

# **European Rule of Law Mechanism: 2023 Rule of Law Report Austrian Input**

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# I. Justice System

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

In the 2022 Rule of Law Report, it is recommended to Austria to:

*“Continue the reform to establish an independent Federal Prosecution Office, taking into account European standards on the independence and autonomy of the prosecution, including to ensure the independent operation of the specialised anti-corruption prosecution”.*

In the 2022 Rule of Law Report, the European Commission referred to the results of the interim report of the expert working group (established in 2021), which was submitted to Parliament on 10 November 2021 and the results of the interim report, which was submitted to Parliament on 2 June 2022. Since then, a comprehensive final report of the working group was submitted to all parties represented in Parliament and to the responsible ministers (Federal Minister of Justice and Federal Minister for the EU and Constitution) on 15 September 2022. This final report of the working group was also published on the homepage of the Ministry of Justice for the purpose of transparency (<https://www.bmj.gv.at/themen/Strafrecht--Gesetze/Generalstaatsanwaltschaft0.html>). The report presents the legal situation in Austria, the solutions discussed so far as well as European models such as the European Public Prosecutor's Office. The report takes into account the case law of the European Court of Justice, recommendations by the Council of Europe and the recommendation by the European Commission in its 2022 Rule of Law Report.

The following recommendations in the final report were supported by the majority of the working group members:

- The working group welcomed the goal of strengthening the independence of the prosecution offices/service. It emphasized that the appearance of political influence is detrimental to the judiciary and politics alike and should be permanently eliminated.
- The working group recommended the introduction of a Prosecutor General's Office headed by a Prosecutor General.
- With regard to instructions in individual criminal cases, the working group recommended that decisions shall be taken by an independent senate of three members of the Office of the Public Prosecutor General with the General Prosecutor as the chair. Each member of a senate is free of instructions and independent. The majority of votes decides. If necessary, several senates shall be in place. In this case, the immediate deputies of the Prosecutor General should chair a senate.
- The appointment process for all members of the Office of the Public Prosecutor General should be adjusted to the appointment procedure for judges. For this purpose, senates should be established, which propose adequate candidates.
- To be appointed to the Office of the Public Prosecutor General, it shall be necessary to fulfill the requirements for the appointment as a judge. The Prosecutor General and the immediate deputies should have outstanding expertise in criminal law and at least ten years of practical experience. Practical experience as a public prosecutor should be an advantage in assessing qualifications.

- The term of office shall be the same as for judges. It should not be limited in time and should end at the age of 65.
- Incompatibilities with the office should be regulated in a similar way as for judges of the Supreme Court. In general, dismissal should only be possible by the Supreme Court. Dismissal may be for disciplinary or criminal reasons, or if incompatibilities subsequently arise. It should also be possible to resign from office.
- Parliamentary control should be possible for matters concerning the administration of the public prosecutor's offices. Ongoing criminal proceedings are to be excluded from parliamentary control. These should only be subject to legal control by the courts. However, parliamentary control should be possible once criminal proceedings have been finally concluded.

Dissenting opinions mentioning the name of the person with a 'dissenting opinion' have also been included in the final report of the expert working group for the sake of transparency and to show the different positions as well as, eventually, the arguments for a 'dissenting opinion'.

As stated in the 2022 Rule of Law Report, the Federal Minister of Justice has also established a separate advisory body in addition to the working group to provide personal advice to her.

Following the publication of the report, the Federal Minister of Justice welcomed the recommendations by the working group. For the Federal Minister for the EU and Constitution parliamentary control concerning the Prosecutor General is indispensable, as well as the establishment of one person as Prosecutor General with full authority to issue instructions. This is commonly the case in most judicial systems in European countries (instead of senates of three Prosecutors without accountability to the Parliament and therefore the people as sovereign). Negotiations regarding the reform are currently ongoing. In order to abolish the right of the Federal Minister of Justice to issue instructions in individual criminal cases, amendments to the Constitution are necessary, which can only be implemented with a two-thirds majority. For this reason, broad consensus among parties represented in Parliament is needed.

In the 2022 Rule of Law Report, it is further recommended to Austria to:

*“Address the need for involvement of the judiciary in the procedures for appointment of the president and vice-president of the Supreme Court and for court presidents of administrative courts, taking into account European standards on judicial appointments and the selection of court presidents.”*

Amendments to the Service Act for Judges and Public Prosecutors (*Richter- und Staatsanwaltschaftsdienstgesetz*, RStDG) revising the appointment procedure for the president and the vice-president of the Supreme Court entered into force on 1 January 2023 ([Federal Law Gazette I Nr. 205/2022](#)). While until now these appointments have been made by the Federal President upon application by the Federal Government or by the Federal Minister of Justice authorized by the Federal Government, judicial involvement through a proposal by a staff panel – similar to all other positions in the ordinary judiciary – is foreseen.

This new staff panel includes the five elected members of the External Senate at the Supreme Court (*Außensenat des Obersten Gerichtshofs*) who represent the entire federal territory and have extensive experience in the selection of staff, also for management functions. Furthermore, the three elected members of the staff panel of the Supreme Court, who

guarantee the best possible assessment of the required professional competences, are also members of this new staff panel. The chair of the staff panel will be the longest-serving president of the Higher Regional Courts, who is best able to assess the management and leadership skills required for the successful leadership of the Supreme Court.

**Administrative courts:**

No substantial changes have occurred since the publication of the 2022 Rule of Law Report.

## **A. Independence**

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

As already indicated in the Austrian input for the 2022 Rule of Law Report, the Federal Ministry of Justice has prepared amendments to the Service Act for Judges and Public Prosecutors revising the appointment procedure for candidate-judges for the ordinary courts. As a result, the decision-making power to make proposals for the appointments has been transferred from the presidents of the Higher Regional Courts to the respective External Senate at the Higher Regional Court (*Außensenat beim Oberlandesgericht*). Its members include the president and the most senior vice-president as ex-officio members, and three elected members of the judiciary.

Thus, the same judicial body that makes proposals for the appointments to become a judge is also responsible to make proposals for the appointments to become a candidate-judge. In any case, the power to appoint judges remains with the Federal Minister of Justice or the Federal President.

The amendments entered into force on 1 January 2023 ([Federal Law Gazette I Nr. 205/2022](#)).

On the appointment procedure for the president and the vice-president of the Supreme Court as well as presidents at the administrative courts see point 1.

**Supreme Administrative Court (VwGH):**

No substantial changes have occurred since the publication of the 2022 Rule of Law Report.

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

No substantial changes have occurred since the publication of the 2022 Rule of Law Report.

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

No substantial changes have occurred since the publication of the 2022 Rule of Law Report.

### **5. Allocation of cases in courts**

No substantial changes have occurred since the publication of the 2022 Rule of Law Report.

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

No substantial changes have occurred since the publication of the 2022 Rule of Law Report.

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

No substantial changes have occurred since the publication of the 2022 Rule of Law Report.

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

As a result of the general salary negotiations, remunerations for the public sector have increased by 7.32 % on average as of January 2023.

To make the public service more attractive, salaries of young professionals, including candidate-judges, have been increased significantly with the second amendment to the Public Service Act 2022.

The amendment entered into force on 1 January 2023 ([Federal Law Gazette I Nr. 205/2022](#)).

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

No substantial changes have occurred since the publication of the 2022 Rule of Law Report.

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

The Professional Code of Conduct Amendment Act 2022 (*Berufsrechtsänderungsgesetz 2022* – BRÄG 2022; [https://www.ris.bka.gv.at/Dokumente/BgblAuth/BGBLA\\_2022\\_I\\_71/BGBLA\\_2022\\_I\\_71.html](https://www.ris.bka.gv.at/Dokumente/BgblAuth/BGBLA_2022_I_71/BGBLA_2022_I_71.html)) was adopted. The most important amendment made to the Lawyers' Act was the introduction of the possibility of suspending the right to practise as a lawyer in the event of the birth/adoption/foster care of a minor child (including accompanying regulations).

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

Reference can be made to point 1 regarding the publication of the results of the working group concerning the Federal Prosecution Office and the positive reaction of the Federal Minister of Justice for the proposals as positive developments capable of strengthening confidence in the judiciary.

## **B. Quality of justice**

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

The Civil Procedure Amendment 2022 ([Federal Law Gazette I No. 61/2022](#)) introduced court fee reductions in various areas. In addition to fee reductions in the event of a settlement agreement, it provides for fee reductions in the area of guardianship proceedings and digital file copying.

In addition, the inflation-linked indexation of court fees scheduled to take place in 2022 was postponed for one year.

Referring to the statement in the Austrian country chapter 2022 that “*income from court fees still corresponds to over 100 % of the judiciary’s budget*” (p. 9), it should be noted that this is incorrect. Rather, in the last few years, the revenue resulting from court fees never exceeded the total expenditure of the judiciary. In 2021 approx. 83 % of the expenditure of the judiciary were covered by revenues from court fees. Taking into account all revenues of the judiciary in 2021 (also including payments from fines, forfeiture, confiscation etc.), the total income covered 94 % of the total expenditure. The figure of 108 % mentioned in the 2020 CEPEJ report (p. 33, cited in footnote 71 of the 2022 Rule of Law Report) might result from the fact that not the entire judicial budget was used as a comparative figure. Moreover, the composition of court fees should also be taken into consideration. The level of court fees can be explained by the fact that fees for services provided by automated registers (mainly land and business registers; in 2021: approx. 81 % of all revenues from court fees) are also included. These fees have in general only minimal, if any, impact on access to justice (cf. <https://www.ris.bka.gv.at/GeltendeFassung.wxe?Abfrage=Bundesnormen&Gesetzesnummer=10002667>). In addition, an efficient and functioning legal aid system is in place in Austria.

#### **Administrative courts and VwGH:**

No substantial changes have occurred since the publication of the 2022 Rule of Law Report.

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

After a substantial increase of resources for the judiciary in the budgets for 2020-2022, there was another significant increase of the budget for the year 2023 (plus EUR 214 861 Mio. or plus 11.48 % compared to the year 2022).

The additional funds primarily cover the higher personnel costs due to considerable wage increases and structural effects as well as the filling of vacant and new positions made available in particular to combat white-collar crime and cybercrime and to accelerate asylum procedures.

The enormous inflation dynamic is being reflected not only in higher salaries but also, in particular, in the area of non-personnel expenses (general price increases, numerous long-term contracts linked to the consumer price index).

Further expenses arise from an additional demand for health-related measures (for prisoners after conditional release), experts and interpreters in legal matters and legal counselling for refugees. Moreover, cost increases are to be expected, especially in the area of forensic commitment and medical care in prisons.

In addition, the increase of the lump sum remuneration paid to the Austrian Bar Association for “pro bono” representation of parties by EUR 2 Mio. and additional IT experts to combat cybercrime will be financed with the budget for the year 2023.

Concerning the material resources in the area of the judiciary, necessary renovations of individual court buildings as well as safety-related adaptations will be carried out in the year 2023. In this context, in particular the renovation of the Vienna Regional Court for Criminal Matters, which will take place over several years, is to be mentioned.

In the area of the penal system, in addition to maintenance measures and the renewal of security systems, it will be possible to finance heat insulation and energy-saving measures on the one hand and the expansion of the prison Göllersdorf by around 100 places in the area of forensic commitment on the other.

**VwGH:**

- 68 justices (president, vice-president, 12 panel presidents, 54 justices)
- 130 administrative staff (including 45 research associates)
- Approved budget 2022: EUR 22 542 000
- Budget 2023: 24 052 000

**Administrative courts:**

No substantial changes have occurred since the publication of the 2022 Rule of Law Report.

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

In July 2022, a total of around 700 court employees attended a webinar on the amendment to the Civil Procedure Act 2022 on two dates. In the future, knowledge transfer through webinars will be used more intensively, especially to reach a large number of practitioners as quickly as possible in the case of amendments to the law.

The e-learning tool "IKT – BenutzungsRichtlinien" (ICT – Guidelines for Use), which has been offered since 2022, provides court employees i.a. with knowledge about handling data and data security in the workplace.

A presentation on the topic of strategic lawsuits against public participation (SLAPP) was held at a training event organized by the Criminal Law Section of the Judges' Association in autumn 2022. 46 persons participated in this training.

**Administrative courts and VwGH:**

No substantial changes have occurred since the publication of the 2022 Rule of Law Report.

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

As of December 2022, civil and criminal proceedings at 127 courts and investigation proceedings at 17 public prosecutor's offices as well as certain types of proceedings at the Supreme Court and the General Procurator's Office are conducted completely digitally using "Justice 3.0" ("*Justiz 3.0*"). More than 750 000 files were processed exclusively digitally and more than 200 000 hearings were held digitally. Over 500 courtrooms are equipped and available for conducting hearings digitally (touch screens, media control and digital interrogation stand). Moreover, as of the end of 2022, nearly every investigation proceeding and every criminal proceeding at regional courts is conducted digitally.

**Administrative courts and VwGH:**

Since the beginning of the corona pandemic, it has been possible to participate in oral hearings before administrative courts by videoconference. It is planned to transfer this COVID-rule to



permanent law. Thereby, particular attention will be paid to compliance with fundamental rights standards. Discussions are currently taking place at the political level.

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

The strategy of internal auditing at the courts and public prosecutors' offices will be changed to an internal control system (ICS)-based, impact-oriented and more risk-oriented approach from the beginning of 2023.

**Administrative courts and VwGH:**

No substantial changes have occurred since the publication of the 2022 Rule of Law Report.

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

No substantial changes have occurred since the publication of the 2022 Rule of Law Report.

## **C. Efficiency of the justice system**

### **18. Length of proceedings**

**Ordinary and administrative courts:**

No further update available (since statistical information is not required).

**VwGH:**

The average length of proceedings at the VwGH in the year 2022 was 6.1 months. This number is based on the information available in the third quarter of 2022. The increase in the length of proceedings (compared to 4.3 in 2021) is due to the COVID-19 pandemic.

## II. Anti-corruption framework

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

In the 2022 Rule of Law Report, it is recommended to Austria to:

*“Finalise the legislative revision of the political party financing rules including to empower the Court of Audit to audit political party finances.”*

In this context, it has to be noted that the Federal Act on the Financing of Political Parties (Political Parties Act 2012 – PartG) was amended by the federal law published on 27 July 2022 ([Federal Law Gazette I 125/2022](#)). The amendments were based on the following aspects:

- Increasing transparency in the financing of political parties
- Strengthening the control by the Court of Audit
- Creation of clear and comprehensible rules regarding donations and bans on donations, advertisements and sponsoring
- Clear rules on "related organization" and "committee of persons"
- Simplification of the enforcement of the Political Parties Act, without restricting the transparency of the financing of political parties
- Restructuring of the outline of the statement of accounts
- Alignment of the regulations concerning accounting with those of the Corporate Code
- Creation of transparency with regard to "political advertisements"
- Introduction of a separate election advertising report
- Tightening of sanctions for violations of the Political Parties Act

Most of the provisions amended entered into force on 1 January 2023 (cf. sec. 16 paras. 10 and 11). As for the rules empowering the Austrian Court of Audit to audit political party finances, see the amended sec. 10 (especially paras 4, 5 and 7).

In the 2022 Rule of Law Report, it is further recommended to Austria to:

*“Introduce effective rules on assets and interests’ declaration for Members of Parliament, including effective monitoring and sanctioning mechanisms.”*

To date, the following measures were taken to follow-up on this recommendation:

In a meeting on 15 September 2022, the recommendation was discussed by the President’s Conference of the National Council (*Nationalrat*), which is formed by the three Presidents of the National Council and the chairpersons of all parliamentary groups. The President’s Conference subsequently instructed a parliamentary working group (consisting of officials of both the parliamentary groups and the parliamentary administration) to follow-up on the recommendation in more detail. Within this working group, the recommendation was discussed in meetings on 15 September, 6 October and 29 November 2022.

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

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

The Regulation (EU) 2017/1939 implementing enhanced cooperation on the establishment of the European Public Prosecutor's Office ('the EPPO') was implemented by a separate legal act in Austria ([Strafrechtliches EU-Anpassungsgesetz 2021 – StrEU-AG 2021](#)), which entered into force on 29 May 2021. Subsequently, the Ministries of Finance and Justice also issued decrees that specifically address reporting obligations in accordance with Regulation (EU) 2017/1939 of national authorities towards the EPPO.

**Federal Bureau of Anti-Corruption:** The resources at the Federal Bureau of Anti-Corruption (*Bundesamt zur Korruptionsprävention und Korruptionsbekämpfung*, BAK) have remained largely stable. As mentioned in last year's input, the budget resources of the BAK have increased since 2014 and the implementation of projects and activities has been consistently assured. Compared to 2021, the expenditure budget of the BAK increased from EUR 9 188 210.24 (actual costs in 2021) to EUR 9 926 000 (estimate of costs in 2022). On 1 December 2022, the staff of the BAK included 124 employees, fourteen of whom are on maternity leave or work in other organizational units outside the BAK.

**Austrian Court of Audit:** The Austrian Court of Audit (ACA) fulfils an important role as independent external auditor. In the summer of 2022, the Parliament has agreed on an even stronger mandate for the ACA in respect to three matters, which represent a significant step forward and underline its important role:

- The first one regards a new legislation of the Political Parties' Act, which the National Council agreed upon in July 2022 (cf. point 19). It is built on a proposal submitted by the ACA in October 2021. This will increase the transparency of political party financing.
- The second issue relates to the right of a certain number of Members of Parliament (MPs) to request special audits. From 2023 onwards, they will be able to address more audit requests to the ACA (effectively five instead of three audits). For further details, see also the information provided under point 49.
- The third matter concerns the independence of the ACA by way of strengthening the position of the President of the ACA. In the future, the appointment and dismissal of the President of the ACA requires a two-thirds majority in the National Council, instead of a simple majority to date. For further details, see also information provided under point 49.

In order for the ACA to properly fulfil the new tasks, its budget was substantially increased (see details below). This will enable the ACA to employ additional staff. As of 1 November 2022, 151 women and 150 men are working at the ACA, 76 % of whom are public auditors. The percentage of women, which accounts for over 50 % is high. At the higher management level, the percentage of women in the ACA is at 62,5 %.

The annual budget of the ACA, which is adopted by the National Council, amounts to EUR 37,4 Mio. in 2022. Due to the additional and new tasks in accordance with the Political Parties' Act and the Federal Law on the Rules of Procedure of the Austrian National Council, in November 2022 the budget was substantially increased to EUR 42,2 Mio. for the year 2023.

The ACA also assists the National Parliament in scrutinising the implementation of government policy in relation to special inquiries. Since November 2020, the Parliament has set up two committees for inquiries dealing with the political responsibility of the work of former governments, in particular in terms of granting public contracts, public advertising and managing vacancies. In this context, the ACA has been asked to undertake special evaluations, e.g., to examine all its reports with relevance on how ministries with leaders of the conservative party handled their work during the time in office between 2017 and 2021. As of December 2022, the ACA has submitted around 40 special reports on performed audit tasks to said committees. Furthermore, said committees have submitted eight additional requests for evidence to the ACA. The (Audit-)Department for Compliance and Anti-Corruption acts as contact point within the ACA to law enforcement authorities such as the Central Public Prosecutor's Office for the Prosecution of Economic Crimes and Corruption.

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

### **Federal Bureau of Anti-Corruption:**

Regarding the BAK's functional independence, please refer to the information provided in the Austrian input to the 2022 Rule of Law Report on pages 9 and 10.

### **Austrian Court of Audit:**

As far as the ACA is concerned, reference is made to the reform strengthening the ACA's mandate as described in point 20.

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

With regard to the Austrian National Anti-Corruption Strategy (NACS) reference is made to previous submissions for the 2020 and 2021 Rule of Law Reports.

In the context of the evaluation of the NACS action plan 2019-2020, which was coordinated by the BAK, all participating institutions submitted their contributions by the beginning of 2022. The contributions were compiled in a final evaluation report and submitted to the national Coordinating Body on Combating Corruption (*Koordinationsgremium zur Korruptionsbekämpfung*) for consideration and adoption. The final evaluation report was adopted by the Coordinating Body in October 2022.

The evaluation approach is based on a standardised procedure and thus leads to a meaningful assessment of the individual measures, but also of the NACS as a whole. In developing the approach, the BAK was guided by international standards, in particular the specifications for implementing the principles of the OECD Council Recommendation on Integrity in Public Life.

The evaluation serves as basis for the further development of the next action plans. The new action plan for 2023-2024 is currently being drawn up by a strategy team, consisting of

representatives of the Federal Chancellery, the Federal Ministry of Justice, the Federal Ministry for Arts, Culture, Civil Service and Sport as well as the BAK. The latter is also coordinating the process.

## **B. Prevention**

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

As regards the judiciary, the 2<sup>nd</sup> Compliance Officer Network Conference was held in September 2022. It was dedicated to the topics of dealing with social media, conflicts of interests in connection with invitations and promotion of e-learning tools. In addition, the Compliance Officers of the detention services have undergone further training with regard to compliance issues. The Compliance Committee met on 24 January 2023. This year, as part of a large-scale risk analysis, a risk map has been prepared in relation to corruption, malversation and compliance risks. This will be the basis for discussion in the committee and the starting point for the Compliance Program 2023.

In addition, another e-learning program with regard to data security issues has been implemented in the Federal Ministry of Justice in March 2021. 50 % of all employees working in the Austrian justice system have so far completed the e-learning programs.

#### **Federal Bureau of Anti-Corruption:**

In 2022, the BAK continued to run and promote the Network of Integrity Officers (NIO), by providing individual consultancy regarding all inquiries received by network members, newsletters as well as operating the NIO website ([www.integritaet.info](http://www.integritaet.info)).

In September 2022, after a two-year break due to the pandemic, the BAK advanced training courses restarted with 25 participants from various fields of activity in the Federal Ministry of the Interior. It was the 27<sup>th</sup> advanced training course organized by the BAK.

In November 2022, the BAK held the autumn conference 2022 of corruption prevention officers (CPO) together with the compliance officers (CO) of the regional police directorates and the Chief Compliance Officer (CCO) of the Federal Ministry of the Interior. The topics discussed included i.a. the impact of the COVID-19 pandemic, the criminal law on corruption, the Compliance Management System of the Federal Ministry of the Interior and CPO as well as a review on past activities and a forecast on future plans. The conference was co-financed by the EU Internal Security Fund (ISF) under the project "Anti-Corruption Training of Public Officials and Support to the National Network of Corruption Prevention Officers".

#### **Education and training programs by the Federal Academy of Public Administration:**

Please find below the statistics of the education and training programs by the Federal Academy of Public Administration, that have a focus on measures to enhance integrity in the public sector and their application as well as on ethics and the prevention of corruption:

Education and training programs	Years in which the program took place	Number of participants
Basic training: The civil service	since 2011	3 452
Apprenticeship training: quality in civil service	since 2018	59
Ethics and professional ethics: What can we contribute to the common good	since 2013	182
Internal control systems and risk management	since 2014	194
Prevention of corruption - compliance – integrity	since 2014	133
Compliance in public administration: basics	since 2017	109
Prevention of corruption - compliance - integrity: in-house training	since 2017	560 One in-house compliance training (8 hrs) was organized specifically for staff dealing with projects concerning the European Recovery and Resilience Fund. 19 participants took part in the training.
Compliance risk analysis	since 2021	21
Risk management course (8 modules; certificate by Austrian Standards according to ONR 49003)	since 2021	13; 9 participants already successfully completed with a Certificate by Austrian Standards according to ONR 49003
E-Learning tool “The RESPONSibility rests with me – A QUESTION OF ETHICS”	since November 2020	<a href="https://www.oeffentlicherdienst.gv.at/moderner-arbeitgeber/korruptionspraevention/verhaltenskodex-e-Learning/Verhaltenskodex-e-Learning.html">https://www.oeffentlicherdienst.gv.at/moderner-arbeitgeber/korruptionspraevention/verhaltenskodex-e-Learning/Verhaltenskodex-e-Learning.html</a> 14.351 IP-addresses (status: June 2021) Electronic Education Management EL-001: 471 (status: 16 December 2021) Updated data for the year 2022 will be available in 2023

### **Federal Chancellery:**

At the Federal Chancellery, it is planned to introduce a compulsory face-to-face training for all employees. The training will complement the already implemented compulsory online-trainings.

### **Austrian Court of Audit:**

The principles of independence, objectivity and impartiality remain reflected within the Internal Standards of the ACA, which go beyond common rules as provided by the Federal Employment Regulation to avoid conflicts of interests:

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

Measures taken to mitigate integrity risks are being especially addressed in the ACA's Code of Conduct, which contains the ACA's core values and their implementation in the daily auditing routines.

Additionally, the ACA has established a Competence Center for Anti-Corruption, Compliance and Incompatibility Measures, which provides training (on-boarding-phase, basic training, e-learning etc.), regular newsletters, guidance in individual cases as well as general guidelines (via the Intranet) on how to handle integrity risks and possible situations of conflicts of interest.

Like in recent years, the ACA is committed to continuing its dedicated tasks with regard to anticorruption, integrity in the public sector and transparency. Currently, it is undertaking a number of audits in this context, both at federal and regional level.

All audit reports are published on the ACA's website. In 2021, roughly one third of its audits dealt with corruption prevention, legal and general compliance. For example, in 2021 the follow-up audit to the report "Corruption Prevention Systems in selected Federal Ministries (Federal Chancellery, Federal Ministry of Education, Federal Ministry of the Interior and Federal Ministry of Agriculture)" was published. These audits have shown that the ministries are quite active in the area of compliance. Having said that, the ACA concluded that a central element of such a system, the comprehensive risk analysis, remains to be institutionalized.

Please find relevant reports here:

- Corruption Prevention Systems in selected Federal Ministries (the Federal Chancellery, the Federal Ministry of Education, the Federal Ministry of the Interior and the Federal Ministry of Agriculture)", Reihe Bund 2017/8, [https://www.rechnungshof.gv.at/rh/home/home\\_2/Corruption\\_Prevention\\_Systems\\_in\\_Selected\\_Federal\\_Ministr.html](https://www.rechnungshof.gv.at/rh/home/home_2/Corruption_Prevention_Systems_in_Selected_Federal_Ministr.html) and its follow-up, Reihe BUND 2021/10, [https://www.rechnungshof.gv.at/rh/home/home/home\\_7/Korruptionspraeventionssysteme\\_in\\_ausgew\\_BM\\_FuP.pdf](https://www.rechnungshof.gv.at/rh/home/home/home_7/Korruptionspraeventionssysteme_in_ausgew_BM_FuP.pdf)
- Register for Lobbying and Interest Representation, Reihe BUND 2019/45 [https://www.rechnungshof.gv.at/rh/home/news/news/news\\_1/Lobbyregister\\_soll\\_fuer\\_Buergerinnen\\_und\\_Buerger\\_informativ.html](https://www.rechnungshof.gv.at/rh/home/news/news/news_1/Lobbyregister_soll_fuer_Buergerinnen_und_Buerger_informativ.html)

- General Secretariats at the Federal Ministries, Reihe BUND 2021/12, [https://www.rechnungshof.gv.at/rh/home/news/Generalsekretaere\\_Zusaetzliches\\_Personal\\_Risiko\\_von\\_Doppelg.html](https://www.rechnungshof.gv.at/rh/home/news/Generalsekretaere_Zusaetzliches_Personal_Risiko_von_Doppelg.html)
- Administrative sponsorship and donations in ministries, Reihe BUND 2021/13, [https://www.rechnungshof.gv.at/rh/home/news/Verwaltungssponsoring\\_und\\_Schenkungen\\_in\\_Ministerien1.html](https://www.rechnungshof.gv.at/rh/home/news/Verwaltungssponsoring_und_Schenkungen_in_Ministerien1.html)
- Corruption prevention systems in the cities of Graz, Innsbruck and Salzburg, Reihe SALZBURG 2020/5, Reihe STEIERMARK 2020/7, Reihe TIROL 2020/3, [https://www.rechnungshof.gv.at/rh/home/news/news/news/Korruptionspraeventionssysteme\\_in\\_den\\_Staedten\\_Graz\\_Innsbru.html](https://www.rechnungshof.gv.at/rh/home/news/news/news/Korruptionspraeventionssysteme_in_den_Staedten_Graz_Innsbru.html)
- Supervisory Boards: Selection Processes in Ministries, Reihe Bund 2022/11, [https://www.rechnungshof.gv.at/rh/home/news/news/aktuelles/Rechnungshof\\_empfiehlt\\_transparente\\_Prozesse\\_bei\\_der\\_Pers.html](https://www.rechnungshof.gv.at/rh/home/news/news/aktuelles/Rechnungshof_empfiehlt_transparente_Prozesse_bei_der_Pers.html)
- Real estate administration by the Austrian Federal Forests (*Österreichische Bundesforste AG*), Reihe Bund 2022/38, [https://www.rechnungshof.gv.at/rh/home/news/news/aktuelles/Rechnungshof\\_pruefte\\_Liegenschaftsverwaltung\\_der\\_Bundesfo.html](https://www.rechnungshof.gv.at/rh/home/news/news/aktuelles/Rechnungshof_pruefte_Liegenschaftsverwaltung_der_Bundesfo.html)

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

With regard to political party financing see point 19.

With regard to lobbying, reference is made to the information provided in the input for the 2022 Rule of Law Report page 13.

In July 2022, a motion to amend the Parliamentary Groups Funding Act (*Klubfinanzierungsgesetz 1985*) has been introduced in Parliament concerning the prohibition for parliamentary groups to accept donations. This motion was passed by the National Council and the Federal Council (*Bundesrat*) in July 2022 and entered into force on 1 January 2023. It provides that parliamentary groups are prohibited to accept all donations (including payments and benefits in kind or living subsidies, such as personnel provided) except for i.a. particular contributions and funds granted under the Parliamentary Groups Funding Act itself, membership fees, funds by political parties and other non-discriminatory public funds. Besides that, the acceptance of donations is generally limited to the value of EUR 150 (cf. sec. 5a of the Parliamentary Groups Funding Act, [Federal Law Gazette I no. 142/2022](#)).

#### **25. Rules and measures to prevent conflict of interests in the public sector. Please specify the scope of their application (e.g. categories of officials concerned)**

See point 23 and previous inputs.

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

Austria proceeded with transposing Directive (EU) 2019/1937 on the protection of persons who report breaches of Union law (“Whistleblower-Directive”):



At federal level, the ministerial draft law on the procedure and protection in the event of indications of violations of rights in certain legal areas (Whistleblower Protection Act - HSchG) was subject to a general consultation.

The ministerial draft law was amended according to the outcomes of public consultation and subsequent negotiations at political level. On 15 December 2022, the revised draft law has been submitted to Parliament ([https://www.parlament.gv.at/PAKT/VHG/XXVII/A/A\\_03087/index.shtml](https://www.parlament.gv.at/PAKT/VHG/XXVII/A/A_03087/index.shtml)). On the basis of parliamentary committees' time scheduling – but without prejudice to parliamentary proceedings – the federal law transposing the Whistleblower-Directive is expected to be adopted in February 2023.

At the level of the Federal provinces (*Länder*), adoption of legislative measures to transpose the Whistleblower-Directive have been finalized in 2022. In each of the *Länder* there is now a separate law regulating the protection of reporting persons and accompanying provisions in particular for the public service.

A whistleblowing system is being implemented to report shortcomings and corruption. It will also cover the Whistleblower-Directive. The Federal Ministry of Justice has already started preparations for the implementation of a web-based reporting system and is in the testing phase. As soon as the Whistleblower-Directive has been transposed into national law (see the expected parliamentary schedule mentioned above), further implementation steps will be taken.

As of 31 October 2022, the introductory page of the electronic whistleblower system mentioned on page 34 of the Austrian Input for the 2020 Rule of Law Report had been accessed over 827 111 times. 13 960 alleged criminal offences were reported, 4.08 % of which were found to have been reported without any justification. 8 501 of all reports involved the installation of a secure mailbox. 26.63 % of the reports fell within the jurisdiction of other fiscal authorities, 11.19 % fell within the jurisdiction of other public prosecutor offices. All of them were followed-up accordingly.

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

No substantial changes have occurred since the publication of the 2022 Rule of Law Report.

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

**Federal Bureau of Anti-Corruption:**

The BAK provided training and lectures for all stakeholders within the Federal Ministry of the Interior, external departments, NGOs and selected institutions in the civil sector. In the course of further developing the concept of prevention and thus the concrete measures to combat corruption, another focus of training has been expanded. This involves a series of lectures for students in school-classes that are about to graduate at A-level (from "*Handelsakademie*" – secondary school with a business focus). In the future, the BAK plans to extend this type of training to include the lower grades.

### **Federal Chancellery:**

In 2022, a comprehensive risk-analysis was conducted by the Compliance department of the Federal Chancellery. All compliance risks in the broadest sense were evaluated and all of the recommendations regarding risk-analysis were incorporated. This risk-analysis will be re-evaluated periodically. In this process, measures taken are also evaluated and new measures will be set where appropriate.

## **C. Repressive measures**

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

On 12 January 2023, the Federal Minister of Justice and the Federal Minister for the EU and Constitution presented a draft law to extend criminal liability in corruption cases.

This draft includes

- the penalization of the so-called purchase of political mandates,
- criminal liability in cases of bribery of candidates running for an office,
- higher penalties for corruption offenses and
- the loss of eligibility in the event of a conviction for a corruption offense to a term of imprisonment exceeding six months.

The draft law has been submitted to public consultation on 12 January 2023 ([Korruptionsstrafrechtsänderungsgesetz 2023 – KorrStrÄG 2023 \(244/ME\) | Parlament Österreich](#)) and will then proceed to the parliamentary process.

### **30. Data on investigation and application of sanctions for corruption offences, including for legal persons and high level and complex corruption cases) and their transparency, including as regards to the implementation of EU funds.**

In 2022 (as of 30 November 2022), the BAK recorded a total of 639 cases that fall under the BAK's exclusive jurisdiction (sec 4 Federal Act on the Establishment and Organization of the Federal Bureau of Anti-Corruption [BAK-G]). Thereof, the majority, namely 576 cases, concern alleged abuse of official authority (sec. 302 Austrian Criminal Code [*Strafgesetzbuch* – StGB]).

Furthermore, the BAK recorded the following allegations:

2 cases of alleged corruptibility (sec. 304 StGB), 2 cases of alleged acceptance of an advantage (sec. 305 StGB), 1 case of alleged acceptance of an advantage for the purpose of exerting influence (sec. 306 StGB) and 5 cases of alleged bribery (sec. 307 StGB). In addition, the Bureau registered 1 case of alleged offering an advantage (sec. 307a StGB), 6 cases of alleged acceptance of gifts and alleged bribery of employees or agents (sec. 309 StGB) and 27 cases of alleged breaches of official secrecy (sec. 310 StGB). The remaining 19 alleged cases are divided among the other cases that fall under the BAK's exclusive jurisdiction (sec. 4 BAK-G).

The basis for these statistics is the "principal offence" of each case, i.e. the criminal act that determines the sentence. However, a criminal investigation case may also include other punishable acts. It should also be noted that the BAK statistics only take into account reports, allegations etc. that were received by the BAK in the reporting year. Alleged cases from previous reporting years, where investigations have not yet been concluded, are not considered in the statistics of the new reporting year.

The BAK publishes a detailed annual report both online and in printed form, which contains, among other things, the statistics gathered by the BAK.

Data analysis for the investigation and prosecution of (alleged) corruption offences in which proceedings were conducted under the Federal Act on the Responsibility of Legal Entities (*Verbandsverantwortlichkeitsgesetz*).

**Outcomes of criminal proceedings against legal persons for corruption offences (1 January 2019 – 23 November 2022):**

Offence	Convictions	Acquittals	Diversions	Indictments	Discontinuation of Investigation Proceedings	Withdrawal of Proceedings	Aborting Investigation Proceedings	Other Outcomes
<b>2019</b>	<b>1</b>	<b>0</b>	<b>0</b>	<b>3</b>	<b>8</b>	<b>0</b>	<b>0</b>	<b>13</b>
§ 304 CC (Passive Bribery)	0	0	0	0	1	0	0	1
§ 307 CC (Active Bribery)	0	0	0	2	2	0	0	8
§ 307a CC (Giving Undue Advantages)	0	0	0	1	1	0	0	0
§ 307b CC (Giving Undue Advantages for the Purpose of Interference)	1	0	0	0	4	0	0	1
§ 309 CC (Acceptance of Gifts and Bribery of Employees and Representatives)	0	0	0	0	0	0	0	3
<b>2020</b>	<b>0</b>	<b>1</b>	<b>2</b>	<b>0</b>	<b>9</b>	<b>1</b>	<b>0</b>	<b>1</b>
§ 304 CC (Passive Bribery)	0	0	0	0	0	0	0	1
§ 307 CC (Active Bribery)	0	1	1	0	5	1	0	0
§ 307a CC (Giving Undue Advantages)	0	0	1	0	1	0	0	0
§ 309 CC (Acceptance of Gifts and Bribery of Employees and Representatives)	0	0	0	0	3	0	0	0
<b>2021</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>21</b>	<b>10</b>	<b>1</b>	<b>0</b>	<b>0</b>
§ 307 CC (Active Bribery)	0	0	0	21	5	1	0	0
§ 309 CC (Acceptance of Gifts and Bribery of Employees and Representatives)	0	0	0	0	5	0	0	0
<b>2022</b>	<b>0</b>	<b>0</b>	<b>3</b>	<b>4</b>	<b>4</b>	<b>0</b>	<b>0</b>	<b>6</b>
§ 304 CC (Passive Bribery)	0	0	0	0	0	0	0	2
§ 307 CC (Active Bribery)	0	0	1	2	1	0	0	4
§ 307a CC (Giving Undue Advantages)	0	0	1	0	2	0	0	0
§ 307b CC (Giving Undue Advantages for the Purpose of Interference)	0	0	1	2	1	0	0	0
<b>Total Number of Outcomes</b>	<b>1</b>	<b>1</b>	<b>5</b>	<b>28</b>	<b>31</b>	<b>2</b>	<b>0</b>	<b>20</b>

**Pending alleged corruption cases against legal persons (as of 23 November 2022)**

Offence	Number of Cases
§ 304 CC (Passive Bribery)	29
§ 305 CC (Accepting Undue Advantages)	4
§ 306 CC (Acceptance of Benefits for the Purpose of Interference)	13

§ 307 CC (Active Bribery)	35
§ 307a CC (Giving Undue Advantages)	2
§ 307b CC (Giving Undue Advantages for the Purpose of Interference)	7
§ 308 CC (Unlawful Intervention)	1
§ 309 CC (Acceptance of Gifts and Bribery of Employees and Representatives)	21
<b>Total Number of Cases</b>	<b>112</b>

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

There has been no change in the legal situation regarding immunity. However, with regard to investigations against non-immune accomplices it has been clarified by decree of 20 April 2022 that investigations against the latter are admissible after all (in deviation from the previously held legal opinion). Evidence that also concerns the immune person – who cannot be prosecuted for the duration of immunity – may also be taken in proceedings initiated against the non-immune accomplices as long as investigations do not violate the immunity status of the immune person.

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

No substantial changes have occurred since the publication of the 2022 Rule of Law Report.

**Other - please specify**

**Popular initiative (*Volksbegehren*) “Rule of Law and Anti-Corruption Referendum”**

As mentioned in the 2022 Rule of Law Report, a petition for a “Rule of Law and Anti-Corruption Referendum” was successfully initiated and is now undergoing consultation in the National Council. A first reading in the plenary of the National Council took place on 21 September 2022. The popular initiative has subsequently been referred to the Justice Committee of the National Council for preliminary deliberation. The Committee has started the deliberation on 19 October 2022 and is obliged to report to the National Council by 21 February 2023. In a hearing on 19 January 2023, the committee dealt with the 72 demands of the initiative to strengthen the independence of the judiciary and the rule of law as well as decency and integrity in politics. The members of parliament discussed with a total of 10 experts (law professors, jurists and lawyers) in the presence of the Federal Minister for the EU and Constitution and the Federal Minister of Justice (cf. [https://www.parlament.gv.at/PAKT/VHG/XXVII/I/I\\_01626/index.shtml](https://www.parlament.gv.at/PAKT/VHG/XXVII/I/I_01626/index.shtml)).

## III. Media freedom and pluralism

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

In the 2022 Rule of Law Report, it is recommended to Austria to:

*“Reform the framework for the allocation of state advertising by public authorities at all levels, in particular to improve the fairness and transparency of its distribution.”*

A draft federal law containing amendments to the Federal Act on Transparency in Media Cooperation and Funding (MedKF-TG) was submitted to public consultation; the consultation period ended on 19 December 2022. It is likely that the Federal Government will introduce the draft law in Parliament by mid-February 2023 (link to the draft law: [https://www.parlament.gv.at/PAKT/VHG/XXVII/ME/ME\\_00233/index.shtml](https://www.parlament.gv.at/PAKT/VHG/XXVII/ME/ME_00233/index.shtml)).

According to this draft law, e.g. the reporting threshold of EUR 5 000 spent for advertisements of a public entity within three months shall be abolished, and for ad campaigns a) over EUR 150 000 and b) over EUR 750 000, additional transparency requirements will have to be fulfilled.

These provisions amended could enter into force on 1 July 2023, for advertisements placed as of 1 October 2023.

In the 2022 Rule of Law Report, it is further recommended to Austria to:

*“Advance with the reform on access to official information taking into account the European standards on access to official documents.”*

In this context it can be mentioned that – as a constitutional amendment – a new [paragraph 5](#) has been attached to Article 20 of the Federal Constitutional Law – B-VG (as amended by [Federal Law Gazette I No. 141/2022](#)).

According to this new para. 5, *“all bodies entrusted with tasks of federal, provincial and municipal administration shall publish studies, expert opinions and surveys commissioned by them, together with their costs, in a manner accessible to everyone, as long as and to the extent that their secrecy is not required under para. 3 [concerning official secrecy].”*

This new constitutional obligation applies to all functional administrative bodies, whether they are public or private in organisational terms. The publication has to be accessible to everyone; publication on the internet fulfils this requirement. Certain interests laid down in constitutional law (cf. Article 20 para 3 Federal Constitutional Law – the maintenance of public peace, order and security, of comprehensive national defence, of external relations, in the interest of a public law corporate body, for the preparation of a ruling or in the preponderant interest of the parties involved, e.g. the right to data protection) are, if their protection so requires, to be taken into account. The need to keep something secret can also change. Partial publication (anonymization) may be necessary.

This provision entered into force on 1 January 2023 and is applicable to all expert opinions, studies and surveys commissioned from that date onwards.

Moreover, the Austrian Government remains committed with regard to the establishment of “freedom of information” as mentioned in the Government program (cf. *Regierungsprogramm 2020–2024*, p. 19 to 20). As explained in detail in previous inputs, the reform requires an amendment of the Federal Constitution, which will need to be approved by a two-thirds majority in the National Council as well as by the Federal Council by a qualified majority. In this sense, further consultations have been held and negotiations on political level continue on the Federal Law on the Freedom of Information (*Informationsfreiheitsgesetz*) with the aim of finding a broad consensual solution.

## **A. Media authorities and bodies**

### **34. Measures taken to ensure the independence, enforcement powers and adequacy of resources (financial, human and technical) of media regulatory authorities and bodies**

A draft federal law containing amendments to the Federal Act on the establishment of an Austrian Communications Authority (“KommAustria”) (KommAustria Act – KOG) was submitted to public consultation; the consultation period ended on 22 December 2022. It is likely that the Federal Government will introduce the draft law in Parliament by mid-February 2023 (link to the draft law: [https://www.parlament.gv.at/PAKT/VHG/XXVII/ME/ME\\_00234/index.shtml](https://www.parlament.gv.at/PAKT/VHG/XXVII/ME/ME_00234/index.shtml)).

According to this draft law, e.g. the number of members of the Austrian Communications Authority would be increased from 5 to 7, to reflect the growing competences of this national regulatory agency (especially under the Terrorist content online (TCO)-Regulation).

Similarly, the annual budget of the *Rundfunk und Telekom Regulierungs-GmbH* (“RTR” i.e. the administrative body supporting the KommAustria) would be increased by EUR 367 000, plus a one-time payment for additional IT-services and IT-tools for users to submit notifications of relevant illegal contents of up to EUR 70 000.

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

No substantial changes have occurred since the publication of the 2022 Rule of Law Report.

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

No substantial changes have occurred since the publication of the 2022 Rule of Law Report.

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

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

See point 33.

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

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

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

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

No substantial changes have occurred since the publication of the 2022 Rule of Law Report.

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

On 16 September 2022, the Commission published on the one hand its Recommendation on internal safeguards for editorial independence and ownership transparency in the media sector, C(2022) 6536 final, and its proposal for a Regulation establishing a common framework for media services in the internal market (European Media Freedom Act) and amending Directive 2010/13/EU, COM(2022) 457 final, on the other. The outcome of the negotiations on this proposal, and depending there upon, the need for national implementing measures will have to be assessed.

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

### **40. Rules and practices guaranteeing journalist's independence and safety, including as regards protection of journalistic sources and communications**

Please refer to information provided in previous inputs. Furthermore, reference is made to the Conference on "Safety of Journalists: Protecting Media to Protect Democracy" held on 3/4 November 2022 in Vienna (see details on the next page).

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

No substantial changes have occurred since the publication of the 2022 Rule of Law Report.

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

See point 33.

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

Since SLAPPs are still a rather recent and uncommon phenomenon in Austria, the Federal Ministry of Justice has so far not taken any legislative measures to specifically counter SLAPPs. Yet, a diverse set of tools and measures is already in place at the national level to protect against manifestly unfounded and abusive lawsuits.

Taking the phenomenon of SLAPPs seriously, the Federal Ministry of Justice observes respective developments closely. Hence, Austria welcomes a comprehensive EU-wide anti-SLAPP-initiative, which is also taking into account the cross-border dimension of SLAPPs. At the same time, Austria recognizes a challenging balance between guaranteeing effective access to justice and properly restraining SLAPPs.

With negotiations still ongoing at the EU level, Austria considers taking legislative measures only after the adoption of the Directive at the EU level. As SLAPPs are still a rather unknown phenomenon, the Ministry of Justice considers awareness raising measures also among legal professionals to be essential. Thus, for example a presentation on the topic of strategic lawsuits against public participation was held at a training event organized by the Criminal Law Section of the Judges' Association (see also point 14).

### **Other - please specify**

Austria would also like to point out that a draft federal law aiming at counteracting the increasingly difficult economic situation in the media sector and at the promotion of quality journalism has been prepared. Its aim is to protect and support journalists who work primarily in the print and online sectors as well as the content they create. Further measures include funding for training for journalists, promotion of digital literacy for children as well as self-regulation in the print and online sector. This draft federal law on the support of quality journalism was submitted to public consultation; the consultation period ended on 19 December 2022. It is likely that the Federal Government will introduce the draft law in Parliament by mid-February 2023 (link to the draft law: [https://www.parlament.gv.at/PAKT/VHG/XXVII/ME/ME\\_00233/index.shtml](https://www.parlament.gv.at/PAKT/VHG/XXVII/ME/ME_00233/index.shtml)). It will be notified to the European Commission.

On the occasion of the 10<sup>th</sup> anniversary of the UN Plan of Action on the Safety of Journalists and the Issue of Impunity, the Federal Ministry for European and International Affairs in cooperation with UNESCO and the Office of the UN High Commissioner for Human Rights (OHCHR) held a high-level conference entitled "Safety of Journalists: Protecting Media to Protect Democracy" in Vienna on 3/4 November 2022. As part of the conference, a political declaration was launched reaffirming the commitment of the signatories to enhance the protection of journalists and strengthen media freedom. In addition, 37 states, international organizations and civil society organizations delivered concrete pledges. For Austria, this included the provision of EUR 150 000 of funding to a UN Women project supporting women-led media initiatives about women's rights in Afghanistan, support for a training course for journalists provided by the Austrian Armed Forces ("Hostile Environment Awareness Training") as well as the strengthening of free and independent media within the framework of Austrian development cooperation. For further details see: [Safety of Journalists: Protecting media to protect democracy – High-level Conference, Vienna, 3 - 4 November 2022 – BMEIA, Außenministerium Österreich.](#)



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

### **44. Please provide information on measures taken to follow-up on the recommendations received in the 2022 Report regarding the system of checks and balances (if applicable)**

Not applicable.

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

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

As already reported in the Austrian Inputs for the 2021 and 2022 Rule of Law Reports, the new “parliamentary consultation procedure” entered into force on 1 August 2021 (cf. Art. 23b para. 1 of the National Council’s Rules of Procedure, [Federal Law Gazette I no. 63/2021](#)). The new “parliamentary consultation procedure” has proved particularly successful since its entry into force. Between 1 January 2022 and 15 December 2022, 196 723 comments by experts and citizens were submitted during the parliamentary legislative process. While all comments received are to be published on the Parliament's website, those from private individuals are only published with their consent.

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

No substantial changes have occurred since the publication of the 2022 Rule of Law Report.

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

No substantial changes have occurred since the publication of the 2022 Rule of Law Report.

### **48. Lawsuits COVID-19: provide update on significant developments with regard to emergency regimes/measures in the context of the COVID-19 pandemic - judicial review (including constitutional review) of emergency regimes and measures in the context of COVID-19 pandemic**

#### **VfGH:**

The VfGH has been reviewing the constitutionality and, in particular, the proportionality of the measures introduced by law or regulation to combat and contain the pandemic. As of 20 December 2022, 75 COVID-19-related cases were pending before the VfGH, and a total of 913 cases had already been concluded.

The VfGH has decided on the following applications and complaints (overview arranged by topics):

Rulings of 3 March 2022 (V 231/2021); 17 March 2022 (V 294/2021); 29 April 2022 (V 23/2022) and 30 June 2022 (V 3/2022):

The 5<sup>th</sup> COVID-19 Protective Measures Regulation, which was in force from 15 to 21 November 2021 and provided for a lockdown for unvaccinated persons and persons who had not recovered, as well as for a 2G-certificate (“*Geimpft oder Genesen*”, “Vaccinated or Recovered”) for entry into certain places, was in line with the (ordinary) law and the Constitution.

The applicant had argued that a lockdown may only be imposed if it is "indispensable" to contain the pandemic "in order to prevent an imminent collapse of medical care or similar emergency situations" and other, less drastic restrictions are not sufficient (Sec. 6 para. 1 COVID-19 Measures Act). According to the applicant, these requirements were not met because based on the then current state of science, even fully-immunised persons could be infected with the virus and infect others. For the same reason, it was not justified to prohibit access for customers, e.g. to shops and restaurants, that – while not being vaccinated nor recovered – tested negative for the virus, as this violated the principle of equality (*Sachlichkeitsgebot*).

The VfGH considered that the regulation files documented the epidemiological situation and the scientific findings, in particular on the Delta variant of COVID-19 prevalent at the time. Against this background, the Federal Minister of Health could reasonably assume in mid-November 2021 that non-immunised persons have both a significantly increased risk of infection and transmission and a significantly increased risk of a severe course of the disease, and that the exit restriction for non-immunised persons was suitable for preventing the spread of COVID-19 and the overloading of the health system. Furthermore, the Minister could not be contradicted when, in view of the high number of new infections per day and the tense situation in the hospitals, he did not consider the (mere) presentation of a negative PCR test result as a less intrusive measure suitable to avert the predicted system-critical burden on the health care system, but instead considered an all-day exit restriction for persons without a 2G-certificate from 15 November 2021 onwards to be indispensable. The VfGH also had no objections to the entry and admission restrictions, which only applied to persons without a 2G-certificate from 15 to 21 November 2021. Among other things, the Minister had explained in a comprehensible manner that the compulsory wearing of masks in commercial premises, which had already been introduced as of 8 November 2021, had not been enough to sufficiently control the rapidly increasing rate of new infections. The distinction between vaccinated and recovered persons on the one hand and persons without a 2G-certificate – i.e. persons that only tested negative for the virus – on the other hand also did not violate the principle of equality. The COVID-19 Measures Act provided that such unequal treatment has to be based on scientifically justifiable assumptions about substantial differences with regard to the further spread of COVID-19. This was comprehensibly documented in the 5<sup>th</sup> COVID-19 Protective Measures Regulation. According to the VfGH, the Minister has also not acted in an unobjective manner when he considered the implementation of tests in itself to be unsuitable for averting the predicted system-critical burden on the health system.

The VfGH recalled that decisions on COVID-19 measures typically have to be made under high uncertainty in view of rapidly changing epidemiological circumstances and the often incomplete state of knowledge of emerging infectious diseases and disease variants. The authority must necessarily consider developments in advance (*ex ante*). The VfGH concluded that the fact that a measure should have been taken differently in retrospect (*ex post*) due to new insights does not make the decision unlawful.

The VfGH also dismissed an application submitted in August 2021, which was directed against the access regulations for night catering premises. According to the provisions of the 2<sup>nd</sup> COVID-19 Opening Regulation, which applied from 22 July 2021 until 15 September 2021, catering premises were generally only allowed to be entered by customers who could present proof that they posed a low epidemiological risk: catering premises "where increased mixing and interaction of customers is to be expected", as this applies to night catering (discotheques, clubs and dance halls), could only be entered by vaccinated and PCR-tested persons. Persons who had recovered from COVID-19 but could not provide a negative PCR test result, on the other hand, were prohibited from entering. According to the VfGH, the Minister of Health has explained in a comprehensible manner that due to the assumed increased mixing of a primarily young public with a low vaccination rate, epidemiologically particularly unfavourable conditions prevail in night catering premises. This is also due to the increased aerosol emission caused by loud talking, singing and dancing. If the Minister of Health therefore considered a PCR test necessary in view of the epidemiological situation documented in the regulation act and the uncertain study situation at that time with regard to the transmission probability of SARS-CoV-2 in convalescents, this did not mean an unobjective unequal treatment compared to vaccinated persons. It was also permissible that in this context only the evidence of a negative PCR test result – and not also a negative antigen test – could justify an admission. This differentiation corresponds to the differences in the accuracy of these tests.

In the subsequent judgment of 30 June 2022 (V 3/2022), however, the VfGH held a provision that applied to unvaccinated persons during the so-called second lockdown to be unlawful, based on arguments raised for the first time in this application: persons who had neither been vaccinated against nor recovered from COVID-19 were only allowed to leave their private homes as of 15 November 2021 on an exceptional basis, for example to meet the necessary basic needs of daily life, e.g. at pharmacies or supermarkets. As a result of several extensions, the lockdown lasted until 30 January 2022, i.e. eleven weeks. According to the VfGH, the 6<sup>th</sup> COVID-19 Protective Measures Regulation on the second "lockdown for the unvaccinated" no longer took sufficient account of its long duration. In the light of the cumulative duration of this measure, visiting the hairdresser, for example, also has to be seen as a basic need of daily life; however, this had not been taken into account in the regulation.

For further details:

[https://www.vfgh.gv.at/medien/Lockdown\\_2G\\_Maerz.php](https://www.vfgh.gv.at/medien/Lockdown_2G_Maerz.php);

[https://www.vfgh.gv.at/medien/Lockdown\\_Jaenner\\_2022.php](https://www.vfgh.gv.at/medien/Lockdown_Jaenner_2022.php);

[https://www.vfgh.gv.at/medien/Covid\\_Kunst\\_Religion\\_Grundbeduerfnisse.php](https://www.vfgh.gv.at/medien/Covid_Kunst_Religion_Grundbeduerfnisse.php)

Judgment of 30 June 2022 (V 312/2021):

On the basis of an application by several artists, the VfGH found that the ban on entering cultural institutions in autumn 2021 violated the principle of equality. The 5<sup>th</sup> COVID-19 Emergency Measures Regulation provided for a nationwide lockdown (including for the vaccinated and recovered) from 22 November 2021 to 11 December 2021. Entering the customer area of cultural institutions was prohibited during this period without any exception. On the other hand, gatherings for the common practice of religion were excluded from the scope of the regulation. In principle, the VfGH had no constitutional objections to the ban on entering cultural institutions. This measure was suitable to counteract the spread of COVID-19, namely the Delta variant, which was dominant at the time, and the measure was necessary and – with regard to the limited period of validity of 20 days – proportionate and, therefore, did not violate the constitutional freedom of art. However, it violated the principle of equality to exclude gatherings for the practice of religion in any form from the lockdown, i.e. regardless of whether such gatherings took place outdoors or indoors, whether they were religious

services, devotions or other religious customs, and also regardless of the number of participants. According to the VfGH, there was no justification for such unequal treatment of religion and art. In both cases, certain fundamental rights are exercised together with or in front of other people. Against this background, with regard to the objective of preventing gatherings of people as far as possible, there is no such difference that would justify the ban on gatherings in the area of freedom of art while gatherings in the area of freedom of religion are allowed.

For further details:

[https://www.vfgh.gv.at/medien/Covid\\_Kunst\\_Religion\\_Grundbeduerfnisse.php](https://www.vfgh.gv.at/medien/Covid_Kunst_Religion_Grundbeduerfnisse.php)

Judgment of 23 June 2022 (G 7/2022 et al):

In this judgment the VfGH stated that the compulsory vaccination introduced by the Federal Act on the Compulsory Vaccination against COVID-19 ("*COVID-19 Compulsory Vaccination Act - COVID-19-IG*"), Federal Law Gazette I No. 4/2022, as well as an implementing regulation based on it,

- was a particularly severe interference with the physical integrity and the right of self-determination of the individual. Therefore, a strict standard applies when examining whether compulsory vaccination is proportionate;
- pursued the goal of a high vaccination rate to protect vulnerable persons. It also aimed at the protection of the functioning of the health infrastructure and thus public health by reducing the risk of severe disease progression following vaccination;
- and that the Federal Minister of Health was obliged under the Compulsory Vaccination Act to continuously evaluate whether vaccination is suitable and necessary to achieve these goals or whether there is an equally effective but less intrusive means (such as compulsory vaccination only for certain occupational or personal groups).

As a result of such an ongoing evaluation, the obligation to vaccinate has been suspended since 12 March 2022. Against this background, there were no constitutional objections to the challenged provisions of the Compulsory Vaccination Act.

For further details:

<https://www.vfgh.gv.at/medien/Impfpflichtgesetz.php>

A subsequent federal law, [Federal Law Gazette I No. 131/2022](#), repealed the COVID-19 Compulsory Vaccination Act and the implementing regulations with effect from 29 July 2022.

Judgment of 13 December 2022 (G 174/2022-28):

In a joint application, 403 Austrian banks had objected to a provision in the 2<sup>nd</sup> COVID-19-Justice Accompanying Act that provides for certain consumer credit agreements to defer repayments or interest payments if the borrower has pandemic-related income losses that make such payments unreasonable. An initial three-month moratorium from April 2020 was extended to seven and finally to a total of ten months. The Austrian Supreme Court (*OGH*) ruled in December 2021 that lenders were also not allowed to charge debit interest for the duration of the moratorium, which means that the loan agreements thus had to be extended free of charge.

The petitioning banks had seen this as a violation of the principle of equality, and as disproportionate and a violation of the fundamental right to property. There was a public hearing on this case in September 2022.

On 13 December the VfGH dismissed the application. In its judgment the VfGH emphasized that the statutory credit moratorium – which was not challenged by the applicant credit institutions – and the resulting extension of credit periods already represent a significant encroachment on private autonomy and thus on the property rights of credit institutions. This applies all the more to the order that the costs of this moratorium are to be borne unilaterally and as a lump sum by the credit institutions.

However, the contested provision served an objective in the public interest and was also suitable to achieve this objective: it provided the beneficiary borrowers with time to make funds available for repayment. The lenders were also only obliged to grant the moratorium under certain conditions. However, the oral proceedings before the VfGH revealed that most of the credit institutions had not even checked whether these conditions existed in the individual case. In addition, even without the statutory moratorium, it would have been questionable whether the borrowers covered would have been able to fulfill their obligations under the loan agreements. These aspects may relativize the encroachment on the fundamental right to property.

The VfGH further held that another reason justifying that credit institutions to bear the costs of the interest-free moratorium: the ECB has taken numerous monetary policy and also banking supervisory measures to mitigate the consequences of the COVID-19 pandemic for credit institutions and the real economy. Against this background, especially in view of the extremely favorable refinancing offers that could also benefit the applicant credit institutions, it was objectively justified to impose the costs of the credit moratorium on the credit institutions.

In conclusion, the VfGH held that the contested provision therefore violates neither the fundamental right to property nor the principle of equality.

For further details:

[https://www.vfgh.gv.at/medien/Kreditmoratorium\\_TV\\_Werbung\\_Dezember\\_2022.php](https://www.vfgh.gv.at/medien/Kreditmoratorium_TV_Werbung_Dezember_2022.php)

Proceedings currently pending before the VfGH:

Proceedings no. V 139/2022, G 108/2022: Discrimination against state-affiliated companies in COVID-19 aid unlawful?

The Federal Act on the Establishment of a Federal Dismantling Participation Company (*ABBAG Act*) provides that "financial measures" can be taken in favour of companies that have run into financial difficulties due to the pandemic. For this purpose, the federal government equipped the *COVID-19 Finanzierungsagentur des Bundes GmbH (COFAG)* so that it can grant financial aid up to a maximum amount of 19 billion euros.

In doing so, COFAG is bound by guidelines that the Federal Minister of Finance, in consensus with the Vice-Chancellor, established in a regulation. According to one of these guidelines, subsidies can be granted to cover fixed costs. Excluded from these grants, however, are, among others, "facilities" that are either wholly owned by regional authorities or majority owned by regional authorities and have a self-sufficiency ratio of less than 75%.

*Wiener Lokalbahnen Verkehrsdienste GmbH (WLV)* - which offers transfer services, for example, and operates some bus lines - is indirectly wholly owned by the City of Vienna. It is of the opinion that the exclusion is not covered by the law and therefore requests that the exemption provisions be repealed as unlawful. It argues that it is not objectively justified to discriminate against state-affiliated companies when granting COVID-19 aid.

By reason of this application by Wiener Lokalbahnen Verkehrsdienste GmbH objecting to provisions in the guidelines for the granting of a fixed cost subsidy, the VfGH also decided to examine several provisions of the underlying ABBAG Act *ex officio* for their constitutionality.

According to the press releases by the VfGH (see links below), the VfGH is concerned that the handling of the COVID-19 financial assistance by COFAG could violate the requirement of objectivity and the constitutional requirement of efficiency. According to the VfGH, it also seems to contradict the constitutional principles of administration that COFAG is not directly subject to instructions from the Federal Minister of Finance in its activities.

Finally, in said press release, the VfGH presumes that the provision violates the right to property, the principle of the rule of law and the principle of equality because the affected companies have no legal claim to financial assistance under the ABBAG Act.

For further details on the pending proceedings:

[https://www.vfgh.gv.at/medien/ABBAG-Gesetz\\_Nitrat-Verordnung.php](https://www.vfgh.gv.at/medien/ABBAG-Gesetz_Nitrat-Verordnung.php)  
[VfGH-Beschluss V 139/2022 vom 29. September 2022 \(PDF, 0.8 MB\)](#)

#### **VwGH:**

In the course of the past year, the VwGH has issued numerous decisions on COVID-19 measures. To name a few:

The VwGH ruled that mere indirect effects do not lead to a compensation for loss of earnings under sec. 32 of the Epidemics Act 1950 (*Epidemiegesetz* 1950 – EpiG, only available in German:

<https://www.ris.bka.gv.at/GeltendeFassung.wxe?Abfrage=Bundesnormen&Gesetzesnummer=10010265>) – e.g. effects of the closure of cable cars and accommodation facilities on hospitality facilities (judgment of 28 February 2022, Ra 2021/09/0229, [https://www.ris.bka.gv.at/Dokumente/Vwgh/JWT\\_2021090229\\_20220228L00/JWT\\_2021090229\\_20220228L00.pdf](https://www.ris.bka.gv.at/Dokumente/Vwgh/JWT_2021090229_20220228L00/JWT_2021090229_20220228L00.pdf)).

Furthermore, the VwGH ruled that the exemption from the obligation to wear face masks according to sec. 15 para. 5 of the 3<sup>rd</sup> COVID-19 Emergency Measures Ordinance (COVID-19-NotMV) is not merely linked to the fact that the person concerned has a medical certificate, but whether he or she cannot be expected to fulfil this obligation for health reasons. Accordingly, the fact to be made credible is not the existence of a certificate issued by a doctor, but the unreasonableness of fulfilling the obligation to wear the mask for health reasons. Whether this requirement is met, is subject to the free assessment of evidence by the authority (judgment of 7 February 2022, Ra 2021/03/0277,

[https://www.ris.bka.gv.at/Dokumente/Vwgh/JWT\\_2021030277\\_20220207L00/JWT\\_2021030277\\_20220207L00.pdf](https://www.ris.bka.gv.at/Dokumente/Vwgh/JWT_2021030277_20220207L00/JWT_2021030277_20220207L00.pdf)).

In addition, the VwGH has sought a preliminary ruling from the European Court of Justice as to whether compensation payments related to the isolation of workers constitute a sickness benefit within the meaning of Art. 3 para. 1 lit. a of Regulation (EC) No 883/2004. If not, whether a national regulation is admissible under which the granting of compensation for loss of earnings suffered by workers as a result of isolation is ordered by an Austrian authority on the basis of provisions of national law relating to epidemics, with the result that such compensation is not paid to workers who, as cross-border workers, are resident in another Member State and whose isolation ('quarantine') is ordered by the health authorities of their Member State of residence (judgment of 24 May 2022, EU 2022/0006,

[https://www.vwgh.gv.at/rechtsprechung/vorabentscheidungsantraege\\_an\\_den\\_eugh/EU\\_20220006.pdf?8lxk8f](https://www.vwgh.gv.at/rechtsprechung/vorabentscheidungsantraege_an_den_eugh/EU_20220006.pdf?8lxk8f)).

### **Administrative Courts:**

No substantial changes have occurred since the publication of the 2022 Rule of Law Report.

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

In the Austrian Inputs for the 2021 and 2022 Rule of Law Reports, it has already been reported that the Main Committee of the National Council has a crucial role in the passing of regulations relating to the combat of the COVID-19 pandemic. In respect of some specific regulations issued by the Federal Minister of Social Affairs, Health, Care and Consumer Protection pursuant to section 12 of the COVID-19 Measures Act, it is required to obtain the approval of the Main Committee of the National Council and to let such regulations expire at the latest after four weeks or ten days (as the case may be) after any such regulation has been issued. In order to extend the validity of such regulations, it is thus required to once again obtain the Main Committee's approval.

Against this background, the Main Committee again met frequently in 2022: It had to give its approval to regulations issued by the Federal Minister of Social Affairs, Health, Care and Consumer Protection under the COVID-19 Measures Act a total of five times.

#### **- processes related to lessons learned/crisis preparedness in terms of the functioning of checks and balances**

No substantial changes have occurred since the publication of the 2022 Rule of Law Report.

## **B. Independent authorities**

### **49. Independence, resources, capacity and powers of national human rights institutions ('NHRIs'), of ombudsman institutions if different from NHRIs, of equality bodies if different from NHRIs and of supreme audit institutions**

In May 2022, a motion to amend the Federal Constitutional Law (*Bundes-Verfassungsgesetz*, B-VG) and the Act on the National Council's Rules of Procedure (*Geschäftsordnungsgesetz 1975*) was introduced in Parliament concerning i.a. the election procedure for the office of President of the Court of Audit (cf. also point 20). This motion was passed by the National Council and the Federal Council in July 2022 and entered into force on 1 January 2023.

The Court of Audit is headed by a President, who is elected by the National Council following a proposal by its Main Committee. His/her term of office is twelve years, after the end of which period he/she cannot be re-elected. In the future, both in the Main Committee and the National Council, the proposal/election will only be able to pass in the presence of at least half the members and by a majority of two thirds of the votes cast in order to strengthen the independence and democratic legitimation of the Court of Audit (cf. Art. 122 para. 4 of the Federal Constitutional Law, [Federal Law Gazette I no. 141/2022](#)). The President of the National Council has to compile a list of applicants for the office of President of the Court of Audit in conjunction with the President's Conference of the National Council and the parliamentary groups. The Main Committee votes on its proposal to the National Council after a hearing of the applicants listed, which has to be public to the media. Also, a summary of the hearing has to be published as an annex to the official record of the Main Committee's sitting (cf. Art. 31g of the National Council's Rules of Procedure, [Federal Law Gazette I no. 141/2022](#)).

In addition, the Court of Audit was empowered to perform so called special audits on demand by the Parliament's minority more easily. In the future, special audits will be able to be demanded by 20 Members of Parliament or, if a parliamentary group consists of less than 20 members, by all members of the respective parliamentary group. However, Members of Parliament will only be able to support another demand for a special audit once the Court of Audit will have delivered its report or after 24 months will have passed (cf. Art. 99 paras 2 and 3 of the National Council's Rules of Procedure, [Federal Law Gazette I no. 141/2022](#)).

#### **50. Statistics/reports concerning the follow-up of recommendations by National Human Rights Institutions, ombudsman institutions, equality bodies and supreme audit institutions in the past two years.**

The CRPD Monitoring Committee (*Monitoringausschuss*), an independent mechanism for the promotion, protection and monitoring of the implementation of the Convention on the Rights of Persons with Disabilities (CRPD) at the federal level (<http://www.monitoringausschuss.at>):

On 6 July 2022, the Austrian Government adopted the National Action Plan on Disability 2022–2030 (NAP on Disability II). This latest national strategy to implement the CRPD in Austria was created in a multi-annual, participatory process involving civil society (26 expert teams from all federal ministries and federal provinces). The NAP contains 8 main chapters, almost 300 common political objectives and 375 measures (German version: <https://www.sozialministerium.at/Themen/Soziales/Menschen-mit-Behinderungen/Nationaler-Aktionsplan-Behinderung.html>).

### **C. Accessibility and judicial review of administrative decisions**

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

See information provided under point 33 regarding the new constitutional provision on the publication of expert opinions, studies and surveys as well as the work on the Federal Law on the Freedom of Information.

#### **52. Judicial review of administrative decisions:**

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

No substantial changes have occurred since the publication of the 2022 Rule of Law Report.

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

No substantial changes have occurred since the publication of the 2022 Rule of Law Report.



## D. The enabling framework for civil society

### 54. Measures regarding the framework for civil society organisations and human rights defenders (e.g. legal framework and its application in practice incl. registration and dissolution rules)

Please refer to information provided in previous inputs (on the legal framework see, in particular, also submissions in the input for the 2020 report).

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

See point 43 and previous inputs.

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

Funding in the context of the COVID-19 pandemic:

The “emergency support for non-profit organizations” in the context of the COVID-19 pandemic was extended until the end of March 2022 (i.e. the 1<sup>st</sup> quarter of 2022) as noted also in the 2022 Rule of Law Report (p. 22 et seq.). As of end of November 2022, more than 23 600 non-profit organizations had received support with a total volume of EUR 801 Mio. Key figures as of 30 November 2022:

- A total of 57 596 disbursements (funding cases) were paid out to 23 621 beneficiaries. The total volume of disbursed subsidies amounts to EUR 801 Mio.
- 48 % of the disbursements went to the two sectors sport (29.6 %) and arts and culture (18.4 %) with 36 % of the disbursed funding volume totaling EUR 288.9 Mio. (sport: EUR 170.8 Mio., arts and culture: EUR 118.1 Mio.).
- High shares of the disbursed volume also went to the sectors health, care, social affairs (EUR 134.3 Mio.), continuing education (EUR 113 Mio.), religion and church purposes (EUR 109.3 Mio., including overlaps with other sectors), fire brigades (EUR 41.8 Mio).

Working group on the modernization of the taxation of NPOs and tax deductibility of donations:

On the general tax regime for civil society (including the distinction to be made between tax treatment of NPOs and tax treatment of donors), please refer to the Austrian Input for the 2021 Rule of Law Report p. 30 et seq. as well as information provided on the website of the Federal Ministry of Finance ([Einleitung \(bmf.gv.at\)](https://www.bmf.gv.at)). In this context, it should also be stressed that non-profit organizations in the areas of human rights, civil and political rights, democracy, transparency and adult education already enjoy preferential treatment (under the general conditions), especially in the areas of corporate income tax and value-added tax.

A working group including representatives of NPOs concerning the modernization of the taxation of non-profit organizations and the tax deductibility of donations has been established. About a dozen meetings have been held since spring 2022. The expansion of donation deductibility to other non-profit organizations and the application and recognition

process for donation deductibility are being examined in more detail. The tax framework for non-profit organizations shall be modernized to provide more legal security and procedural simplifications. Results shall be presented in 2023.

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

Measures on public participation in the digital age (cf. reference in the 2022 country chapter for Austria p. 21):

The Federal Ministry for Arts, Culture, Civil Service and Sport has continued its intensive work on public participation in the digital age in the last two years and is on track regarding the estimated timeline towards 2023. The project is structured in a three-steps-action-plan, of which phase 1 is completed, phase 2 being finished by Q1 2023 and phase 3 being currently conceptualized by the Department of “Strategic Performance Management and Public Sector Innovation”.

Concluding phase 1 “Greenbook on Public Participation in the digital age”, the end of 2020 saw a Greenbook on participation in the digital age having been finalized and published. The Greenbook, which is the result of four workshops and an ongoing dialogue with public and private stakeholders as well as scientific experts, provides the theoretical foundations, methods and frameworks in order to integrate participation projects along administrative processes, namely the policy cycle.

Continuing phase 2 “Practical guide (*Praxisleitfaden*) on Public Participation in the digital age”, two workshops have been held in March and April 2022, gaining insights on practical challenges, opportunities and insights on participation in an administrative context. The two workshops focused on digital opportunities and challenges for participation processes, requirements for a practical and user-centered practical guide, as well as hurdles and “enabling insights” to implement participation processes in the Austrian public sector. The results will be published in a practical guide on participation in the digital age within Q1 2023. Connecting the design of participation processes with the differentiated goals of political-administrative phases in the policy cycle, the practical guide provides a new approach for goal-orientated participatory public policy. Among basic criteria for successful participation projects, the guide seeks to provide public sector employees and the civil society with a basic set of knowledge and tools (ranging from decision trees, methods of stakeholder-analysis, risk assessments up to checklists and the description of exemplary participation methods) in order to manage and successfully integrate participation projects in the context of public administration.

Conceptualizing phase 3 “Website on Public Participation in the digital age”, where the gathered knowledge, theoretical foundations, methods and the step-by-step action plan are foreseen to be published on a website. Concerning phase 3, the Federal Ministry for Arts, Culture, Civil Service and Sport is currently analyzing possible stakeholders, technical implementation requirements and project partners in order to facilitate a structured “customer-centered” website design, which provides the necessary information for public sector employees, in order to successfully implement participation projects. The website is scheduled to be launched by the beginning of 2024.

In addition to information provided already in previous inputs please see below further examples with regard to involvement into policy-making and stakeholder dialogue:

## Implementation of the 2030 Agenda and SDGs

In its implementation of the 2030 Agenda and the SDGs, Austria takes a multi-stakeholder-approach that involves all Federal Ministries, Federal provinces, cities and municipalities as well as social partners and stakeholders from business, the scientific community and the civil society. Communicating the SDGs on a broad basis and incorporating them in all relevant strategies and programs, as well as drawing up corresponding action plans and taking appropriate measures, are important priorities in these efforts.

A decision by the Austrian Council of Ministers of 12 January 2016 lays the foundation for the implementation of the 2030 Agenda in Austria. In line with its universal, integrated and interrelated nature, the Decision of the Council of Ministers emphasizes a mainstreaming approach. Hence, the SDGs are integrated into all activities of Austrian politics and administration in an efficient, goal-oriented and autonomous manner. Therefore, the Ministries build on existing multi-stakeholder strategies and programming processes to take the SDGs into account in their respective national policy frameworks. Thereby, well-established structures of numerous national policy frameworks may be deployed for the enhancement of SDG implementation. Information on the implementation of SDGs, e.g. listing success stories, is provided by the Austrian Federal Chancellery on a specific website [www.sdg.gv.at](http://www.sdg.gv.at).

The interministerial working group “Implementation of the 2030 Agenda for Sustainable Development” (IMAG 2030) was created in 2017, which includes representatives of all Federal Ministries under the Co-Chair of the Federal Chancellery and the Federal Ministry for European and International Affairs and focuses on general coordination and on dialogue with relevant actors. The IMAG 2030 meets at regular intervals (approx. four times a year). Within the IMAG 2030, specific stakeholders, including social partners, civil society organisations and representatives of scientific community, are informed about and consulted on developments and invited to meetings on a regular basis.

Austria has presented its first Voluntary National Review (VNR) – the Report on the implementation of the Sustainable Development Goals (SDGs) – during the United Nations’ High Level Political Forum in July 2020. While providing a nationwide overview of the measures taken, success stories and initiatives supporting the implementation of the 2030 Agenda, Austria has opted for a broad and transparent multi-stakeholder approach when compiling the VNR. Over 40 organisations were actively involved from the outset in all phases of the review compilation process. The process played a key role in strengthening dialogue, networking and cooperation between state and non-state actors for the implementation of the 2030 Agenda in Austria.

One result of the active stakeholder engagement that has been deliberately continued since the preparatory process for the VNR, is the so-called „SDG Dialogue Forum“ which has taken place already two times, in 2021 and 2022. Both events have been co-organised – on an equal footing – by government units together with civil society organisations (SDG Watch Austria) with its aim to promote dialogue and cooperation on the most compelling challenges identified in Austria’s first VNR. With that, a continuous dialogue with stakeholders has been institutionalised to uphold the commitment on implementing the SDGs. The cooperative approach when discussing future challenges will be followed also in the next SDG Dialogue Forum, envisaged for 2023, which will have a focus on Austria’s second VNR to be presented in 2024. Broad and transparent involvement of all relevant stakeholders, including civil society, will remain a cornerstone when preparing Austria’s second VNR. This has already been stated in the recent Decision by the Austrian Council of Ministers dated 12 October 2022.

Furthermore, on participation, the Federal Ministry for Climate Action, Environment, Energy, Mobility, Innovation and Technology intends to update the website [www.partizipation.at](http://www.partizipation.at),

which refers to major ongoing participation activities in Austria also at regional and local level and by providing tools for participation processes in practice.

## **National Strategy against Antisemitism**

### *Establishment of the National Forum against Antisemitism*

Austria's National Strategy against Antisemitism was presented in January 2021. Austria thereby was one of the first EU Member States to establish a National Strategy on the Fight against Antisemitism as recommended by the EU Strategy on combating antisemitism and fostering Jewish life. The prevention and combatting of all forms of antisemitism requires a society-wide effort, not merely by ministries and corporate bodies, but equally by the media and the institutions and organisations of civil society. Therefore, an important step was the establishment of the National Forum against Antisemitism in June 2022 in Vienna. The National Forum will meet regularly (next meeting envisaged for June 2023) with the aim of discussing current developments in the Federal government, the states, communities, corporate bodies, civic institutions, NGOs, sports associations, youth organisations and other bodies, and in order to evolve and put forward potential options. In addition – given the large number of activities being undertaken in the various states, cities and communities – best practice examples should be exchanged and other initiatives should be strengthened.

### *Working Group on Documentation of Antisemitic incidents*

With the participation of various ministries, the Jewish Community of Austria and representatives of the civil society, the "Working Group on Documentation of Antisemitic incidents" was established in May 2022. The aim is to improve data collection on antisemitic incidents. The working group has begun its work and meets at regular intervals.

**Youth participation** (reference in this context is also made to proposal number 36 in the report on the final outcome of the Conference on the Future of Europe as well as the report by the FRA on ["Europe's civil society: still under pressure - 2022 update"](#) published in July 2022):

The Austrian National Youth Council (*Bundesjugendvertretung*, BJV) has the legal status as a so-called Social Partner. It includes 59 Austrian child and youth organizations with various goals and political and religious backgrounds. This diversity ensures that the interests of young people are represented on a very broad basis. Furthermore, the BJV is also a lobby for young people and promotes greater involvement of young people in political decision-making processes. The BJV receives Federal Youth Promotion funds and project funds from various different national and international public funding pools. The financing of the last years amounted to EUR 207 836 in 2019, EUR 211 548 in 2020, EUR 214 404 in 2021 and EUR 214 403 in 2022. In total, Austria is financing youth projects of youth organisations and youth initiatives with a total budget of EUR 9 Mio. each year. In addition, the sector receives funding by programs of the EU like Erasmus+ and ESC amounting to another EUR 9 Mio. each year.

Austria also has a "Youth Strategy" in place: the "Competence Centre Youth", a unit in the ministry responsible for Youth, tied all initiatives of Federal ministries targeted to young people together and laid a foundation for good youth-focussed networking between institutions. The "Austrian Youth Strategy" is arranged around 4 focus areas: education and employment; participation and citizenship; quality of life and living together; media and information. Based on the "Austrian Youth Strategy", "Austrian Youth Goals" were formulated – they also reflect the European Youth goals.

"Reality checks" on this strategy and the Youth goals are taking place to ensure their realisation and relevance: the "reality checks" are carried out through various forms of youth participation and research on youth as well as through co-operation with the National Youth Council and youth networks.

Therefore, young people continue to be directly involved in order to reflect the youth objectives of the Austrian Youth Strategy.

"Youth checks" were established in 2013 as an element in the process of preparing new legislation. Each new bill has to be checked in advance on its potential implications on children and youth. This process strengthens awareness of policy makers for the needs of children and youth. Austria has also expressed support for a kind of "youth check" at the European level as suggested by the European Youth Forum.

Austria has also adopted the Federal Constitutional Act on the Rights of Children to strengthen the rights of children by implementing the UN Convention for the Rights of the Child (CRC) on constitutional level. It grants constitutional status to a number of CRC principles and provisions, for example the best interests of the child, the right to be heard and the right of the child to a childhood free from sexual, psychological and physical violence. The Austrian Constitutional Act has proven itself as an extremely valuable benchmark for legislation, law enforcement and the jurisprudence of the Supreme Court.

With the constitution of the "Children's Rights Board" in 2012, which acts as an independent advisory body to the Minister in charge of children's rights, a permanent mechanism for dialogue and consultation with civil society organisations has been established.

Austria also took an important step in 2007 and lowered the general voting age to 16 years (for national and European Parliament elections). Now, in 2022, "Voting at 16" is a well-established reality in Austria. Austria is one of a few countries world-wide where all young people above the age of 16 are invited to participate in national elections (also in: Argentina, Brazil, Cuba, Ecuador, Nicaragua, Isle of Man, Jersey and Guernsey, Malta since 2018). Since 2021, this also includes elections of the work councils (*Betriebsräte*), in accordance with the commitments in the Government program (p. 195 et seq.). In Austria, possibilities for youth participation exist on all levels. For example, there was a major reform in 2001 through the Federal Youth Representation Act 2001 (*Bundes-Jugendvertretungsgesetz*). Moreover, the government also remains committed to strengthen the participation of young people by supporting the youth representatives like pupil, apprentice and youth parliaments as provided in the Government program.

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

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

Austria continues to benefit from an active and engaged civil society. As an example for the active engagement in policy-making, reference can be made to the popular initiative on "Rule of Law and Anti-Corruption" as referenced in Chapter II.