicts of interest and other irreconcilabilities in the medical sector, especially with regard to the issues of secondary employment and scheduling of operations. The KAV project team, with the support of the BAK, drew up detailed risk lists and developed recommendations for measures to control risks and optimise existing measures.

The BAK also provided compliance advisory services to the General Accident Insurance Institution (AUVA) from autumn 2018 to the end of 2019 with the aim of implementing a comprehensive compliance management system (CMS) and consolidating former compliance-related measures.

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

The Network of Integrity Officers in the year 2019
The BAK started to set up this network in 2016. The Network of Integrity Officers, consisting of representatives from public administration, state-owned enterprises and the education sector, promotes the exchange of experience and helps to create synergies on integrity issues. To date, more than 151 integrity officers from more than 60 entities have been trained in a one-week basic training course within the framework of the NIO. The main task of the integrity officers is to support their entities in compliance and integrity issues.

The NIO's activities in 2019: 6th NIO Follow Up-Meeting in the BAK, two NIO basic training courses, annual meeting of the members.

Since the establishment of the Austrian Court of Audit department "Anti-Corruption, Compliance, Risk Management" in March 2018, the ACA has firmly continued to pursue its path regarding the prevention of corruption. Within the ACA, a risk analysis was carried out in 2019 in the framework of the ACA's compliance management system and coping strategies were developed for the risks identified. In addition to the creation of a central point of contact for advice on compliance-related matters, regular newsletters inform the members of the Court on relevant topics. Furthermore, the ACA compares organizational units in the framework of its cross-cutting audits, assessing their actions taken to prevent corruption. Based on the Guideline for Auditing Corruption Prevention Systems (volume Positions 3/2016), the ACA continued the cross-cutting audit, which had been completed on the federal level in 2016, on the municipal level in 2019. The guideline, which has been received very positively by the national and international expert community, is—together with the Guideline on Auditing Internal Control Systems—currently under revision and will be republished in early 2020. Moreover, in its capacity as the General Secretariat of INTOSAI, the ACA also played a substantial role in the preparation of a Memorandum of Understanding between the United Nations Office on Drugs and Crime (UNODC) and INTOSAI. The Memorandum was signed in Vienna on 30 July 2019.

C Repressive measures

25 Criminalisation of corruption and related offences

The criminal offences related to corruption are listed in Chapter 22 of the Criminal Code *(Strafgesetzbuch, StGB;* sec. 304 to 309) and can be downloaded from the following link.

Furthermore, the Federal Act on the responsibility of legal entities *(Verbandsverantwortlichkeitsgesetz, VbVG)* regulates under which conditions legal entities are responsible for offences and how they shall be sanctioned. If a decision-maker or an employee of a legal entity commits the offence of receiving bribes pursuant to sec. 304, para. 1 StGB or commits another type of corruption and in this connection the preconditions of sec. 3 VbVG are being fulfilled, the legal entity shall be responsible for the relevant offences of such natural persons.

In recent years, domestic combat against corruption has been continuously expanded, most recently by adopting the 2012 Act amending the corruption law—aimed at achieving a legal situation in compliance with international and European standards. In October 2016, these reforms were evaluated by the Federal Ministry of Justice on behalf of the Parliament (Resolution by the National Council of 12 June 2012, 257/E XXIV. GP) with regard to their efficiency and usefulness.

In December 2019, provisions regarding corruption offences in the StGB (Art. 1), BAK-G (Art. 2) and the StPO (Art. 3) were amended by the Federal Law Gazette I 111/2019[5] implementing Directive (EU) 2017/1371 of the European Parliament and of the Council of 5 July 2017 on the fight against fraud to the Union's financial interests by means of criminal law.

Moreover, Austria has acceded to all international bodies and conventions against corruption or has become a member of such bodies, which advocate binding rules of preventing and combating corruption, international cooperation and asset recovery, and which, by implementing improvements of anti-corruption standards in the Member States and guaranteeing compliance to their principles through mutual evaluation, form the cornerstones of the efficient and effective combat against corruption, such as:

- UN Convention against Corruption (UNCAC)
- OECD Working Group on Bribery in International Business Transactions
- Group of States against Corruption (GRECO)

5 https://www.ris.bka.gv.at/Dokumente/BgblAuth/BGBLA_2019_I_111/BGBLA_2019_I_111.html

All conventions are periodically evaluated by peer-reviews, the results of which can be publicly accessed on, and downloaded from the websites of the respective organisations.

Furthermore, Austria actively supports the EU measures combating corruption.

Domestically, a coordination body for combating corruption (*Koordinationsgremium zur Korruptionsbekämpfung*) has been established under the leadership of the Federal Ministry of Justice, which comprises all ministries, but also the federal provinces *(Bundesländer)* and the NGO "Transparency International" and in which also the Austrian Court of Auditors is represented. Although this body, the establishment of which goes back to a GRECO recommendation, has no rights to intervene in the participating organisations, it nevertheless fulfils an important information and coordination function.

As regards content, the coordination body for combating corruption, in addition to broadly exchanging information on national and international developments and initiatives in the area of combating and preventing corruption, mainly prepares a National Anti-Corruption Strategy (NACS) or a National Anti-Corruption Plan (NAP) based upon such strategy for the repression area, which shall be dealt with further below because of its important role with respect to the rule of law:

- **National Anti-Corruption Strategy (NACS)**
  The NACS was submitted to the Council of Ministers and adopted on 31 January 2018 in order to comply, inter alia, with an outstanding GRECO recommendation. The only GRECO recommendation which is still outstanding now is the providing of adequate resources to the coordination body for combating corruption.

- **National Anti-Corruption Plan (NAP)**
  On 16 January 2019, the Council of Ministers adopted an Action Plan to implement a National Anti-Corruption Strategy for the federal administration, specifying relevant measures for subsequent years. The Federal Action Plan and this catalogue of measures were expanded in May 2019 by a second part, which includes the voluntary self-commitment of parties involved from the public and private sectors, and from civil society.

According to the NACS, the implementation of these plans shall be evaluated by the coordination body for combating corruption in the next two years, with interim results being presented in the first half of 2020.

In a resolution of 19 September 2019, NR 124/E the National Council requested an annual comprehensive corruption report, summarising statistics on relevant offences and a systematic analysis. Such a report shall be presented to the National Council for the first time in 2020.

26 Overview of application of sanctions (criminal and non-criminal) for corruption offences (including for legal persons)

Criminal sanctions: The following table contains convictions, diversions (*Diversionen*) and acquittals with regard to offences pursuant to sec. 304 to 309 StGB for natural persons:

2019:	Section 304	Section 305	Section 306	Section 307	Section 307a	Section 307b	Section 308	Section 309
Convictions	10	4	-	80	3	2	-	3
Diversions	4	2	2	2	2	1	-	-
Acquittals	2	-	-	17	1	-	-	6

1 January 2020 to 15 April 2020:	Section 304	Section 305	Section 306	Section 307	Section 307a	Section 307b	Section 308	Section 309
Convictions	1	1	-	24	-	-	-	-
Diversions	-	-	-	2	-	-	-	1
Acquittals	-	-	-	24	-	-	-	-

In 2019 and 2020 there were no convictions of legal entities pursuant to sec. 304, 305, 306, 307, 307a, 307b, 308 and 309 StGB, nor were there any diversions imposed in criminal proceedings against legal entities for the above-mentioned crimes. In criminal proceedings conducted in 2020, a legal entity was acquitted of the accusation of having been responsible for offences pursuant to sec. 307 StGB.

In addition to corruption offences regulated in the StGB, the RStDG provides for disciplinary consequences for violating professional and official duties (sec. 101 et seqq. RStDG), which may also include (corruption) offences. Possible consequences are, in increasing order according to the seriousness of the official offence and the disadvantages caused, as well as according to the degree of fault and the total previous behaviour of the judge or public prosecutor, a reprimand, a fine up to five (gross) monthly remunerations, an involuntary transfer to a different place of employment or discharge. The result of disciplinary proceedings is decided upon by an independent disciplinary tribunal. Due to the responsibility of judges and public prosecutors under disciplinary law, disciplinary penalties may be imposed in addition to punishment under criminal law.

Non-criminal sanctions: Due to the different legal status of federal civil servants and federal contractual employees, the provisions regulating the disciplinary proceedings of federal civil servants on one hand and federal contractual employees on the other hand differ slightly.

In the event of a culpable breach of official duties, disciplinary action is instituted. The service superior shall investigate any reasonable suspicion of a breach of official duties and file a disciplinary complaint with the competent personnel authority without delay. If the breach of official duty also constitutes a criminal offence, there is an obligation to report the matter to the public prosecutor's office. The following disciplinary measures are available under the disciplinary code applicable to federal civil servants: reprimands, small fines (up to a month's salary), large fines (from one to five month's salary) and dismissal. For federal contractual employees the disciplinary measures applicable are reprimands, termination of contract or dismissal.

The current disciplinary commissions will be replaced by the Federal Disciplinary Authority (*Bundesdisziplinarbehörde*), which is competent to issue disciplinary decisions and to decide on suspensions for all federal civil servants. Its members are independent and autonomous in the performance of their duties. A Disciplinary Attorney advocates the interests of public service in the proceeding before the Federal Disciplinary Authority. The newly founded Federal Disciplinary Authority, which will officially start its work on 1 October 2020, is responsible to compile an annual report regarding the year under review. The report shall contain the number of cases pending, the number and type of cases ending the procedure, the concluded findings regarding breaches of official duty, the concluded findings regarding the imposed sentences and the number of acquittals in the year under review. Against decisions of the Federal Disciplinary Authority appeal to the Federal Administrative Court (*Bundesverwaltungsgericht*) is admissible. The parties of the proceedings before the Federal Administrative Court are entitled to file for final complaint at the Supreme Administrative Court (*Verwaltungsgerichtshof*).

Federal contractual employees may file an action against a disciplinary order issued by a personnel authority to the courts for labour and social matters.

Within the Federal Ministry of the Interior, the Department for Human Resources contains a unit responsible for disciplinary and complaint matters. Certain breaches of disciplinary law may lead to procedures before the disciplinary commission of the Federal Ministry of the Interior.

27 Potential obstacles to investigation and prosecution of high-level and complex corruption cases (e. g. political immunity regulation)

Regarding the immunity of Members of Parliament and potential obstacles of investigations, see points 65 and 66 of the GRECO Evaluation Report of Austria where the

4th evaluation round focused on the "Corruption prevention in respect of Members of Parliament, judges and prosecutors"[6].

Pursuant to Art. 57 para. 3 B-VG, members of the National Council—apart from cases of professional immunity pursuant to Art. 57 para. 1 B-VG or in the two instances of an obligatory approval by the National Council pursuant to Art. 57 para. 2 B-VG (firstly—except when caught in the very act—with respect to arrests, and according to the case-law of the Constitutional Court also with respect to body searches, and secondly with respect to house searches)—may only be prosecuted for offences without their consent, if such offences evidently had no relationship to their political activity. Pursuant to Art. 96 para. 1 B-VG and Art. 58 B-VG, these provisions apply mutatis mutandis also for members of a Provincial Parliament *(Landtag)* and for members of the Federal Council.

6 https://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=0900 0016806f2b42

III Media Pluralism

As for any democratic society media freedom and pluralism are core elements of the Austrian constitutional and legal framework and are effectively protected by the rule of law. The existence of a wide range of TV, radio, printed press and online media, covering the diversity of opinions and content is self-evident. The Austrian newspaper market includes 12 (paid-for), 3 (giveaway) daily papers and more than 200 weekly and monthly papers (mostly regional). The dual system of broadcasting in Austria comprises public and private providers. The Austrian Broadcasting Corporation *(Österreichischer Rundfunk, ORF)* is the Austrian national public service broadcaster. It is obliged under national law to ensure that all Austrian residents are provided with one province-wide and three nation-wide radio channels as well as four nation-wide TV channels. In addition, there are some 80 private (commercial as well as non-commercial "community") radio, about 60 private AV-services, including nationwide, regionally and locally acting operators.

Legislation in force:

- Federal Act on the establishment of an Austrian Communications Authority (KommAustria Act [*KommAustria-Gesetz, KOG*]), Federal Law Gazette I No. 32/2001, as amended by: Federal Law Gazette I No. 47/2019, date of the translated version: 19 December 2019;
- Federal Constitutional Act on Transparency in Media Cooperation and of Advertising Orders and the Funding of Media Owners of a Periodical Medium (Federal Constitutional Act on Media Cooperation and Media Funding [*BVG Medienkooperation und Medienförderung, BVG MedKF-T*]), Federal Law Gazette I No. 125/2011, date of the translated version: 1 January 2015;
- Federal Act on Transparency in Media Cooperation as well as of Advertising Orders and the Funding of Media Owners of a Periodical Medium (Transparency in Media Cooperation and Funding Act [*Medienkooperations- und -förderungs-Transparenzgesetz, MedKF-TG*)]), Federal Law Gazette I No. 125/2011, as amended by: Federal Law Gazette I No. 6/2015; date of the translated version: 1 January 2015;
- Media Act (*Mediengesetz*), Federal Law Gazette No. 314/1981, as amended by: Federal Law Gazette I No. 101/2014, date of the translated version: 25 February 2015;
- Federal Act on the Austrian Broadcasting Corporation (*Bundesgesetz über den Österreichischen Rundfunk, ORF-Gesetz*), Federal Law Gazette No. 379/1984, as amended by: Federal Law Gazette I No. 115/2017, date of the translated version: 1 August 2017;

- Federal Act on Audiovisual Media Services (*Bundesgesetz über audiovisuelle Mediendienste, AMD-G*), Federal Law Gazette I No. 84/2001, as amended by: Federal Law Gazette I No. 86/2015, date of the translated version: 1 January 2016;
- Federal Constitutional Law (*Bundes-Verfassungsgesetz, B-VG*), Federal Law Gazette No. 1/1930 as amended by: Federal Law Gazette I No. 102/2014; date of the translated version: 1 January 2015;
- Duty to Grant Information Act (*Auskunftspflichtgesetz*), Federal Law Gazette No. 287/1987, as amended by: Federal Law Gazette I No. 158/1998; date of the translated version: 1 February 2010;
- Fundamental Act on the Duty to Grant Information (*Auskunftspflicht-Grundsatzgesetz*), Federal Law Gazette No. 286/1987, as amended by: Federal Law Gazette I No. 158, date of the translated version: 1 April 2010;
- Environmental Information Act (*Umweltinformationsgesetz, UIG*), Federal Law Gazette No. 495/1993, as amended by: Federal Law Gazette I No. 74/2018.

Policy developments:

- As for a summary of the most important topics related to media pluralism on the EU and international level, the "Council conclusions on the strengthening of European content in the digital economy" (OJ C 457, 19.12.2018, p. 2–7), which were drafted under Austria's EU presidency, should be kept in mind.
- In line with the Recommendation CM/Rec(2016)5[1] of the Council of Europe's Committee of Ministers to Member States on Internet freedom, especially its Art. 7, Austria presented an evaluation on internet freedom in Austria to the Council of Europe in January 2018.

A Media regulatory authorities and bodies

28 Independence, enforcement powers and adequacy of resources of media authorities and bodies

The Austrian Communications Authority *(KommAustria)* is the regulatory authority for electronic audio media and electronic audiovisual media in Austria. It is an independent panel authority, which is not subject to instructions from any other authority. In all of its activities, KommAustria is provided with operational support by the media division of the Austrian Regulatory Authority for Broadcasting and Telecommunications *(Rundfunk und Telekom Regulierungs-GmbH, RTR)*. KommAustria is responsible for issuing licenses to private television and radio stations, managing broadcasting frequencies, handling the legal supervision of private broadcasters, as well as preparing and launching digital broadcasting in Austria, administering the Austrian federal government's press and journalism subsidies, monitoring compliance with Austrian advertising regulations in broadcasts of the Austrian Broadcasting Corporation (*ORF*) and private broadcasters,

legal supervision of ORF and its subsidiaries, of private providers of audiovisual media services on the Internet, and for certain tasks under the Federal Act on Exclusive Television Rights. In the performance of their duties, the members of KommAustria are independent and not bound by instructions from any other authority. The Federal Chancellor does not have the power to issue instructions to KommAustria. However, the Federal Chancellor is authorised to gather and request relevant information on all matters handled by KommAustria.

Appeals against KommAustria decisions can be submitted to the Federal Administrative Court *(Bundesverwaltungsgericht, BVwG)*. Further appeals against BVwG decisions may be submitted to the Supreme Administrative Court *(Verwaltungsgerichtshof, VwGH)* and the Constitutional Court *(Verfassungsgerichtshof, VfGH)*.

As for the resources of the regulatory authority (i.e. the expenses for salaries, office rent and equipment, etc. of the KommAustria and the supporting media division of the RTR), its annual budget was EUR 4,146 million in 2018, which is deemed to be adequate. One part of the budget comes from the general federal budget; the other part is to be paid by the market participants. According to a decision of the Constitutional Court in 2004 (dec. VfSlg. 17.326), it is unconstitutional if the market participants are required to pay for services which are in the interest of the general public.

For more information, please consult the annual report of the RTR (*Kommunikationsbericht*) for 2018, especially p. 16-43. As for the legal foundations and provisions for the budget of the KommAustria, cf. sec. 1-15 and 35 of the KommAustria Act.

Legislative plans: For the transposition of the new AVMS-Directive (EU) 2018/1808, the KommAustria Act, the Federal Act on the Austrian Broadcasting Corporation as well as the Federal Act on Audiovisual Media Services will have to be amended.

29 Conditions and procedures for the appointment and dismissal of the head / members of the collegiate body of media authorities and bodies

According to sec. 3 to 5 of the KommAustria Act, KommAustria shall consist of five members, i.e. the Chairman, a Deputy Chairman and three additional members. All members shall exercise their activities as their main occupation. Only persons who have completed a law degree course or a degree course of law and political science and have at least five years of legal work experience may be appointed as members. The Chairman, the Deputy Chairman and the additional members shall be appointed by the Federal President upon the proposal of the Federal Government (which requires the agreement of the Main Committee of the National Council) for a term of six years. Reappointment shall be permitted. The proposal shall be preceded by a public invitation

for applications. The invitation shall be initiated by the Federal Chancellor and published in the Official Gazette *(Wiener Zeitung)*. After expiry of their term of office, the previous members shall continue to manage the business of KommAustria until the constitutive meeting of the newly appointed members.

Persons who are currently in a top position e. g. in the Federal Government or in the Austrian Broadcasting Corporation, or have done so within the past 12 months, may not be active in KommAustria (incompatibility provision). For the duration of their term of office, the members may not exercise any activity that could cast doubt on the independent exercise of their function or give rise to the suspicion of bias or that could prevent them from fulfilling their official tasks or put substantial official interests at risk.

Membership in the KommAustria shall terminate by lapse of time, upon death, by waiver, upon loss of the eligibility to be elected to the National Council, upon a finding by the General Assembly that the member is unable to properly exercise his or her functions due to serious physical or mental conditions, upon a finding by the General Assembly that the member has grossly violated his or her duties, or with a finding by the General Assembly that there is incompatibility. If a member's membership terminates for the mentioned reasons, a new member shall be appointed immediately for the remaining term of office.

B Transparency of media ownership and government interference

30 The transparent allocation of state advertising (including any rules regulating the matter)

Since 2012, all legal entities subject to the supervision of the Austrian Court of Audit are obliged to publicly disclose the name of the periodical medium and the amount of the fee. In the case of subsidies to media owners of a periodical medium, the name of the recipient of the subsidies and the amount of the subsidies must be disclosed according to the Federal Constitutional Act on Media Cooperation and Media Funding and the Transparency in Media Cooperation and Funding Act. To this end, the Austrian Court of Audit shall keep a list, to be updated every sixth months, of the legal entities known to it and subject to its supervision, including the details required to record the legal entities (names, addresses, executive officers having power of representation). Currently, there are about 5400 legal entities on this list, about 2000 of which are legally associated municipalities *(Gemeindeverbände)*.

Those legal entities shall disclose the name of the relevant periodical medium in which publications were made as well as the total amount of the fee to be paid for the relevant publications made within one quarter. This is applicable to all orders placed directly or

through arrangement by third parties, relating to (audiovisual) commercial communication and commercials and sponsored programmes as well as to contributions to programmes in the service of the general public in the content offered or in radio channels or in audiovisual media services, and to paid publications placed with media owners of a periodical print medium or media owners of a periodical electronic medium.

If no relevant orders were carried out for a legal entity in the relevant quarter or if the total amount of the fee of the orders carried out by a media owner of a periodical medium is not more than EUR 5,000 in the relevant quarter, this must also be disclosed (by a so-called "empty disclosure"—*Leermeldung*). Those legal entities have to disclose all orders placed to the KommAustria; currently, the empty disclosures amount to about 80 % of all disclosures. Non-compliance is an administrative offence and shall be punished with a fine of up to EUR 20,000, in a repeated case with a fine of up to EUR 60,000. Currently, about 99 % of all legal entities are duly fulfilling the required reporting. As for the rest, the KommAustria fines, on average, 4 legal entities for non-compliance per quarter.

The KommAustria quarterly publishes lists of the disclosed information, to provide for full transparency. See also the annual report of the RTR (*Kommunikationsbericht*) for 2018, especially p. 35-36.

31 Public information campaigns on rule of law issues (e. g. on judges and prosecutors, journalists, civil society)

Austria's constitutional and institutional system is based on the rule of law. The three supreme courts (Supreme Court in civil and criminal matters—Oberster Gerichtshof, Supreme Administrative Court—Verwaltungsgerichtshof and Constitutional Court—Verfassungsgerichtshof) are committed to an active information policy and give comprehensive information about their work and their decisions, inter alia. The decisions can be downloaded, along with federal and provincial laws and other decisions, by means of the Legal Information System of the Republic of Austria (RIS).

32 Rules governing transparency of media ownership

The relevant provision on the transparency of media ownership is to be found in sec. 25 par. 2 and 3 on "Disclosure" (*Offenlegung*) of the Media Act:

The media owner shall be specified by name or company name, including the object of the company, residential address or registered office (branch office) and the names of the executive bodies and officers of the media owner authorised to represent the company and, if there is a supervisory board, its members. In addition, the ownership, shareholding, share and voting rights proportions shall be stated in respect of all persons holding a direct or indirect share in the media owner. Furthermore, any undisclosed shareholdings

in media owner and in persons holding a direct or indirect share in the media owner as specified in the previous sentence shall be stated, and fiduciary relationships shall be disclosed for each level. In the case of direct or indirect shareholdings of foundations, the founder and the relevant beneficiaries of the foundation shall be disclosed. If the media owner is an association or an association holds a direct or indirect share in the media owner, the management board and the purpose of the association shall be stated in respect of such association. Persons holding a direct or indirect share, trust makers, founders and beneficiaries of a foundation shall be obliged, upon request by the media owner, to communicate to the media owner the details required for complying with his/her/its disclosure obligation.

If a person to be disclosed is also owner of another media undertaking or media service, the name, object and registered office of such company shall also be stated.

C Framework for journalists' protection

33 Rules and practices guaranteeing journalists' independence and safety and protecting journalistic and other media activity from interference by state authorities

As a necessary precondition of the freedom of information guaranteed under Art. 10 ECHR and for media to be able to serve as "public watchdogs", the sources of journalists are privileged information. This "protection of editorial confidentiality" (*Redaktionsgeheimnis*) is stipulated in sec. 31 of the Media Act: Media owners, editors, copy editors and employees of media undertaking or media service as witnesses in criminal proceedings or other proceedings before a court or an administrative authority have the right to refuse answering questions concerning the person of an author, sender or source of articles and documentation or any information obtained for their profession. This must not be by-passed by requesting the person enjoying this right to surrender documents, printed matter, image, sound or data carriers, illustrations or other representations of such contents or confiscating them. The extent to which the surveillance of communications of subscribers who are media undertakings or optical and acoustical observation of persons with technical devices on premises of media undertaking are admissible, is governed by the Code of Criminal Procedure.

The ECtHR currently deals with an Austrian case *(Standard Verlagsgesellschaft mbH against Austria, Appl. No. 39378/15)* on whether a daily newspaper is obliged to hand over user data related to insulting posts in an online forum of that newspaper. The Supreme Court in civil and criminal matters decided in favor of politicians of the FPÖ, arguing that a necessary link to journalism was missing, as there was no journalistic control over the forum. In the proceedings before the ECtHR, the daily newspaper claims, inter alia, that the national judgements are not in line with Art. 10 ECHR and that online

posters should enjoy a legal position comparable to sources, as otherwise there would be a chilling effect on discussion in public (online) fora. It is uncertain when the ECtHR will reach its decision.

Furthermore, the independence of journalists is particularly important in the case of the public broadcaster, the ORF. Respecting this independence and self-responsibility of the persons and organs of the Austrian Broadcasting Corporation, its programming staff and its journalistic staff to freely exercise the journalistic profession is mentioned at several occasions in the Federal Act on the Austrian Broadcasting Corporation (e. g. sec. 1 para. 3, sec. 4 para. 6, sec. 13 para. 3, sec. 16 para. 5, sec. 17 para. 1 fig. 1, sec. 32 para. 1). Consequently, there is a number of decisions that demonstrate that there are effective proceedings and remedies to protect the independence of ORF journalists (e. g. Constitutional Court 14.03.2013, VfSlg. 19742; Supreme Administrative Court 22.05.2013, 2012/03/0144).

34 Law enforcement capacity to ensure journalists' safety and to investigate attacks on journalists

For Austria, the topic of promoting the protection and safety of journalists is one of its key human rights priorities in international fora (like the Council of Europe and the UN Human Rights Council). It is of utmost importance to respond to a worrying worldwide trend of increased attacks, intimidation and harassment of journalists as well as of efforts to limit the freedom of the media. Safety of journalists is a cornerstone of the civil, political, economic, social and cultural fundamentals of modern societies, not least in the digital age.

35 Access to information and public documents

Legislation in force: There are no specific legal provisions concerning the access to public information for journalists. In general, administrative organs shall impart information about matters pertaining to their sphere of competence *(Auskunftspflicht)* in so far as this does not conflict with a legal obligation to maintain confidentiality *(Amtsverschwiegenheit*; cf. Art. 20 para. 3 and 4 B-VG). These constitutional principles are put into practice in implementing laws at the federal level (cf. the Duty to Grant Information Act, and the Fundamental Act on the duty to grant Information) and in the legislation of the Laender based on the cited laws. In addition, specific laws contain provisions about access to information in certain legal matters, e. g. the Environmental Information Act.

Important case law by national courts: In 2018, the Supreme Administrative Court *(Verwaltungsgerichtshof)* rendered two important judgements interpreting the Duty to Grant Information Act. These judgements substantially facilitate the exercise of the information right (VwGH 24.05.2018, Ro 2017/07/0026; VwGH 29.05.2018, Ra 2017/03/0083).

The Administrative Courts interpret the national law in accordance with the ECHR and the relevant case law on Art. 10 ECHR, and they accept only narrow and well-founded exceptions to the right of information, especially concerning the right to information of journalists and media, explicitly taking into account their important role in a democratic society ("public watchdogs"). This line of jurisprudence has a wide influence on the administrative practice of all administrative authorities, in particular concerning requests on information by journalists.

Legislative plans envisaged by the Government: The current Austrian government programme mentions the establishment of "freedom of information" as one of the main goals of the policy agenda (cf. the Regierungsprogramm 2020–2024, pp. 19–20). The legislation in force on the duty to grant information shall be repealed. A new constitutional right to information (on demand) shall be granted to everybody. In addition, public organs shall provide information of general interest by themselves, accessible for everyone on the Internet, in a central information register. The right to information should be enforceable before the administrative courts and finally before the Constitutional Court. The new fundamental right should only be limited by certain public and very important private interests (e.g. data protection) provided by (constitutional) law. Procedural aspects and other conditions (e.g. direct access, delays, costs) are also determined by the government programme quoted above. Therefore, an amendment of the Federal Constitution would be necessary. As competences of the provinces *(Länder)* are also concerned, also the Federal Council *(Bundesrat)* would have to approve the act with a qualified majority. Based on the envisaged constitutional amendments, precisions are to be made in a (simple) federal law *(Informationsfreiheitsgesetz)*.

IV Other institutional issues related to checks and balances

The Austrian Constitution is based on some core elements, so called basic principles, which can only be abolished or substantially amended by means of a "total revision" *(Gesamtänderung)* of the Federal Constitution. This special revision procedure requires a two third majority in the National Council *(Nationalrat)* and the approval in a referendum by Austrian citizens. One of the basic principles thereby protected is the *Rechtsstaatsprinzip*, a principle that guarantees legality and legal certainty *(Rechtssicherheit)* and legal protection *(Rechtsschutz)*.

A central element of this basic principle is enshrined in Art. 18 of the Federal Constitutional Law (*Bundes-Verfassungsgesetz, B-VG*) which reads, "the entire public administration shall be based on law". It provides for a separation of powers and requires that all state action complies with the existing constitutional and legal framework. In the event of non-compliance, access to an efficient judicial remedy is guaranteed by the Constitution.

A The process for preparing and enacting laws

37 Stakeholders'/public consultations (particularly consultation of judiciary on judicial reforms), transparency of the legislative process, 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)

Legislative proposals on federal laws are submitted to the National Council *(Nationalrat)* either

- as motions by at least five of its members, or by one of its committees,
- or by the Federal Council *(Bundesrat)* as the second parliamentary chamber, or by a third of its members
- or, most commonly, as bills by the Federal Government,
- or by way of popular initiative.

Similar procedures are in place at provincial level *(Landesebene)*.

Legal bases:

Art. 41 of the Federal Constitutional Law (B-VG)

Federal Law on the Rules of Procedure of the National Council (*Geschäftsordnungsgesetz 1975*) https://www.ris.bka.gv.at/Dokument.wxe?Abfrage=Erv&Dokumentnummer=ERV_1975_410

A Federal Government's bill (*Regierungsvorlage*) is based on a proposal submitted by the competent Ministry which are both published on the Parliament's website. Generally, such proposal is subject to an open consultation procedure, during which a number of institutions may comment on the draft (*Begutachtungsverfahren*). These consultations are a long-standing and general practice in Austria. The institutions explicitly invited to submit opinions on these proposals comprise a wide range of public and private institutions and interest groups, which usually include all other ministries, Land Governments, the Austrian Court of Audit, the Supreme Courts, the chambers of commerce, the federation of industries, the chamber of labour, unions, religious communities, universities, other entities likely to be affected, and expert groups such as NGOs. The opinions expressed during these consultations are also published on the Parliament´s website. With Resolution no. 200/E of the National Council of 16 May 2017, steps were taken to ensure an even wider public participation in this consultation process by also enabling individuals, organisations and other legal persons who have not been directly invited to participate in the consultation procedure to submit opinions on legislative proposals. https://www.parlament.gv.at/PAKT/VHG/XXV/I/I_01622/fname_633844.pdf.

As a result of the consultations, a draft may be modified before it is submitted as a bill to the National Council where it is deliberated in the competent committees and in the plenary. The Federal Council (*Bundesrat*) can confirm a bill passed by the National Council or veto it. Before a law enters into force, it requires the authentication by the Federal President as having been passed in accordance with the Federal Constitution and the countersignature by the Federal Chancellor. Once authenticated, the adopted law must be published in the Federal Law Gazette (*Bundesgesetzblatt*), which is the final step required by the Federal Constitution for a law to enter into force.

Further details on the legislative process as well as the relevant legal bases and laws are available in English on the website of the Austrian Parliament: https://www.parlament.gv.at/ENGL/PERK/.

The Austrian Federal Constitution foresees neither legislative emergency or fast-track-procedures nor government ordinances in lieu of federal laws. Whenever there is a need for an expeditious process, an informal consensus is sought between political groups in both parliamentary chambers on expediting the procedures commonly in place.

Only if the National Council is by any means prevented from convening to make a resolution or is impeded from action by events beyond its control, the Federal President has the authority to issue a provisional emergency ordinance according to Art. 18 para. 3 of the Federal Constitutional Law (B-VG). Such law-amending ordinances must be limited to preventing obvious and irreparable damage to the public. Even in such a case, issuance by the Federal President requires a prior recommendation by the Federal Government and the consent of the standing sub-committee of the Main Committee (*Hauptausschuss*) of the National Council. Every such ordinance must be revised by the National Council without delay, viz. as soon as it is able to reconvene, and must either be replaced by a federal law or be declared invalid by the Federal Government on a motion of the National Council within four weeks after submission. However, this emergency procedure so far has never been applied during the Second Republic starting in 1945.

38 Regime for constitutional review of laws

The Constitutional Court (*Verfassungsgerichtshof, VfGH*) ensures the constitutional review of laws adopted at federal and provincial level (*Bundes- und Landesgesetze*). If the Constitutional Court finds a (legal provision of a) law to be unconstitutional, it must repeal it.

Review proceedings are to be launched ex officio by the Constitutional Court itself if it suspects a legal provision or law to be unconstitutional during a case pending before it (*amtswegige Prüfung*). If any other court has doubts as to the constitutionality of a legal provision or law to be applied in a case pending before it, it is obliged to bring it before the Constitutional Court (*Gerichtsantrag*).

Individuals have the right to address the Constitutional Court with allegations that their rights have been directly violated (in the absence of a court ruling or an administrative decision) due to the unconstitutionality of a law (*Individualantrag*). In addition, under certain conditions a party to a lawsuit may directly address the Constitutional Court in order to review the constitutionality of the provisions applied in a proceeding before an ordinary court of first instance (*Parteiantrag auf Normenkontrolle*).

Irrespective of a specific case, the following bodies are entitled to appeal to the Constitutional Court for judicial review of a law (*abstrakte Normenprüfung*):

- the Federal Government (regarding laws adopted at provincial level / *Landesebene*),
- the government of a province / *Land* (regarding laws adopted at federal level),
- one third of the members of the National Council (*Nationalrat*) or the Federal Council (*Bundesrat*) regarding federal laws,

- as well as—in some provinces (*Länder*)—one third of the members of a Provincial Parliament (*Landtag*) regarding laws adopted at provincial level.

A more detailed description of the constitutional review of laws is provided in English on the website of the Constitutional Court (see "Unconstitutionality of laws"): https://www.vfgh.gv.at/kompetenzen-und-verfahren/functions.en.html.

Legal bases (in English):
Art. 140 of the Federal Constitutional Law (B-VG)
Sec. 62 to 65a of the Constitutional Court Act 1953 (*Verfassungsgerichtshofgesetz 1953, VfGG*)

B Independent authorities

39 Independence, capacity and powers of national human rights institutions, ombudsman institutions and equality bodies

The Ombudsman Board

The Ombudsman Board (*Volksanwaltschaft, AOB*) is Austria's national human rights institution. This fully independent body deals with citizens' complaints about inactivity, legal opinions or alleged acts of gross negligence of administrative bodies. Anyone may lodge a complaint for an alleged infringement of human rights with the AOB at any time. The AOB has to examine each such complaint: it reviews whether the administrative bodies concerned operate in accordance with the respective law and adhere to human rights standards.

The AOB is also Austria's National Prevention Mechanism (NPM) pursuant to the UN Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (OPCAT) since 2012. Together with six regional commissions, the AOB inspects institutions in which there is or can be a deprivation or restriction of personal liberty, such as prisons, military barracks, psychiatric hospitals, old people's homes or nursing homes, residential groups for children and juveniles and welfare facilities for people with disabilities. The inspection also extends to institutions and programs for people with disabilities. In addition, the administration when acting as an executive authority is monitored where direct orders are issued and coercive measures are exercised, as in the case of deportations, demonstrations and police operations. The essential purpose of the above is to recognise and remedy risk factors for human rights infringements at an early stage.

Different instruments, such as the Board's recommendations to the authorities in individual cases, a comprehensive annual activity report to Parliament and optional reports

about certain observations, have proven to be effective tools to raise awareness and to develop appropriate solutions and last but not least to improve human rights standards in a consistent and sustainable manner. The AOB also regularly holds symposia, so-called NGO forums, and acts as a platform for involving civil society in major projects, e. g. at the OSCE self-evaluation. For further information, please refer to: https://volksanwaltschaft.gv.at/en/about-us.

The Federal Disability Ombudsman

The independent Federal Disability Ombudsman (*Behindertenanwalt des Bundes*) advises and supports persons with disabilities in cases of discrimination. He/she is also a member of the Federal Disability Advisory Board (*Bundesbehindertenbeirat*), which has an advisory function in all fundamental issues related to disability policy. Some of the provinces (*Länder*) have also provided for Disability Ombudspersons or an equivalent advisory committee. For further information, please refer to: http://www.behindertenanwalt.gv.at/fileadmin/user_upload/dokumente/Folder_Behindertenanwalt_2017_ENG.pdf.

The independent CRPD Monitoring Committees

The CRPD Monitoring Committee (*Monitoringausschuss*) is 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. The provinces (*Länder*) have established their own monitoring committees within their sphere of competences.

Legal basis (in German):
Sec. 13h of the Federal Disability Act, (*Bundesbehindertengesetz*)
https://www.ris.bka.gv.at/eli/bgbl/1990/283/P13h/NOR40198315

For further information (in German), please refer to:
https://www.sozialministerium.at/Themen/Soziales/Menschen-mit-Behinderungen.html
https://www.monitoringausschuss.at/

The Data Protection Authority

The Data Protection Commission, established in 1980, was replaced by the Data Protection Authority (*Datenschutzbehörde*) in 2014. It has the power to investigate formal complaints regarding the fundamental (constitutionally guaranteed) right to data protection in the public sector and—limited to the right of access—also in the private sector. Furthermore, the Data Protection Authority can act as an ombudsperson in both the public and private sector, and is empowered to issue recommendations. It deals with all types of allegations against the police, public service organisations, telecommunication and insurance companies, banks and other financial service providers etc.

The Director of the Data Protection Authority is appointed by the Federal President on the recommendation of the Federal Government. She/he enjoys full independence and

may not be removed or discharged against her/his will. For further information, please refer to: https://www.data-protection-authority.gv.at/.

The Commissioners for Legal Protection

The Commissioners for Legal Protection (*Rechtsschutzbeauftragte*) have been installed within the Federal Ministry of Justice, the Federal Ministry of the Interior (https://www.bmi.gv.at/407/), the Federal Ministry of Defence and the Federal Ministry of Finance to examine the lawfulness of certain investigative measures taken by the public prosecutor's office, the police, intelligence agencies and the financial crime authorities. Such measures include audio and video surveillance, the automatic comparison/matching of databases and covert investigations.

Depending on the level of interference with fundamental rights, the powers of the Commissioners range from ex ante approval to ex post supervision by means of appeal or complaint to the Data Protection Authority. The Commissioners submit annual activity reports to their respective ministers, who then report to the National Council.

The Commissioner within the Federal Ministry of Justice is appointed by the Federal Minister of Justice on a joint recommendation of the President of the Constitutional Court, the Austrian Bar Association and the chairperson of the Austrian Ombudsman Board. The Commissioners within the Federal Ministry of the Interior and the Federal Ministry of Defence are appointed by the Federal President on the proposal of the Federal Government, which has to take into consideration the views of the President of the Constitutional Court, the President of the Supreme Administrative Court and the President of the National Council. The Commissioner within the Federal Ministry of Finance and his/her deputies are appointed by the Federal Minister of Finance after the hearing of the President of the National Council, the President of the Constitutional Court and the President of the Supreme Administrative Court.

Terms of office vary from three to five years; renewal is possible. Commissioners are fully independent and may not be removed or discharged against their will.

Legal bases (in German):
Sec. 47a of the Code of Criminal Procedure (*Strafprozeßordnung, StPO*)
https://www.ris.bka.gv.at/eli/bgbl/1975/631/P47a/NOR40123707

Sec. 91a - 91d Security Police Act (*Sicherheitspolizeigesetz, SPG*)
https://www.ris.bka.gv.at/eli/bgbl/1991/566/P91a/NOR40179876

Sec. 57 of the Military Powers Act (*Militärbefugnisgesetz, MBG*)
https://www.ris.bka.gv.at/eli/bgbl/i/2000/86/P57/NOR40218325

Sec. 74a und 74b of the Law on Financial Crime (*Finanzstrafgesetz, FinStrG*)
https://www.ris.bka.gv.at/eli/bgbl/1958/129/A1P74a/NOR40173956

See also the overview (in German):
https://www.oesterreich.gv.at/lexicon/R/Seite.991658.html

The Equal Treatment Commission and the Federal Equal Treatment Commission
The following equality bodies were set up to scrutinise matters relating to discrimination: The Equal Treatment Commission investigates matters concerning discrimination according to the Equal Treatment Act (*Gleichbehandlungsgesetz*). Its members are independent. The Equal Treatment Act covers discrimination based on grounds of gender, ethnic origin, religion or belief, age or sexual orientation in private employment. It also covers discrimination based on gender and ethnic origin in other areas, i.e. the access to goods and services which are publicly accessible, social protection and social advantages, education and health care.

The Commission acts at pre-trial stage. If it concludes that a complainant has been discriminated against, it issues an expert opinion and recommendations addressed to the employer/service provider. Proceedings aim at facilitating arrangements to avoid or settle legal disputes. Any claims for compensation must be asserted before a civil court unless the employer voluntarily complies with the Commission's recommendations.

Victims can address the Commission directly and online. The proceeding is free of charge and does not require legal representation.

The Federal Equal Treatment Commission is a federal administrative body that deals with individual complaints regarding discrimination on grounds of gender, ethnic origin, religion or belief, age or sexual orientation in public employment. Its tasks also include monitoring the implementation of measures targeting the advancement of women.

Website of the Commissions: https://www.bundeskanzleramt.gv.at/agenda/frauen-und-gleichstellung/gleichbehandlungskommissionen.html, and in English: https://www.bundeskanzleramt.gv.at/en/agenda/women-and-equality/equal-treatment-commissions.html.

For an overview (in German), please refer to:
https://www.oesterreich.gv.at/themen/dokumente_und_recht/gleichbehandlung/4/2.html

The Ombud for Equal Treatment
The Ombud for Equal Treatment is an independent body providing assistance to victims of discrimination on grounds of gender, ethnicity, age, sexual orientation, religion and belief in employment and occupation, and gender and ethnic origin in other areas of the

private sector of the economy, i.e. the access to goods and services which are publicly accessible, social protection and social advantages, education and health care. Its role is defined in accordance with EU equal treatment legislation, which requires member states to set up equality bodies to combat discrimination.

The Ombud for Equal Treatment consists of a central office and four regional offices.

The Ombud for Equal Treatment plays a role in combating discrimination and promoting equality that is distinct from government and civil society organisations. It offers individual legal advice to alleged victims of discrimination, negotiates with employers, companies, institutions and work councils to reach friendly settlements, and provides legal representation to victims of discrimination in proceedings before the Equal Treatment Commission. Other tasks include awareness raising and providing information to the public about the Equal Treatment Act and about cases of discrimination. As a central stakeholder within the multifaceted national equal treatment architecture, the Ombud for Equal Treatment acts as a helpdesk and clearing organisation.

The Ombud for Equal Treatment reports to the National Council biannually about its work, making observations and recommendations. To foster non-discriminatory practices and ensure awareness of and compliance with equal treatment legislation, the Ombud for Equal Treatment engages with public bodies, employers and NGOs.

Website: https://www.gleichbehandlungsanwaltschaft.gv.at/ombud-for-equal-treatment. https://www.oesterreich.gv.at/themen/dokumente_und_recht/gleichbehandlung/4/1/Seite.1860510.html

The Ombudsperson for Children and Youth

The Federal Ombudsperson for children and Youth (*Kinder- und Jugendanwalt des Bundes*) is set up within the Federal Ministry of Labour, Family and Youth. His/her mandate includes the promotion of the concept of a child-friendly society and the non-violent upbringing of children.

In addition, independent Ombuds-offices for Children and Youth (*Kinder- und Jugendanwaltschaften*) are established by law in each of the provinces (*Länder*). These ombudspersons are entrusted with individual counselling, awareness raising and promoting children's rights. Tasks include counselling for parents, mediation in child custody proceedings and commenting on draft legislation that has an impact on children. In some provinces (*Länder*) the ombudsperson is also authorised to act as a contact person for children in residential care.

Please refer to the overview in Austria's replies to the list of issues in relation to its combined fifth and sixth periodic reports pursuant to the UN Convention on the Rights of

the Child, paras. 81 et seqq: https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CRC%2fC%2fAUT%2fRQ%2f5-6&Lang=en

For further details of the provincial ombudspersons (in English):
https://www.kija.at/images/aktualisierte_kija%20Kurzbeschreibung%20englisch_af232.pdf

The Patient advocates

Patient advocates (*Patientenanwaltschaft*) are established as independent and autonomous provincial institutions. They help patients to exercise their rights in the health care and hospital sectors.

C Accessibility and judicial review of administrative decisions

40 Modalities of publication of administrative decisions and scope of judicial review

Administrative judicial control is exercised by administrative courts (*Verwaltungsgerichte*). Decisions by an administrative authority (*Bescheide*) can be contested before the competent administrative court of first instance (this legal remedy is called Bescheidbeschwerde). Administrative courts of first instance enjoy full jurisdiction in matters of law and fact. In general, administrative courts decide on their own rather than referring cases back to the administrative authority that had taken the contested decision in the first place. In most cases, the administrative courts hold public hearings. Rulings may be pronounced orally at the end of a hearing. However, in practice, most rulings are handed down in written form.

There are eleven administrative courts:

- one administrative court in every province (*Landesverwaltungsgericht*), and
- two administrative courts at federal level—the Federal Administrative Court (*Bundesverwaltungsgericht*), and the Federal Fiscal Court (*Bundesfinanzgericht*)

Depending on whether the administrative decision was issued by an administrative authority at federal or provincial level, either the federal administrative courts or the courts of the provinces are competent.

Rulings of an administrative court can be contested before the Constitutional Court (*Verfassungsgerichtshof, VfGH*), the Supreme Administrative Court (*Verwaltungsgerichtshof, VwGH*) or both. While the "benchmark" for review of the Constitutional Court is the Constitution, the Supreme Administrative Court ensures that administrative court rulings comply with simple laws.

The primary task of the Constitutional Court is to examine conformity with Austrian constitutional law, which includes the protection of constitutionally guaranteed (fundamental) rights. It is, in particular, called upon to review the constitutionality of federal and provincial laws and, where necessary, to declare their unconstitutionality, to review the lawfulness of ordinances by administrative bodies, and to examine the constitutionality of the rulings of the administrative courts, leading to the repeal of the latter, mainly on the grounds of an arbitrary execution of laws. The competence of the Constitutional Court for the control of certain acts of the administration enshrined in Art. 144 of the Federal Constitutional Law (B-VG) is considered the central pillar of the protection of fundamental rights in Austria.

The Supreme Administrative Court is called upon to review the lawfulness of administrative courts' decisions, with the exception explained above (see Constitutional Court). This makes the Supreme Administrative Court competent for the bulk of complaints against the administration in Austria. EU law as a standard of review would generally also fall within the Supreme Administrative Court's realm of competence.

Hence, the Supreme Administrative Court decides whether administrative court rulings have violated complainant rights laid down in simple laws. It therefore serves as a court of last resort regarding alleged unlawfulness. However, access to the Supreme Administrative Court is restricted to reviewing legal questions of essential importance.

Individuals can also file a complaint to the Constitutional Court by alleging that the contested administrative court ruling violates a fundamental right (constitutionally guaranteed right) and/or by alleging the violation of his/her individual rights by the application of an unconstitutional law or an unlawful ordinance. The Constitutional Court therefore serves as a court of last resort regarding alleged breaches of the Constitution.

Administrative courts also decide on complaints concerning the administrative authorities' failure to adopt a decision (*Säumnisbeschwerde*). If the administrative court itself does not act within the legally provided timeframe—generally 6 months—the applicant can lodge an appeal with the Supreme Administrative Court. In such case, the Supreme Administrative Court will order the respective administrative court to decide within a certain period.

Further information is available here:

Website of the Supreme Administrative Court (in English): https://www.vwgh.gv.at/english.html

Information booklet of the Supreme Administrative Court (in English): https://www.vwgh.gv.at/gerichtshof/VwGH_Infofolder_en.pdf?6rl0ca

Website of the Constitutional Court (see "Complaints against rulings by administrative tribunals"): https://www.vfgh.gv.at/kompetenzen-und-verfahren/functions.en.html

The legal basis for the administrative courts is provided in Art. 129 to 132 and 134 to 136 of the Federal Constitutional Law (B-VG). The Federal Act on Proceedings of Administrative Courts (*Verwaltungsgerichtsverfahrensgesetz, VwGVG*) contains provisions concerning the procedure before the administrative courts (except the Federal Fiscal Court). In addition, there is a specific law for each administrative court.

The procedures before the Constitutional Court and the Supreme Administrative Court are governed by specific laws, namely the Constitutional Court Act of 1953 (*Verfassungsgerichtshofgesetz, VfGG*) and the Supreme Administrative Court Act of 1985 (*Verwaltungsgerichtshofgesetz, VwGG*).
Art. 133 para. 1 point 1 of the Federal Constitutional Law (B-VG)
Sec. 24, 25a, 26 and 28 of the Supreme Administrative Court Act of 1985 (*Verwaltungsgerichtshofgesetz 1985, VwGG*)
Art. 144 of the Federal Constitutional Law (B-VG)
Sec. 82 to 88a of the Constitutional Court Act of 1953 (*Verfassungsgerichtshofgesetz 1953, VfGG*)

Relevant rulings of the administrative courts, the Federal Fiscal Court, the Supreme Administrative Court and the Constitutional Court are accessible via the website of the Legal Information System of the Republic of Austria (*Rechtsinformationssystem des Bundes, RIS*): https://www.ris.bka.gv.at/Judikatur/.

41 Implementation by the public administration and State institutions of final court decisions

The Austrian administrative court system has been fundamentally reorganised with effect from 1 January 2014. This major reform was guided by the aim to fully comply with obligations under international law, in particular those arising from Art. 5, 6 and 13 of the European Convention for the Protection of Human Rights and Fundamental Freedoms and the European Court of Human Rights' jurisprudence as well as from Art. 47 of the EU-Charter of Fundamental Rights.

The legal protection mechanism against individual decisions of administrative authorities has therefore been improved by abolishing the review of decisions of administrative authorities by superior administrative authorities and replacing the old structure by a "streamlined" model with a single administrative instance and a two-stage system of administrative court review. Judges at the administrative courts of first instance and the Supreme Administrative Court (as well as the judges of the Constitutional Court) enjoy the same constitutional guarantees as judges at the ordinary courts. They are

independent and subject to a legal retirement age but may otherwise not be removed from office or transferred against their will.

If an administrative court sets aside the contested administrative decision, the administrative or State authorities are obligated to establish, without delay and with the legal means available to them, the legal situation corresponding to the legal opinion of the administrative court in the relevant legal matter.

A judgement by the Constitutional Court repealing a law as unconstitutional (see above) imposes on the Federal Chancellor or the competent Governor of the respective province (*Landeshauptmann*) the obligation to publish the repeal without delay. The repeal enters into force upon expiry of the day of publication unless the Constitutional Court sets a deadline for the repeal.

D The enabling framework for civil society

42 Measures regarding the framework for civil society organisations

There are many human rights non-governmental organisations operating in Austria. Non-governmental organisations do not require state approval; they are, however, subject to the Austrian legal order in general. For tax purposes, non-governmental organisations mainly take the form of non-profit associations under the Associations Act (*Vereinsgesetz*). In 2018, there were more than 124.600 associations within the meaning of the Associations Act registered in Austria, including sports clubs, choral societies etc. There are no numbers on how many of these associations are non-governmental organisations within the meaning of the Council of Europe Recommendation CM/Rec(2007)14 of the Committee of Ministers to member states on the legal status of non-governmental organisations in Europe and the European Convention on the Recognition of the Legal Personality of International Non-Governmental Organisations.

Up-to-date information on FAQs, including on the establishment of an association (*Verein*), model statutes, deduction for tax purposes of gifts to associations established and recognised as charitable, liability of members, useful contact-details (in German) are accessible on
https://www.bmi.gv.at/609/
https://www.oesterreich.gv.at/themen/freizeit_und_strassenverkehr/vereine.html

Civil society organisations and non-governmental organisations play a key role in the protection, promotion and advancement of human rights in Austria. The expert knowledge of representatives from thematically specialised non-governmental organisations is much appreciated and is drawn upon by the Government as much as possible when developing and implementing specific policy measures and initiatives. Non-governmen-

tal organisations also play a major part in human rights training amongst Government officials and in raising public awareness on key human rights issues, and receive public funding from the state, the provinces (*Länder*) and the municipalities. Since the first Universal Periodic Review (UPR) conducted by the United Nations in 2011, there has been a constant dialogue with representatives of civil society on implementing the UPR recommendations, which contributed to building confidence and a positive culture of communication between the Government and non-governmental organisations.

One of the legal instruments for NGOs to set in motion legal reforms is to submit a popular initiative (*Volksbegehren*). A popular initiative bearing the signatures of at least 100,000 persons entitled to vote or of one sixth of those entitled to vote in three federal provinces (*Bundesländer*) has to be submitted to the National Council for deliberation. For the legal basis, please refer to:
Art. 41 of the Federal Constitutional Law (B-VG)

In addition, environmental organisations have certain rights to file an application with the court for reviewing compliance with environmental regulations. For the legal bases (in German), please refer to the *Aarhus-Beteiligungsgesetz 2018*, https://www.ris.bka.gv.at/Dokumente/BgblAuth/BGBLA_2018_I_73/BGBLA_2018_I_73.pdfsig, and the Environmental Impact Assessment Act 2000 (*Umweltverträglichkeitsprüfungsgesetz 2000, UVP-G 2000*), https://www.ris.bka.gv.at/GeltendeFassung.wxe?Abfrage=Bundesnormen&Gesetzesnummer=10010767

43 Other—please specify

Measures taken in relation to the Covid-19 outbreak
Austria has passed several laws and regulations with a view to combatting the coronavirus outbreak since the end of February 2020. Acting under severe time pressure, the laws were passed by Parliament on the basis of the Federal Constitutional Law and the relevant procedural laws in an expeditious procedure (see above), and the regulations were issued by the responsible Federal Ministers or the responsible Governors or Land Governments pursuant to the relevant laws. Limitations to fundamental rights are of a temporary nature and under constant evaluation in order to guarantee proportionality and non-discrimination. A more detailed country report on this by the European Union Agency for Fundamental Rights (FRA) is available here: https://fra.europa.eu/sites/default/files/fra_uploads/austria-report-covid-19-april-2020_en_0.pdf.