



# UNODC

United Nations Office on Drugs and Crime

## United Nations Convention against Corruption

Self-assessment Name: Self-assessment checklist on the implementation of chapters II and V of UNCAC - Austria

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Assessor: Ms. Julia Peitl

Assessor Position: Attachée - Permanent Mission of Austria to the UN in Vienna

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Comments:

**Completed self-assessment checklists should be sent to:**

Corruption and Economic Crime Section  
Division for Treaty Affairs  
United Nations Office on Drugs and Crime  
Vienna International Centre  
PO Box 500  
1400 Vienna, Austria

Attn: KAMBERSKA Natasha

Telephone: + (43) (1) 26060-4293  
Telefax: + (43) (1) 26060-74293  
E-mail: [uncacselfassessment@unodc.org](mailto:uncacselfassessment@unodc.org)

## A. General information

### A. General information

#### 1. General information

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##### 1 Focal point:

Federal Ministry for Europe, Integration and Foreign Affairs

Permanent Mission of Austria to the UN in Vienna (Ms. Julia Peitl) and Office of the Legal Adviser of the Foreign Ministry (Department I.5, Mr. Gerhard Thallinger).

##### 2 Institutions consulted:

Federal Chancellery

Federal Ministry for Europe, Integration and Foreign Affairs

Federal Ministry of Constitutional Affairs, Reforms, Deregulation and Justice

Federal Ministry of the Interior (MoI)

MoI Federal Bureau of Anti-Corruption

MoI Asset Recovery Office

MoI Financial Intelligence Unit

Federal Ministry of Finance

Federal Ministry for Civil Service and Sport

Federal Ministry for Digital and Economic Affairs

Federal Ministry for Education, Science and Research

Austrian Court of Audit

Austrian Chamber of Commerce

##### 3 Please provide information on the ratification/acceptance/approval/accession process of the United Nations Convention against Corruption in your country (date of ratification/acceptance/approval of/accesion to the Convention, date of entry into force of the Convention in your country, procedure to be followed for ratification/acceptance/approval of/accesion to international conventions etc.).

The Convention was signed on 10 December 2003 by the Republic of Austria and ratified by the Austrian Parliament on 11 January 2006. Austria deposited its instrument of ratification with the Secretary-General of the United Nations on 12 January 2006.

##### 4 Please briefly describe the legal and institutional system of your country.

Austria is a democratic Republic. The populace elects its head of state (the Federal President) and its legislative organs. Citizens of Austria have been guaranteed basic rights and freedoms (such as freedom of assembly, belief and conscience) since 1867.

Austria is a federal Republic. Burgenland, Carinthia, Lower Austria, Salzburg, Styria, Tyrol, Upper Austria, Vienna and Vorarlberg form the nine constituent federal states (*Länder*). Vienna is also the federal capital. The two chambers of Parliament, the *Nationalrat* and the *Bundesrat* enact federal legislation. The latter chamber represents the federal states' interests on federal level. The populace elects the 183 deputies in the *Nationalrat* every five years. The Federal President, the members of the Federal Government (i.e. Federal Chancellor and Federal Ministers) and the Federal Government in its entirety (as an administrative body) are the three supreme federal executive organs of the Austrian federal administration. The nine State Governments (*Landesregierungen*) are the supreme state executive organs. On 26 October 1955 the *Nationalrat* enacted a federal constitutional law declaring Austria a permanently neutral state. Austria has ratified the European Convention on the Protection of Human Rights and Fundamental Freedoms and adopted the Convention as part of federal constitutional law.

The Austrian legal system is based on Roman law and is structured in hierarchical layers. The General Civil Code - *Allgemeines Bürgerliches Gesetzbuch (ABGB)* - is one of the world's oldest

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codes of civil law. The Austrian legal system's structure follows a so-called tier system of laws, which decrees that laws and regulations must comply with the standards set by legal acts in higher tiers (e.g. the constitution, constitutional laws). The top tier comprises the Austrian Federal Constitution and individual constitutional laws, as well as the Federal Constitutional Law on the Accession of Austria to the European Union. General federal laws and laws of the federal provinces are legal acts in lower tiers. Statutory authorities are competent to enact regulations or individual administrative rulings (*Bescheide*) in accordance with the above-mentioned legal acts in higher tiers.

Through accession to the European Union on 1 January 1995, Austria adopted the European Union's legal framework ("*acquis*").

Austria's administration of justice proceeds from the federal level. The judiciary is separate from the executive at all levels of jurisdiction. The police force, as an executive agency, is part of the Federal Ministry of the Interior. Court judgments and decisions are given and published in the name of the Republic. Judges are independent in exercising their office. The final court of appeal for civil and criminal proceedings is the *Oberster Gerichtshof* (Supreme Court) and for administrative proceedings the *Verwaltungsgerichtshof* (Administrative Court). The *Verfassungsgerichtshof* (Constitutional Court) is competent to review any legal act of a federal, provincial, regional or municipal authority or court against the Federal Constitution. Below those high courts, there are District Courts (*Bezirksgerichte*), Regional Courts (*Landesgerichte*) and Higher Regional Courts (*Oberlandesgerichte*) in civil and criminal matters, and regional Administrative Courts (*Verwaltungsgerichte*) in administrative matters.

The Austrian Public Prosecution (*Staatsanwaltschaft*) is a self-contained judicial authority separate from the courts tasked with safeguarding the state's interest in the criminal jurisdiction. The prosecutors' most important tasks include the commencement of criminal proceedings, conducting prosecutions and supervising / leading preliminary proceedings. The Public Prosecution Act governs these tasks. In contrast to the judge, the prosecution, as a judicial body, is subject to instructions by superior authorities. The public prosecutor carries out the public prosecution's tasks at first-instance courts, the senior public prosecutor represents the public prosecution at the court of appeal and the general procurator represents it at the Supreme Court. The offices of senior public prosecutors and the General Procurator's Office are each only subordinate to the Federal Minister of Justice. Only judges or former judges, who continue to meet the requirements for appointment as professional judges, may become public prosecutors. The Federal President appoints public prosecutors upon proposal by the staff commission. However, in most cases the Federal President has delegated the right of appointment to the Federal Minister of Justice.

The public prosecutors labour contract with the federal government is subject to public law. Public Prosecutors represent the public interest on behalf of the state as a formal party in criminal proceedings and e.g. present the indictment. However, they are obliged to observe full impartiality towards all sides. Public prosecutors must follow up on aggravating as well as mitigating circumstances with the same diligence and care. The public prosecutor heads the preliminary proceedings and in doing so may ask the criminal police to take evidence. The prosecutor grants and issues orders in preliminary proceedings. Any party to the proceedings that regards a prosecutor's order as onerous may seize the competent court.

Relevant institutions involved in the prevention, investigation and prosecution of corruption and the recovery of assets include, inter alia, the Federal Ministry of the Interior, the Federal Ministry of Constitutional Affairs, Reforms, Deregulation and Justice, the Central Public Prosecutor's Office for Combating Economic Crime and Corruption (WKStA), the Federal Chancellery, the Federal Ministry for Civil Service and Sport, the Federal Ministry of Finance and the Court of Audit. Additional networks/bodies such as the Co-ordinating Body on Combating Corruption (KzK) and the Network of Integrity Officers (NIO) aim to ensure coordination, efficiency and effectiveness of anti-corruption efforts.

As a member of the Council of Europe's Group of States against Corruption (GRECO), the OECD Working Group on Bribery (WGB) and the Financial Action Task Force (FATF), Austria's anti-corruption and anti-money laundering framework is subject to regular reviews. Likewise, being an EU

Member State, Austria has to comply with EU legislation on anti-money laundering and asset recovery.

- 5 In a separate communication addressed and e-mailed to the secretariat ([uncac.cop@unodc.org](mailto:uncac.cop@unodc.org)), please provide a list of relevant laws, policies and/or other measures that are cited in the responses to the self-assessment checklist along with, if available online, a hyperlink to each document and, if available, summaries of such documents. For those documents not available online, please include the texts of those documents and, if available, summaries thereof in an attachment to the e-mail. If available, please also provide a link to, or the texts of, any versions of these documents in other official languages of the United Nations (Arabic, Chinese, English, French, Russian or Spanish). Please revert to this question after finishing your self-assessment to ensure that all legislation, policies and/or other measures you have cited are included in the list.**

See attachment. In addition, Austrian laws and jurisprudence are available under <https://www.ris.bka.gv.at/> (in German; a selection of laws translated into English is available under <https://www.ris.bka.gv.at/Englische-Rv/>).

- 6 Please provide a hyperlink to or copy of any available assessments of measures to combat corruption and mechanisms to review the implementation of such measures taken by your country that you wish to share as good practices.**

**Group of States against Corruption (GRECO):**

Evaluation Report of the Third Evaluation Round (Theme I):

<https://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=09000016806c650f>

Compliance Report of the Third Evaluation Round:

<https://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=09000016806c6558>

Second Compliance Report of the Third Evaluation Round:

<https://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=09000016806c655b>

**OECD Working Group on Bribery in International Business Transactions:**

Phase 3 Report: <https://www.oecd.org/daf/anti-bribery/Austriaphase3reportEN.pdf>

Follow-up Phase 3 Report: <https://www.oecd.org/daf/anti-bribery/Austria-Phase-3-Follow-up-Report-ENG.pdf>

Additional written follow-up Report Phase 3:

[https://one.oecd.org/document/DAF/WGB\(2017\)72/en/pdf](https://one.oecd.org/document/DAF/WGB(2017)72/en/pdf)

- 7 Please provide the relevant information regarding the preparation of your responses to the self-assessment checklist.**

The Federal Ministry for Europe, Integration and Foreign Affairs is coordinating the Austrian self-assessment process and is supported in particular by the Federal Bureau of Anti-Corruption (BAK) in the Federal Ministry of the Interior. The self-assessment checklist is based upon the responses of all institutions consulted. On 7 June 2019 a coordination meeting took place in the premises of the Federal Ministry for Europe, Integration and Foreign Affairs, in which all those institutions took part.

- 8 Please describe three practices that you consider to be good practices in the implementation of the chapters of the Convention that are under review.**

The establishment of the **Co-ordinating Body on Combating Corruption** (“Koordinationsgremium zur Korruptionsbekämpfung”, “KzK”), see answer to Article 5 para. 1 (3) below.

Developing a **National Anti-Corruption Strategy** involving all relevant stakeholders from public

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administration, civil society, and business;

Developing a **Network of Integrity Officers (NIO)**, who are “multipliers” in the awareness-raising process regarding the prevention of corruption;

Developing corruption prevention measures particularly designed for children and adolescents, such as the “**BAK App**” or the “**BAK Game**”. As the development of character and moral values is not yet completed in adolescence, preventive measures are particularly effective and awareness of the phenomenon of corruption can be raised.

- 9 Please describe (cite and summarize) the measures/steps, if any, your country needs to take, together with the related time frame, to ensure full compliance with the chapters of the Convention that are under review, and specifically indicate to which articles of the Convention such measures would relate.

## II. Preventive measures

### 5. Preventive anti-corruption policies and practices

#### 2. Paragraph 1 of article 5

*1. Each State Party shall, in accordance with the fundamental principles of its legal system, develop and implement or maintain effective, coordinated anti-corruption policies that promote the participation of society and reflect the principles of the rule of law, proper management of public affairs and public property, integrity, transparency and accountability.*

**1520** Is your country in compliance with this provision?

**0** (Y) Yes

**1522**

- 1** Please describe (cite and summarize) the measures/steps your country has taken, if any, (or is planning to take, together with the related appropriate time frame) to ensure full compliance with this provision of the Convention.

#### **The Austrian National Anti-Corruption Strategy - Prevention**

The Austrian National Anti-Corruption Strategy (NACS), adopted by the Austrian Federal Government on 31 January 2018, provides the framework for all measures to prevent and combat corruption. It consists of two parts: Prevention and Prosecution. The NACS provides the strategic framework and defines basic principles and objectives. The Strategy also includes the binding implementation of corresponding measures contained in an action plan for the next two years drawn up by the Federal Chancellery and the Federal Ministries.

The NACS was developed under the direction of the Federal Ministry of the Interior, in particular the Federal Bureau of Anti-Corruption (BAK), and the Federal Ministry of Constitutional Affairs, Reforms, Deregulation and Justice, with the involvement of all relevant stakeholders from public administration, civil society, and business. For further information, see also the reply to Article 6 (1) or the BAK website ([www.bak.gv.at](http://www.bak.gv.at)). The BAK had a leading role in the development of the part of the Strategy relating to the prevention of corruption. The second part of the Strategy relates to prosecution and was developed under the coordination of the Federal Ministry of Constitutional Affairs, Reforms, Deregulation and Justice.

#### **Development of the prevention part**

The process of elaborating the NACS took about 18 months - from 2013 to 2014 - and consisted of a total of ten roundtables organized by the BAK. At these events, experts gave lectures and discussed selected topics in the field of corruption prevention. Strategies can only be successfully implemented in practice if as many actors as possible are involved in the preparatory phase. For this reason, the BAK called on experts and representatives from administration, business and civil society to join in the development of a strategy. The roundtables were attended by leading anti-corruption experts, high-ranking officials from the Austrian Federal Chancellery, all federal ministries, the Court of Audit, the regional courts of audit, the Association of Cities and Towns, the Association of Municipalities, the Main Association of Austrian Social Security Institutions, trade union representatives and experts in the fields of internal audit, personnel management, disciplinary matters and complaints management.

In line with the structure of the NACS, the action plan was drawn up in close cooperation with the

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BAK and other relevant ministries and departments. It has been approved by the Co-ordinating Body on Combating Corruption (KzK) and is divided into “Prevention” and “Prosecution” sections. The action plan includes individual measures and defines six areas of action in the field of prevention, in line with the NACS:

1. Integrity management - promoting behaviour of integrity
2. Compliance management for public administration
3. Reducing the risks of structural corruption
4. Promoting approaches to the prevention of corruption and taking concrete measures to that end
5. Raising public awareness
6. Awareness raising - training of particular target groups

The action plan for the NACS was adopted at a meeting of the Council of Ministers on 16 January 2019. It comprises measures in the field of prevention and prosecution which represent implementation goals set by the Federal Chancellery and the federal ministries for themselves. The aim is to implement the measures listed in the action plan in a binding manner or to initiate corresponding implementation steps at federal level between 2019 and 2020. In order to regularly supplement and update the action plan, it was conceived as a “living document”. Furthermore, some authorities (e.g. the Länder) and organizations have decided to voluntarily participate in the implementation of the NACS by developing an action plan of their own. The voluntary participants will adhere to the structure and measures described in the initial action plan for the NACS. Their action plan was published on 1 May 2019.

Furthermore, civil servants are obliged to obey to general official duties especially provided by § 43 of the Civil Servants Employment Act 1979 (Beamtendienstrechtsgesetz 1979 - BDG 1979, Federal Law Gazette No. 333/1979), in consideration of the general observance to the principles of the rule of law and in order to ensure the integrity, transparency and accountability of the civil service. In this context, they shall perform their official duties personally and conscientiously, with loyalty, dedication, impartiality and due regard to the law, using the means available to them. Civil servants shall consistently act in such a way as to maintain the public’s trust in the objective performance of their official duties. When performing their official duties, civil servants shall support and inform parties to an extent compatible with official interests and the impartial exercise of their office.

§ 43 BDG 1979 is also applicable to contractual employees via § 5 of the Act on Contractual Public Employees (Vertragsbedienstetengesetz 1948 - VBG, Federal Law Gazette No. 86/1948).

Breaches of these duties are prosecuted by disciplinary or sometimes even criminal law.

Please also see the information provided on Articles 7 and 8.

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- 1 Please provide examples of the implementation of those measures, including related court or other cases, available statistics etc.

#### **A.) Evaluation of the National Anti-Corruption Strategy (NACS) - Prevention**

Both action plans contain implementation steps according to the NACS for the years 2019 and 2020. The possible development of individual (internal) systems to monitor the implementation progress and to assess the impact and effectiveness of the measures taken is the responsibility of the

respective authority or organization.

The Co-ordinating Body on Combating Corruption coordinates a comprehensive (external) evaluation of the binding measures in the area of prevention and prosecution which is carried out every two years. The first evaluation is due to start at the end of 2020.

### **Impact of the Anti-Corruption Strategy**

The aim of the NACS is to increase and ensure integrity and transparency in administration, politics and business.

The strategy sets out the basic objectives and includes an indicative list of specific measures. The objectives are to be implemented on the basis of the action plans and will be evaluated. The NACS and the derived measures are divided into six areas of action with different objectives and priorities:

Promotion of measures to prevent corruption - Systematic exchange of best practices and new approaches between the public and private sectors, involving civil society; establishment of new communication platforms.

Compliance Management Systems (CMS) - Enhance implementation of CMS in public administration, systematize and further develop existing prevention measures, appoint integrity officers.

Reducing risks of structural corruption - Systematically identify and reduce risks and areas prone to structural corruption through risk analysis and control mechanisms.

Integrity management - Information, training and awareness-raising for/among public service members.

Public awareness - Promoting transparency and integrity through the intensive involvement of civil society in corruption prevention activities and cooperation with the media and business.

Training for specific target groups - Integration of corruption prevention and integrity issues into school and university curricula.

With regard to the impact and results of the implementation of measures in the field of integrity management, it is important to highlight the establishment of the Network of Integrity Officers (NIO), as it is a key element of the NACS. The BAK started to set up this network in 2016. The Network of Integrity Officers, consisting of representatives from public administration, state-owned enterprises and the education sector, promotes the exchange of experience and helps to create synergies on integrity issues. To date, more than 126 integrity officers from more than 60 entities have been trained in a one-week basic training course within the framework of the NIO. In addition, follow-up seminars and workshops were offered for specific target groups. In 2018, a ministry received the Integrity Award for a very innovative concept for raising awareness among new employees. The main task of the integrity officers is to support their entities in compliance and integrity issues. For further information on the BAK's NIO, see reply to Article 5, paragraph 2 and Article 7, paragraph 1 d.)

### **B.) Basic research of the BAK in the field of corruption prevention**

The BAK has the statutory mandate to analyse corruption phenomena, gather information on preventing and combating them and develop appropriate preventive measures.

In order to counteract the complexity and intricacy of the phenomenon of corruption with appropriate preventive measures, it is necessary to study the causes and backgrounds of corrupt behaviour.

In 2015/16, the BAK carried out its first research study on "Attitudes to corruption in the Austrian



police" in cooperation with the Hanover University of Applied Sciences and Arts and the Münster University of Applied Sciences.

The attitude of a person is a relevant indicator for predicting future behaviour, e.g. behaviour in ethical dilemmas or possible corrupt behaviour.

This first study measured attitudes towards corruption among approximately 1,700 police trainees and students of psychology and law from all over Austria. The "Hanover Corruption Scale 38" (HCS 38) served as a measuring instrument. Results can be found on the BAK's website, in the BAK Annual Report 2016 published on the BAK website and in other publications (including SIAK [Federal Police Academy] Journal 2/2017).

On the basis of the experience gained from this study, an Austrian version of the HCS 38 was conceived, taking into account Austria's linguistic characteristics. The HCS 38 Austria was used for the first time in the follow-up study "Attitudes to corruption", which was initiated by the BAK in 2018.

This follow-up study explores the attitudes to corruption among Austrian police trainees. The use of the instrument in this target group makes it possible to intensively address and raise awareness of corruption, particularly in the framework of police training (basic police training, PGA). Around 1,400 police trainees were surveyed in 2018. The results of the study are expected in 2019 and will form the basis for further research into corruption and the development of targeted prevention concepts.

The study was co-financed by the EU's Internal Security Fund (ISF) within the project "Analysis of corruption and integrity in Austria".

#### **Co-ordinating Body on Combating Corruption ("Koordinationsgremium zur Korruptionsbekämpfung"):**

In respect of a recommendation by GRECO, the Austrian Government decided on 29 January 2013 to establish the Co-ordinating Body on Combating Corruption ("*Koordinationsgremium zur Korruptionsbekämpfung*"). This body is composed of representatives of all federal ministries, the "Länder", the Austrian Association of Towns, Cities and Municipalities, as well as the Federal Chamber of Economy, representatives of the public service union and the union of municipal employees.

Furthermore, the Court of Auditors, the Central Public Prosecutor's Office for Combating Economic Crimes and Corruption (WKStA), the Federal Bureau of Anti-Corruption (BAK) and Transparency International - Austrian Chapter as well as representatives of the Austrian Bar Association and the Austrian Chamber of Notaries are represented in this committee.

The body convenes four times a year to exchange latest developments in national and international context as well as best practices in the field of combatting corruption. In addition, it aims to develop a national anti-corruption strategy and the update/review of the federal code of conduct for public service.

The Co-ordinating Body on Combating Corruption is established within and led by the Federal Ministry of Constitutional Affairs, Reforms, Deregulation and Justice (BMVRDJ). The Co-ordinating Body deals with

Information exchange regarding questions on combating corruption in Austria;

Monitoring the international developments in the field of prevention and combating corruption;

Mutual exchange of events with respect to prevention and combating corruption;

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Acting as a hub for efforts of the participants' efforts on prevention and combating corruption;

Guaranteeing a platform for establishing common approaches and aligning joint approaches with respect to international anti-corruption conventions, such as UNCAC, GRECO and OECD Working Group on bribery in international business transactions;

Developing a common approach for the National Anti-Corruption Strategy;

Enforcing the harmonization of the respective relevant ministry-specific and institutional competencies in the field of combating and preventing corruption;

Building a forum for discussion of most recent scientific approaches in the field of prevention of corruption;

Informing all representatives of national initiatives and strategies of other states;

Mutual information about prevention measures.

Recently, the following three milestones were reached:

National Anti-Corruption Strategy: The Co-ordinating Body on Combating Corruption has been working on the strategy since 2015 with the main goal to strengthen the integrity of public service, especially through establishing the Action Plan (see under 2.). The Strategy was approved by the Ministerial Council on 31 January 2018 in compliance with a GRECO-recommendation.

Action Plan: On 16 January 2019, the Ministerial Council decided upon a National Anti-Corruption Plan to establish specific measures for the federal administration for the next years. This action plan is based upon the preliminary work coordinated by the Co-ordinating Body on Combating Corruption and contains a catalogue of measures. In a second step, in May 2019 an additional anti-corruption plan was agreed upon, which addresses several other organisations/bodies in the private as well as the public sector, who voluntarily commit to these actions. The aim of these measures is to strengthen compliance and integrity and to raise awareness among the stakeholders.

Code of Conduct - „Die VerANTWORTung liegt bei mir“:

This code of conduct dates back to the year 2008 and was developed through common efforts by public service unions as well as regional governmental administrations aiming to develop and visualize the principles of preventing corruption. In November 2017, the Co-ordinating Body on Combating Corruption decided for the revision of these Guidelines. The BMVRDJ supported these efforts by coordinating the sub-working groups and providing logistics. After one year of intense work in five sub-working groups, the revised Code of Conduct is about to be published.

### 3. Paragraph 2 of article 5

2. Each State Party shall endeavour to establish and promote effective practices aimed at the prevention of corruption.

**1520** Is your country in compliance with this provision?

**0** (Y) Yes

**1522**

**1** Please describe (cite and summarize) the measures/steps your country has taken, if any, (or is planning to take, together with the related appropriate time frame) to ensure full compliance with this provision of the Convention.

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### **A.) Summary of compliance measures taken by the Austrian Ministry of the Interior (MoI)**

As part of a comprehensive Compliance Management System (CMS), the MoI promotes a ministry-wide "compliance culture" by creating compliance-relevant regulations, developing compliance management systems, establishing and defining corresponding structures and responsibilities, raising and strengthening awareness and communication as well as a clear commitment ("tone from the top").

As regards structures, integrity officers have been appointed within each directorate general as contact points for integrity promotion and corruption prevention issues.

Measures to promote a compliance culture include, in particular, individual advice and assistance to employees in the areas of compliance, integrity and corruption prevention through communication, provision and publication of appropriate information and materials such as fact sheets and forms on the intranet.

Examples include regulations, information and materials (forms, leaflets) on sponsoring, accepting gifts, secondary employment, dealing with club activities and social media.

Other current measures include the preparation and use of a declaration of ethics for all ministry employees and the discussion of compliance and anti-corruption issues in employee appraisals.

### **B.) Federal Bureau of Anti-Corruption (BAK) compliance**

Due to the change in the subdivision of business within the Federal Ministry of the Interior with effect from 1 September 2014, the BAK was assigned the task of replicating the complementary component of the MoI Compliance Management System in its own area. The implementation of the BAK's own compliance management system (CMS) was carried out as part of a project that was based on ISO 19600 "Compliance Management System" and ONR 192050 "Compliance Management Systems - Instructions and Procedures for Application". The aim of the project was to implement a CMS that records all compliance risks that affect the objectives, activities and requirements of the BAK. The basis for this was formed by the legal regulations, the BAK mission statement and the objectives defined in the strategy. The project started on 26 February 2015 and was completed at the end of June 2016.

As part of the project, all the rules (e.g. laws, guidelines, directives, etc.) that are binding on the BAK and all the rules to which the BAK has voluntarily committed itself (e.g. MoI Code of Conduct, BAK Value Board, etc.) were compiled first. In addition, all standardized and recurring work processes were recorded and presented in a consistent form. A comprehensive risk analysis was then carried out on the basis of this data. In doing so, the BAK was guided by the "Collection of standards on risk management - the most important standards and rules with a compact introduction to the subject". A risk data sheet was developed specifically for the conditions of the BAK. Individual risks were also assessed according to parameters developed specifically by and for the BAK. Finally, measures were developed to mitigate the risks identified.

The risk analysis was carried out in workshops attended not only by senior officials but also by as many other employees as possible from the organizational units concerned. The measures to be implemented were written down in a risk management plan and handed over to the respective supervisors as a written mandate from the Director of BAK. The CMS developed and implemented in this way is continuously monitored and evaluated at least once a year.

Finally, it is worth mentioning that on the occasion of this project eleven BAK employees successfully completed their training as certified risk managers according to ONR49003 at TÜV Austria.

The implementation of the CMS has primarily led to the acquisition of comprehensive knowledge of BAK's internal risks and has made it possible to work continuously and actively on the analysis and mitigation of these risks and the implementation of improvement measures. In addition, this has

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promoted awareness and discussion within the organization and created new certainty with regard to procedures and the applicable law.

Another effect was that through their active involvement in both risk and value management, the staff not only identified with the BAK-internal CMS, but also has put it into practice, which is essential for the sustainable success of a CMS.

### **C.) The BAK's corruption prevention activities - advisory services**

Compliance and corruption prevention advisory services are at the core of the BAK's prevention work. Prevention of compliance-related incidents generally means the prevention of unwanted behaviour. Corruption prevention, however, focuses on compliance with legal norms for the prevention of corruption offences in the stricter sense. It can be regarded as an integral part of compliance.

Compliance advisory services pursue the goal of implementing a compliance management system (CMS) to achieve compliance in an organization. The BAK advises organizations on how to establish compliance elements and merge them into an overall system. It also analyses CMSs and CMS elements that have already been set up.

The BAK's approach in this field is innovative. The contents of different standards for setting up and evaluating CMSs are brought together, and different methods are combined in such a way that they can best be applied in practice.

The systematic analysis of risk areas in an organization is paramount in corruption prevention advisory services. These corruption risk analyses are aiming to avoid or reduce damage. In addition to the set of rules of an organization, its structure and workflow are also examined. The organizational culture and the "human factor" are further key elements of the analysis.

Both advisory services are subject to the principles of the BAK's prevention work: equivalence, holism and adequacy. They are specifically tailored to the needs of public institutions with regard to compliance and corruption prevention. The target groups of both services are public service organizations or organizational units.

Consultations can be conducted on the basis of general considerations or of a specific event (e.g. a compliance or corruption incident). Depending on the interests of an organization and the precise objectives of the advisory services, the two different types can be combined.

Compliance analyses focus on the information provided about CMSs and CMS elements. Corruption prevention advisory services include the collection and analysis of information on the basis of a "mixed method" approach.

The BAK laid down its procedures in this field in two "Handbooks on advisory services". They contain the basics of the advisory services, the methods used and the advisory process.

In 2018, the BAK was providing compliance and/or corruption prevention advisory services for the Tyrolean Regional Government and, in the healthcare sector, for the Vienna Hospital Association (KAV) and the Austrian Workers' Compensation Board (AUVA).

### **D.) The BAK's Network of Integrity Officers (NIO)**

The BAK introduced the Network of Integrity Officers (NIO) in 2016 to further enhance the concept of integrity in Austria. In currently six basic training programs, staff members from all strata of civil service life in Austria were trained to become Integrity Officers: experts in issues of promotion of integrity, corruption prevention and compliance. Within their department/authority, they are now multipliers in the awareness-raising process and serve as contacts for inquiries regarding promotion of integrity, corruption prevention and compliance, for staff including senior officials.

The main goal of the BAK was reducing and preventing corruption by promoting integrity. The following tasks were defined for the Integrity Officers:

Contact persons for questions having regard to corruption prevention and promotion of integrity for both employees and management;

Providing management advice on the development and implementation of sector-specific anti-corruption measures (e.g. compliance program, codes of conduct, ethics guidelines, specialized education and training programs; developing and conducting corruption risk analyses);

Participation in the observation and evaluation of signs pointing to corruption and risk factors;

Multipliers in the awareness-raising process, training and anti-corruption training, as well as other awareness-raising activities.

#### **Compliance-Management-Strategy of the Federal Chancellery:**

The Federal Chancellery of Austria has established a compliance-management-office, which permanently takes measures to prevent corruption: A Compliance-Management-Strategy, a risk-analyses and a code of conduct. Main fields of work are also information and education in the field of the prevention of corruption.

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#### **1 Please provide examples of the implementation of those measures, including related court or other cases, available statistics etc.**

Please see answer to Article 5 para. 1 (3) on the Co-ordinating Body on Combating Corruption (“Koordinationsgremium zur Korruptionsbekämpfung”).

#### **The BAK’s Network of Integrity Officers (NIO):**

Currently, the 126 participants in the Network are from all Federal Ministries, regions, municipalities, various different universities, state-affiliated enterprises, the Austrian Association of Cities and Towns, and the Court of Audit.

All training courses are now co-financed by the EU’s Internal Security Fund (ISF); however, this financial support will end in 2020. This means that there might be an upcoming challenge concerning funding. To handle this challenge, NIO was included in the National Anti-Corruption Strategy that was enacted by the Austrian government.

Another challenge is to cover the demand for basic training programs by all Austrian public institutions and to handle the Network which is still in the expansion phase. To cope with that issue a public website has been created and annual meetings continue to take place.

To keep all the partners interested, in 2018, an Integrity Award was granted to the institution with the most innovative efforts in their fight for integrity. Public sector employees who wish to become part of the NIO are trained to become experts in integrity promotion and corruption prevention. As multipliers, they are required to make this know-how available in their area of responsibility. Integrity Officers are expected not only to provide general advisory services, but also to provide qualified information on complex issues relating to corruption risks and preventive measures. In addition, they offer and promote training and awareness-raising events as well as other integrity measures (e.g. corruption risk analysis).

Furthermore, the follow-up and network meetings offered by NIO are intended to ensure the regular exchange of experience between Integrity Officers. The network meetings, which are offered three to four times a year by the BAK, are highly interactive and give network participants sufficient space to share their experiences with the implementation of activities to improve integrity. The

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uncomplicated contact and the provision of materials on the network's internal online platform allow the network participants not to "reinvent the wheel" every time, but to rely on NIO colleagues to provide preliminary work and considerations. This regular exchange is intended to make more targeted use of public resources for the implementation of integrity promotion measures and to make better use of existing synergies.

In the fight against corruption, the independent Austrian Court of Audit relies upon effective preventive measures, standards and procedures. Already in 2015/16, the "Guideline for Auditing Corruption Prevention Systems (CMS)" was published to enhance transparency and proper management of public affairs and prevent corruption. This Guideline will be amended soon with more practical examples to support the auditors. Due to its publication, the Guideline supports also the audited bodies as a code of practice in the establishment of Corruption Prevention Systems.

#### 4. Paragraph 3 of article 5

3. Each State Party shall endeavour to periodically evaluate relevant legal instruments and administrative measures with a view to determining their adequacy to prevent and fight corruption.

**1520 Is your country in compliance with this provision?**

**0 (Y) Yes**

**1522**

**1 Please describe (cite and summarize) the measures/steps your country has taken, if any, (or is planning to take, together with the related appropriate time frame) to ensure full compliance with this provision of the Convention.**

As described in the response to Article 5, paragraph 1, both action plans of the National Anti-Corruption Strategy (NACS) contain implementation steps according to the NACS for the years 2019 and 2020. The possible development of individual (internal) systems to monitor the implementation progress and to assess the impact and effectiveness of the measures taken is the responsibility of the respective authority or organization. A comprehensive (external) evaluation of the binding measures in the area of prevention and prosecution, which is carried out every two years, is coordinated by the Co-ordinating Body on Combating Corruption. The first evaluation is due to start at the end of 2020.

As described in the response to Article 5, paragraph 2, the Compliance Management System of the Federal Bureau of Anti-Corruption (BAK) is continuously monitored and evaluated at least once a year.

The Federal Act on the Establishment and Organization of the Federal Bureau of Anti-Corruption (BAK-G) is updated and further developed on certain occasions.

The Austrian performance management approach is designed to regularly monitor relevant legal instruments as well as administrative measures. Activities that are supposed to prevent and fight corruption can be taken into account in the form of outcome objectives, key performance indicators and global budget activities which are the most relevant and highest aggregated elements of this instrument.

Moreover, the general code of conduct „Die VerANTWORTung liegt bei mir“ ([https://www.oeffentlicherdienst.gv.at/moderner\\_arbeitgeber/korruptionspraevention/infos/VerhaltenskodexDeutsch\\_2012\\_druck.pdf?3shqic](https://www.oeffentlicherdienst.gv.at/moderner_arbeitgeber/korruptionspraevention/infos/VerhaltenskodexDeutsch_2012_druck.pdf?3shqic)) („The RESPONSibility rests with me“ ([https://www.oeffentlicherdienst.gv.at/moderner\\_arbeitgeber/korruptionspraevention/infos/VerhaltenskodexEnglish\\_2012\\_druck.pdf?4ppzt1](https://www.oeffentlicherdienst.gv.at/moderner_arbeitgeber/korruptionspraevention/infos/VerhaltenskodexEnglish_2012_druck.pdf?4ppzt1))“) that defines standards for public servants for their daily professional activities and explains examples of required behaviours, is currently under

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review. The reprint of the code of conduct shall include new examples building upon sensitive relevant cases.

The existing code of conduct for all public officials is available in English via the following link:  
<[http://oeffentlicherdienst.intra.gv.at/moderner\\_arbeitgeber/korruptionspraevention/infos/Verhalten\\_skodexEnglish\\_\\_2012\\_druck.pdf?4ppzt1](http://oeffentlicherdienst.intra.gv.at/moderner_arbeitgeber/korruptionspraevention/infos/Verhalten_skodexEnglish__2012_druck.pdf?4ppzt1)>

For more information, please see answers on Article 8.

The Austrian Court of Audit held audits of Corruption Prevention Systems with the aim to evaluate instruments and administrative measures at four Federal Ministries (2016) and three larger Cities (2019) aimed at determining their adequacy to prevent and fight corruption periodically.

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**1 Please provide examples of the implementation of those measures, including related court or other cases, available statistics etc.**

It is part of the strategy of the compliance-management-office of the Federal Chancellery of Austria to evaluate periodically the measures taken to prevent corruption.

## 5. Paragraph 4 of article 5

4. States Parties shall, as appropriate and in accordance with the fundamental principles of their legal system, collaborate with each other and with relevant international and regional organizations in promoting and developing the measures referred to in this article. That collaboration may include participation in international programmes and projects aimed at the prevention of corruption.

**1520 Is your country in compliance with this provision?**

**0 (Y) Yes**

1522

**1 Please describe (cite and summarize) the measures/steps your country has taken, if any, (or is planning to take, together with the related appropriate time frame) to ensure full compliance with this provision of the Convention.**

Austria is actively participating in the UN's anti-corruption activities and is proud to host the United Nations Office on Drugs and Crime (UNODC) in Vienna. This enables Austria to take upon a strategic leading role in the international efforts to combat corruption. In line with this, Austria had always supported the idea of establishing a legally binding universal anti-corruption instrument and became one of the first signatories to the United Nations Convention against Corruption (UNCAC).

### IACA

Austria is a party of the International Anti-Corruption Academy (IACA) headquartered in Laxenburg, Lower Austria. IACA is an international organization dedicated to overcoming current shortcomings in knowledge and practice in the field of anti-corruption and seeking to empower professionals. The Academy offers standardized and tailor-made trainings, academic degree programmes, opportunities for dialogue and networking and serves as an anti-corruption think-tank. The Republic of Austria, together with UNODC, INTERPOL and OLAF was one of the initiators of IACA and ever since its foundation, Austria has substantially supported IACA with generous financial contributions and rent-free premises used for IACA's campus south of Vienna.

### OECD

Austria is a party to the OECD Anti-Bribery Convention. The convention establishes legally

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binding standards to criminalise bribery of foreign public officials in international business transactions and provides for related measures that make this effective. It is the first and only international anti-corruption instrument focused on the “supply side” of the bribery transaction. Monitoring of implementation and enforcement of the OECD Anti-Bribery Convention take place in successive phases through a rigorous peer-review monitoring system and is conducted by the OECD Working Group on Bribery in International Business Transactions. Currently, Austria is participating in the Working Group’s fourth evaluation round.

### **OSCE**

Austria is an active member and supporter of the OSCE with its secretariat located in Vienna. In terms of combatting corruption, the OSCE develops knowledge materials and organizes training on international anti-corruption commitments and good practices, including prevention of corruption, asset declaration regimes and asset recovery, codes of conduct for civil servants and anti-corruption institutional structures. It pays attention to both centralised and local levels of government. Aside from participating in further OSCE anti-corruption activities, Austria co-financed the OSCE-supported workshop on anti-corruption review of draft legislation concluded in Bishkek, Kyrgyzstan in 2018.

### **GRECO**

On 1 December 2006, Austria became a member of the Group of States against Corruption within the Council of Europe (GRECO). In addition, Austria ratified the Criminal Law Convention against Corruption (ETS NO. 173) and the Civil Law Convention on Corruption (ET NO. 174). GRECO monitors all its members through a process of mutual evaluation and peer pressure. The review process is based on standards set by GRECO and legal instruments adopted in the framework of the Council of Europe. After the recent fourth evaluation round, Austria is expected to be evaluated in this fifth evaluation round in 2021/2022.

### **International and regional cooperation activities by the Federal Bureau of Anti-Corruption (BAK):**

Pursuant to § 4 para. 2 of the Federal Act on the Establishment and Organization of the Federal Bureau of Anti-Corruption (BAK-G), the BAK is responsible for cooperation with foreign authorities and international institutions in the prevention of and fight against corruption in general, and, in particular, exchange of experience in this area. As part of its mandate, the BAK considers bilateral and international cooperation as an essential component of corruption prevention. To this end, the Bureau regularly hosts delegations from authorities of various countries and gives lectures on its activities in the field of corruption prevention, the latter often in cooperation with international bodies dealing with anti-corruption issues, such as the United Nations Office on Drugs and Crime (UNODC), the International Anti-Corruption Academy (IACA), the Organisation for Security and Cooperation in Europe (OSCE) etc.

The BAK has also concluded a number of Memoranda of Understanding (MoUs) with certain authorities in other countries worldwide. Such agreements allow for more effective and better cooperation between the two states in preventing and combating corruption.

In addition, the BAK also plays an active role in regional anti-corruption networks such as the **European Partners against Corruption (EPAC)** and the **European contact-point network against corruption (EACN)**. Following the election of the Director of the BAK as the new EPAC/EACN President in November 2016, the EPAC/EACN Secretariat was handed over from the IACA to the BAK. The two networks are independent forums for practitioners in the fields of anti-corruption and police supervision. While EPAC was established in 2001, EACN was officially established in 2008 by a decision by the Council of the European Union based on the existing structures of EPAC.

EPAC/EACN comprises some 100 anti-corruption authorities (ACAs) and police oversight bodies (POBs) from EU Member States and Council of Europe member countries, as well as OLAF (European Anti-Fraud Office) and two observers. Together, EPAC and EACN provide a platform for practitioners to exchange expertise and information, support each other and work together across national borders on a practical and professional level. In line with their respective



constitutions, EPAC and EACN also endorse international legal instruments and assist other institutions in creating transparent and efficient mechanisms. Their main objective is to contribute to police oversight and the global fight against corruption through dialogue and joint efforts. Once a year, the Annual Professional Conference (including the General Assembly) takes place in a different member country according to a rotation system, where a jointly agreed anti-corruption declaration is also adopted. Furthermore, the networks include ad hoc working groups (WGs) that work on specific topics and projects and are set up for a specific period of time.

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- 1 Please provide examples of the implementation of those measures, including related court or other cases, available statistics etc.**

**Examples of the implementation of measures by the BAK:**

**- Bilateral cooperation of the BAK in connection with the National Anti-Corruption Strategy (NACS)**

The BAK also hosted several bilateral delegation visits related to the NACS, e.g., on 27 and 28 October 2015, a delegation from the Department of Criminal Policy of the Finnish Ministry of Justice paid an official visit to the BAK. The main topics addressed in this meeting were the development process and implementation of the Austrian strategy as well as the involvement of both the public sector and civil society. Furthermore, an informal meeting between a member of the interdepartmental working group of Anti-Corruption (IDAG) of Switzerland and members of the BAK took place on 15 November 2018. The intention of the meeting was to share information and experience on the Austrian NACS and its development.

Finally, on 11 and 12 September 2018, a 12-member delegation from Kosovo visited the BAK. The delegation was made up of representatives of the Anti-Corruption Agency, the Kosovo Police, the Ministry of Internal Affairs and the Ministry of European Integration. The purpose of the visit was to gain an insight into Austrian standards and practices in the fields of preventing and combating corruption, including the National Anti-Corruption Strategy of Austria.

**- EPAC/EACN**

Until recently, EPAC/EACN had two working groups on corruption prevention, one of which was completed in 2017 and the other one is ongoing.

a.) **WG "Risk Management and Risk Analysis"**: This working group was chaired by the BAK and aimed at the development of risk management and risk analysis guidelines for ACAs and POBs. In this context, from April to September 2017, two working group meetings and an additional trilateral meeting were held in Austria, Moldova and Slovenia. Several written contributions have also been considered.

This guideline aims to support EPAC/EACN members, both ACAs and POBs, in combating corruption and promoting compliance issues and to foster the development of a common risk policy among EPAC/EACN members. This guideline can be implemented in two ways, either by:

establishing a comprehensive risk management system to increase the effectiveness of ACAs and POBs and to optimize the achievement of their objectives (internal approach), or by contributing to the performance of the task to be carried out by ACAs and POBs, i.e. the prevention of and fight against corruption, by identifying, analysing and evaluating corruption risks (external approach).

Several text passages of the Lisbon Declaration, adopted at the 17th Annual Professional Conference and General Assembly in Lisbon, refer to the guideline and the achievements of the working group:

“are committed to disseminate the guideline among relevant national bodies”;

... “acknowledge that the guideline contributes to creating a common basis and framework of promoting integrity of public organizations”;

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...“invite member states to share their experiences in using guidelines with other EPAC/EACN members”.

b.) **WG “EU-Integrity”**: This working group was set up during the 18th EPAC/EACN Annual Professional Conference and General Assembly in Rust, Austria, in October 2018. The WG had been initiated by the BAK and is being co-chaired by Germany (State Criminal Police Office North Rhine-Westphalia - LKA), France (Agence Française Anticorruption - AFA), Romania (Ministry of Internal Affairs’ Anticorruption General Directorate - DGA) and Austria (Federal Bureau of Anti-Corruption - BAK). Its overall objectives are:

prevent corruption by promoting integrity in all sectors across the EU

create synergies and adopt diversified approaches to promote integrity

promote public-private partnerships

organize practice oriented meetings

Each authority will be hosting one sub-working group (SWG) with the focus on a particular corruption prevention aspect. The main topic of SWG 1 is the “Support and protection of whistle-blowers” and will be hosted by LKA NRW/Germany. SWG 2 will be organized and hosted by AFA/France and deals with “Interagency cooperation and common standards for its improvement”. The third SWG is based on “Educational and value management measures” and will take place in Romania organized by DGA. The contents of the fourth SWG are “Integrity and anti-corruption standards”. The first meeting of this SWG took place in May 2019, in Vienna, Austria. Its objectives are to share views and experiences, develop and agree on common standards and strategies as well as common terminology and definitions of relevant terms related to integrity, and to develop an analysis framework for integrity self-assessment.

#### **OECD Working Group on Bribery:**

The Federal Ministry for Constitutional Affairs, Reforms, Deregulation and Justice (BMVRDJ) is an active member of the main anti-corruption convention bodies, especially in the OECD Working group on bribery in international business transactions as well as in The Group of States against Corruption - GRECO. Representatives of the Federal Ministry for Constitutional Affairs, Reforms, Deregulation and Justice actively participate in evaluations as well as in the periodic meetings of these bodies.

### **6. Technical Assistance**

The following questions on technical assistance relate to the article under review in its entirety.

1529

- 1 Please outline actions required to ensure or improve the implementation of the article under review and describe any specific challenges you might be facing in this respect.**

1530

**Do you require technical assistance for the implementation of this article? If so, please specify the forms of technical assistance that would be required. For example:**

- 0 (NO) No assistance would be required**

1531

- 1 Is any technical assistance already being provided to you? If so, please provide a general description of the nature of the assistance, including donor information.**

### **6. Preventive anti-corruption body or bodies**

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## 7. Paragraph 1 of article 6

1. Each State Party shall, in accordance with the fundamental principles of its legal system, ensure the existence of a body or bodies, as appropriate, that prevent corruption by such means as:
- (a) Implementing the policies referred to in article 5 of this Convention and, where appropriate, overseeing and coordinating the implementation of those policies;
  - (b) Increasing and disseminating knowledge about the prevention of corruption.

**1520** Is your country in compliance with this provision?

**0** (Y) Yes

**1522**

- 1** Please describe (cite and summarize) the measures/steps your country has taken, if any, (or is planning to take, together with the related appropriate time frame) to ensure full compliance with this provision of the Convention.

**As to Article 6, paragraph 1 a.)**

**Description of the Federal Bureau of Anti-Corruption (BAK) and its mandate**

The BAK was established with the entry into force of the Federal Act on the Establishment and Organization of the Federal Bureau of Anti-Corruption (BAK) as of 1 January 2010.

In accordance with § 1 BAK-G, the BAK is an institution of the Austrian Federal Ministry of the Interior. Organizationally speaking, it is, de jure, established outside the Directorate-General for Public Security and has nationwide jurisdiction in

the prevention of and the fight against corruption,

the close cooperation with the Central Public Prosecutor's Office for Combating Economic Crimes and Corruption (WKStA) and

security police and criminal police cooperation with foreign and international anti-corruption institutions.

Corruption is a complex phenomenon, which has to be tackled in a holistic way. According to its legal mandate, the BAK follows a four-pillar approach:

Prevention - includes, inter alia, the analysis of corruption phenomena and the development of adequate preventive measures.

Education - through information transfer as well as educational and awareness raising campaigns.

Law enforcement - i.e. security police and criminal police investigations.

Cooperation - with national and international institutions working in the field of preventing and combating corruption, as well as exchange of best practices.

With particular regard to the prevention of corruption, the BAK has a comprehensive legal mandate to analyse corruption phenomena and prevent them, which is also enshrined in its legal basis. According to § 4, paragraph 3, of the BAK-G, the BAK shall analyse corruption phenomena, gather information on preventing and combating them and develop appropriate preventive measures. In this context, the BAK is responsible for strengthening the willingness and abilities of individuals as well as territorial communities or authorities to obtain knowledge about measures for the prevention of corruption and promotion of integrity and, accordingly, to develop an awareness of

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this issue.

From the organizational point of view, the Bureau is divided into three departments:

Department 1 - Resources, Support and Legal Affairs

Department 2 - Prevention, Education and International Cooperation

Department 3 - Operational Service

For the BAK's role regarding the development and implementation of the National Anti-Corruption Strategy (NACS), please see reply to Article 5, paragraph 1.

**As to Article 6, paragraph 1 b.)**

**A.) Brief description of the compliance structures within the Federal Ministry of the Interior (MoI)**

Compliance is integrated into the organizational structure of the MoI as follows: Through the institutionalization of a Compliance Officer, the Chief Compliance Officer (CCO), as well as a Compliance Officer in the Central Office, the decentralized Compliance Officers in the Regional Police Offices (plus District Officers in the Region of Burgenland), the Federal Police Academy (BIZ/SIAK) and Federal Office for Immigration and Asylum (BFA) as well as the Integrity Officers of the five Directorates General at the MoI.

Cooperation and coordination also takes place with the BAK, the internal audit department and the disciplinary department of the Ministry of the Interior.

Compliance functions are also anchored in the organization in the areas of procurement, human resources development, training and further education, and quality management.

Incidentally, all senior officers at the MoI perform compliance tasks.

**B.) The BAK's Network of Integrity Officers (NIO)**

Regarding the Network of Integrity Officers and its role as multipliers of corruption prevention knowledge, see response to Article 5, paragraphs 1 and 2 and Article 7, paragraph 1 d.).

**C.) The BAK's System of Knowledge Disseminators - Corruption Prevention Officers (CPOs)**

**In general**

The Federal Bureau of Anti-Corruption (BAK) has set up and implemented a multiplier system (train-the-trainer model) within the Ministry of the Interior by deploying corruption prevention officers (CPOs). The aim is to expand educational measures in the field of corruption prevention while at the same time ensuring uniform quality standards. The resulting greater consideration of regional circumstances through the deployment of corruption prevention officers contributes significantly to raising awareness in the area of preventing and combating corruption.

The multiplier system is regulated by a guideline issued by the Federal Ministry of the Interior (Ref. no.: BMI-EE1500/0020-IV/BAK/2.2/2018) and laid down in law.

**Mission and tasks**

In principle, corruption prevention officers are deployed within the scope of action of the respective competent authority and exclusively under the direction and coordination of the BAK. Such coordination is carried out in consultation with the respective competent authority.

To ensure uniform quality standards in the area of corruption prevention and education, the BAK carries out the following measures in particular:

Nationwide introduction and development of a multiplier system (Train-The-Trainer model) for corruption prevention officers

Selection and training of suitable staff to become corruption prevention officers in coordination with the relevant departments of the MoI

Administration of the staff pool of corruption prevention officers

Coordination and management of lecturing activities, training and information events

- Ongoing communication with the corruption prevention officers and the corresponding recipients of their services
- Fulfilling the need for coordination and networking with the Chief Compliance Officer of the MoI and the Compliance Officers (COs) of the regional police headquarters
- Provision of specialist content (in particular lecture materials)
- Service for corruption prevention officers (provision of various information material, updates, etc.)
- Evaluation and further development of all measures taken in this context with the involvement of specialist departments of the Federal Ministry of the Interior
- Coordination and implementation of e-learning measures in cooperation with the Federal Police Academy (SIAC) (blended learning)
- The BAK is exclusively responsible for establishing cooperation in the context of anti-corruption education (e.g. with other organizational units of the MoI).

1525

**1 Please provide examples of the implementation of those measures, including related court or other cases, available statistics etc.**

**The BAK's Network of Integrity Officers (NIO)**

Regarding the Network of Integrity Officers and its role as multipliers of corruption prevention knowledge, see response to Article 5, paragraphs 1 and 2 and Article 7, paragraph 1 d.).

**The BAK's System of Knowledge Disseminators** - Training and further qualification of Corruption Prevention Officers (CPOs)

Training for corruption prevention officers is provided centrally by the BAK. The professional standards and content of the training are also determined by the BAK.

In addition, the BAK regularly organizes corruption prevention conferences which serve to define and (if necessary) adapt professional standards, to set priorities in corruption prevention work and for training measures, to transfer knowledge, to exchange experience and coordinate, and to coordinate corruption prevention-related issues between the Chief Compliance Officer of the MoI (CCO), the Compliance Officers of the Regional Police Headquarters (COs), the corruption prevention officers and the BAK.

The Austrian Court of Audit as supreme audit institution of Austria is subordinate only to the Austrian Parliament based on a profound legal basis at constitutional law level. This basis is in line with the "Lima Declaration of Guidelines on Auditing Precepts". The Declaration of Lima, which was adopted by the IX<sup>th</sup> International Congress of INTOSAI in Lima in 1977, is considered as the Magna Charta of government audit and defines the prerequisites for its independent and effective functioning. The Austrian Court of Audit acts functionally and organizationally independent.

The Austrian Court of Audit relies upon a multi-pillar and comprehensive approach in the fight against corruption: In addition to the traditional pillar "repression of corruption" by the law enforcement agencies, the second pillar "prevention of corruption" has the main priority in addition to the third pillar "education", e.g. lectures or seminars.

The fourth pillar "cooperation at national and international level", e.g. within the INTOSAI Working Group on the Fight against Corruption and Money Laundering, complements the holistic approach.

The establishment of a special Department for Anti-Corruption, Compliance and Risk Management within the Court of Audit in 2018 demonstrates the importance to prevent corruption by implementing and coordinating anti-corruption policies and increasing and disseminating knowledge about the prevention of corruption.

## 8. Paragraph 2 of article 6

2. Each State Party shall grant the body or bodies referred to in paragraph 1 of this article the necessary independence, in accordance with the fundamental principles of its legal system, to enable the body or bodies to carry out its or their functions effectively and free from any undue influence. The necessary material resources and specialized staff, as well as the training that such staff may require to carry out their functions, should be provided.

1520 Is your country in compliance with this provision?

0 (Y) Yes

1522

- 1 Please describe (cite and summarize) the measures/steps your country has taken, if any, (or is planning to take, together with the related appropriate time frame) to ensure full compliance with this provision of the Convention.

**Independence and autonomy of the Federal Bureau of Anti-Corruption (BAK):** According to § 1 of the Federal Act on the Establishment and Organization of the Federal Bureau of Anti-Corruption (BAK-G), the Federal Bureau of Anti-Corruption is an institution of the Austrian Federal Ministry of the Interior (MoI) outside the Directorate General for Public Security. In organizational terms, this means that it is established outside “Sektion” II (Directorate-General for Public Security) and is thus separated from the hierarchy of the Austrian police.

In addition, according to § 7 BAK-G, instructions to the BAK on the investigation of a specific case must be issued in writing and must be substantiated. An oral instruction given in advance for special reasons, in particular in the event of imminent danger, must be given also in writing as soon as possible.

**Procedure for appointing the head of the BAK and for recruiting and selecting specialized staff:** Information on the organization of the BAK is provided in § 2 BAK-G:

*§2 (1) The BAK is headed by a director. In the event of the director's absence, his duties are to be performed by a deputy.*

*(2) Director and deputy are appointed for a period of five years by the Federal Minister of the Interior after consultation with the presidents of the Constitutional Court, the Administrative Court and the Supreme Court. The term of office shall be renewable.*

*(3) A person may only be appointed as director or deputy director if he has special knowledge as well as national and international experience in the field of prevention of and fight against corruption. Furthermore, a person may only be appointed as director if he has been employed for at least five years in an occupation requiring a degree in Law or Economics, and as deputy director if he has been employed for at least three years in such occupation.*

*(4) A person may not be appointed as director or deputy director if he is a member of the federal government, a government of a Land, or a general representative body, or if he has held one of these positions in the previous six years.*

*(5) For the selection of the other employees of the BAK, account should be taken of whether they have the legal and other knowledge, skills and aptitudes required to fulfil the tasks of the specific post, as well as sufficient relevant work experience. Prior to their employment, director and deputy shall be consulted.*

*(6) Director and deputy are not permitted to engage in any gainful outside employment with the exception of publications and teaching activities.*

Jobs for prevention and education staff are awarded on the basis of the 1989 Tender Act and the

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Equal Treatment Act. The supervisory authority in the MoI prepares enquiries for interested parties for vacant positions in corruption prevention. The incoming applications are carefully examined and the applicants are invited to hearings in the presence of a head of department and the responsible head of unit.

When appointing prevention staff, the Director of the BAK and his deputy must be heard by the supervisory authority in accordance with § 2 paragraph 5 BAK-G. The Director and his deputy can thus give their assessment of the suitability of a candidate. If the Director and his deputy were not questioned, the entrustment by the supervisory authority would be null and void.

There is the possibility of taking on administrative trainees. After a three-month probationary period, the administrative traineeship may be extended to a total of twelve months.

#### • **Mandatory and optional training requirements for BAK staff**

New employees are required to complete the eLearning module "Criminal Law on Corruption".

Prevention staff attend advanced training courses at the Federal Police Academy (SIAG) and the Federal Academy of Public Administration (VAB).

In-house training courses are offered for prevention employees (e.g. compliance).

Employees are awarded non-binding certifications for compliance management, risk management and project management.

Once a year, a training week is organized for new employees in the area of anti-corruption, during which lectures are held on criminal law on corruption.

#### • **Procedures for ensuring the allocation of necessary material resources to the BAK**

Austria has fundamentally changed its budgetary law since 2013; this reform has strengthened budget autonomy and the amounts laid down in the Federal Financial Framework Act are binding (upper limits must be observed, but more flexible within a lower limit). Annual adjustments to the forecasts for the next four years can be made in response to new projects, thus enabling medium-term budget planning. The BAK has its own detailed budget (no. 11040200) in subdivision 11 (Interior). The BAK can dispose of this detailed budget. The amount of the available funds is decided by the Austrian Parliament in the Finance Act for the respective year.

In addition, see also the answers under Article 5.

#### **Measures by the Austrian Court of Audit:**

The Austrian Court of Audit disposes of its own budget and selection of specialized staff based on the Austrian Constitution (Article 121 and 122 of the Austrian Constitution). Every staff member of the Austrian Court of Audit and the Audit Courts of the *Länder* has to graduate in the subject "Prevention of Corruption" as part of the compulsory basic training on academic level.

The Austrian Court of Audit is independent in drafting its annual Audit Plan as well as in conducting the audits. The National Parliament can also entrust the Austrian Court of Audit with audits and thereby limit its resources for independent auditing. A minority of the National Council (Lower House of the Austrian Parliament) can entrust the Court of Audit with a maximum of three audits at the same time. The majority of the National Council can entrust the Austrian Court of Audit with an unlimited number of audits (Article 126b of the Austrian Constitution and Article 99 of the Federal Law on the Rules of Procedure of the National Council 1975).

Besides, the President of the Austrian Court of Audit can be dismissed by simple majority of the National Council without giving reasons (Article 123 of the Austrian Constitution).

1525

- 1 Please provide examples of the implementation of those measures, including related court or other cases, available statistics etc.

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### Implementation of measures regarding the effectiveness of the BAK's performance under the aspect of material resources and specialized staff

**a.) Staff:** The BAK has 129 employees as of 1 July 2019, ten of whom are on maternity leave or working in other organizational units. On 1 July 2019, 21 persons are active in the Prevention, Education and International Cooperation Department. The Unit for Prevention and Basic Research (BAK/2.1) has six staff members as of 1 July 2019. The Unit for Education (BAK/2.2) also has six staff members as of 1 July 2019.

An annual demand and development plan is prepared, which represents the strategic further development and the necessary personnel resources. Based on this planning, appropriate personnel measures are taken by the supervisory authority.

**b.) Budget:** As shown in the table, budget resources have increased since 2014 and the implementation of projects and activities has been consistently assured.

Budget - Austrian Federal Bureau of Anti-Corruption			
Expenditure	Expenditure	Thereof personnel	Thereof non-staff expenses
2018 - no annual accounts online yet - internal data	9,375,397.78	8,169,728.44	1,205,669.34
2017, EURO	9,529,298.15	8,051,763.94	1,477,534.21
2016, EURO	8,814,625.24	7,629,016.37	1,185,608.87
2015, EURO	8,469,926.92	7,387,394.05	1,082,532.87
2014, EURO	7,768,703.47	6,903,624.24	865,079.23

All expenditure not attributable to staff expenditure is summarized under the heading of non-staff expenses. The efficiency of the use of funds is measured, among other things, by impact targets. The impact target published by the BAK in the budget report and the associated indicator is as follows: The total number of participants in BAK lecture activities (MoI internal lectures, lectures in MoI basic training, external lectures) is at least 17,000 hours and was exceeded in 2016 with 18,889 participant hours. Examples of non-staff expenses include consumables, spare parts, software, repairs, training, contracts for work, etc.

#### Ensuring the implementation of various measures

*Planning and implementation of measures and projects:* The individual departments submit their planned measures including cost estimates at regular intervals. This requirement, together with the contractual obligations (e.g. leasing costs, licence agreements, personnel expenses), results in the BAK's budget requirements.

*Ensuring trouble-free and efficient performance of services:* The employer provides employees with all the resources they need for their work and also ensures that the workplace is ergonomically designed. The necessary technical aids, such as computers, mobile phones and the like, are regularly serviced or replaced if necessary. In 2018, an extensive refurbishment was carried out on the premises of the Federal Bureau and a number of rooms were added in order to enable the staff to work in a disruption-free and focused manner.

*Training for employees:* The training for employees is provided by both private sector providers and public institutions in Austria and abroad. In 2018, the costs for this amounted to approximately € 50,000.

#### Annual reports:

By publishing the annual accounts of the federal government, Austrian citizens and all other interested parties are able to view the expenses of the federal administration and also the details of the BAK. All reports are published on the website of the Court of Audit. The Federal Finance Act, which is adopted annually, is also published following a decision by the National Council.



## 9. Paragraph 3 of article 6

3. Each State Party shall inform the Secretary -General of the United Nations of the name and address of the authority or authorities that may assist other States Parties in developing and implementing specific measures for the prevention of corruption.

**1520** Is your country in compliance with this provision?

☒ (Y) Yes

**1528**

**1** Has your country provided the information as prescribed above? If so, please also provide the appropriate reference.

The Federal Act on the Establishment and Organization of the Federal Bureau of Anti-Corruption (BAK-G) [https://www.bak.gv.at/en/101/files/Federal\\_Act\\_on\\_the\\_Establishment\\_and\\_Organization\\_of\\_the\\_Federal\\_Bureau\\_of\\_Anti\\_Corruption\\_Version\\_August\\_2017.pdf](https://www.bak.gv.at/en/101/files/Federal_Act_on_the_Establishment_and_Organization_of_the_Federal_Bureau_of_Anti_Corruption_Version_August_2017.pdf), which entered into force on 1 January 2010 and was last amended by Federal Law Gazette I 101/2017, forms the legal basis for the Federal Bureau of Anti-Corruption (BAK). With the approval of this Federal Act, Austria fulfils the international requirements and obligations for the establishment of independent national anti-corruption bodies. In accordance with Articles 6 and 36 of the United Nations Convention against Corruption (UNCAC) call on the States Parties to establish such authorities. The BAK is thus both a preventive body in accordance with Article 6 and a law enforcement authority in accordance with Article 36 of the UNCAC. Further information can be found on the BAK website (<https://www.bak.gv.at/>).

Chair of the Co-ordinating Body on Combating Corruption is Dr. Christian Manquet, head of the substantial criminal law department at the Federal Ministry of Constitutional Affairs, Reforms, Deregulation and Justice (BMVRDJ).

If you wish to liaise with this Anti-Corruption Body, please contact the e-mail addresses [Christian.Manquet@bmvrjdj.gv.at](mailto:Christian.Manquet@bmvrjdj.gv.at)  
[Caroline.Bacher@bmvrjdj.gv.at](mailto:Caroline.Bacher@bmvrjdj.gv.at)  
[team.s@bmvrjdj.gv.at](mailto:team.s@bmvrjdj.gv.at)

## 10. Technical Assistance

The following questions on technical assistance relate to the article under review in its entirety.

**1529**

**1** Please outline actions required to ensure or improve the implementation of the article under review and describe any specific challenges you might be facing in this respect.

**1530** Do you require technical assistance for the implementation of this article? If so, please specify the forms of technical assistance that would be required. For example:

☒ (NO) No assistance would be required

**1531**

**1** Is any technical assistance already being provided to you? If so, please provide a general description of the nature of the assistance, including donor information.

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## 7. Public sector

### 11. Paragraph 1 of article 7

1. Each State Party shall, where appropriate and in accordance with the fundamental principles of its legal system, endeavour to adopt, maintain and strengthen systems for the recruitment, hiring, retention, promotion and retirement of civil servants and, where appropriate, other non-elected public officials:

- (a) That are based on principles of efficiency, transparency and objective criteria such as merit, equity and aptitude;
- (b) That include adequate procedures for the selection and training of individuals for public positions considered especially vulnerable to corruption and the rotation, where appropriate, of such individuals to other positions;
- (c) That promote adequate remuneration and equitable pay scales, taking into account the level of economic development of the State Party;
- (d) That promote education and training programmes to enable them to meet the requirements for the correct, honourable and proper performance of public functions and that provide them with specialized and appropriate training to enhance their awareness of the risks of corruption inherent in the performance of their functions. Such programmes may make reference to codes or standards of conduct in applicable areas.

1520 Is your country in compliance with this provision?

0 (Y) Yes

1522

- 1 Please describe (cite and summarize) the measures/steps your country has taken, if any, (or is planning to take, together with the related appropriate time frame) to ensure full compliance with this provision of the Convention.

**Employment laws and regulations of federal public servants:**

Most public services in Austria are provided by government staff at the federal, provincial (i.e. regional) and municipal (i.e. local) level. Collectively, these levels of government are commonly referred to as “public administration”. The Federal Ministry for the Civil Service and Sport is responsible for the employment law of the federal public servants, whereas each province and even municipalities have their own employment laws.

Federal civil service staff is employed either on a statutory or on a contractual basis. Statutory civil servants are employed by virtue of a sovereign act called “appointment” (as a rule, appointment is for life), whereas contractual employees are employed on the basis of a working contract. The legal status of contract staff is comparable to that of salaried employees in the private sector. Their service contracts and remuneration are, however, based on specific federal laws.

**The Austrian System of Personnel Selection regarding federal public officials**

- Based on the Act on the Advertisement of Vacancies 1989 (Ausschreibungsgesetz 1989 - AusG, Federal Law Gazette No. 85/1989)

Public advertisement of jobs is mandatory

Aptitude testing for all candidates, who apply for civil service

Objective and unbiased recruitment

High grade selection progress

Federal Ministry for the Civil Service and Sport provides Aptitude testing for candidates

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Based on job description

Performance tests (verbal and numerical reasoning, logical thinking, language comprehension...)

Computer based testing

Embedded into a large and flexible PC based recruiting system (Jobbörse der Republik Österreich) in 2011

### **Recruitment of Senior Civil Servants**

- Obligatory advertisement of management functions/certain posts
- Management of an organizational unit in Central Offices (esp. Director General, Head of Group/Area, Head of Department)
- Management of subordinate agencies (enumerated in § 3 Act on the Advertisement of Vacancies 1989 or in case of more than 50 employees)
- Posts grade A1/5 and higher or A2/8 within agencies
- Deputy Director General in Central Offices (unless divided in groups)

### **Contents of the advertisement of management functions**

- General requirements + special knowledge and skills expected from applicants
- The manager's future tasks
- Possible restriction of jobs to Austrian citizens
- Grade A1/5 and higher: qualified professional experience/ internships (at least 6 months) outside of service are welcome
- Less than 50 % women: applications of women are especially welcome

### **Recruitment procedure for managers**

- Establishment of Board of Review
- Board of Review composed of 4 members:
  - 2 (1 female, 1 male) appointed by manager of Central Office (among them the chairman),
  - 1 by the Union of Civil Services,
  - 1 by the central committee of the staff representation, consultative participation of „women's representative“ (member of a working group for gender equality)
- Members of the Board of Review are not bound by instructions and hence independent in exercise of their function.

### **Tasks of the Board of Review**

- Assessment of applications,
  - Carrying out of hearings/ assessment centers,
  - Reviewing of personal files,
  - Interviews with superiors, co-workers, etc.
- Assessment of aptitude, e.g.
  - Professional experience
  - Leadership qualities,
  - Organizational skills and
  - Merit

### **Expert opinion of the Board of Review**

- Specifies, which applicants are unsuitable and which applicants are to be considered suitable
- Indicates, which of the suitable applicants are suitable to a very high, high and lesser extent
- Suggestion is transferred to Minister
- Minister has free right to appoint candidate

### **Reassignment**

- Directors General, Heads of Group, managers of large services are generally assigned for time periods of 5 years (A1/7-9 for civil servants, v1/7 for contractual employees)
- Reassignment is possible (in that case no new job advertisement and recruitment procedure is required).
- If the minister decides not to reassign:
  - Possibility of complaint to the Commission for Reassignment.

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- Commission gives expert opinion on job performance in the function -  
Minister can decide not to reassign in spite of positive expert opinion
- No reassignment -> the above described job advertisement and recruitment procedure is initiated

#### Career Data Base

- Established in July 2009 with these aims
  - Mobility in the Central Public Administration
  - Talent pool of federal public employees
  - Anonymous profile
- Embedded into the Act on the Advertisement of Vacancies 1989
  - when recruited by the Career Data Base, a further job announcement is not required
- Shortens the process of job advertisement and publication

#### E-Recruiting

- Job agent including e-mail notification
- professional & consistent first point of contact with candidates
- automated posting of vacancies to multiple channels
- enhanced interaction through personalized areas for candidates

#### Performance appraisal interview

- Mandatory once a year
  - Instrument of Management by Objectives (MbO)
- Main topics
  - **Feedback** on the quality of co-operation (to improve the corporate culture)
  - **Career development** (career options + concrete development measures)
  - **Sensitizing to aspects of the prevention of corruption**
- Federal Ministry for the Civil Service and Sport provides
  - Guidelines for the interview
  - Forms
  - Training

Work **objectives and tasks** (achievements in the previous year + agreements for the coming year)

- **Feedback** on the quality of co-operation (to improve the corporate culture)
  - **Career development** (career options + concrete development measures)
  - **Sensitizing to aspects of the prevention of corruption**
  - Federal Ministry for the Civil Service and Sport provides
    - Guidelines for the interview
    - Forms
    - Training
- Within the Austrian Federal Public Administration the recruitment process is based on the **Act on the Advertisement of Vacancies 1989**. Depending on the type of the vacant post the Act stipulates various recruitment processes. On the one hand, the Act contains provisions governing appointments to management-level and high-level jobs, and on the other hand, provisions governing the filling of all other posts. The Act does not apply to posts which are subject to other advertising or recruitment procedures laid down in other federal laws (e.g. the Judges and Public Prosecutors Service Act (Richter- und Staatsanwaltschaftsdienstgesetz - RStDG, *Federal Law Gazette No. 305/1961*), the Civil Servants Employment Act 1979 (Beamtenstellengesetz 1979 - BDG 1979, *Federal Law Gazette No. 333/1979*) in respect of federal teachers employed by the State).

Recruitment is done decentralized by the different federal ministries. However, the Act of Advertisement of Vacancies 1989 foresees that Directorate General III of the Federal Ministry for the Civil Service and Sport has to provide the computer-based tests, which have to be used in recruitment process. For each level of qualifications, a specific set of tests is available.

#### How vacancies are announced?

The Act on the Advertisement of Vacancies 1989 contains systematic and comprehensive provisions governing appointments to management-level functions and higher-level jobs. **All of these functions or higher-level jobs have to be officially published on the Website “Career Public Administration” (Karriere Öffentlicher Dienst): [www.jobboerse.gv.at](http://www.jobboerse.gv.at)**. All top management positions (TMP) have to be published as well in the Official Journal (Amtsblatt der Wiener Zeitung).

#### What is the (general) job description for TPM positions on each level?

As recruitment is done decentralized, a general job description is not foreseen in the Act on the

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Advertisement of Vacancies 1989. However § 5 of the Act on the Advertisement of Vacancies 1989 lays down that each TPM advertisement has to comprise a detailed job profile/description which has to wage the different competencies the manager has to have.

The job profile/description has to define the general and the specific competencies in accordance with the defined tasks of the relevant organizational unit.

In order to support the decentralised recruitment process, there is a general competency catalogue which ministries can (voluntary) use when recruiting TPM.

Depending on the kind of high-level function, a **permanent or an individual Board of Review** has to be set up in the relevant ministry, which has to submit an expert opinion on the suitability of candidates to the Federal Minister in each case. The board consists of members nominated by the minister and members nominated by the staff representation.

Methods: careful screening of the applications by the board and hearing in front of the board. Application of further state of the art selection methods is possible (Assessment Center). Review of the CV and hearing in front of the Board. In a further stage, an assessment can take place. Since 2011 standardized computer based tests for different function groups are available for all HR departments dealing with recruitment.

#### **How is transparency of the selection process guaranteed?**

In general, for each selection procedure an individual selection Board has to be established (the Act on the Advertisement of Vacancies 1989 foresees only some special cases where a permanent Board has to be set). Each hearing of the candidate takes place in front of the board. Afterwards the Board prepares a report, which identifies the qualified as well as unqualified candidates for the relevant profile. Candidates who are qualified for the relevant function are split in three groups: very highly qualified for the relevant function/ highly qualified/ less qualified.

The number (not the names) of qualified candidates together with the names of the Board members have to be published on the website of the ministry in charge of recruitment, as well as the finally selected candidate's name.

#### **On para. 1. lit. (c):**

Federal Civil Service staff is paid according to pay schemes and provisions which are provided by law. These are primarily laid down in the Civil Servants' Remuneration Act (Gehaltsgesetz 1956 - *Federal Law Gazette No. 54/1956*) and the Act on Contractual Public Employees (Vertragsbedienstetengesetz 1948 - VBG, *Federal Law Gazette No. 86/1948*).

Salary increases are usually negotiated annually between the Austrian Government and the Public Service Union ("Gewerkschaft Öffentlicher Dienst").

During these negotiations factors such as

- inflation,
- economic growth and
- private sector salaries

are customarily taken into account.

After the negotiations have been concluded, the parliament passes an amendment which changes the respective laws.

Pay (and employment) regulations are regularly evaluated by the specialists in the Directorate General for the Civil Service and Public Administration Innovation within the Federal Ministry for the Civil Service and Sport.

Any necessary adjustments are, as a rule, negotiated (at least) once a year at social-partner level and implemented under the amendments to Civil Service employment law which are periodically adopted by parliament.

Please note, that further information can be found in the handbook "The Austrian Federal Civil Service 2017. Facts and figures" provided under this link:

Handbook „The Austrian Federal Civil Service 2017. Facts and

figures“ ([https://www.oeffentlicherdienst.gv.at/fakten/publikationen/PJB\\_E\\_final\\_25022016\\_barrier\\_efrei.pdf?6wd8aw%20](https://www.oeffentlicherdienst.gv.at/fakten/publikationen/PJB_E_final_25022016_barrier_efrei.pdf?6wd8aw%20))

**On para. 1 lit. d:**

In particular the federal administration academy of the Federal Ministry of the Civil Service and Sport offers education and training programmes for public servants. Basic training is obligatory for all public officials.

Additionally, many departments, such as the Federal Ministry of Finance, the Federal Ministry of Defence, the Federal Ministry of the Interior (including the Federal Bureau of Anti-Corruption) and others offer special trainings on the topics of professional ethics as well as of duties of public servants.

**The legal framework for the appointment of judges and prosecutors:**

The legal framework for the appointment of judges and prosecutors is the Judges and Public Prosecutors Service Act (Richter- und Staatsanwaltschaftsdienstgesetz, RStDG). Persons wishing to become judges or public prosecutors must apply for one of the vacancies of candidate judge announced by the president of a higher regional court of appeal. The Federal Minister of Constitutional Affairs, Reforms, Deregulation and Justice appoints the candidate judge upon proposal by the president of the respective higher regional court. Completion of university studies, Austrian citizenship, aptitude regarding subject matter and character, physical fitness, the required social skills for the profession of a judge, as well as a five-month traineeship at court are prerequisites for being admitted to the preparatory service for becoming a judge or a public prosecutor.

When deciding on admission, the training judges during the traineeship and the head of the trainee courses are also heard. Since 1986, written and oral examinations, and a psychological aptitude test, performed by an independent psychologist, are also required.

By their appointment as a candidate judge, the future judges are admitted to the preparatory service for becoming a judge. It generally lasts four years. The traineeship at court is included in this training period. The training period is spent at a district court and a court of first instance, with a public prosecution office, in a prison, as well as with a lawyer or notary public, or with the Financial Procurator's Office, and with a victim protection or public welfare institution. The judge's examination comes at the end of the training period. It is a written and oral examination. After having passed the examination and having completed four years of legal practice, candidates may apply for a vacant tenured judge's position. Upon proposal by the competent staff panels, applicants are appointed as judges for an indefinite period of time. The appointment is reserved to the Federal President, who has delegated this privilege to the Federal Minister of Constitutional Affairs, Reforms, Deregulation and Justice for most of the judge's and prosecutor's positions.

**a) Judges and Prosecutors**

The Austrian Criminal Code of 23 January 1974 (Federal Law Gazette No. 60/1974) contains provisions on corruption prevention. It is being taught as part of all Austrian law studies offered at university level. As such, corruption prevention forms part of university exams and therefore is a prerequisite for finishing a law degree. A law degree, in turn, is one of the requirements for becoming a candidate judge.

Once a person has become a candidate judge, they are allowed to join the judicial "preparatory service" - a mandatory, very practice-oriented initial training, containing, amongst others, lessons in ethics. These lessons particularly deal with corruption prevention, professional behaviour - containing clear and important provisions on ethically correct behaviour - compliance and integrity. In the framework of an obligatory curriculum called "Justice and History", occupational ethics are put into a historical context and links are made to current challenges to the judge's profession. Also, the relevant provisions of the Criminal Code mentioned above are dealt with in further detail during the preparatory service. In addition, seminars on compliance and corruption prevention offered to judges and prosecutors (see below) are open to the participation of candidate judges. Corruption prevention, ethics and rules of professional conduct form part of the final judicial examination,

which has to be passed by the candidate judges in order to become either a judge or a prosecutor.

Austrian judges and prosecutors have an obligation to take part in continuous trainings (Section 57 of the *Austrian Judges and Public Prosecutors Service Act* (RStDG)). Part of these trainings are focused on matters related to corruption prevention. Due to legal changes within the provisions on corruption contained in the Austrian Criminal Code in the year of 2008, corruption prevention has increasingly been addressed in trainings on criminal law over the last decade. Likewise, ethic seminars, soft skill seminars or seminars on “judgecraft” increasingly form part in the continuous training program. Discussions, lectures and workshops on the integrity of the judiciary are very important elements in this context. Also, the *behavior* of members of the judiciary is subject to many seminar agendas. In a seminar series called “Justice and History”, ethical questions are being discussed against the background of lessons taught by the judicial history.

The national seminars are organized and provided by either the Federal Ministry of Constitutional Affairs, Reforms, Deregulation and Justice, the Austrian Supreme Court, one of the four Austrian Courts of Appeal, the Federal Administrative Court, one of the four Senior Public Prosecutor’s Offices, the Austrian Association of Judges or the Association of Prosecutors. Also, the federal administration academy provides seminars on ethical topics, which are open to the participation of (candidate) judges and prosecutors.

Since the knowledge of its judicial staff in the field of corruption prevention is particularly crucial, the Austrian *Central Public Prosecutor's Office for Combating Economic Crimes and Corruption* (WKStA) offers in-House seminars for their public prosecutors on topics such as “Prohibition of the acceptance of gifts” or on integrity. Also, they have nominated an integrity protection commissioner who has completed a respective training course. In addition, prosecutors of this institution often participate in the “Anti-Corruption-Day” offered by the Federal Bureau of Anti-Corruption.

Other than that, Austrian judges and prosecutors may take part in meetings and the vast amount of training programs offered by various different international networks (EJTN, HELP, International Anti-Corruption Academy (IACA), Transparency International etc.) or foreign institutions (such as the European Academy of Law). These networks and institutions increasingly focus on topics such as judgecraft, integrity, ethics or Rule of Law in general. The participation of Austrian judges and prosecutors in respective foreign seminars is strongly supported by the ministry. For instance, the participation of prosecutors of the *Central Public Prosecutor's Office for Combating Economic Crimes and Corruption* (WKStA) in the training courses of Transparency International and IACA has been and is being financed by the ministry.

In addition to face-to-face events, members of the Austrian judiciary have access to an e-learning platform (“ELAN”) containing a whole section dedicated to the topic of corruption.

The Federal Ministry of Constitutional Affairs, Reforms, Deregulation and Justice is about to implement an IT-based Training Management tool (“EBM”) which will allow for the collection of data on relevant figures, such as, for instance, the number of participants of seminars on corruption prevention over a specific period of time. For continuous trainings, the implementation of this tool will be finished by September 2019; for initial training, the tool shall be in force from mid/end 2020 on.

#### b) Court staff

The above mentioned e-learning platform and its specific section on corruption also forms part of the initial training phase of the Austrian court and Public Prosecutor’s office staff. At the same time, this group obtains information on corruption prevention in the course of several face to face seminars. Also, the seminars of the federal administration academy on the topics of corruption prevention, compliance and integrity are open to the participation of court staff and in particular to persons in managing positions.

#### **Training programmes and other measures by the Federal Bureau of Anti-Corruption (BAK):**

## **General initial and further training programmes / training measures by the BAK**

### **Training and awareness-raising for police trainees as part of basic police training (PGA E2b)**

The educational objective is that prospective policemen and policewomen acquire the necessary confidence to act in their daily working lives through instruction in relevant service and criminal law regulations and the use of practical case studies, and are able to identify situations suspected of corruption and deal with them adequately. In order to consider the moral and ethical dimensions in action and decision-making situations in future work as executive officers, the discussion will focus on the topics of "correct and honest behaviour" and "ethical issues".

The educational content ranges from the tasks and competences of the BAK, the definitions of the term corruption, the manifestations of the phenomenon of corruption, the phases of structural corruption, the causes and consequences of corruption, the psychological aspects of corruption, the presentation of corruption prevention measures, the explanation of legal norms relating to corruption, the recommendations for conduct in cases of suspected corruption to ethics and morals to the Code of Conduct of the Ministry of the Interior (MoI).

### **Training and awareness-raising for police officers in the framework of basic police training for supervisors (PGA E2a)**

Participants know

the backgrounds and mechanisms underlying the phenomenon of corruption;

about possible forms of combating corruption;

what problems and dangers corruption entails - especially with regard to their future function;

how important the role model function of the superior officer is;

what rules exist for the acceptance of gifts, both under criminal law and under public service law;

in which phases a corrupt connection can be divided;

the scope and competence of the BAK.

Participants can

identify indicators that may point to corrupt behaviour;

explain to their staff the definitions of "civil servant" and "public official" in terms of both criminal law and public service law;

recognize facts and associate them with the respective legislative texts;

distinguish between criminal law and public service law;

explain the duties to report and the rights to report to their colleagues.

### **Training and awareness-raising for staff in the "General Administrative Service" of A1/v1 and A2/v2 range of tasks/remuneration groups**

raising participants' awareness of their position as public officials;

teaching legal certainty about corruption offences;



raising awareness of the phenomenon and consequences of corruption;

getting to know methods to prevent corruption;

performing leadership responsibilities, including developing measures to prevent corruption;

identifying problems specific to corruption, analysing individual processes and establishing suitable organizational measures within the framework of the respective supervisory responsibility.

#### **Further training measure “BAK advanced training course”**

The educational objective is to ensure that members of MoI staff are more confident in their daily working lives by communicating relevant public service and criminal law regulations and by drawing on practical case studies; that they are in a position to identify situations suspected of corruption and deal with them adequately. In order to also consider the moral and ethical dimensions in action and decision-making situations in future activities as a MoI official, the topics of "correct and honest behaviour" and "ethical issues" are discussed in this context. The focus is on imparting knowledge on the corruption phenomenon, heightening awareness of their role as civil servants and creating legal certainty and confidence in action.

#### **BAK E-Learning-Programme**

##### **E-learning module “Criminal law on corruption for police basic training”**

The interactive learning object (e-learning module) "Criminal law on corruption for police basic training" became an integral part of police basic training in 2018. Not only does it provide effective preparation for the period of attendance at basic training, but it is also a valuable reference tool for the theoretical part of criminal law on corruption. In addition, it describes various corruption phenomena on the basis of numerous examples. By completing this specialized module, the future law enforcement officers are expected to achieve a uniform level of knowledge. Even before the period of attendance, they have to acquire a certificate confirming the completion of the obligatory e-learning preparation course.

#### **Anti-corruption work for youth**

The BAK offers various nationwide anti-corruption activities for students at upper secondary level in order to impart knowledge on corruption, raise awareness of the crime phenomenon and point out possible ways to prevent corruption. In addition to enhancing cognitive and behaviour-oriented skills, the aim is to raise basic awareness, prevent any misconduct and promote integrity in action.

When conceiving the anti-corruption workshops and events for the education sector, the BAK attached great importance to providing participants with the opportunity to acquire special skills in the perception and prevention of corruption and to develop an awareness of the dangers of corruption. The intention is to prevent possible misconduct and promote integrity in the long term.

For further information on these workshops, see Annex I D. and response to Article 13, paragraph 1.

##### **E-learning module “Code of Conduct, MoI” as part of “Our Values. Our Approach. Code of Conduct of the Austrian Federal Ministry of the Interior”**

Since July 2018, in addition to the written learning material "Code of Conduct, MoI" and the shorter version "Code of Conduct to go", an e-learning module has been offered, including learning content about the rule of law, acceptance of gifts, official secrecy, general obligations of conduct, social media, bias, secondary employment, as well as about "Correct handling of mistakes" and "Our principles for dealing with each other".

**1 Please provide examples of the implementation of those measures, including related court or other cases, available statistics etc.**

**Statistics relating to the training measures mentioned above (PGA E2b, PGA E2a, A1/v1 and A2/v2):**

In the year 2018, 178 lectures (1.115 lessons) on preventing and combating corruption were offered to approximately 4.670 participants. The BAK gave 107 lectures (equivalent to 624 teaching units) in all basic training courses offered by the Austrian Federal Police Academy. These lectures were attended by 2,612 persons. The most important target group (2.242 participants in 95 lectures) were police trainees, e.g. from border police.

Seven lectures attended by 258 officers were delivered as part of the training for future police sergeants. Five lessons for 112 employees of the Austrian Federal Ministry of the Interior were given within the framework of the basic training courses for administrative staff of all grades. **Statistics relating to the “BAK advanced training course”:**

In the year 2018, the BAK organized its 24<sup>th</sup> advanced training course for staff members of the Federal Ministry of the Interior. 17 employees from various departments of the MoI and one participant from the Federal Ministry of Constitutional Affairs, Reforms, Deregulation and Justice (BMVRDJ) completed this course.

**Statistics relating to the BAK E-Learning-Programme E-learning module “Criminal law on corruption for police basic training”:**

During the period from 01.01.2017 to 01.07.2019, the management of organizational measures and the evaluation of efficiency are implemented with the support of the training centres of the SIAK. During the reporting period, 3.658 police trainees underwent this training, 3.408 completed it and added the certificate to their training passport.

**Statistics relating to the E-learning module “Code of Conduct, MoI” as part of “Our Values. Our Approach. Code of Conduct of the Austrian Federal Ministry of the Interior:** During the period from 01.01.2017 to 01.07.2019 the BAK e-learning course mentioned under Question 2 was taken by **2.912 employees, 2.745 employees completed it** and added the certificate to their training passport. This course is intended to ensure training in this field for the entire staff of the Ministry of the Interior (MoI).

For further information on the content of the training regarding the MoI Code of Conduct, please see response to Article 8, paragraphs 1 and 2.

**The Network of Integrity Officers (NIO) training programme by the Federal Bureau of Anti-Corruption as a good practice:**

The NIO offers an institutionalized training programme for multipliers in the entire Austrian public service. The curricula of the network’s basic training programmes (one week, 32 teaching units) include:

the phenomenon of corruption (psychological background, risk factors, national and international aspects, measurement of corruption, manifestations of the phenomenon, etc.)

law (criminal law on corruption, civil service law, statute on responsibility of legal entities)

compliance (risk analysis, compliance management systems - structure and tasks)

prevention of corruption (national and international prevention instruments and strategies)

best practices for the design and implementation of training courses on corruption prevention

value management (code of conduct, role models, tone from the top)

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The integrity officers are trained by the BAK to become experts in integrity promotion and corruption prevention. As multipliers, they are required to make this know-how available in their area of responsibility through appropriate training measures.

For further information on the BAK's NIO, see response to Article 5, paragraphs 1 and 2.

Please find below the statistics of the education and training programmes of the federal administration academy, that have a focus on the prevention of corruption, as an example for the wide variety of offers at the federal level:

Education and training programmes	Years in which the programme took place	Number of participants
Basic training: The civil service	since 2011	2428
Apprenticeship training: quality in civil service	since 2018	16
Ethics and professional ethics: What can we contribute to the common good	since 2013	123
Internal control systems and risk management	since 2014	138 (19 participants in 2018)
Prevention of corruption - Compliance - Integrity	since 2018	90 (21 participants in 2018)
Compliance in Public Administration: Basics	since 2017	26 (10 participants in 2018)
Prevention of Corruption - Compliance - Integrity: In-house training	since 2017	385
Integrity and value management in the public sector	Newly included in the education and training programme	no numbers available yet
Compliance from a psychological point of view	Newly included in the education and training programme	no numbers available yet

## 12. Paragraph 2 of article 7

2. Each State Party shall also consider adopting appropriate legislative and administrative measures, consistent with the objectives of this Convention and in accordance with the fundamental principles of its domestic law, to prescribe criteria concerning candidature for and election to public office.

**1520 Is your country in compliance with this provision?**

**0 (Y) Yes**

**1522**

**1 Please describe (cite and summarize) the measures/steps your country has taken, if any, (or is planning to take, together with the related appropriate time frame) to ensure full compliance with this provision of the Convention.**

On 1 January 2017, a new provision was introduced in the National Council Elections Act (§ 41, paragraph 1), which aims at making it more difficult for eligible voters to stand in an election in case of a criminal offence. According to the present version of the National Council Elections Act, Austrian citizens of at least 18 years of age may stand in elections unless they were sentenced by a domestic criminal court to imprisonment of more than six months or to a probationary term of more than a year. Exclusion from the right to be elected ends six months after the sentence's entire

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enforcement. Prior to the introduction of these principles in 2017, only eligible voters sentenced to imprisonment of more than five years (or to more than a year in some exclusive cases) lost the right to be elected.

525

- 1 Please provide examples of the implementation of those measures, including related court or other cases, available statistics etc.**

See also answers under Article 7, para. 1.

### 13. Paragraph 3 of article 7

3. Each State Party shall also consider taking appropriate legislative and administrative measures, consistent with the objectives of this Convention and in accordance with the fundamental principles of its domestic law, to enhance transparency in the funding of candidatures for elected public office and, where applicable, the funding of political parties.

**1520 Is your country in compliance with this provision?**

**0 (Y) Yes**

1522

- 1 Please describe (cite and summarize) the measures/steps your country has taken, if any, (or is planning to take, together with the related appropriate time frame) to ensure full compliance with this provision of the Convention.**

The Federal Act on the Financing of Political Parties (Political Parties Act 2012 - PartG) [PPA] entered into force on 1 July 2012 (cf. Federal Law Gazette Nr. I 56/2012). It was amended four times, the last time by Federal Law Gazette Nr. I 55/2019).

The Law on Financing Political Parties (PPA) does not contain specific provisions on the funding of individual candidatures for elected public office. The FPPA only refers once to individual candidates, stating that the maximum amount of 7 million euros that every political party may expend for election campaigning „shall also include the expenses of a committee of persons or of individual candidates who stood for the election on a list of candidates submitted by the political party. But expenses of a candidate for election campaigning adjusted to his or her personal campaign of up to an amount of 15,000 euros shall not be taken into account.” (para. 4-1 PPA).

The following measures to ensure enhancing transparency in the funding of candidatures for elected public office and, where applicable, the funding of political parties have been taken:

Financial support of parties: „Each year the federation, the provinces and the municipalities can grant subsidies to political parties for their activities in participating in the formation of political will in the federation, the provinces and the municipalities. For that purpose, political parties represented in a general representative body may be granted a total of at least 3.10 euros but at most 11 euros per person eligible to vote in elections for the relevant general representative body. The provinces can regulate their subsidies within double the lower and upper limits in order to also ensure participation in the formation of political will at the district and municipal levels. To determine the number of persons eligible to vote, the persons eligible to vote in the last election for the general representative body shall be relevant. Subsidies granted to political parties and campaigning parties exceeding the above amounts to pay campaign costs in elections for general representative bodies shall not be permitted. Subsidies by the federation for political parties shall be regulated in separate federal legislation.“ (para. 3 PPA. [Constitutional law provision]). - The

mentioned separate federal legislation is the Federal Act on Subsidies for Political Parties (PartFörG) which also entered into force on 1 July 2012 (cf. federal law gazette Nr. I 57/2012), as amended by Federal Law Gazette Nr. I 31/2019.

Restriction on campaign expenses: As already indicated above, there is a maximum amount of 7 million euros that every political party may expend for election campaigning (para. 4-1 PPA). Expenses for election campaigning shall, in particular, include also expenses of the political party for the candidates, as well as expenses of the political party for natural persons and groups of persons to support a candidate (para 4-2 lit. 11 and 12 PPA). - There are now higher penalties for exceeding the campaign expenditure limit (para. 10-8 PPA).

Statement of accounts: „Every political party shall annually render public account of the type of its income and expenses by way of a statement of accounts. This statement shall also include the branches of the political party that do not have their own legal personality. The statement of accounts shall be divided into two parts, the first part stating the income and expenses of the federal organisation and the second part stating those of its territorial branches (provincial, district, municipal organisations), irrespective of whether or not those branches have their own legal personality or are themselves parties as defined in § 1. (...)“ (para. 5-1 PPA). “The statement of accounts shall be audited and signed (§ 8) by two auditors not working together in a joint office (§ 9). The auditors shall be appointed for five years by the Court of Audit from among five auditors proposed by the relevant political party. Reappointment immediately following the previous appointment shall not be permitted.” (para. 5-3 PPA). “A list of undertakings in which the party and/or an affiliated organisation and/or a branch of the party with its own legal personality holds at least 5% direct shares or 10% indirect shares or voting rights shall be attached to the statement of accounts. For that purpose, affiliated organisations and branches of the party that have their own legal personality shall submit to the political party the required complete and correct details. To the extent, such details have already been submitted to a higher-level territorial branch of a political party, the obligation to submit such details shall be deemed fulfilled. The Court of Audit shall communicate those undertakings that were disclosed to it to the legal entities under its supervision and request such legal entities to disclose to it, within one month, the total amount of the legal transactions made between the legal entities and each of the undertakings listed in the reporting period of the statement of accounts.“ (para. 5-6 PPA). “Every political party shall submit the statement of accounts including lists of donations, sponsorships and advertisements and a list of the undertakings in which shares are held as referred to in para 6 to the Court of Audit by 30 September of the following year. For that purpose, affiliated organisations and branches of the party that have their own legal personality as well as members of parliament and candidates who stood for elections on a list of candidates submitted by the political party shall submit to the political party the complete and correct details required for the lists of donations, sponsorships and advertisements. The period referred to in the first sentence can be extended by the Court of Audit by up to four weeks in the event of a request, stating reasons, by the political party.“ (para. 5-7 PPA). „The statement of accounts shall separately state at least the following types of income and revenue: membership fees, payments by affiliated organisations, subsidies, contributions by members of parliament and officials belonging to the relevant party, etc.“ (para. 5-4 PPA). - With the recent amendment, the wording “membership fees” was insofar amended as membership fees as of EUR 7.500,- per calendar year have to be disclosed by naming the member and the amount.

As for donations, until recently, donations whose total amount exceeds the amount of 3,500 euros in a calendar year (accounting year), including the name and address of the donor, shall be stated. - With the recent amendment, this amount was reduced to 2.500 euros. (para. 6-4 PPA).

Until recently, donations exceeding the amount of 50,000 euros in an individual case should be immediately reported to the Court of Audit. The Court of Audit shall immediately publish the donations, including the name and address of the donor, on its website. - With the recent amendment, it was stated that any donor may only donate a total amount of 7,500 euros per year, and that donations exceeding 2,500 euros are to be reported immediately to the Court of Audit, indicating the name of the donor and the amount; the Court of Audit shall immediately publish the donations, including the name and address of the donor, on its website. (para. 6-5 PPA).

Furthermore, with the recent amendment, political parties shall accept donations only up to a total value of 750,000 euros per year. (EUR 375,000 for the period from 9th of July till 31st of December 2019). Donations exceeding this threshold are to be handed over to the Court of Auditors without delay (para. 6-1a PPA).

Additionally, prohibitions from whom political parties shall not accept donations from, were extended: while until recently, foreign natural or legal persons could donate an amount up to 2,500 euros, this is now entirely forbidden, and the limit for donations in cash was lowered from 2,500 euros to 500 euros (para. 6-6 lit. 6 and 7 PPA).

With the recent amendment, “committees of persons” are now subject to stricter rules: they do not only have to register themselves with an independent body, but also have to open their books to the Court of Auditors, also retroactively beginning with January 2017 (para. 2 lit. 3a; para. 6-9a PPA; para. 11-5a).

Finally, with the recent amendment, also „subsidiary organizations“ fall under the definition of a political party and are thereby covered by the PPA (para. 2-1).

The mentioned amendments are already applicable to the federal general elections of Sunday, 29 September 2019.

#### **Competences of the Court of Audit:**

The role of the Austrian Court of Audit within the Political Parties Act is limited to the acceptance, formal control and publication of the statement of accounts of the political parties. In addition, the Austrian Court of Audit is mandated to audit the performance of the educational institutions of the political parties with their granted means according to the Publizistikförderungsgesetz 1984. See e.g. the audit report on the educational institutions of the political parties („Prüfung der Bildungseinrichtungen der politischen Parteien“ (Bund 2014/4 as well as 2019/30a-h).

1525

**1 Please provide examples of the implementation of those measures, including related court or other cases, available statistics etc.**

Further information (in German language) can be downloaded from the homepages of the Federal Court of Auditors as well as of the independent senate for the transparency of the funding of political parties:

[https://www.rechnungshof.gv.at/rh/home/was-wir-tun/was-wir-tun\\_5/Kontrolle\\_der\\_Parteien.html](https://www.rechnungshof.gv.at/rh/home/was-wir-tun/was-wir-tun_5/Kontrolle_der_Parteien.html)

<https://www.bundeskanzleramt.gv.at/themen/unabhaenger-parteien-transparenz-senat>

#### **14. Paragraph 4 of article 7**

4. Each State Party shall, in accordance with the fundamental principles of its domestic law, endeavour to adopt, maintain and strengthen systems that promote transparency and prevent conflicts of interest.

**1520 Is your country in compliance with this provision?**

**0 (Y) Yes**

1522

**1 Please describe (cite and summarize) the measures/steps your country has taken, if any, (or is planning to take, together with the related appropriate time frame) to ensure full compliance with this provision of the Convention.**

Concerning the highest executive organs (the Federal President, the Federal Ministers, the state secretaries and the members of the Land Governments), the mayors and their representatives and the members of the city senate in towns with their own charter and the members of the legislative bodies (National Council, Provincial Parliaments), the provisions, some of them constitutional provisions, of the Federal Act on transparency and incompatibilities for the persons in the highest offices and other public officials (Incompatibility and Transparency Act - Unvereinbarkeits- und Transparenz-Gesetz - Unv-Transparenz-G), Federal Law Gazette No. 330/1983, apply. This law regulates detailed reporting obligations, employment bans and restrictions to entrepreneurial activities.

There are many employment law provisions that serve to prevent corruption. Please see the examples given regarding the Civil Servants Employment Act 1979:

o Termination of employment

§ 20. (3a) Within six months of termination of her/his employment, a civil servant shall be prohibited from working for any legal entity

1. that is not subject to review by the Austrian Court of Audit, a Regional Court of Audit [i.e. the audit institution of one of Austria's nine provinces] , or a comparable, international or foreign audit institution, and

2. the legal position of which has been substantially influenced by decisions taken by the civil servant in her/his official capacity within the twelve months prior to termination of her/his employment,

if such work is apt to damage the public's trust in the objective performance of her/his former official duties. In the case of non-compliance, the civil servant shall pay to the Federation [i.e. the legal entity comprised of the entire territory of the Republic of Austria] a penalty amounting to three times the salary payable to her/him in the last month of her/his employment. Any claim to performance or further damages shall be excluded.

(3b) Para. 3a shall not apply

1. if this would unduly hinder the civil servant's professional advancement,

2. if the salary payable to her/him in the last month of her/his employment does not exceed twenty times the daily maximum basis of assessment pursuant to § 45 of the General Social Insurance Act [Allgemeines Sozialversicherungsgesetz - ASVG, Federal Law Gazette No. 189/1955],

3. if culpable behaviour on the part of the civil servant's employer or one of its representatives constituted grounds for constructive dismissal, or

4. if the employer terminates a provisional employment relationship, unless one of the grounds for termination provided in § 10 para. 4 subpara. 1, 3 or 4 applies.

o General duties of civil servants

§ 43. (1) Civil servants shall perform their official duties personally and conscientiously, with loyalty, dedication, impartiality and due regard to the law, using the means available to them.

(2) Civil servants shall consistently act in such a way as to maintain the public's trust in the objective performance of their official duties.

(3) When performing their official duties, civil servants shall support and inform parties to an extent compatible with official interests and the impartial exercise of their office.

In order to prevent "partiality" and bias as well as to ensure that decisions are taken in accordance with the law and as objectively as possible, civil servants must therefore not be involved in any conflict of interest or conscience. Reasons for bias for civil servants are laid down in the Administrative Procedure Act (Allgemeines Verwaltungsverfahrensgesetz 1991 - AVG, Federal Law Gazette No. 51/1991) (in particular § 7 AVG). Accordingly, civil servants must abstain from exercising their office in cases of conflicts of interests and arrange for representation if there are important reasons which cast doubt on their complete impartiality. Each member of staff must therefore judge for her- or himself whether there is a reason for bias. Even in cases of doubt, the existence of bias should be presumed in order to ensure the objectivity of the procedure.

Where bias is presumed, civil servants must, in accordance with the law (§ 47 of the Civil Service

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Employment Act 1979) abstain from any official action and arrange their representation. Only in the event of "imminent danger" they must, if representation by another civil servant is not immediately possible, take the necessary measures to prevent such danger. The conflict-of-interest rules under service law are "catch-all rules" for all those areas of responsibility in which no special (procedural) conflict-of-interest rules apply (such as in the AVG as mentioned above).

o Reporting obligations

§ 53. (1) If a civil servant, in the exercise of her/his duties, becomes aware of a reasonable suspicion of a criminal offence subject to mandatory prosecution that is relevant to the scope of operation of the government office to which she/he belongs, she/he shall report it to the Head of Office without delay.

(1a) The reporting obligation pursuant to para. 1 shall not apply if such a report would compromise the transaction of official business requiring a relationship of personal trust in order to be effective.

(1b) Notwithstanding para. 1a, the Head of Office may impose a reporting obligation for reasons concerning

1. the person that the official business relates to, or
2. the nature of the business itself.

(1c) If a civil servant is prevented from performing her/his duties for reasons partly or fully attributable to third parties, she/he shall report this to the competent personnel authority without delay. At the request of this authority, the civil servant shall present all data and other evidence required in order to pursue any claims for compensation against the third parties in question.

(2) Notwithstanding further reporting obligations, civil servants shall report the following to the competent personnel authority:

1. a change of name,
2. a change in civil status,
3. any change in citizenship or nationality, as well as any change concerning their unrestricted access to the Austrian labour market,
4. a change of residence,
5. the loss of an official licence or certificate required for the performance of their duties, as well as any loss of uniform, badge, civil service ID or similar items,
6. receipt of a decision pursuant to § 14 para. 1 or 2 of the Law on the Employment of Persons with Disabilities [Behinderteneinstellungsgesetz - BEinstG, Federal Law Gazette No. 22/1970].

o Protection against prejudicial treatment

§ 53a. A civil servant who, pursuant to § 53 para. 1, reports in good faith a reasonable suspicion of an offence listed in § 4 para. 1 of the Federal Act on the Establishment and Organisation of the Federal Bureau of Anti-Corruption [Bundesgesetz über die Einrichtung und Organisation des Bundesamts zur Korruptionsprävention und Korruptionsbekämpfung - BAK-G, Federal Law Gazette No. 72/2009)] shall not suffer any prejudicial treatment at the hands of a representative of her/his employer in consequence of such a report. The same shall apply if a civil servant makes use of her/his right to report in accordance with § 5 of the Federal Act on the Establishment and Organisation of the Federal Bureau of Anti-Corruption .

o Additional occupations

§ 56. (1) "Additional occupation" shall mean any occupation carried out by a civil servant in addition to her/his official duties and to any secondary occupation within the civil service.

(2) Civil servants may not engage in an additional occupation which hinders them in performing their official duties, creates the impression of bias, or otherwise jeopardises important official interests.

(3) Civil servants shall report to the competent personnel authority any gainful additional occupation, as well as any change in such an occupation, without delay. An additional occupation shall be deemed gainful if it is aimed at generating a significant income in cash or in kind.

(4) Civil servants

1. whose regular weekly working hours have been reduced in accordance with §§ 50a, 50b, 50e or 50f, or
2. who are working part-time in accordance with the Maternity Leave Act [Mutterschutzgesetz 1979 - MSchG, Federal Law Gazette No. 221/1979] or the Law on Parental Leave for Fathers [Väterkarenzgesetz, Federal Law Gazette No. 651/1989], or
3. are on care leave in accordance with § 75c



may only pursue a gainful additional occupation provided that and to the extent that the competent personnel authority permits it. Permission shall be denied in the cases referred to in para. 2, as well as in cases where the pursuit of an additional occupation runs counter to the objective of a measure taken pursuant to subparas. 1 to 3.

(5) Civil servants shall in any case report any membership of the supervisory board, management board, board of directors or any other corporate body of a legal entity under private law operating for profit.

(6) The competent personnel authority shall without delay prohibit, by written order, the pursuit of an occupation which is impermissible according to para. 2, or an occupation within the meaning of para. 5.

(7) The competent Federal Minister may lay down, by regulation, any occupations which shall in any case be impermissible pursuant to para. 2.

o Prohibition of the acceptance of gifts

§ 59. (1) Civil servants shall not solicit or accept gifts or other benefits for themselves or third parties in connection with their official position or the performance of their official duties. Likewise, they shall not obtain gifts or other benefits, or accept promises of gifts or other benefits, for themselves or third parties in connection with their official position or the performance of their official duties.

(2) Customary gifts of minor value shall not be deemed to be gifts or other benefits within the meaning of para. 1 unless a civil servant intends to secure a regular income for her-/himself or a third party by repeatedly acting contrary to the provisions of para. 1.

(3) "Gifts of honour" shall mean objects awarded to civil servants for their services or out of courtesy by foreign countries, institutions under public law or traditional institutions.

(4) Civil servants may accept gifts of honour. They shall inform the competent personnel authority of such gifts without delay. The gifts thus received shall be recorded as Federal assets and sold or otherwise realised in accordance with the principles of economy, efficiency and effectiveness. The proceeds shall be used for charitable purposes benefiting public servants, or for other charitable purposes. Detailed provisions shall be laid down by regulation for each ministry.

(5) Civil servants may be allowed to keep for their own use gifts of honour of minor or merely symbolic value.

(6) Civil servants may accept benefits granted to them in the course of events in which their participation is justified by official interests or other objective reasons, if these benefits

1. are generally granted to all participants in the respective event,
2. are of a standard that is customary at comparable events,
3. are connected to the topic of the event in question, and
4. are not connected to any particular official business save as referred to in subpara. 3.

o Duties of retired civil servants

§ 61. (1) The duties referred to in § 46 and § 53 para. 2 subparas. 1 to 4 shall also apply to retired civil servants.

(2) Civil servants who have not yet reached the age of 60 shall also be subject to the obligations laid down in § 56 paras. 3 and 5 and in § 57.

(3) Within six months of her/his retirement, a retired civil servant shall be prohibited from working for any legal entity

1. that is not subject to review by the Austrian Court of Audit, a Regional Court of Audit, or a comparable, international or foreign audit institution, and

2. the legal position of which has been substantially influenced by decisions taken by the civil servant in her/his official capacity within the twelve months prior to her/his retirement, if such work is apt to damage the public's trust in the objective performance of her/his former official duties.

(4) Para. 3 shall only apply if the salary payable to the civil servant in the last month of her/his active duty was in excess of twenty times the daily maximum basis of assessment pursuant to § 45 of the General Social Insurance Act.

The provisions depicted before are also applicable to contractual employees via § 5 of the Act on Contractual Public Employees or because of provisions identical in content regarding "Termination of employment" (see § 30a of the Act on Contractual Public Employees that takes into account the different regulations regarding termination due to the legal status of contractual employees).

§ 5 of the Act on Contractual Public Employees reads as follows:

o General duties and oath of office

§ 5. (1) § 43, § 43a, § 45a, § 45b, § 46 para. 1 to 4, § 47, § 53, § 53a, § 54 paras. 1 and 2, as well as §§ 55 to 59 of the Civil Servants Employment Act 1979, Federal Law Gazette No. 333, shall apply. In the application of § 56 para. 4 subpara. 1 of the Civil Servants Employment Act 1979, the reduction of working time following long-term sick leave pursuant to § 50f of that Act shall be replaced by part-time work pursuant to § 20c. In the application of § 56 para. 4 subpara. 3 of the Civil Servants Employment Act 1979, long-term care leave pursuant to § 75c of that Act shall be replaced by long-term care leave pursuant to § 29e.

(2) Any special provisions adopted for specific branches of public administration shall equally apply to the private law employees of the respective offices and authorities.

(3) On commencing their duties, private law employees shall pledge to obey the laws of the Republic of Austria and to execute the duties of their office with loyalty and diligence. This pledge shall be affirmed by a handshake.

Please also see the information provided on Article 7 para. 1, as well as on Article 8 and on Article 11.

The provisions related to the avoidance of conflicts of interest (incompatibilities and outside employment) regarding the Director and Deputy Director of the Federal Bureau of Anti-Corruption are incorporated into § 2 of the Federal Act on the Establishment and Organization of the Federal Bureau of Anti-Corruption:

*(4) A person may not be appointed as director or deputy director if he is a member of the federal government, a government of a Land, or a general representative body, or if he has held one of these positions in the previous six years.*

*Director and deputy are not permitted to engage in any gainful outside employment with the exception of publications and teaching activities.*

#### **Court of Audit Guideline for Auditing Corruption Prevention Systems (CPS):**

The prevention of conflicts of interests is an essential element of the audits of the Austrian Court of Audit and is included in the “Guideline for Auditing Corruption Prevention Systems (CPS)”. The principles of independence, objectivity and impartiality are reflected within the Internal Standards such as the Code of Conduct.

The Internal Standards of the Austrian Court of Audit are beyond common rules as provided by the Federal Employment Law to avoid conflicts of interests: Staff members of the Austrian Court of Audit are not allowed to engage in the management and administration of enterprises, which are subject to the control of the Austrian Court of Audit. Likewise, they do not engage in the management and administration of other profit-making enterprises (Article 126 of the Austrian Constitution).

1525

#### **1 Please provide examples of the implementation of those measures, including related court or other cases, available statistics etc.**

The Federal Chancellery provides services for Members of the Federal Government when applying the Federal Act on Emoluments and Pensions of persons in highest federal offices and other officials (Bezügegesetz - Emoluments Act, Original version: Federal Law Gazette No. 273/1972) and other related acts. It also provides forms in accordance with the Federal Act on transparency and incompatibilities for persons in highest offices and other public officials (Incompatibility and Transparency Act - Unv-Tr-G, Original version: Federal Law Gazette No. 330/1983) for new Members of the Federal Government. These forms contain the significant legal provisions of the Incompatibility and Transparency Act and are handed over to new Members of the Federal Government by the Federal Chancellery. Newly inaugurated members of the Federal Government fill out the forms and forward them to the Incompatibility Committee of the National Council. In addition, the Incompatibility Committee of the National Council gives notice to the Federal Chancellor regarding companies and persons engaged in a freelance activity that are excluded from being awarded any contracts because of the provisions of the Incompatibility and Transparency Act. The Federal Chancellor publishes such information in the Official Gazette of Wiener Zeitung.

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Please see also the information provided on Article 7 para. 1, as well as on Article 8 and on Article 11, especially the information on the general code of conduct „Die VerANTWORTung liegt bei mir“ („The RESPONSibility rests with me“) as a specific measure to prevent corruption and to sensitize civil servants for situations where conflicts of interests may occur.

The code of conduct “Die VerANTWORTung liegt bei mir” („The RESPONSibility rests with me“) stipulates the development of preventative measures such as the rotation principle and mandatory dual control to prevent corruption in vulnerable areas.

Within the Ministry of the Interior (MoI) a Code of Conduct (“Our Values - Our Approach”) is based on values such as transparency, loyalty or rule of law. Further information can be found in the response to Article 7, paragraph 1 d.) and Article 8, paragraphs 1, 2 and 3.

## 15. Technical Assistance

The following questions on technical assistance relate to the article under review in its entirety.

1529

- 1** Please outline actions required to ensure or improve the implementation of the article under review and describe any specific challenges you might be facing in this respect.

1530 Do you require technical assistance for the implementation of this article? If so, please specify the forms of technical assistance that would be required. For example:

- 0** (NO) No assistance would be required

1531

- 1** Is any technical assistance already being provided to you? If so, please provide a general description of the nature of the assistance, including donor information.

## 8. Codes of conduct for public officials

### 16. Paragraph 1 of article 8

1. In order to fight corruption, each State Party shall promote, inter alia, integrity, honesty and responsibility among its public officials, in accordance with the fundamental principles of its legal system.

1520 Is your country in compliance with this provision?

- 0** (Y) Yes

1522

- 1** Please describe (cite and summarize) the measures/steps your country has taken, if any, (or is planning to take, together with the related appropriate time frame) to ensure full compliance with this provision of the Convention.

#### Oath of Office and general federal code of conduct

Upon entering service, all public servants shall pledge to obey Austrian laws and execute their duties loyally and diligently.

§ 7 of the Civil Servants Employment Act 1979 (Beamtenstellengesetz 1979 - BDG 1979, *Federal Law Gazette No. 333/1979*, reads as follows:

o Oath of office

§ 7. (1) Within four weeks of entering into their public law employment relationship, civil servants shall take the following oath of office: "I swear that I will obey the laws of the Republic of Austria and execute the duties of my office with loyalty and diligence."

(2) The oath shall be taken before a civil servant to be designated by the competent personnel authority.

§ 5 para. 3 of the Act on Contractual Public Employees (Vertragsbedienstetengesetz 1948 - VBG, *Federal Law Gazette No. 86/1948*) reads as follows:

(3) On commencing their duties, private law employees shall pledge to obey the laws of the Republic of Austria and to execute the duties of their office with loyalty and diligence. This pledge shall be affirmed by a handshake.

The existing general code of conduct to prevent corruption „Die VerANTWORTung liegt bei mir“ ([https://www.oeffentlicherdienst.gv.at/moderner\\_arbeitgeber/korruptionspraevention/infos/VerhaltenskodexDeutsch\\_2012\\_druck.pdf?3shqic](https://www.oeffentlicherdienst.gv.at/moderner_arbeitgeber/korruptionspraevention/infos/VerhaltenskodexDeutsch_2012_druck.pdf?3shqic)) („The RESPONSibility rests with me“ ([https://www.oeffentlicherdienst.gv.at/moderner\\_arbeitgeber/korruptionspraevention/infos/VerhaltenskodexEnglish\\_2012\\_druck.pdf?4ppzt1](https://www.oeffentlicherdienst.gv.at/moderner_arbeitgeber/korruptionspraevention/infos/VerhaltenskodexEnglish_2012_druck.pdf?4ppzt1))) was first edited in 2008 and adopted in 2012. This code elucidates provisions of national criminal law as well as federal civil service employment law. However, it does not create any new provisions. Especially the standards public servants have to observe for their daily professional activities are explained. Examples of required behaviours and such contrary to duty are provided. This code of conduct for civil servants is applicable across all government departments and local authorities.

The code of conduct „Die VerANTWORTung liegt bei mir“ is currently under review by the Coordinating Body for Combating Corruption involving all stakeholders under the lead of the Federal Ministry for the Civil Service and Sport. This is apparent from the fact that this code of conduct is applicable across all government departments and local authorities.

The existing code of conduct for all public officials is available in English via the following link: [http://oeffentlicherdienst.intra.gv.at/moderner\\_arbeitgeber/korruptionspraevention/infos/VerhaltenskodexEnglish\\_2012\\_druck.pdf?4ppzt1](http://oeffentlicherdienst.intra.gv.at/moderner_arbeitgeber/korruptionspraevention/infos/VerhaltenskodexEnglish_2012_druck.pdf?4ppzt1)

Certain departments or local authorities also have their own codes of conduct, which also apply.

Please also see the information provided on Article 7 para. 1 and para. 4.

#### **Additional Code of Conducts from other Federal Ministries (examples):**

In addition to the general code of conduct at the federal level, „Die VerANTWORTung liegt bei mir“, several federal ministries have developed, own, more specific Codes of Conduct for their employees, such as:

#### **Brief description of the Code of Conduct of the Ministry of the Interior (MoI):**

The Code of Conduct of the Federal Ministry of the Interior ("Our Values - Our Approach") is the code of conduct issued by the Federal Ministry of the Interior for all members of staff.

The Code is based on three central values: the rule of law (ensuring service exclusively on the basis of the law), loyalty (mutual appreciation, respect, support, reliability and regard) and quality (providing quality work; transparency, credibility and reliability).

The contents of this Code of Conduct are the general duties of the employees of the MoI, their

respectful interaction with each other (= prohibition of mobbing), the legally compliant fulfilment of tasks, official secrecy, bias, the acceptance of gifts and other advantages, gifts of honour, secondary employment, correct action in the event of misconduct, as well as opportunities for contact with the compliance officers and extracts from the relevant legal provisions. For further information on the evaluation of the MoI Code of Conduct, see response to Article 8, paragraphs 2 and 3. For information on the e-learning module "Code of Conduct, MoI", see response to Article 7, paragraph 1 d.).

#### **Code of Conduct of the Federal Chancellery:**

The federal chancellery of Austria has established a code of conduct, which applies to all civil servants working at the federal chancellery. This code of conduct „Null Toleranz für Korruption“ („Zero Tolerance for Corruption“) was signed by the Chancellor and two ministers to show its importance. The code of conduct of the federal chancellery is based on the code of conduct of the Austrian civil service „Die VerANTWORTung liegt bei mir“ („The RESPONSibility rests with me“).

#### **Ordinance of the Federal Ministry for Constitutional Affairs, Reforms, Deregulation and Justice:**

The Ordinance of the Federal Minister of Constitutional Affairs, Reforms, Deregulation and Justice regarding the modular basic training for court staff (office) and bailiffs (Kanzlei- und Gerichtsvollzieher/innen-Grundausbildungsverordnung) provides that office staff and bailiffs, right at the beginning of their modular basic training, have to attend an introductory module in the subject “Communication and Professional Ethics”, where they learn about the standards of behaviour in public life. As part of the basic module, they have to attend courses as “Fundamentals of civil service law and Compliance”, where they learn about the most important rights and responsibilities and deal with subjects such as acceptance of gifts and guidelines for judicial staff. Bailiffs have to attend a mandatory module called “Conduct in Office”, which comprises courses as “Behaviour and safety in office” and “Prevention of corruption and integrity management (Code of Conduct).

Please see also the answers from the Federal Ministry for Constitutional Affairs, Reforms, Deregulation and Justice to Article 11, paras. 1 and 2.

1525

#### **1 Please provide examples of the implementation of those measures, including related court or other cases, available statistics etc.**

The Austrian Court of Audit gave professional input to the amendment of the general federal Code of Conduct „Die VerANTWORTung liegt bei mir (The RESPONSibility rests with me)“ for the correct and honourable performance of public functions.

Special audits of the Austrian Court of Audit monitor also the implementation of the requirements of this Code of Conduct.

For further information on the e-learning module "Code of Conduct, MoI", see response to Article 7, paragraph 1 d.).

### **17. Paragraph 2 and 3 of article 8**

2. In particular, each State Party shall endeavour to apply, within its own institutional and legal systems, codes or standards of conduct for the correct, honourable and proper performance of public functions.

3. For the purposes of implementing the provisions of this article, each State Party shall, where appropriate and in accordance with the fundamental principles of its legal

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system, take note of the relevant initiatives of regional, interregional and multilateral organizations, such as the International Code of Conduct for Public Officials contained in the annex to General Assembly resolution 51/59 of 12 December 1996.

**1521 Is your country in compliance with these provisions?**

**0 (Y) Yes**

**1523**

**1 Please describe (cite and summarize) the measures/steps your country has taken, if any, (or is planning to take, together with the related appropriate time frame) to ensure full compliance with these provisions of the Convention.**

The responsibility for revising the existing code of conduct to prevent corruption „Die VerANTWORTung liegt bei mir  
<[https://www.oeffentlicherdienst.gv.at/moderner\\_arbeitgeber/korruptionspraevention/infos/VerhaltenskodexDeutsch\\_2012\\_druck.pdf?3shqic](https://www.oeffentlicherdienst.gv.at/moderner_arbeitgeber/korruptionspraevention/infos/VerhaltenskodexDeutsch_2012_druck.pdf?3shqic)>“ („The RESPONSibility rests with me  
<[https://www.oeffentlicherdienst.gv.at/moderner\\_arbeitgeber/korruptionspraevention/infos/VerhaltenskodexEnglish\\_2012\\_druck.pdf?4ppzt1](https://www.oeffentlicherdienst.gv.at/moderner_arbeitgeber/korruptionspraevention/infos/VerhaltenskodexEnglish_2012_druck.pdf?4ppzt1)>“) is entrusted to five special working groups comprising inter alia experts from the ministries, the provinces, towns and cities, the Public Service Union, the Union of Municipal Employees and Transparency International - Austrian Chapter. These experts also take note of initiatives of regional, interregional and multilateral organizations.

On the basis of the existing code of conduct each department may issue standards of conduct for the public servants employed in the particular department.

Please also see the information provided on Article 7 para. 1 and on Article 8 para. 1.

See also the answers to Article 8 para. 1 and Article 11 paras. 1 and 2.

The Code of Conduct of the Ministry of the Interior (MoI) with the title "Our Values - Our Approach", was published in 2010 and is based on international recommendations as well as on the Code of Conduct of the Austrian Federal Chancellery. It was revised in 2012; in 2016/17, the Federal Bureau of Anti-Corruption (BAK) launched an evaluation of the new edition of the Code of Conduct in cooperation with the MoI Chief Compliance Officer.,

To evaluate the Code of Conduct, data regarding the expertise and experience of public officials who, according to their duties, are dealing with matters of integrity and the prevention of corruption on a regular basis was collected. The gathered results were taken into account in the new edition of the Code of Conduct of 2017. Furthermore, a concept for conveying the values and the content of the Code of Conduct was developed. For further information on the content of the MoI Code of Conduct, see response to Article 8, paragraph 1. For information on the e-learning module "Code of Conduct, MoI", see response to Article 7, paragraph 1 d.).

**1525**

**1 Please provide examples of the implementation of those measures, including related court or other cases, available statistics etc.**

Please see the information provided to the questions 1 and 2 on Article 8 para. 2 and 3.

Results of the evaluation of the MoI's Code of Conduct (CoC):

The knowledge of the existence of the CoC and a barrier-free, easy access to its content are essential if it is to be seen and applied as a practical tool in everyday working life. Despite a positive assessment of the accessibility of the CoC for staff members and the fact that the CoC issue had been raised regularly by the Ministers of the Interior over the years before, the majority of respondents considered the level of awareness to be rather low and saw a great need for improvement. In particular, the need for training on this topic within the ministry, a stronger

presence on the Internet and Intranet, an increased circulation of the CoC booklet, and the fact that it should be constantly addressed or put on the agenda by senior officials (e.g. in the context of internal meetings or appraisal interviews) were cited.

The access to the CoC via the MoI's intranet site was already optimized during the evaluation phase. The desire for new subjects dealt with by the CoC, such as behaviour in social media, as well as for a more condensed presentation of the content was taken into account. In addition, on the basis of suggestions made by the interviewed experts, short versions of the CoC (in the form of a leaflet as well as a brochure in a 10x10 cm format) were also produced and already published.

## 18. Paragraph 4 of article 8

4. Each State Party shall also consider, in accordance with the fundamental principles of its domestic law, establishing measures and systems to facilitate the reporting by public officials of acts of corruption to appropriate authorities, when such acts come to their notice in the performance of their functions.

1520 Is your country in compliance with this provision?

0 (Y) Yes

1522

1 Please describe (cite and summarize) the measures/steps your country has taken, if any, (or is planning to take, together with the related appropriate time frame) to ensure full compliance with this provision of the Convention.

Please see the information provided on Article 7, Article 8 and Article 11, in particular regarding "Reporting obligations" and "Protection against prejudicial treatment".

§ 53a of the Civil Servants Employment Act 1979 - also applicable for contractual employees via § 5 of the Act on Contractual Public Employees - entered into force on 1 January 2012 and regulates a better protection for civil servants, especially towards their employer, against retaliation or disadvantages in their employment relationship, when they report in good faith certain moments of reasonable suspicion or cases of corruption.

§ 53a of the Civil Servants Employment Act 1979 reads as follows:

o *Protection against prejudicial treatment*

§ 53a. A civil servant who, pursuant to § 53 para. 1, reports in good faith a reasonable suspicion of an offence listed in § 4 para. 1 of the Federal Act on the Establishment and Organisation of the Federal Bureau of Anti-Corruption [Bundesgesetz über die Einrichtung und Organisation des Bundesamts zur Korruptionsprävention und Korruptionsbekämpfung - BAK-G, Federal Law Gazette No. 72/2009)] shall not suffer any prejudicial treatment at the hands of a representative of her/his employer in consequence of such a report. The same shall apply if a civil servant makes use of her/his right to report in accordance with § 5 of the Federal Act on the Establishment and Organisation of the Federal Bureau of Anti-Corruption .

### The Federal Bureau of Anti-Corruption (BAK) Single Point of Contact

A reporting party can contact the BAK via the Single Point of Contact (SPOC) at any time (24/7) by telephone, post, fax or e-mail. Staff from the various departments/authorities have the opportunity to report suspicious facts relating to the offences listed in § 4 of the Federal Act on the

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Establishment and Organisation of the Federal Anti-Corruption Bureau (BAK-G) directly to the BAK, without having to go through the official channels. The allegations can also be reported anonymously. The SPOC's contact details are published in a number of places on the BAK's official website.

According to § 5 BAK-G, civil servants are not prohibited from reporting the above-mentioned allegations or suspicious circumstances directly to the BAK without using official channels (right to report). The BAK guarantees to treat data of persons who report suspicious circumstances as confidential as possible. In this regard, the BAK will obviously endeavour to cooperate with the competent judicial authorities. In some cases, especially if the suspicion is based solely on information from an informant, the relevant criminal law provisions may make it imperative to disclose the source of the suspicion in court. According to § 53a of the Civil Servants Employment Act, all civil servants and contract staff may be granted special protection.

Since 20 March 2013, wrongdoings may also be reported anonymously via a portal ([www.bkms-system.net/wksta](http://www.bkms-system.net/wksta)), which was launched by the Austrian Federal Ministry of Constitutional Affairs, Reforms, Deregulation and Justice (BMVRDJ) in 2013. The portal can also be accessed via a link on the Ministry's homepage (<https://www.justiz.gv.at/web2013/html/default/2c9484853d643b33013d8860aa5a2e59.de.html>), where further information on the portal is available for download.

The portal is operated by the Central Public Prosecutor's Office for Combating Economic Crimes and Corruption (CPPOCECC). The whistleblowing system is an anonymous online reporting system, which is especially suited for investigations in the areas of economic crimes and corruption. The whistleblower (or "discloser") may report anonymously any suspicion that a crime in the general remit of the CPPOCECC pursuant to section 20a of the Code of Criminal Procedure (CCP) has been committed; the investigation authority in turn may make inquiries with the whistleblower, while maintaining his or her anonymity, in order to verify the value of the information. Any reports within the focus set out in section 20a CCP but outside the CPPOCECC's remit are forwarded to the competent authorities (i.e. mostly fiscal authorities).

To ensure that anonymity is guaranteed when setting up a secured mailbox, the whistleblower is required to choose a pseudonym/user name and password. The anonymity of the information disclosed is maintained by using encryption and other security procedures. Furthermore, whistleblowers are requested not to enter any data that give any clues as to their identity and to refrain from submitting reports using devices provided by their employers. Following submission, the CPPOCECC provides the whistleblower with feedback and information on the status of his/her disclosure through a secured mailbox. If there are issues that need to be clarified regarding the case, the questions are directed to the whistleblower through an anonymous dialogue.

Such verified reports can lead to the opening of investigations or raise specific suspicions requiring the initiation of preliminary investigations. As of 30 June 2019, the introductory page of the electronic whistleblowing system had been accessed over 643.209 times. 7,882 (possible) criminal offences were reported, 5.2 % of which were found to be completely without justification. 5.289 of all reports involved the installation of a secured mailbox. About 42,88 % of the reports fell within the jurisdiction of other (especially fiscal) authorities and were forwarded accordingly.

The following description is available on the website in English and German:

"... [P]rosecution offices and police usually also depend on the information of responsible citizens. Often individual persons shy away from divulging information due to their fear of personal disadvantages. The reasons for this can for example be the involvement of colleagues or superiors. Also the uncertainty of whether their information is taken seriously and investigated can be a problem.

This protected communication platform serves to allay these doubts. Reports can be submitted anonymously and without being traceable. Please set up a secured postbox after reporting. This way, the prosecution office, unlike in the case of other anonymous reports, has the possibility to further establish the circumstances by directly asking you questions, in order to take appropriate

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and successful investigative measures.

By using the provided communication platform you have the possibility to protect yourself by remaining anonymous and at the same time actively help in the clarification of economic crime and corruption ...”

#### **Possibility to approach the Court of Audit:**

Every citizen is invited to express her or his concerns to the Austrian Court of Audit via telephone, mail and social media. The third campaign for public participation was launched in summer 2019. Citizens are invited to communicate their suggestions for audits. More than one quarter of these suggestions have been considered in the Audit Program 2019 of the Austrian Court of Audit.

The Department for Anti-Corruption, Compliance and Risk Management acts as contact point within the Austrian Court of Audit to the law enforcement authorities such as the Specialized Public Prosecutor's Office for Combatting Economic Crime and Corruption. The legal appreciation respectively the process of transmission of penal relevant circumstances as well as the coordination of requests by prosecution or police shall be harmonized and standardized.

1525

**1 Please provide examples of the implementation of those measures, including related court or other cases, available statistics etc.**

Since the BAK also functions as a reporting office (§ 5 BAK-G), it keeps statistics on the reported cases. It should be noted that these statistics only reflect the number of incoming reports, complaints, allegations or accusations made by private parties or authorities, that were initially classified as a suspected specific offence, without further checking the legal qualification or taking into account a later development of the facts.

## **19. Paragraph 5 of article 8**

5. Each State Party shall endeavour, where appropriate and in accordance with the fundamental principles of its domestic law, to establish measures and systems requiring public officials to make declarations to appropriate authorities regarding, inter alia, their outside activities, employment, investments, assets and substantial gifts or benefits from which a conflict of interest may result with respect to their functions as public officials

**1520 Is your country in compliance with this provision?**

☐ (Y) Yes

1522

**1 Please describe (cite and summarize) the measures/steps your country has taken, if any, (or is planning to take, together with the related appropriate time frame) to ensure full compliance with this provision of the Convention.**

§ 56 of the Civil Servants Employment Act 1979 - also applicable for contractual employees via § 5 of the Act on Contractual Public Employees - regulates the engagement of civil servants in additional occupations. Public servants may not engage in any additional occupation that hinders them in performing their official duties or might create the impression of bias or jeopardize official interests. If a public official acts in breach of these obligations, the competent personnel authority shall prohibit the pursuit of this occupation immediately.

Public servants are obliged to report to the competent personnel authority any gainful occupation as well as any change in such an occupation. Furthermore, public servants must report any

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membership of the supervisory board, management board, board of directors or any other corporate body of a legal entity under private law operating for profit.

Regarding the provisions, regulating additional occupations of judges and public prosecutors please also see the information provided on Article 11.

Pursuant to § 59 Civil Servants Employment Act 1979 civil servants are prohibited to solicit, obtain or accept (promises of) gifts in connection with their official position or their official duties, this is also applicable to contractual employees via § 5 of the Act on Contractual Public Employees. There are, however, exceptions:

- Public servants may keep customary gifts of minor value.
- Public servants may accept “gifts of honour”. They are obliged to inform the competent personnel authority of such gifts immediately. The competent personnel authority decides whether the public servant may keep such a gift or whether it has to be sold or otherwise realised.
- Public servants may accept benefits granted to them in the course of events in which their participation is justified by official interests.

In the event of a culpable breach of these provisions, disciplinary action is launched. In this context, please also see the information provided on Article 8 para. 6.

Compliance with these regulations is also subject to irregular audits of the Austrian Court of Audit (Rechnungshof) and the competent internal audit division of a department.

The relevant provisions are cited in the information provided on Article 7 para. 4.

The compliance with regulations on secondary employment, gifts and benefits is also an integral part of the audits of the Austrian Court of Audit and is also considered in the “Guideline for Auditing Corruption Prevention Systems (CMS)”, e.g. in the audit report “Corruption Prevention Systems in selective Federal Ministries (Federal Chancellery, Education Ministry, Ministry of the Interior, Agriculture Ministry)”, Reihe Bund 2017/8. Also, in the second specialized audit on “Corruption Prevention Systems in the cities Graz, Innsbruck and Salzburg” (not published until 18 July 2019) these issues were integral part of the audit.

In the current audit report “Secondary Employment of University Professors”, Reihe Bund 2019/20, notifications of secondary employments, their administrative procession and impact on the Universities have been audited.

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- 1 Please provide examples of the implementation of those measures, including related court or other cases, available statistics etc.**

Please see the information provided to the questions 1 and 2 on Article 8 para. 5.

## 20. Paragraph 6 of article 8

6. Each State Party shall consider taking, in accordance with the fundamental principles of its domestic law, disciplinary or other measures against public officials who violate the codes or standards established in accordance with this article.

**1520 Is your country in compliance with this provision?**

**0 (Y) Yes**

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1522

**1 Please describe (cite and summarize) the measures/steps your country has taken, if any, (or is planning to take, together with the related appropriate time frame) to ensure full compliance with this provision of the Convention.**

Due to the different legal status of civil servants and civil service employees working on a contractual basis, the provisions regulating the disciplinary proceedings of civil servants on one hand and civil employees on the other hand differ slightly.

In the event of a culpable breach of official duties disciplinary action is instituted. The service superior shall investigate any reasonable suspicion of a breach of official duties and file a disciplinary complaint with the competent personnel authority without delay. If the breach of official duty also constitutes a criminal offence, there is an obligation to report the matter to the public prosecutor's office.

The following disciplinary measures are available under the disciplinary code applicable to civil servants:

- Reprimands,
- small fines (up to half a month's salary),
- large fines (from one to five month's salary) and
- dismissal.

For civil service employees reprimands, termination of contract or dismissal are the only applicable disciplinary measures.

The competent personnel authority may temporarily suspend civil servants and issue disciplinary orders in respect of civil servants in its area of responsibility. The current disciplinary commissions will be replaced by the Federal Disciplinary Authority (Bundesdisziplinarbehörde). This Federal Disciplinary Authority is competent to issue disciplinary decisions and to decide on suspensions for all civil servants. Its members are independent and autonomous in the performance of their duties. A Disciplinary Attorney advocates the interests of public service in the proceeding before the Federal Disciplinary Authority.

Against decisions of the Federal Disciplinary Authority appeal to the Federal Administrative Court (Bundesverwaltungsgericht) is admissible. The parties of the proceedings before the Federal Administrative Court are entitled to file for final complaint at the Supreme Administrative Court (Verwaltungsgerichtshof).

Civil service employees working on a contractual basis may file an action against a disciplinary order issued by a personnel authority to the courts for labour and social matters.

Please also see the information provided on Article 7, Article 8 and Article 11, in particular regarding "Reporting obligations" and "Protection against prejudicial treatment".

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

1525

**1 Please provide examples of the implementation of those measures, including related court or other cases, available statistics etc.**

The newly founded Federal Disciplinary Authority (please see Article 8 para. 6 question 2), which will officially start its work on 1 July 2020, is responsible to compile an annual report regarding the year under review. The report shall contain the number of cases pending, the number and type of cases ending the procedure, the concluded findings regarding breaches of official duty, the concluded findings regarding the imposed sentences and the number of acquittals in the year under review.

## 21. Technical Assistance

The following questions on technical assistance relate to the article under review in its entirety.

1529

- 1** Please outline actions required to ensure or improve the implementation of the article under review and describe any specific challenges you might be facing in this respect.

**1530** Do you require technical assistance for the implementation of this article? If so, please specify the forms of technical assistance that would be required. For example:

- 0** (NO) No assistance would be required

1531

- 1** Is any technical assistance already being provided to you? If so, please provide a general description of the nature of the assistance, including donor information.

## 9. Public procurement and management of public finances

### 22. Paragraph 1 of article 9

1. Each State Party shall, in accordance with the fundamental principles of its legal system, take the necessary steps to establish appropriate systems of procurement, based on transparency, competition and objective criteria in decision -making, that are effective, inter alia, in preventing corruption. Such systems, which may take into account appropriate threshold values in their application, shall address, inter alia:

(a) The public distribution of information relating to procurement procedures and contracts, including information on invitations to tender and relevant or pertinent information on the award of contracts, allowing potential tenderers sufficient time to prepare and submit their tenders;

(b) The establishment, in advance, of conditions for participation, including selection and award criteria and tendering rules, and their publication;

(c) The use of objective and predetermined criteria for public procurement decisions, in order to facilitate the subsequent verification of the correct application of the rules or procedures;

(d) An effective system of domestic review, including an effective system of appeal, to ensure legal recourse and remedies in the event that the rules or procedures established pursuant to this paragraph are not followed;

(e) Where appropriate, measures to regulate matters regarding personnel responsible for procurement, such as declaration of interest in particular public procurements, screening procedures and training requirements.

**1520 Is your country in compliance with this provision?**

**0 (Y) Yes**

**1522**

**1 Please describe (cite and summarize) the measures/steps your country has taken, if any, (or is planning to take, together with the related appropriate time frame) to ensure full compliance with this provision of the Convention.**

1. In 2018, Austria implemented the EU Public Procurement Directives (2014/23/EU, 2014/24/EU and 2014/25/EU) into national law: The new Federal Procurement Act 2018 (FPA 2018) and the Federal Procurement Act on Concessions 2018 (FPAConc 2018) entered into force in August 2018. These national acts ensure full compliance with article 9, paragraph 1 of the United Nations Convention Against Corruption in the field of public procurement. For reasons of simplicity the answer will only refer to provisions of FPA 2018 concerning “standard” public procurement procedures (i.e. although identical or similar provisions for procedures regarding utilities and concessions exist, those provisions will not be referred to explicitly). All translations of provisions of the FPA 2018 included in the following answers are non-official translations.

It has to be mentioned that in the Austrian public procurement system certain thresholds (in regard to the estimated contract value) exist, but - mainly due to jurisprudence of the Constitutional Court - the provisions of the FPA 2018 are in general applicable to all procurement procedures regardless of the estimated contract value. Whereas the EU public procurement directives are only applicable to above threshold procedures, the FPA 2018 also covers below threshold procedures. As the below threshold procedures have a lower economic impact due to their lower estimated contract value, the provisions are simplified in certain aspects.

According to section 20 paragraph 1 of the FPA 2018, procurement procedures have to adhere to the Union law principles of equal treatment of all candidates and tenderers, non-discrimination, proportionality, transparency, free and fair competition and the principle of economic efficiency. Procurement contracts may only be awarded to capable and reliable (suitable) economic operators at reasonable prices.

Those principles are recurring in various provisions of the FPA 2018 concerning specific aspects of public procurement procedures:

1.1. Selection criteria have to be ranked according to their importance, must be objective, non-discriminatory, proportionate to the subject-matter of the contract and related to the economic operator. Award criteria for the choice of the technically and economically most advantageous tender are the lowest price, the lowest cost or criteria, which are linked to the subject-matter of the public contract in question. The contracting authority/entity shall specify, in the procurement documents, the relative weighting which it gives to each of the criteria chosen to determine the technically and economically most advantageous tender, except where this is identified on the basis of price alone. Where weighting is not possible for objective reasons, the contracting authority/entity shall indicate the criteria in decreasing order of importance. The award criteria must not provide the contracting authority/entity with unrestricted choice and have to ensure effective competition and must be accompanied by specifications that allow for an effective review of the

information provided by the tenderers regarding how the tenders fit the award criteria.

1.2. The provisions regarding principles for setting deadlines require from the contracting authority/entity to calculate and set deadlines in a way that leaves the economic operators enough time to take the required action. In particular, deadlines for requests to participate and for tenders (and for providing a solution in a competitive dialogue) have to be set in a way that - having regard to the complexity of the subject of the procurement procedure - the economic operator has enough time to create or provide these documents. Further legal provisions set a minimum period of time for taking the required action. For example in an above threshold open procedure the period for the submission of tenders has to be at least 30 days.

1.3. In procurement procedures, electronic communication is standard. In above threshold procedures it is mandatory with very limited exceptions. As far as the publication of notices is concerned, those have to be published in an open data framework (national level) and - above the EU thresholds - also in Supplement S of the Official Journal of the European Union which is electronically available via Tender Electronics Daily (TED) (EU level). On the national level, other methods of publication may be used but only in addition to the ones mentioned above. In Austria the open and restricted procedure with prior publication are the default procedures above and below the EU thresholds. In the latter, an unlimited number of economic operators is publicly asked to submit requests for participation. Subsequently a selection of suitable economic operators is asked to submit tenders. Thus, the second stage of this procedure is similar to an open procedure.

1.4. In Austria, there is a differentiation between the grounds for exclusion (which are addressed at the tenderer) and the grounds for rejection (which are directly related to the tender). Exclusion grounds are regulated in section 78 FPA 2018. This provision regulates under which circumstances a contracting authority has to exclude an economic operator from participating in a procurement procedure. Examples for such circumstances are: the contracting authority is aware of a final conviction of the economic operator regarding corruption, the economic operator is guilty of grave professional misconduct or the economic operator has undertaken to unduly influence the decision-making process of the contracting authority.

A contracting authority has to reject a tender for example, if the tender is submitted late, if the composition of the price is not plausible, if the tender does not contain a price, but only a statement that the lowest bid is going to be undercut by a certain percentage or value or if the tender was submitted by a tenderer that is not suitable.

1.5. As far as the choice of a specific procurement procedure is concerned, as already stated above, the open procedure and the restricted procedure with prior publication can be chosen regardless of the procurement to be carried out. All other procedures can only be chosen under specific circumstances. Those other procedures include restricted procedure without prior publication, competitive negotiated procedure with or without prior publication, competitive dialogue, framework agreements, dynamic purchasing systems, competitive dialogue, innovation partnerships, direct procurement and direct procurement with prior publication. For example, the competitive negotiated procedure with prior publication can - for example - be chosen, if the needs of the public authority cannot be met without the adaption of already available solutions or if the contract includes conceptual or innovative solutions. Those rules are laid down in the FPA 2018 and thus publicly available (available at: [www.ris.bka.gv.at](http://www.ris.bka.gv.at)). Concluded procurement contracts are not published but the important facts are publicly available via the OGD publication system and TED (in particular regarding the contract notice, procurement documents, award notice).

1.6. Tendering rules or selection/award criteria may not be amended during a pending procurement procedure. However, the possibility to correct the procurement documents exists (for example a standard has been cited wrongly in the procurement documents, a deadline has been miscalculated a.s.o.). A correction of the procurement documents must not lead to a relevant (substantial) change of the subject matter of the procurement procedure or otherwise alter the terms of the procedure in a substantial way. Furthermore, a correction is only possible as long as the time limit for the receipt of tenders has not expired; if a correction shall take place before the end of this time limit, the deadline for submitting tenders has to be extended if the correction has a significant impact on the

preparation of a tender. Any correction and any change of the time limit has to be communicated to all candidates or tenderers to ensure transparency and equal treatment.

1.7. A failure to comply with the applicable laws, regulations and procedures leads to serious consequences. For example a decision of the contracting authority, such as the exclusion of a tenderer, may be declared void, the contract may be declared void ex tunc, the contract may be suspended at a later point in time or the contracting authority sentenced to pay a fine which is capped at 20% of the contract value in above threshold procedures.

1.8. There are various supervising bodies in the context of procurement that monitor public procurement procedures. On the one hand, there are internal control bodies responsible for internal revision and, on the other hand, there is the Austrian Court of Audit at federal level and the Regional Court of Audits, which are external supervising bodies.

The development of risk management and internal control systems is an integral part of the audits of all Courts of Audit and is also considered for example in the Austrian Court of Audit "Guideline for Auditing Corruption Prevention Systems (CPS)".

In the current audit report "Procurement Processes of Construction Works in Bruck an der Mur", Reihe Steiermark 2019/5, the Austria Court of Audit recommends the following measures for an effective internal control system to improve the procurement processes:

- Clear and distinct specifications in writing,
- written specifications without exception,

documentation of the submission and opening of the offer as well as filing of the documents and

reviews of procurement processes with the aim to promptly identify potential vulnerabilities and undesirable developments.

Within the scope of its audit reports the Austrian Court of Audit recommends the use of e-procurement-tools exceeding legal requirements as a measure for the prevention of corruption, e.g. in the audit report "Corruption Prevention Systems in the cities Graz, Innsbruck and Salzburg" (not published until 18 July 2019)].

1.9. For business and professional organizations, there exist certain obligations for the exchange of information regarding an economic operator's entry in specific registers. Furthermore, certain professional organizations are involved in the nomination of lay judges for review bodies.

2. Since the EU Directives are in conformity with the UNCITRAL model law the national legislation transposing these Directives must be in conformity as well. Furthermore, it has to be pointed out, that the Explanatory Notes to the FPA 2018 specifically refer to the UNCITRAL Model Law.

3. In case of a procurement procedure with prior publication, contracting authorities and entities have to offer unrestricted and full direct access free of charge to the procurement documents by electronic means as soon as the corresponding notice or invitation to confirm interest is sent or provided by electronic means. The text of the notice or the invitation to confirm interest has to specify the internet address at which the procurement documents are accessible. The electronically provided procurement documents have to be available at least until the time limit for the submission of requests to participate or tenders has expired. In case of a procurement procedure without prior publication the procurement documents have to be sent or provided electronically and free of charge to every economic operator that has been invited to submit a tender. The only exceptions from the obligations to provide the procurement documents electronically are cases in which the contracting authority is not required to use electronic communication or it is necessary for the protection of confidential information or where information cannot be sent electronically (for example architecture models).

The procurement documents have to contain all relevant and pertinent information for the economic operators. For example the contracting authority or entity has to be exactly identified, information has to be provided on whether the procedure is a below threshold or above threshold procedure, which means of proof are regarded as necessary, if they have not already been listed in the notice, or which award criteria are going to be used. An important part of the procurement documents is the description of the subject-matter to be procured, which can be provided through a technical description based on standards or a functional description. The procurement documents also have to contain the contract clauses and information on the competent review body for the procurement procedure.

4. Concerning the review of procurement procedures, the competence is divided between the Federation (*Bund*) and the Regions (*Länder*). Therefore, the review system in the FPA 2018 is only applicable to the procurement procedures regarding contracting authorities or entities of the *Bund*. For the other procurement procedures, nine regional laws exist, one in each *Land*, which to a large extent mirror the respective provisions of the *Bund*. The competent review bodies are in all cases the administrative courts. In case of the review of a procurement procedure that falls within the scope of the FPA 2018 the competent body is the Federal Administrative Court.

Up to the award of the contract or the cancellation of the procurement procedure it is possible to submit a request for a temporary injunction and a request to declare decisions of the contracting authority/entity void (for example the decision to exclude a tenderer). These requests have to be submitted within certain time limits. For requests to declare decisions void, this time limit is ten days after the decision was electronically sent to the respective tenderer/participant in the procurement procedure or fifteen days if the decision was sent by mail or in another suitable manner. After the award of the contract or the cancellation of the procurement procedure the administrative court is competent to state that a procurement procedure has been conducted in an unlawful way (for example the procedure was unlawfully carried out without prior publication). As a result of this statement, the administrative court can declare the contract or the decision to cancel a procurement procedure void or, if the contract is not declared void, sentence the contracting authority or entity to pay a fine. Requests for such decisions have to be submitted within six months after the award of the contract or the cancellation of the procurement procedure.

The fees for those procurement review proceedings are higher than for standard proceedings before the administrative courts due to the higher complexity and amount of time needed for those procedures. However, those fees will be refunded to the applicant in case of a successful request.

Economic operators can appeal against decisions by an administrative court to the Supreme Administrative Court or the Constitutional Court. In general, these courts do not decide on the matter itself, but decide if the decision by the administrative court was unlawful. If the latter holds true the case is referred back to the administrative court to be decided again. The administrative court concerned is bound by the legal opinion of the (higher) court that quashed its decision.

5. As far as personnel matters are concerned, the Federal Academy of Public Administration offers various workshops for procurement personnel, for example on the prevention of corruption. Constant training is a focus for all personnel working in public procurement. Some provisions also aim at preventing conflicts of interest or negative impacts thereof. For example, Section 26 paragraph 1 FPA 2018 requires the public authority to take appropriate measures to effectively prevent, discover and resolve conflicts of interest in public procurement procedures aiming to prevent distortions in competition and to ensure equal treatment for all economic operators. Paragraph 2 leg. cit. defines the concept of a conflict of interest in the following way: The concept of conflicts of interest shall at least cover any situation where staff members of the contracting authority or of a procurement service provider acting on behalf of the contracting authority who are involved in the conduct of the procurement procedure or may influence the outcome of that procedure have, directly or indirectly, a financial, economic or other personal interest which might be perceived to compromise their impartiality and independence in the context of the procurement procedure. If such a conflict of interest cannot be resolved by less severe measures, it leads to the exclusion of the respective economic operator from the procurement procedure. If a conflict of interest arises in a procurement procedure, it has to be documented as well as the measures taken



to resolve it.”

6. In Austria public servants have to refrain from the exercise of their office and arrange for their substitution, if relevant grounds arise, which are likely to raise doubts as to their full impartiality. A failure to do so may result in disciplinary proceedings, which - in the worst case - may lead to a dismissal from public service.

7. For a detailed description of the debarment procedure see point 1.4. above.

1525

**1 Please provide examples of the implementation of those measures, including related court or other cases, available statistics etc.**

**Relevant decisions of the Supreme Administrative Court (Verwaltungsgerichtshof, VwGH):**

VwGH 16.5.2018, Ra 2017/04/0152:

The administrative court of the *Land* Upper Austria dismissed a request of a tenderer to declare the award decision void. In the reasoning of its decision, it argued that the composition of the price of the successful tender was not plausible in certain aspects. However, since this unlawfulness had, according to the administrative court, no relevant influence on the outcome of the procurement procedure, it dismissed the request.

The Supreme Administrative Court argued that the legal opinion of the administrative court was unlawful, because an implausible composition of the price constitutes a mandatory rejection ground. Therefore, the successful tender should have been excluded and not considered for the award decision. The Supreme Administrative Court thus quashed the decision of the administrative court.

VwGH 4.7.2016, Ra 2016/04/0015, 0016:

Following a request by a tenderer the administrative court of the *Land* Vienna declared an award decision for a lot in an above threshold procurement procedure concerning service

contracts void. The administrative court argued that the procurement documents stated that the amount of time needed to supply a substitute (one of the quality criteria in the procurement procedure) would only be considered, if it could be adhered to in conformity with the provisions on traffic regulations. The contracting authority reserved the right to check those amounts of time by a test drive. In case of a test drive, the results of this test drive would be the basis for the evaluation of the tender. Concerning the tenderer that submitted the request a test drive was conducted and the result of the test drive showed a shorter amount of time than that provided in the tender. Nevertheless, the amount of time given in the tender was used for the evaluation of the tender. Since the procurement documents stated that the result of the test drive would be the basis for the evaluation of the tender, the administrative court declared the award decision void.

The Supreme Administrative Court argued that procurement documents have to be interpreted objectively and, if in doubt, in accordance with the legal provisions. Since the legal provisions do not allow for a subsequent improvement of the tender, because this would give certain tenderers an advantage over other tenderers, which would be in contrast to the principle of equal treatment, the procurement documents could not be interpreted as allowing for an improvement of the tender due to the results of the test drive. Rather the procurement documents had to be interpreted as allowing the contracting authority to conduct a test drive to ensure the amounts of time were attainable in adherence to the provisions on traffic regulations and only consider those amounts of time in the case this holds true. Therefore, the Supreme Administrative Court quashed the decision of the administrative court.

VwGH 4.7.2016, Ra 2016/04/0023:

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A contracting authority initiated an above threshold procurement procedure for the supply of syringes. The original deadline for the submission of tenders was postponed twice using a correction of the procurement documents. In this setting the administrative court of the *Land* Vienna dismissed a request to declare the invitation to tender void, because it was submitted late. The administrative court argued that the invitation to tender and the two corrections were separately reviewable acts and the request to declare the invitation to tender void was submitted late, although the deadline to submit tenders had not yet expired due to the two corrections of the procurement documents.

The Supreme Administrative Court argued that in such a case a postponement of the deadline for the submission of tenders also affects the deadline for review requests. Otherwise, in case of a permitted shortening of the deadline to submit tenders the invitation to tender could still be subject to a review after the deadline to submit tenders has ended, which would be in contrast to the aim of efficient procurement procedures. The Supreme Administrative Court thus quashed the decision of the administrative court of the *Land* Vienna.

### 23. Paragraph 2 of article 9

2. Each State Party shall, in accordance with the fundamental principles of its legal system, take appropriate measures to promote transparency and accountability in the management of public finances. Such measures shall encompass, inter alia:

- (a) Procedures for the adoption of the national budget;
- (b) Timely reporting on revenue and expenditure;
- (c) A system of accounting and auditing standards and related oversight;
- (d) Effective and efficient systems of risk management and internal control; and
- (e) Where appropriate, corrective action in the case of failure to comply with the requirements established in this paragraph.

**1520** Is your country in compliance with this provision?

☒ (Y) Yes

**1522**

**1** Please describe (cite and summarize) the measures/steps your country has taken, if any, (or is planning to take, together with the related appropriate time frame) to ensure full compliance with this provision of the Convention.

**Procedures for the adoption of the national budget**

The ideal-typical budget cycle in Austria is shown in the figure below:

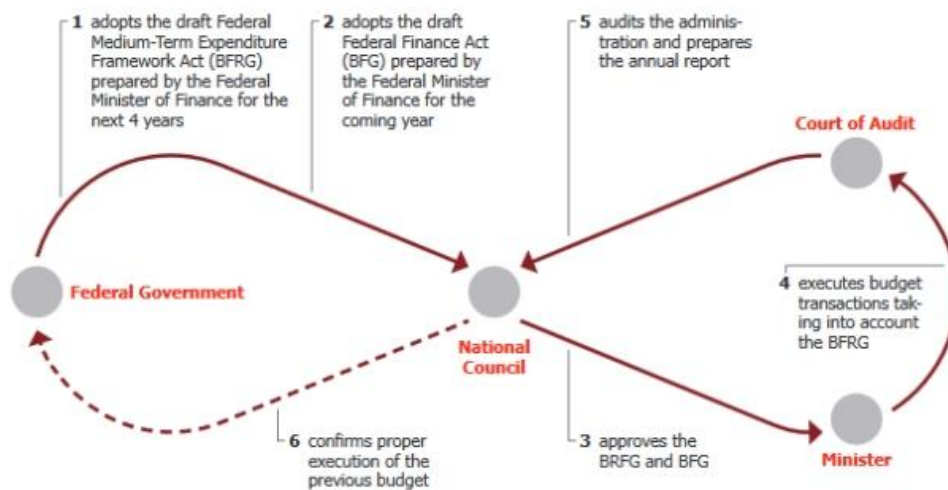


Figure: ideal-typical budget cycle

The national council resolves the **Federal Medium-Term Expenditure Framework Act** and within its limits the **Federal Finance Act**; the respective draft of the federal government shall form the basis of the debates.

The **Federal Medium-Term Expenditure Framework Act** (MTEF, “Bundesfinanzrahmengesetz”) makes medium-term budget planning possible. The Federal Medium-Term Expenditure Framework Act stipulates binding statutory expenditure ceilings for four years into the future under five “headings” (Law and security; Labour, social affairs, health and family; Education, research, art and culture; Economy, infrastructure and environment; Cash and interest). These headings represent clusters of related major areas of political responsibility of the federal government.

The Federal Medium-Term Expenditure Framework Act fixes

Expenditure ceilings per heading for all 4 years and

Expenditure ceilings per chapter for the upcoming year.

The Federal Medium-Term Expenditure Framework Act also fixes an upper limit on the number of personnel that may be employed by each ministry.

These binding, rolling, four-year budget plans with upper limits on expenditures and personnel under the Federal Medium-Term Expenditure Framework Act have greatly increased the importance of medium-term planning by the federal government.

The Federal Medium-Term Expenditure Framework Act is accompanied by a strategy report that informs the public about the Federal Medium-Term Expenditure Framework Act and its main budgetary and economic policy objectives, provides an overview of the economic situation and expected changes to the economic situation, and presents the federal government’s political priorities and main areas of expenditure. In addition to a discussion of target objectives, strategies and outcomes at the level of the headings and chapters the strategy report also includes gender equality objectives.

The federal government has to submit to the national council the draft of a **Federal Finance Act** (FFA, “Bundesfinanzgesetz”) for the following fiscal year at least ten weeks before the start of that fiscal year for which a Federal Finance Act should be resolved. Exceptionally, the federal government can also present to the national council the draft of a Federal Finance Act for the following and the next following fiscal years, separated by year.

The Federal Finance Act has to contain the federal budget statement and the personnel plan as well as further essential fundamentals for budget management as annexes.

For the federal budget management the fundamental principles of impact orientation are to be observed, especially under consideration of the objectives of the effective equality of women and men, transparency, efficiency and the most faithfully possible representation of the financial situation of the federation.

### **Timely reporting on revenue and expenditure**

On federal level:

Monthly reporting of actual revenues and expenditures (from April on)

Analysis of forecasted deviations to the budget as part of the monthly (cash) and quarterly (accruals) controlling report

Financial statements including actual operating statement and analysis of deviations to the budget of the fiscal year

Compiled by the MoF with inputs from all ministries

### **A system of accounting and auditing standards and related oversight**

Austria has a system of accrual-based budgeting and accounting (cash flow statement, operating statement and statement of financial position).

Accounting for the federal government is based on double-entry bookkeeping. The accounting system takes account of the special needs of the federal government and orientates on the International Public Sector Accounting Standards (IPSAS).

The Austrian Court of Audit, as the Supreme Audit Institution of the state, is independent and committed to complying with the International Standards of Supreme Audit Institutions (ISSAIs).

### **Effective and efficient systems of risk management and internal control**

Risk Management:

There is an analysis of forecasted federal budget risks and chances as part of the monthly controlling report (see below)

Internal national control:

Four-eyes principle for every spending

Internal inspection by the Federal Accounting Agency before, during and after the payment transaction

Internal audit and controlling by line ministries incl. observance of basic budgetary principles, instructions regarding allocation...

External national control:

Houses of Parliament

Court of Audit:

By introducing the Federal Budget Law 2013, the Federal Household Regulation 2013 and the Accounting

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Regulation 2013, the federal accounting system was changed from camera accounting to double bookkeeping. The duties of the Austrian Court of Audit to establish and audit the Federal Financial Statements are regulated in the Federal Constitutional Law and the Court of Audit Act Bundesgesetz über den Rechnungshof (Rechnungshofgesetz 1948 - RHG). The Austrian Court of Audit establishes and audits the Federal Financial Statements.

The format, structure and allocation of operation withholding are based on the International Public Sector Accounting Standards - IPSAS. The Federal Financial Statements are published until June 30 of the following fiscal year. The International Standards of Supreme Audit Institutions (ISSAI) respectively the International Standards on Auditing (ISA) are the basis for auditing the Federal Financial Statements. The publication comprises the Federal Financial Bills as well as annexes and explanations to the Federal Financial Bills, segment reporting (subdivisions) and the report on the financial bills.

International Public Sector Accounting Standards (IPSAS) are a set of accounting standards issued by the IPSAS Board for use by public sector entities around the world in the preparation of financial statements. IPSAS aims to improve the quality of general-purpose financial reporting by public sector entities, leading to better informed assessments of the resource allocation decisions made by governments, thereby increasing transparency and accountability.

The International Standards of Supreme Audit Institutions (ISSAI) are a benchmark for auditing public entities.

International Standards on Auditing (ISA) are professional standards for the performance of financial audit of financial information.

In addition, the Austrian Court of Audit conducts yearly “function tests” with a special focus on processes and internal control systems related to the federal financial statement (e.g. “Internal Control System in the Federal Financial Statement“, Bund 2012/10 or the audit reports of the process of tax collection in the Federal Financial Statement 2014).

The Federal Financial Statement is debated in the budget committee of the National Parliament and is enacted as a law.

The development of risk management is an integral part of the audits of the Austrian Court of Audit which already recommends the establishment of a legal basis for the establishment and implementation of a risk management system in the federal administration in the audit report “Risk Management in the Financial Administration“, Bund 2014/14 and the follow-up-audit, Reihe Bund 2017/27.

A broad discussion at federal level with the focus to establish a legal basis for the establishment and implementation of a risk management system in the federal administration as well as the establishment of a working group on a cross-ministry basis could pave the way to the appropriate legislation.

Budget-controlling (done by Ministry of Finance, MoF):

Regular check of planning, decisionmaking and executive processes

Fundamental changes in the development of planned expenditures and receipts, expenses and revenues

Changes in assets have to be made visible; proposals for necessary steering measures have to be lined out

MoF is collecting the data and gives his own opinion

Budget-risk-controlling (done by MoF):

Duty to recognise risks and chances to take them into account and to evaluate them

Set up steering measures to fight or minimize these risks

Finance and participation-controlling (done by line ministries):

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Subject: Illustrate future developments and previews plausible

Coverage: Economically reporting, expenditure- and revenue- situation of companies which are controlled by the federal state

Staff-capacity-controlling (done by the ministry of civil service and sports):

Securing that the number of personnel fixed in the personnel-plan will not be exceeded

Performance-controlling (done by the ministry of civil service and sports):

Qualitative Dimension: Regular checks of contents (performance targets, measures), mile-stones and key-figures

**Where appropriate, corrective action in the case of failure to comply with the requirements established**

Sanctions when not-fulfilling budgetary rules:

Restrictions in general: cutbacks in the level of 2% of approved funds, at maximum: 10 Mio. €

Restrictions in concrete cases: Projects: if there had not been an involvement of the MoF there can be cutbacks in the level of this concrete project

Lowering of the limits for projects regarding the involvement of the MoF down to 50% of the regular height

**Role of the Court of Audit:**

By introducing the Federal Budget Law 2013, the Federal Household Regulation 2013 and the Accounting Regulation 2013, the federal accounting system was changed from camera accounting to double bookkeeping. The duties of the Austrian Court of Audit to establish and audit the Federal Financial Statements are regulated in the Federal Constitutional Law and the Court of Audit Act.

The Austrian Court of Audit establishes and audits the Federal Financial Statements.

The format, structure and allocation of operation withholding are based on the International Public Sector Accounting Standards - IPSAS. The Federal Financial Statements are published until June 30 of the following fiscal year. The International Standards of Supreme Audit Institutions (ISSAI) respectively the International Standards on Auditing (ISA) are the basis for auditing the Federal Financial Statements. The publication comprises the Federal Financial Bills as well as annexes and explanations to the Federal Financial Bills, segment reporting (subdivisions) and the report on the financial bills.

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Management in the Financial Administration”, Bund 2014/14 and the follow-up-audit, Reihe Bund 2017/27.

A broad discussion at federal level with the focus to establish a legal basis for the establishment and implementation of a risk management system in the federal administration as well as the establishment of a working group on a cross-ministry basis could pave the way to the appropriate legislation.

## 24. Paragraph 3 of article 9

3. Each State Party shall take such civil and administrative measures as may be necessary, in accordance with the fundamental principles of its domestic law, to preserve the integrity of accounting books, records, financial statements or other documents related to public expenditure and revenue and to prevent the falsification of such documents.

**1520** Is your country in compliance with this provision?

☒ (Y) Yes

**1522**

**1** Please describe (cite and summarize) the measures/steps your country has taken, if any, (or is planning to take, together with the related appropriate time frame) to ensure full compliance with this provision of the Convention.

The Austrian Court of Audit draws a random sample based on statistical methods. Bases for this sample are relevant cases of the fiscal year to assess the compliance and numerical accuracy of the statements and receipts of the operations concerning profit and loss account and balance sheet. Every random sample is audited by means of diverse criteria.

## 25. Technical Assistance

The following questions on technical assistance relate to the article under review in its entirety.

**1529**

**1** Please outline actions required to ensure or improve the implementation of the article under review and describe any specific challenges you might be facing in this respect.

**1530** Do you require technical assistance for the implementation of this article? If so, please specify the forms of technical assistance that would be required. For example:

☒ (NO) No assistance would be required

1531

- 1** Is any technical assistance already being provided to you? If so, please provide a general description of the nature of the assistance, including donor information.

## 10. Public reporting

### 26. Subparagraph (a) of article 10

Taking into account the need to combat corruption, each State Party shall, in accordance with the fundamental principles of its domestic law, take such measures as may be necessary to enhance transparency in its public administration, including with regard to its organization, functioning and decision-making processes, where appropriate. Such measures may include, inter alia:

(a) Adopting procedures or regulations allowing members of the general public to obtain, where appropriate, information on the organization, functioning and decision-making processes of its public administration and, with due regard for the protection of privacy and personal data, on decisions and legal acts that concern members of the public;



**1520** Is your country in compliance with this provision?

**0** (Y) Yes

1522

- 1** Please describe (cite and summarize) the measures/steps your country has taken, if any, (or is planning to take, together with the related appropriate time frame) to ensure full compliance with this provision of the Convention.

The Austrian Federal Constitutional Law (Bundes-Verfassungsgesetz - B-VG, Federal Law Gazette No. 1/1930) contains a provision on the **duty to grant information**:

Article 20 para. 4 of the Federal Constitutional Law reads as follows:

(4) All organs entrusted with Federation, provinces and municipal administrative duties as well as the executive officers of other public law corporate bodies shall impart information about matters pertaining to their sphere of competence in so far as this does not conflict with a legal obligation to maintain confidentiality; an onus on professional associations to supply information extends only to members of their respective organizations and this inasmuch as fulfilment of their statutory functions is not impeded. The detailed regulations are, as regards the federal authorities and the self-administration to be settled by federal law in respect of legislation and execution, the business of the Federation; as regards the provinces and municipal authorities and the self-administration to be settled by provincial legislation in respect of framework legislation, they are the business of the Federation while the implemental legislation and execution are provincial business.

Federal (cf. the Fundamental Act on the duty to grant Information - Auskunftspflicht-Grundsatzgesetz, Federal Law Gazette No. 286/1987) and Lander laws regulate the details how to obtain the information.

The Austrian Federal Constitutional Law (Bundes-Verfassungsgesetz - B-VG, *Federal Law Gazette No. 1/1930*) also contains a provision on official confidentiality.

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**Article 20 para. 3 of the Federal Constitutional Law** reads as follows:

*(3) All functionaries entrusted with federal, provinces and municipal administrative duties as well as the functionaries of other public law corporate bodies are, save as otherwise provided by law, pledged to confidentiality about all facts of which they have obtained knowledge exclusively from their official activity and which have to be kept confidential in the interest of 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 (official confidentiality). Official secrecy does not exist for functionaries appointed by a popular representative body if it expressly demands such information.*

The following provisions of employment law contain more detailed regulations with regard to official confidentiality:

§ 46 of the Civil Servants Employment Act 1979 (Beamtendienstrechtsgesetz 1979 - BDG 1979, *Federal Law Gazette No. 333/1979*) - also applicable to contractual employees via § 5 of the Act on Contractual Public Employees (Vertragsbedienstetengesetz 1948 - VBG, *Federal Law Gazette No. 86/1948*) - reads as follows:

#### **Official confidentiality**

**§ 46. (1)** *Civil servants shall keep secret from anyone save those to whom they are obliged to officially report them all facts of which they have obtained knowledge exclusively from their official activity and which have to be kept confidential in the interest of maintaining public peace, order and security, of comprehensive national defence, of external relations, in the economic interest of a corporate body under public law, for the preparation of a ruling, or in the preponderant interest of the parties involved (official confidentiality).*

*(2) The duty to maintain official confidentiality shall continue to apply after the termination of a civil servant's employment.*

*(3) If a civil servant is summoned to testify before a court of law or an administrative authority and if it is obvious from the summons that the content of his/her testimony may be subject to official confidentiality, he/she shall report this to the competent personnel authority, which shall decide whether to release him/her from his/her confidentiality obligation. In doing so, the personnel authority shall weigh the interest in maintaining confidentiality against the interest in the civil servant's testimony, taking into account the object of the proceedings as well as any damage the civil servant may face. The personnel authority may release the civil servant from his/her confidentiality obligation subject to the condition that the public be excluded from the part of his/her testimony which is the subject of the release.*

*(4) However, should it not be obvious from the summons that the content of the civil servant's testimony may be subject to official confidentiality and should this possibility only emerge in the course of his/her testimony, the civil servant shall refuse to answer any further questions. If the court or administrative authority conducting the proceedings deems his/her testimony to be essential, it shall apply to have him/her released from his/her confidentiality obligation.*

*In this case the personnel authority shall proceed in accordance with sentences two to four of para. 3.*

*(5) Neither the accused nor the disciplinary authority nor official counsel shall be obliged to maintain official confidentiality in disciplinary proceedings.*

§ 58 of the Judges and Public Prosecutors Service Act (Richter- und Staatsanwaltschaftsdienstgesetz - RStDG, *Federal Law Gazette No. 305/1961*) reads as follows:

#### **Official confidentiality**

*§ 58. (1) Judges shall keep confidential from anyone save those to whom they are obliged to officially report them all facts of which they have obtained knowledge exclusively from their official activity and which have to be kept confidential in the interest of maintaining public peace, order and security, of comprehensive national defence, of external relations, in the economic interest of a corporate body under public law, for the preparation of a ruling, or in the preponderant interest of the parties involved.*

*(2) If a judge is summoned to testify before a court of law or an administrative authority and if it is obvious from the summons that the content of his/her testimony may be subject to official confidentiality, he/she shall report this to the competent personnel authority, which shall decide whether to release him/her from his/her confidentiality obligation. In doing so, the personnel authority shall weigh the interest in maintaining confidentiality against the interest in the judge's testimony, taking into account the object of the proceedings as well as any damage the judge may face. The personnel authority may release the judge from his/her confidentiality obligation subject to the condition that the public be excluded from the part of his/her testimony which is the subject of the release.*

*(3) Should it not be obvious from the summons that the content of the civil servant's testimony may be subject to official confidentiality and should this possibility only emerge in the course of questioning, the judge shall refuse to answer any further questions. If the court or administrative authority conducting the proceedings continues to require the judge's testimony, it shall apply to the competent personnel authority to have him/her released from his/her confidentiality obligation. In this case the personnel authority shall proceed in accordance with sentences two to four of para. 2.*

*(4) Judges shall be subject to the same confidentiality obligation while off duty, as well as during retirement and after the termination of their employment.*

*(5) While off duty, judges shall not state their views on the cases before them.*

The publication of the audit reports of the Austrian Court of Audit comprising recommendations for the organization, function and decision-making processes within the public administration enhance transparency. Also, progress reports by other public authorities are published.

Please also see the information provided on Article 7 and on Article 8, in particular regarding "General duties of civil servants".

1525

**1 Please provide examples of the implementation of those measures, including related court or other cases, available statistics etc.**

The Austrian Supreme Administrative Court redefined in its recent jurisprudence (cf. VwGH 29. Mai 2018, Ra 2017/03/0083; VwGH 24. Mai 2018, Ra 2017/07/0026) the right to obtain information from administrative bodies in strong orientation on the jurisprudence of the European Court of Human Rights to Art. 10 ECHR, especially concerning questions on the restrictive limits of this rights; the specific and important role of the press and journalists as "public watchdogs"; on the obligated institutions (e.g. privatized companies/legal entities); on the form of access to information (under certain circumstances, a direct access must be granted); and on the enforcement of the right in case of default. These decisions and their effect should facilitate the exercise of the right in essential points in practice.

## 27. Subparagraph (b) of article 10

Taking into account the need to combat corruption, each State Party shall, in accordance with the fundamental principles of its domestic law, take such measures as may be necessary to enhance transparency in its public administration, including with regard to its organization, functioning and decision -making processes, where appropriate. Such measures may include, inter alia:

...

(b) Simplifying administrative procedures, where appropriate, in order to facilitate public access to the competent decision -making authorities; and

**1520** Is your country in compliance with this provision?

**0** (Y) Yes

**1522**

**1** Please describe (cite and summarize) the measures/steps your country has taken, if any, (or is planning to take, together with the related appropriate time frame) to ensure full compliance with this provision of the Convention.

The Austrian Federal Ministry of the Interior (MoI) runs a „Citizen Information Service“ responsible for active communication with citizens and the receipt of requests for information according to the “Duty to Grant Information Act”.

In cooperation between the Federal Chancellery and some cities (Wien, Linz, Salzburg, Graz) an informal platform was founded in 2011 with the aim to open a wide range of government data to the public. This „Cooperation Open Government Data Österreich“, also „Cooperation OGD Österreich“, operates a webpage (<https://www.data.gv.at/>, run by the Austrian Federal Ministry of Digital and Economic Affairs) where many different kinds of government data are easily found and accessible by the public.

## 28. Subparagraph (c) of article 10

Taking into account the need to combat corruption, each State Party shall, in accordance with the fundamental principles of its domestic law, take such measures as may be necessary to enhance transparency in its public administration, including with regard to its organization, functioning and decision -making processes, where appropriate. Such measures may include, inter alia:

...

(c) Publishing information, which may include periodic reports on the risks of corruption in its public administration.

**1520** Is your country in compliance with this provision?

**0** (Y) Yes

**1522**

- 1 Please describe (cite and summarize) the measures/steps your country has taken, if any, (or is planning to take, together with the related appropriate time frame) to ensure full compliance with this provision of the Convention.**

See the webpage <https://www.data.gv.at/> and its description above under Article 10, subparagraph (b), point 2.

The Federal Bureau of Anti-Corruption (BAK) and the Ministry of the Interior (MoI) regularly publish the periodic reports listed in point 3. For further measures relating to the publication of information concerning the BAK and its prevention activities, see also response to Article 13, paragraph 1.

1525

- 1 Please provide examples of the implementation of those measures, including related court or other cases, available statistics etc.**

**Periodic reports of the BAK and the MoI:**

**Annual Report by the BAK:** is published annually in German and English on the BAK homepage.

**Corruption Situation Report:** is prepared every two years and published on the BAK homepage.

**MoI Security Report:** is compiled annually and published on the MoI homepage.

**MoI Compliance Activity Report:** is drawn up annually and published on the MoI homepage.

**Compliance Activity Report by the BAK:** is prepared every two years and published on the BAK homepage.

## 29. Technical Assistance

The following questions on technical assistance relate to the article under review in its entirety.

1529

- 1 Please outline actions required to ensure or improve the implementation of the article under review and describe any specific challenges you might be facing in this respect.**

**1530 Do you require technical assistance for the implementation of this article? If so, please specify the forms of technical assistance that would be required. For example:**

- 0 (NO) No assistance would be required**

1531

- 1 Is any technical assistance already being provided to you? If so, please provide a general description of the nature of the assistance, including donor information.**

## 11. Measures relating to the judiciary and prosecution services

### 30. Paragraph 1 of article 11

1. Bearing in mind the independence of the judiciary and its crucial role in combating corruption, each State Party shall, in accordance with the fundamental principles of its legal system and without prejudice to judicial independence, take measures to strengthen integrity and to prevent opportunities for corruption among members of the judiciary. Such measures may include rules with respect to the conduct of members of the judiciary.

**1520** Is your country in compliance with this provision?

**0** (Y) Yes

**1522**

**1** Please describe (cite and summarize) the measures/steps your country has taken, if any, (or is planning to take, together with the related appropriate time frame) to ensure full compliance with this provision of the Convention.

The Judges and Public Prosecutors Service Act contains regulations that are identical in content to the regulations of the Civil Servants Employment Act 1979 (Beamtenstellengesetz 1979 - BDG 1979, *Federal Law Gazette No. 333/1979*) regarding “Protection against prejudicial treatment”, “Termination of employment” and “Duties of retired civil servants”. § 53 of the Civil Servants Employment Act 1979 regulating reporting obligations of civil servants is applicable to judges and public prosecutors via § 206 of the Judges and Public Prosecutors Service Act. Therefore, reference may be made to the depiction of these regulations.

**Provisions/procedures/measures ensuring the independence and integrity of the judiciary:**

Judges are appointed for an indefinite period of time:

Pursuant to Art 88 of the Austrian Constitution (B-VG) and to Section 99 of the Austrian Judges and Public Prosecutors Service Act (Richter- und Staatsanwaltschaftsdienstgesetz - RStDG, Federal Law Gazette No. 305/1961) as amended by law Austrian Federal Law Gazette I 65/2015; the tenure of judges is guaranteed until the mandatory retirement age of 65. It starts with the permanent appointment to the post of a judge.

Early retirement at the request of the judge (sec. 87 RStDG) as well as early retirement on medical grounds (sec 89 a RStDG) is possible. The decisions are rendered by the Courts of Appeal acting as Service Courts.

Judges are in office at the court they have been appointed to. They may be moved to another court by a decision of the (judicial) staff panel only in specific cases determined by law (see below)

Judges may apply for new posts. They may be moved to another judicial office only with their consent, except in cases of disciplinary sanctions (see below) or reform of the organisation of the judicial system.

Judicial staff panels:

Pursuant to Art. 87 para 2 and 3 B-VG specific questions of court management and administration (allocation of cases, appointment and promotion of judges, deployment of assistance and deputy judges, assessment of judges) are dealt with by judicial staff panels who then act as independent judicial bodies.

Staff panels are judicial bodies that are situated at all higher levels of the court system: there are staff panels at all 20 Regional Courts, at the four Courts of Appeal and at the Supreme Court. They

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comprise the president and the vice-president of the courts and three to five judges elected by their peers every four years within the judicial constituency.

Please find the relevant provisions of the Austrian Judges and Public Prosecutors Service Act (Chapter IV - sections 36 - 49) in the annex.

The appointment and promotion of judges

Following the provisions of the Austrian Constitution (B-VG) and of the Austrian Judges and Public Prosecutors Service Act (RStDG) the appointment and every further promotion of judges is task of the Austrian Federal President. According to section 30 RStDG vacant positions of judges as well as of managerial posts (these are the heads of the District Courts, the presidents and vice-presidents of the Regional Courts, Courts of Appeal, Supreme Court) have to be advertised.

The Federal President appoints the judges upon proposal by the Federal Minister of Constitutional Affairs, Reforms, Deregulation and Justice who gets - non binding - proposals by staff panels. However, for most of the judges' posts the Federal President has delegated the right of appointment to the Federal Minister of Constitutional Affairs, Reforms, Deregulation and Justice.

The appointment of higher managerial positions - (presidents and vice-presidents of the Regional Courts, Courts of Appeal and Supreme Court) - remains with the Federal President. Finally, the Austrian Prime Minister - with the exception of the positions of vice-presidents of the Courts of Appeal and Regional Courts - has also to assent to the appointment.

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

In case of equal qualification, women shall be preferred until a rate of 50% is reached in a certain group of positions. Should the criteria not enable the listing of the candidates, the seniority-principle is applied (Directive of the Ministry of Justice of February 2nd, 2015, Federal Law Gazette Volume II 2015/16).

Please find the relevant provisions of the Austrian Judges and Public Prosecutors Service Act (sections 2 -3 and Chapter III [Sections 25 - 35] in the annex.

The mobility (transfer, rotation etc.) of judges:

Judges are in office at the court they have been appointed to. They may be moved to another court by a decision of the (judicial) staff panel only in specific cases determined by law (Sec. 65a and 77 RStDG).

Section 65a of the Austrian Judges and Public Prosecutors Service Act enables to nominate "substitute judges" (Sprengelrichter) for the jurisdiction of the Courts of Appeal (the number of which may not exceed 3 % of the permanent judges appointed within the jurisdiction of the four Courts of Appeal). Substitute judges may be deployed at District Courts, Regional Courts and Courts of Appeal should a judge be absent due to illness or to an accident, or due to the suspension or dismissal of a judge. The substitute judge may also be deployed to the department of a court where backlogs of cases exist or where a judge is unable to process pending cases in a reasonable time due to another highly complex case.

A judge appointed as a substitute judge remains in this position as long as he/she does not apply for another judicial position.

If substitute judges cannot be deployed (their number being exhausted) “deputy judges” (Vertretungsrichter) have to be deployed to District Courts and Regional Courts (sec 77 RStDG).

The pool of deputy judges comprises judges of the Regional Courts, whose first appointment as a judge is most recent (at least four judges) + the replacement judges who can be appointed to the Regional Courts and to larger District Courts in case another judge e.g. takes maternity/paternity leave or does civil service.

The term of assignment of a deputy judge is usually determined by the time a judge has to be replaced. If a deputy judge is no longer part of the pool of deputies the assignment has to be cancelled and another deputy judge has to stand in.

Judges may apply for new posts. They may be moved to another judicial office only with their consent, except in cases of disciplinary sanctions (sec 104 para 2 c RStDG) or reform of the organisation of the judicial system. In case of court closures/mergers the transfer has to be regulated by federal law. This has never been necessary so far because affected judges usually apply for other posts in time.

A judge has to be transferred if nonprofessional circumstances (that haven’t) been inflicted by him-/herself) permanently damage his/her reputation and ability to perform the duties of his/her post to an extent that he/she would not be able to function as a judge at that post anymore.

Furthermore in cases of adoption of the judge by another judge of the same district court, adoption of another judge of the same district court by the judge or marriage or non-marital relationship of judges of the same district court.

Finally, with his/her consent a judge may be assigned to the Ministry of Justice, to a public prosecutors’ office or another judicial body for administrative tasks (sec. 78 RStDG).

Please find the relevant provisions of the Austrian Judges and Public Prosecutors Service Act in the annex (sections 77 and 78).

The dismissal of judges/disciplinary proceedings:

The tenure of a judge can only be terminated in case of serious breaches of disciplinary or criminal provisions established by law (sec 104 para 1 d; sec 114 para 2 RStDG; sec 27 of the Code of Criminal Law).

Judges who are found guilty of violating their professional and ethical duties have to face disciplinary and possibly criminal law sanctions. Under civil law, judges are only liable to the State. Parties suffering damages on account of any unlawful and culpable conduct of a judge may only assert their claims against the State pursuant to the law on official liability (Amtshaftungsgesetz).

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

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

The disciplinary panels consist of senior judges and judges of the Court of Appeal. Furthermore, a disciplinary investigator has to be appointed among the judges of the Court of Appeal (sec 112 RStDG).

Sec 36 RStDG provides for staff panels, inter alia also for a staff panel at the Courts of Appeal. Such a staff panel consists of five members (President and Vice-president of the Court of Appeal and three judges of the Court of Appeal being elected to this panel). This staff panel of the Court of Appeal has to compose the Disciplinary Panels for a period of five years, consisting of senior judges and judges of the Court of Appeal.

There is no subordination for the four Courts of Appeal sitting as disciplinary courts. Their decisions may be challenged to the Supreme Court.

Being part of the Court of Appeal the Disciplinary Court uses the resources allocated to the Court of Appeal.

The Courts of Appeal acting as Disciplinary Courts adjudicate disciplinary proceedings.

The Court of Appeal when sitting as Disciplinary Court sits in a disciplinary panel of three senior judges, one of which chairs the panel. The preliminary investigations must be led by the disciplinary investigator who is not part of the disciplinary panel.

During the disciplinary proceedings, the Disciplinary Public Prosecutor upholds the interests of Public Service (sec 118 RStDG). The Disciplinary Public Prosecutor is obliged to report to the Ministry of Justice being the Supreme Administrative Body representing the interests of Public Service.

The disciplinary investigator appointed among the judges of the Court of Appeal conducts the investigations. Investigations can be triggered by anyone.

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

Decisions of the Supreme Court are published (<<http://www.ris.bka.gv.at/Bundesrecht>>).

Please find the relevant provisions of the Austrian Judges and Public Prosecutors Service Act in the annex (sections 82 - 165).

Procedure and criteria to check the integrity/propriety of candidates for the position of a judge and assessment of the integrity of judges during their tenure:

Persons wishing to become judges must apply for one of the established posts for trainee judges. Such vacancies are advertised by the presidents of the (four) Courts of Appeal. The requirements for being admitted to the preparatory service as a trainee judge are: Austrian citizenship, full legal capacity, psychological aptitude, physical fitness and judicial ability, law degree as well as five month court internship. Tests have to be passed on the psychological aptitude, physical fitness and judicial ability.

The preparatory service for becoming a judge generally takes four years. During this time, the trainee judges are assigned to judges of a District Court, a Regional Court, Court of Appeal, to the Public Prosecutor's Office, to a prison. They also have to complete an internship with a lawyer or a notary public or with the Financial Procurator's Office and with a victim protection or public welfare institution. Finally, they have to take a written and an oral exam. Those having passed the exam and having completed the four years' traineeship may apply for a vacant established post. During their tenure, judges are to be assessed. This is done by staff panels (see above)

Art 54 of the Judges and Public Prosecutors Service Act determines widely verbalized criteria for the assessment: range and current status of professional knowledge, industriousness, perseverance, diligence, reliability, decisiveness, social skills, expressive abilities (both oral and in writing), general conduct in office, in particular towards superiors, co-workers and the public, any conduct outside the office with repercussions to the service as well as the accomplishments of the position and the formal periodical appraisal.

Criteria, how cases are assigned to judges and circumstances, under which it is possible to remove a judge from a case:

Pursuant to Art. 87 para 3 B-VG and section 32 seqq of the Law of Court Organization

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(Gerichtsorganisationsgesetz = GOG - Austrian Federal Law Gazette No 217/1896, as amended by law, Austrian Federal Law Gazette Volume I 94/2015) all judicial duties have to be allocated amongst the judges of a court in advance for a period of one year (principle of fixed allocation). These fixed rules for the allocation of cases must also list the deputy judges assigned to the court. The rules for the allocation of cases are determined by the staff panels.

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

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

Pursuant to Art. 87 paras 2 and 3 B-VG specific questions of court management and administration (allocation of cases, nomination and assignment of judges, deployment of substitute and deputy judges, assessment of judges) are dealt with by judicial staff panels who then act as independent judicial bodies (see above).

Duties of judges after the Austrian Judges and Public Prosecutors Service Act (RStDG) and measures to ensure compliance with these rules

Sec 57 of the Austrian Judges and Public Prosecutors Service Act (RStDG) determines the duties of judges.

According to sec 57 of the Austrian Judges and Public Prosecutors Service Act (RStDG), judges have to devote all their powers, abilities and efforts to the interests of Public Service; they have to pursue continuous training; they have to fulfil their duties assiduously, impartially and unselfishly; and they have to carry out their duties as quickly as possible. Offences against sec. 57 RStDG (professional and ethical duties) and against sec 57a RStDG (ban of harassment), offences against the criminal law lead to disciplinary proceedings. Judges who are found guilty of violating their professional and ethical duties have to face disciplinary and possibly criminal law sanctions. Under civil law, judges are only liable to the State. Parties suffering damages on account of any unlawful and culpable conduct of a judge may only assert their claims against the State pursuant to the law on official liability (Amtshaftungsgesetz). Judges have the same duties of integrity in both their public and their personal lives.

Please find the relevant provision of the Austrian Judges and Public Prosecutors Service Act in the annex (section 57).

### **Prevention of conflicts of interests of judges:**

Pursuant to sec. 63 para 2 and para 3 of the Austrian Judges and Public Prosecutors Service Act judges may not engage in any occupation that is incompatible with the dignity of their office or hinders the judge to devote all her/his time, powers, abilities and efforts to the interests of Public Service or might give rise to the suspicion of bias. When engaged in an occupation the judge may not refer to her/his being a judge. If the judge acts in breach of these obligations, the administrative authority (= the President of the Court of Appeal) immediately has to forbid the occupation (para 7 of sec.63).

Pursuant to sec 63 para 4 judges are not entitled to be members of executive boards, management boards, supervisory boards, boards of directors or any other bodies of profit orientated legal persons. In case a judge is a member of the body of any other (non-profit-orientated) legal person, they may not be remunerated for this activity.

Pursuant to sec 63 para 5 judges are obliged to notify the administrative authority (= Court of Appeal) about the beginning, the type of occupation and the extent of it as well as about the ending of it.

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

Judges violating this duty have to face criminal sanctions (section 304 to 309 Penal Law Code) and disciplinary sanctions.

However, judges may hold financial interests. Judges are also entitled to maintain their quality of a shareholder in a civil or commercial company, including banks or other credit institutions, insurance or financial societies, national companies etc., quality obtained by inheritance.

Judges may also be employed in certain posts/functions or engage in other paid or non-paid

activities after exercising a judicial function.

Judges are subject to the provisions of tax income declaration as every other Austrian citizen does.

Please find the relevant provision of the Austrian Judges and Public Prosecutors Service Act in the annex (sections 59, 63 and 63a).

Rules on the (mis)use of confidential information by judges

Pursuant to sec 58 of the Austrian Judges and Public Prosecutors Service Act judges are sworn to confidentiality in office about the facts they have gained knowledge of exclusively from their official activities. Judges violating this duty have to face criminal sanctions (section 310 Penal Law Code) and disciplinary sanctions.

Please find the relevant provision of the Austrian Judges and Public Prosecutors Service Act in the annex (section 58).

§ 79 of the Judges and Public Prosecutors Service Act concerns the ban of parallel activities in an executive and legislative function for judges as well as for prosecutors, but not for lay judges:

○ **Leave of absence**

**§ 79.** (1) A judge of a civil or criminal court, of the Federal Administrative Court or of the Federal Fiscal Court, or a candidate judge who

1. holds the office of Federal President, of a member of the Federal Government, of State Secretary, President of the Austrian Court of Audit, President of the National Council [i.e. the directly elected chamber of the Austrian Parliament], leader of a political group in the National Council, a member of the Austrian Ombudsman Board, a member of a Regional Government, a member of a Regional Ombudsman Board, Head of a Regional Court of Audit, mayor of a municipality, or a member of the European Commission, or

2. holds a seat in the National Council, the Federal Council [i.e. the chamber of the Austrian Parliament representing the country's nine Regions], a Regional Parliament or the European Parliament shall be placed on leave of absence without pay while holding his/her office or seat.

(2) A judge or candidate judge running for the office of Federal President or for a seat in the National Council, the European Parliament or a Regional Parliament shall be granted the requisite leave of absence from the time of filing his/her candidacy with the competent Electoral Authority until the announcement of the official election results.

(3) If a judge who is a member of a general representative body [i.e. a chamber of the Austrian Parliament, a Regional Parliament or a municipal council] or the European Parliament resigns his/her seat before the end of the legislative period or his/her term of office, the incompatibility of this function with the exercise of his/her judicial office shall nevertheless continue until the end of the respective period or term.

(4) Furthermore, a judge who has exercised one of the functions referred to in para. 1 within the previous five years shall not be eligible for appointment as Head of a District Court or as President or Vice President of a Regional Court or Regional Court of Appeal, of the Supreme Court, the Federal Administrative Court or the Federal Fiscal Court.

Codes of conduct:

In the year 2003, the Association of Austrian Judges initiated in the city of Wels, Upper Austria, a discussion process that all Austrian judges could participate. In the further development of the principles of the Salzburg Resolution of 1982, the following Declaration of Principles was resolved on November 8th 2007:

## **THE WELS DECLARATION OF ETHICS**

The Austrian Judges declare to be guided in their work by the following ethical principles:

### **Art. I. Fundamental Rights:**

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Human rights and fundamental freedoms form the basis of our democratic constitutional state. As guarantors of the rule of law, we let our behavior and our decisions be guided by these fundamental rights. We decidedly oppose every attempt to question the democratic and constitutional order of our Republic.

#### **Art. II. Independence:**

We decide exclusively on the basis of statutory law and our free inner conviction. We reject any form of unlawful exertion of influence, invitations and gifts, and disclose all attempts to intervene. Judicial independence serves the protection of people seeking of justice, and may never be abused as a pretext for arbitrariness or for behavior that is intellectually or socially detached from reality. In selecting and evaluating fellow judges, we are guided according to the criteria of the Richterdienstgesetz (Austrian Judicial Services Act) by their professional and social abilities, and reject any patronage.

#### **Art. III. Self-control and Organization:**

We are aware of the fact that the development of a judge's personality has no definite end, but requires constant further education in all fields of professional and personal qualification for our profession. We carefully reflect where we stand, so that we can critically scrutinize our own point of view. Our cooperation with our co-workers is borne by appreciation, honesty, and sincere interest for their concerns. We organize our own work and, as far as we are authorized to do so, the work of our employees proactively and with commitment.

#### **Art. IV. Education:**

Committed educational work is an essential part of the optimal selection process, but is also vital for a positive image of justice in the general public. We train those whose education is entrusted to us conscientiously and thoroughly, and do not abuse their labor for easing our own workload.

#### **Art.V. Administration of Justice:**

Within the framework of the duties of judicial administration assigned to us, we work for the cause of independent jurisdiction. We endeavor to provide and maintain the best possible organizational conditions for independent judicial work. We strive to acquire all abilities necessary for our organizational and managerial work.

#### **Art. VI. Fairness:**

Judicial impartiality also includes the ability to recognize one's own prejudices and to pay attention to the effect one's words and actions have on others. We encounter all parties objectively, respectfully, and equidistantly, and grant everyone a fair hearing. Discriminating attitudes and statements during the proceedings are unconditionally rejected.

#### **Art. VII. Decision making:**

Every person that applies to the court or stands before the court as a defendant may expect from us to enter into a case with full commitment and to take a high-quality decision. To this end, we take as much time and decide as quickly as our working circumstances may allow. We avoid inflicting the parties with unnecessary disadvantages by exaggerated scepticism and immaterial formalities.

#### **Art. VIII. Publicity and Comprehensibility:**

From time to time, jurisdiction will release a socio-political impulse, or an impulse for legal policy, that goes beyond an individual case. This needs the perception by the general public. We therefore strive to be generally intelligible in all our oral and written statements.

**Art. IX. Private Behaviour:**

We scrutinize carefully and critically whether our actions or statements are suitable to make us dependent on someone, or could even only give the appearance thereof. This also applies to our off-duty activities, as far as we can expect that this may compromise our credibility as judges or cause our credibility to be questioned. We are convinced that being a member of a political party or being politically active within such a party can be detrimental to the credibility of independent jurisdiction that is unswayable by political parties and not bound to any interest groups and lobbies.

**Art. X. Social Influences:**

The judicial office is a fundamental part of our political and social structure. Judicial work can influence this structure, but is also influenced thereby. We are aware that judicial decisions can have profound and existential repercussions for the way of life of the affected people. In exercising our office, we therefore always consider these coherencies and handle our responsibility conscientiously.

~~~~~

In the Austrian judicial system, there are also “Rechtspfleger”, judicial officers with a special training and special qualifications, who play a role in the field of legal aid, family cases, payment orders, registry cases, enforcement of civil cases and non-litigious cases. Their number is not included in the number of professional judges that is indicated above.

There are no data on the number of judges dealing with the prosecution of perpetrators of corruption offences or other offences against the duty of probity. All judicial duties are allocated amongst the judges of a court in advance for a period of one year. The staff panels who then act as independent judicial bodies determine the rules for the allocation of cases. The parameters for the allocation of cases to judges have to be determined exactly by abstract rules (see also above the criteria, how cases are assigned to judges).

In Austria there is a case weighting system called Personalanforderungsrechnung II (PAR II), which is mainly based on an empirical survey of the working hours of judges and public prosecutors (a sample of courts and public prosecution offices was surveyed over a period of six months from October 2008 until March 2009) and which provides information on the workload of judges and public prosecutors (first and second instance level). According to this system, in 2018 the average workload of judges in district courts was 107,66 %, in regional courts 100,17 %.

1525

**1 Please provide examples of the implementation of those measures, including related court or other cases, available statistics etc.**

Number of professional judges on 31 December 2018<sup>1</sup>:

|                                                                                                       |         |
|-------------------------------------------------------------------------------------------------------|---------|
| Number of judges in district courts, regional courts and Courts of Appeal (higher regional courts)    | 1680,80 |
| Number of Supreme Court professional judges (including judges in the office of records EB)            | 70      |
| Number of judges in the Federal Ministry of Constitutional Affairs, Reforms, Deregulation and Justice | 42,80   |
| Number of Judges in the Federal Administrative Court                                                  | 212,13  |
| Total number of professional judges                                                                   | 2005,73 |

<sup>1</sup> Data in full time equivalent and for permanent posts actually filled for all type of courts - general jurisdiction and specialised courts

**Audits “Controlling and Quality Management in criminal proceedings” and “Duration of Civil Proceedings” by the Austrian Court of Audit:**

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Within the audit “Controlling and Quality Management in criminal proceedings”, Bund 2015/2, the Austrian Court of Audit examined the measures of the administration of justice to ensure quality, prevent backlogs and disproportionate duration of criminal proceedings.

The Austrian Court of Audit gave recommendations e.g. regarding incentives for the qualification and competence of the staff of the administration of justice, improvement of database, increased risk orientation within internal controls and improving administrative conditions.

Within the audit “Duration of Civil Proceedings”, Bund 2009/12, the Austrian Court of Audit examined inter alia the effectiveness of internal control measures and recommended e.g. to continuously monitor “overlong” proceedings and not only by means of yearly evaluations of registry data and promptly take measures. Also, the use of the system of Internal Revision should be increased for the analysis of the causes of long proceedings.

### 31. Paragraph 2 of article 11

2. Measures to the same effect as those taken pursuant to paragraph 1 of this article may be introduced and applied within the prosecution service in those States Parties where it does not form part of the judiciary but enjoys independence similar to that of the judicial service.

**1520** Is your country in compliance with this provision?

**0** (Y) Yes

**1522**

**1** Please describe (cite and summarize) the measures/steps your country has taken, if any, (or is planning to take, together with the related appropriate time frame) to ensure full compliance with this provision of the Convention.

The provisions applicable for judges are also applicable for public prosecutors via Article IIa of the Judges and Public Prosecutors Service Act:

#### *Article IIa*

*(1) [...]*

*(2) Unless this federal law or other regulations under civil service law contain special provisions for public prosecutors, the provisions applicable to judges apply by analogy to public prosecutors; the 4th part of this federal law in particular contains special provisions for public prosecutors. The following provisions of the legislation are not applicable: from Part 1, section III with the exception of Articles 26 and 32b, section IV, Article 52, section VI with the exception of Articles 57, 57a, 58a and 58b, section VII with the exception of Articles 68a, 72 and 76f to 76h, section VIII, and Part 3 with the exception of Article 170b.*

**In Austria, the prosecution service is part of the judicial branch.**

Public prosecution offices are judicial authorities, but in contrast to the courts, they are not independent. They have a hierarchical structure and are bound by instructions of senior public prosecution offices and ultimately of the Federal Minister of Constitutional Affairs, Reforms, Deregulation and Justice. There are precise statutory rules for the right to issue instructions.

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Instructions by a senior public prosecution office or by the Federal Minister of Constitutional Affairs, Reforms, Deregulation and Justice may only be issued in written form and must contain a statement of reasons. Moreover, any instruction received has to be recorded in the criminal case file. The Federal Minister of Constitutional Affairs, Reforms, Deregulation and Justice bears ministerial responsibility and is thus accountable and obliged to provide information to the Parliament.

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

A public prosecution office is set up at every regional court in charge of criminal cases. The public prosecutors of these courts are in charge of raising and presenting indictments, both before regional courts and district courts of the respective regional court district. As a rule, district prosecutors will present indictments at district courts. They are public officials with special expertise, but do not require university training.

- Length of mandate

Sec. 13 of the Civil Servants Employment Act 1979 (Beamtendienstrechtsgesetz, Austrian Federal Law Gazette 333/1979 as amended by law, Austrian Federal Law Gazette Volume I 65/2015) defines the mandatory retirement age with 65. If required in the interests of the Public Service it may be postponed by the Federal Minister of Constitutional Affairs, Reforms, Deregulation and Justice.

- Appointment and promotion of prosecutors

Basis for the appointment of posts of public prosecutors is the proposal of a staff commission. This commission consists of four members, comprising the Head of the General Procurators Office, his deputy (in case of the appointment of a Procurator General), respectively the Head of the Senior Public Prosecutors Office, the Head of the Public Prosecutors Office (in case of the appointment of public prosecutors) and two further public prosecutors, one of which representing the Union of Public Services and one of which representing the staff committee. Only judges or former judges, who continue to meet the requirements for being appointed as professional judges, and have performed a minimum one-year traineeship as a judge at a court or as a prosecutor, may become public prosecutors. The short list of the candidates is drawn up by following the criteria laid down in section 54 of the Austrian Judges and Public Prosecutors Service Act (see above the provisions concerning judges).

Please find the relevant provision of the Austrian Judges and Public Prosecutors Service Act in the annex (sections 174 -194).

- Mobility (transfer, rotation etc.) of prosecutors

Vacancies have to be advertised.

Finally, with their consent a public prosecutor may be assigned to the Ministry of Justice, to a public prosecutors' office or another judicial body for administrative tasks (According to sec 206 of the Judges and Public Prosecutors Service Act and sec. 39, 30 of the Civil Servants Employment Act 1979)

- The dismissal of prosecutors/disciplinary proceedings

See further above the rules relating to judges

- Procedure(s) and criteria in place to check the integrity/propriety of candidates for the position of a prosecutor:

Persons wishing to become a public prosecutor first have to undergo the same procedure as someone who wants to become a judge and has thus to apply for one of the established posts for trainee judges firstly. Such vacancies are advertised by the presidents of the (four) Courts of Appeal. The requirements for being admitted to the preparatory service as a trainee judge are Austrian citizenship, full legal capacity, psychological aptitude, physical fitness and judicial ability, law degree regarding subject as well as five month court internship. Tests have to be passed on the psychological aptitude, physical fitness and judicial ability.

The preparatory service for becoming a judge generally takes four years. During this time, the trainee judges are assigned to judges of a District Court, a Regional Court, Court of Appeal, to the Public Prosecutor's Office, to a prison. They also have to complete an internship with a lawyer or a notary public or with the Financial Procurator's Office and with a victim protection or public welfare institution. Finally, they have to take a written and an oral exam. Those having passed the exam and having completed the four years' traineeship may apply for a vacant established post.

After having accomplished one year as a judge or as a public prosecutor, they may apply for a vacant established post of a public prosecutor.

- Criteria, how cases are assigned to/removed from prosecutors

Pursuant to sec 5 and 6 of the Act on Public Prosecutor's Offices (Staatsanwaltschaftsgesetz - StAG, Austrian Federal Law Gazette No 164/1986, as amended by law, Austrian Federal Law Gazette Volume I 96/2015) all duties within a public prosecutor's office have to be allocated among the public prosecutors in advance for a period of one year. Public prosecutors being in office for more than at least five years may be assigned with specific duties according to their personnel ability and capacity.

In case of backlogs or illness the head of the public prosecutor's office may decide to remove a case from a prosecutor.

- Duties of prosecutors after the Austrian Judges and Public Prosecutors Service Act (RStDG):

According to sec 57 of the Austrian Judges and Public Prosecutors Service Act, public prosecutors have to devote all their powers, abilities and efforts to the interests of Public Service; they have to pursue continuous training; they have to fulfil their duties assiduously, impartially and unselfishly (see above the provisions concerning judges).

A breach of Art 57 RStDG may be a criminal offence or may lead to disciplinary measures.

- Duties of prosecutors according to the Austrian Civil Servants Employment Act 1979:

Pursuant to sec 56 of the Austrian Civil Servants Employment Act 1979, public prosecutors may not engage in any occupation that is incompatible with the dignity of their office or hinders the public prosecutor to devote all her/his time, powers, abilities and efforts to the interests of Public Service or might give rise to the suspicion of bias.

Public prosecutors are obliged to notify the administrative authority (= Head of Public Prosecutors' Office) about the beginning, the type of occupation and the extent of it as well as about the ending of it (Sec. 56 para 3).

Pursuant to sec 56 para 5, public prosecutors have to report any activity in a board of directors, supervisory board, administrative board or in any other body in a profit-oriented legal entity governed by private law.

- Prevention of conflict of interests of prosecutors:

Pursuant to sec. 59 of the Civil Servants Employment Act 1979 public prosecutors may neither accept gifts nor other personal benefits which are directly or indirectly offered to them or to their relatives in the context of exercising their office. Furthermore, they may neither obtain gifts nor may they be promised gifts.

Public prosecutors violating this duty have to face criminal sanctions (section 304 to 309 Penal Law Code) and disciplinary sanctions.

However, public prosecutors may hold financial interests.

They may also be employed in certain posts/functions or engage in other paid or non-paid activities after exercising a prosecutorial function.

Prosecutors are subject to the provisions of tax income declaration as every other Austrian citizen does.

- Rules on the (mis)use of confidential information by prosecutors

Pursuant to sec 56 para 5 of the Austrian Civil Servants Employment Act 1979 public prosecutors have to report any activity in a board of directors, supervisory board, administrative board or in any other body in a profit-oriented legal entity governed by private law.

- Disciplinary measures:

With regard to disciplinary measures against judges and prosecutors:

In the period from January 1st, 2018 and July 31st, 2019 in six cases disciplinary proceedings regarding judges ended with a conviction (in three cases the disciplinary measure was a fine, in two cases a reprimand, in one case imposing a disciplinary measure was waived).

Selected decisions of the disciplinary tribunals are published in the Legal Information System of the Republic of Austria (RIS).

- Awareness raising:

Additionally, specific measures are taken by the Federal Ministry of Constitution, Reforms, Deregulation and Justice to strengthen integrity and raise awareness amongst members of the judiciary

Since 2015 at the Federal Ministry of Constitution, Reforms, Deregulation and Justice a department is responsible for the compliance matters, such as prevention of corruption. At the current state, the competences of the compliance department are as follows:

Implementation of a Compliance Management System

Offering expert non-binding advice to all justice officials/employees on compliance issues, including prevention of corruption

Ensuring that all necessary steps are taken by the competent departments of the Federal Ministry for Constitution, Reforms, Deregulation and Justice to investigate compliance violations.

The appointed Chief Compliance Officer (CCO) heads this department. The compliance department reports directly to the head of the Ministry. The CCO drew up a strategy for the implementation of a Compliance Management System for the judiciary, including the formulation of goals, the stipulation of priorities as well as proposing and elaborating concrete measures in a working group. Since the end of 2017, the CCO chaired a working group to elaborate a code/guidelines for all justice officials/employees. The „Compliance Guidelines“ for all justice officials/employees were



put into effect in March 2019. The Compliance Guidelines cover topics such as gifts, accessory/secondary activities, professional secrecy and prevention of corruption. For the first time, the Compliance Guidelines also set out the basic values of all justice officials/employees, e.g. independence of jurisdiction, integrity or transparency.

In May 2018, also a compliance webpage was created on the intranet, accessible to all justice officials, for preparing a dedicated internal communication related to measures for promoting integrity and corruption prevention. Officials may find relevant information (e.g. Compliance Guidelines, forms for dealing with gifts), including the state of current compliance measures, as well as contact persons for compliance issues. At the current state of the implementation of the Compliance Management System, the compliance department offers expert non-binding advice to all justice officials/employees on compliance issues.

1525

- 1 Please provide examples of the implementation of those measures, including related court or other cases, available statistics etc.**

**Audit “Preliminary Proceedings by Public Prosecution” by the Austrian Court of Audit:**

Within the audit “Preliminary Proceedings by Public Prosecution”, Bund 2014/5, measures to ensure the quality within the public prosecution were examined and recommendations e.g. to apply the four-eyes-principle in the appointment of experts and to enhance the competence to prosecute economic criminal and corruption cases were given.

Within the audit „Effectiveness of administrative investigative measures (Bund 2011/5) and the follow-up audit (Bund 2013/10), the Austrian Court of Audit inter alia made recommendations for a transparent presentation of the grounds for the decision and for the internal control (e.g. to apply the four-eyes-principle and judicial control) for decisions on the termination of proceedings and also for avoiding backlogs and excessively long investigations.

## 32. Technical Assistance

The following questions on technical assistance relate to the article under review in its entirety.

1529

- 1 Please outline actions required to ensure or improve the implementation of the article under review and describe any specific challenges you might be facing in this respect.**

**1530 Do you require technical assistance for the implementation of this article? If so, please specify the forms of technical assistance that would be required. For example:**

- 0 (NO) No assistance would be required**

1531

- 1 Is any technical assistance already being provided to you? If so, please provide a general description of the nature of the assistance, including donor information.**

## 12. Private sector

### 33. Paragraphs 1 and 2 of article 12

1. Each State Party shall take measures, in accordance with the fundamental principles of its domestic law, to prevent corruption involving the private sector, enhance accounting and auditing standards in the private sector and, where appropriate, provide

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effective, proportionate and dissuasive civil, administrative or criminal penalties for failure to comply with such measures.

2. Measures to achieve these ends may include, inter alia:

- (a) Promoting cooperation between law enforcement agencies and relevant private entities;
- (b) Promoting the development of standards and procedures designed to safeguard the integrity of relevant private entities, including codes of conduct for the correct, honourable and proper performance of the activities of business and all relevant professions and the prevention of conflicts of interest, and for the promotion of the use of good commercial practices among businesses and in the contractual relations of businesses with the State;
- (c) Promoting transparency among private entities, including, where appropriate, measures regarding the identity of legal and natural persons involved in the establishment and management of corporate entities;
- (d) Preventing the misuse of procedures regulating private entities, including procedures regarding subsidies and licences granted by public authorities for commercial activities;
- (e) Preventing conflicts of interest by imposing restrictions, as appropriate and for a reasonable period of time, on the professional activities of former public officials or on the employment of public officials by the private sector after their resignation or retirement, where such activities or employment relate directly to the functions held or supervised by those public officials during their tenure;
- (f) Ensuring that private enterprises, taking into account their structure and size, have sufficient internal auditing controls to assist in preventing and detecting acts of corruption and that the accounts and required financial statements of such private enterprises are subject to appropriate auditing and certification procedures.

**1521 Is your country in compliance with these provisions?**

☒ (Y) Yes

**1523**

- 1 Please describe (cite and summarize) the measures/steps your country has taken, if any, (or is planning to take, together with the related appropriate time frame) to ensure full compliance with these provisions of the Convention.**

Answer to para. 1:

The applicable provisions in the Austrian Criminal Code specifically incriminating forms of corruption in the private sector are as follows:

**Offence of dishonesty**

**§ 153.** (1) Any person who knowingly abuses his or her authority to dispose of property of another or to engage another thus causing a financial detriment to the other person is liable to imprisonment for up to six months or a fine not exceeding 360 penalty units.

(2) A person abuses his authority if the person violates rules that serve to protect the economic interests of the owner in an indefensible manner.

(3) Any person who causes damages exceeding 5,000 Euro is liable to imprisonment for up to three years; any person who causes damages exceeding 300,000 Euro is liable to imprisonment for one to 10 years.

**Acceptance of gifts by persons in authority**

**§ 153a.** Any person who accepts a more than minor financial or other material benefit that was offered for the execution of an authority to dispose of the property of another or to engage another, where that authority was granted by law, official order, or legal transaction, and who breaches his or her duty by not transferring the benefit is liable to imprisonment for up to one year or a fine not exceeding 720 penalty units.

**Anti-competitive collusion in tendering process**

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**§ 168b.** (1) Any person who in a tendering process makes an offer, submission or leads negotiations that are based on unlawful collusion aimed at causing the tenderer to accept a particular offer is liable to imprisonment for up to three years.

(2) A person is not liable under para. 1, if the person freely prevents the tenderer from accepting the offer or from meeting his or her obligations. A person is also not liable even if the offer is not accepted or if the tenderer

does not meet his or her obligations without any contribution by the person if the person freely and genuinely seeks to prevent the tenderer from accepting the offer or from meeting his obligations.

#### **Acceptance of gifts and bribery of employees and representatives**

**§ 309.** (1) Any person being an employee or representative of a company who, in the course of business transactions, demands, accepts, or accepts the promise of an advantage for himself, herself, or for a third person in return for the execution or omission of a legal act in breach of the person's duties is liable to imprisonment for up to two years.

(2) The same penalty applies to any person who offers, promises, or provides a benefit to an employee or representative of a company in return for the execution or omission of a legal act in breach of that person's duties in the course of business transaction.

(3) Any person who commits the offence in relation to benefits exceeding a value of 3,000 Euro is liable to imprisonment for up to three years; any person who commits the offence in relation to benefits exceeding a value of 50,000 Euro is liable to imprisonment for six months to five years.

In addition, the **Statute on Responsibility of Legal Entities (VbVG)** guarantees the application of the above mentioned sections also on legal entities as well as the applicable penalties for those offences if the offence was committed for the benefit of the entity or duties of the entity have been neglected by such offence. Also, the entity shall be held responsible if a decision maker of the entity acted illegally and culpably.

#### **Ad para. 2 lit. b) und f)**

In addition to the legal standards provided by Austrian corporate law the federal government of Austria has established the „Bundes Public Corporate Governance Kodex 2017“ („Federal Public Corporate Governance Codex 2017“). The „Bundes Public Corporate Governance Kodex 2017“ („Federal Public Corporate Governance Codex 2017“) contains important legal provisions and international and national standards for the management and the monitoring of companies owned by the federal state of Austria and their subsidiary companies, taking into account the special tasks and the importance of these companies for the general public.

The goal of the „Bundes Public Corporate Governance Kodex 2017“ („Federal Public Corporate Governance Codex 2017“) is to ensure transparent and accountable management and monitoring of companies and to state the relation of the federal republic of Austria and the companies more precisely.

Austria has enacted the Federal Act against Unfair Competition (UWG 1984), which aims to keep market participants' behavior free from unfair practices so that competing companies can freely present and deliver their services. § 1 Federal Act against Unfair Competition states that anyone who in the course of business resorts to an unfair commercial practice or another unfair practice which is likely to distort not only insignificantly the competition to the detriment of enterprises or uses an unfair commercial practice contrary to the requirements of professional diligence and which is with regard to the respective product suitable to materially distort the economic behavior of the average consumer whom it reaches or to whom it is addressed, may be sued for a cease-and-desist order and in case of fault for payment of damages.

Moreover, numerous Austrian companies have enacted their own code of conducts. According to § 2 Federal Act against Unfair Competition a commercial practice shall also be regarded as misleading if it is able to cause a market participant to take a transactional decision that he would not have taken otherwise, and which involves non-compliance with commitments, which the entrepreneur has in the framework of a code of conduct undertaken to be bound so far as the commitment is not aspirational but is firm and is capable of being verified, and the entrepreneur indicates in a commercial practice that he is bound by the code.

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**Remarks from the Austrian Federal Chamber of Commerce:***Paragraph 1:*

Austria has enacted various laws to achieve high standards in this regard: First of all, the Austrian Criminal Law addresses corruption (e.g. Art. 304 ff StGB - up to ten years prison) and unlawful accounting (e.g. Art. 163a ff StGB - up to two years prison) on various occasions (criminal law).

Besides the managing directors are legally obliged to act in the best interest of their respective incorporated companies/owners and to maintain an appropriate accounting system (e.g. Art. 22 GmbHG - Law for Private Limited Liability Company - and Art. 70 AktG - Austrian Stock Corporation Act). As a result they can be held liable, if they violate these obligations (civil law). In addition, the Federal Act against Unfair Competition (UWG 1984) includes also provisions (civil law) to reduce unlawful behaviour in these matters.

High accounting standards assure transparency, especially in regard to business records (e.g. Art. 189 ff UGB - Commercial Code), which have to be published with the commercial register. If business records are not published within due time penalties are imposed on the company as well as on the managing directors. The penalties can be imposed every two months if the accounts are still not published. If a company does not publish its records in two successive years it is assumed by law that it has no assets and therefore can be deleted from the companies register (Art. 40 of the Law of the Commercial Register). The managing directors of companies have to be registered with the commercial register. Specific rules apply to the banking sector (e.g. BWG - Law for Banking System) and other sensitive fields. Even the Tax Law addresses certain aspects of corruption (administrative law).

Austria has established a system of penalties for companies that fail to convert their bearer shares into registered shares by December 2013. This step will also help the law enforcement authorities to identify the beneficial owners of companies in a more effective way.

A new law implements the requirements set out in 4th AMLD, the "Beneficial Owners Register Act" (WiEReG) - it provides for fines up to 200,000 Euro.

The liability of legal persons is a matter of the Federal Statute on Responsibility of Entities for Criminal Offences (VbVG) - it provides for fines up to 1,8 mio. Euro.

These acts are being enforced in an effective, proportionate and dissuasive way by reliable and highly specialized authorities (e.g. Austrian Financial Market Authority, Federal Bureau of Anti-Corruption and the Federal Public Prosecutor's Office for White-Collar Crime and Corruption).

The Austrian Chamber of Commerce (WKÖ) publishes information on the internet to provide its members and other interested parties with information on corruption law and auditing standards.

*Paragraph 2:*

Please see primarily our comments on para. 1 above.

The new directive of the European Parliament and of the Council on the protection of persons who report breaches of Union law (EU Whistleblower Directive), adopted by the EU Council of Ministers on 7 October 2019, contains various measures to protect whistleblowers and also for internal and external reporting channels.

Many companies have enacted special code of conducts, e.g. OMV Aktiengesellschaft: <https://www.omv.com/en/sustainability/code-of-conduct>, Österreichische Post AG: [https://www.post.at/en/downloads/150531\\_Folder\\_Ethikkodex\\_EN\\_v2.pdf?1560346430](https://www.post.at/en/downloads/150531_Folder_Ethikkodex_EN_v2.pdf?1560346430). Companies are urged to inform continuously their employees to reduce the risk of corruption. The Business Information System Austria (GISA) contains the most important company-related

data of all business enterprises established in Austria. The Business Information System Austria is set up at the Federal Ministry for Digitization and Economic Affairs. The misuse of these licences can be punished according to the Trade Regulation (GewO) up to 3.600 Euro.

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**1 Please provide examples of the implementation of those measures, including related court or other cases, available statistics etc.**

Please see the information provided on Article 7, Article 8 and Article 11, in particular regarding “Termination of employment” and “Duties of retired civil servants”.

The civil law measures described above have been implemented with the entry into force of the Federal Act against Unfair Competition (UWG 1984).

### 34. Paragraph 3 of article 12

3. In order to prevent corruption, each State Party shall take such measures as may be necessary, in accordance with its domestic laws and regulations regarding the maintenance of books and records, financial statement disclosures and accounting and auditing standards, to prohibit the following acts carried out for the purpose of committing any of the offences established in accordance with this Convention:

- (a) The establishment of off-the-books accounts;
- (b) The making of off-the-books or inadequately identified transactions;
- (c) The recording of non-existent expenditure;
- (d) The entry of liabilities with incorrect identification of their objects;
- (e) The use of false documents;
- (f) The intentional destruction of bookkeeping documents earlier than foreseen by the law.

**1520 Is your country in compliance with this provision?**

**0 (Y) Yes**

1522

**1 Please describe (cite and summarize) the measures/steps your country has taken, if any, (or is planning to take, together with the related appropriate time frame) to ensure full compliance with this provision of the Convention.**

There is an obligation to keep records for seven years (sec. 189 and 212 para. 1 UGB [Unternehmensgesetzbuch, Entrepreneurial Code]), also in order to determine their taxable profits. This rule applies for companies, for partnerships where all members having unlimited liability are companies and for other enterprises if their annual turnover exceeds EUR 700,000.

Under tax law, the obligation for taxpayers to keep books and records or other relevant documentation is governed by sec. 124 to sec. 132b of the Federal Fiscal Code (Bundesabgabenordnung - BAO). For tax purposes the term “to keep books” is identical with double-entry book-keeping (net worth comparison method).

Sec. 124 BAO stipulates that any obligation to keep and maintain books and records under the

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UGB - or any other legal provisions - also applies for tax purposes.

Sec. 125 BAO stipulates the obligation to keep books and records for certain categories of enterprises that are not already covered by the UGB and Sec. 124 BAO. Moreover, the general requirements of tax law concerning the calculation of profits apply in any case (sec. 126 of the Federal Fiscal Code - BAO): Taxpayers who bear an obligation to submit tax returns must keep such records necessary for recording facts and circumstances relating to their tax liability. In particular, when such taxpayers are not required to keep books and records, they nevertheless have an obligation to record all their business receipts and disbursements and prepare their annual accounts at the end of each year for purposes of income and profit tax collection.

According to the UGB there is a requirement in all cases that records should:

a) correctly explain the company's transactions (sec. 190 para. 1 UGB);

enable the company's financial position to be determined with reasonable accuracy at any time (sec. 190 Para. 1 UGB);

c) allow financial statements to be prepared;

include underlying documentation such as invoices, contracts, etc. (sec. 212 para. 1 UGB).

Sec. 189 para. 1 UGB requires a business to record in its books its business transactions and the situation of its property according to the principles of correct accounting. The books must be kept in such a way that a competent third party is able to get a picture of the business transactions and the situation of the enterprise within a reasonable time. The business transactions must be recorded in a way that makes it possible to follow their origins and development. According to sec. 190 para. 2 UGB, all entries in the books and other records must be complete, correct, up-to-date and orderly.

Where there is no obligation to keep books and records, according to the UGB, taxpayers who bear an obligation to submit tax returns must keep such records necessary for recording facts and circumstances relating to their tax liability pursuant to sec. 126 BAO. They should

correctly explain the transactions (sec. 131 para. 1 subpara. 3 BAO)

enable the financial position to be determined with reasonable accuracy at any time (sec. 126 para. 2 BAO)

allow financial statements to be prepared (sec. 126 para. 2 BAO)

d) include underlying documentation (sec. 131 para. 1 subpara. 5 BAO)

In companies where a statutory audit is required by law (in particular in all stock corporations and in medium as well as large limited liability companies), compliance with these rules is also monitored by the statutory auditor.

1525

**1 Please provide examples of the implementation of those measures, including related court or other cases, available statistics etc.**

Section 163a Austrian Criminal Code penalizes organs if they incorrectly describe or if they conceal the situation of the company inter alia in the annual accounts.

According to sec. 159 of the Austrian Criminal Code ("Grossly negligent impairment of creditors' interests") one can be punished with up to 2 years of imprisonment for grossly negligently causing one's bankruptcy or for grossly negligently impairing the satisfaction of one's creditors knowing or

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negligently not knowing that one is already bankrupt by acting bankruptcy-prone; according to the definition of sec. 159 para 5 violating one's book keeping obligations may be a way to act bankruptcy-prone.

When there is an intentional failure to keep accounting records and underlying documentation for tax purposes, a fine of up to 5000 Euro is applicable (sec. 51 para 1 subpara c and para 2 Fiscal Offences Act (Finanzstrafgesetz [FinStrG])).

### 35. Paragraph 4 of article 12

4. Each State Party shall disallow the tax deductibility of expenses that constitute bribes, the latter being one of the constituent elements of the offences established in accordance with articles 15 and 16 of this Convention and, where appropriate, other expenses incurred in furtherance of corrupt conduct.

**1520 Is your country in compliance with this provision?**

**0 (Y) Yes**

**1522**

**1 Please describe (cite and summarize) the measures/steps your country has taken, if any, (or is planning to take, together with the related appropriate time frame) to ensure full compliance with this provision of the Convention.**

The restriction on claiming deductions for cash and non-cash gifts and donations that are punishable by the courts is regulated in section 20(1) no. 5 letter a of the Einkommensteuergesetz (Income Tax Act - EStG) and section 12(1) no. 4 of the Körperschaftsteuergesetz (Corporate Tax Act- KStG).

Further detailed information is provided in the Einkommensteuerrichtlinien (Income Tax Guidelines - EStR) starting from recital 4840.

<https://findok-intra.bmf.gv.at/findokintra?execution=e3s2#segmentHeadline1>

Precondition for non-tax deductibility of expenses that constitute bribes, the latter being one of the constituent elements of the offences are the following sections of the Criminal Code:

Misuse of authority (§302)

(1) A public officer who carries out official functions, on behalf of a federal government, a country, an association of local authorities, a municipality or another entity under public law, as an employee in the execution of laws, and who knowingly abuses his powers and deliberately harms the rights of others, shall be punished with a term of imprisonment from six months to five years. (2) Anyone who commits the offence of conducting official business with a foreign power or a supranational or intergovernmental organisation shall be punished with a term of imprisonment from one to ten years. Anyone who commits an offence which causes damages of more than 50,000 Euros will also be punished.

Corruptibility (§ 304)

(1) A public officer or arbitrator who requests, accepts or is promised a benefit for himself or a third party shall be punished with a term of imprisonment of up to three years. Anyone who is authorised by a court or another authority as an expert for a particular proceeding and who requests, accepts or is promised a benefit for himself or a third party in exchange for the restitution of incorrect findings or opinions, will also be punished.

(2) Anyone who commits an offence regarding a benefit which exceeds 3,000 Euros in value, shall be punished with a term of imprisonment from six months to five years, and anyone who commits an offence in which the benefit exceeds 50,000 Euros shall be punished with a term of imprisonment from one to ten years.

## Accepting benefits (§ 305)

(1) A public officer or arbitrator who requests a benefit for himself or a third party, or accepts an undue benefit (Paragraph 4) or the promise of one for the dutiful act or omission of an official function shall be punished with a term of imprisonment for up to two years.

(2) *has been repealed*

(3) Anyone who commits an offence regarding a benefit which exceeds 3,000 Euros in value, shall be punished with a term of imprisonment from six months to five years, and anyone who commits an offence in which the benefit exceeds 50,000 Euros shall be punished with a term of imprisonment from one to ten years.

(4) Undue benefits do not include

1. Benefits which can be legally accepted, or which are allowed within the context of events at which participants have official or factually justified interests,
2. Benefits for charitable purposes (§ 35 of the Federal Fiscal Code) whereby the public officer does not exercise a decisive influence by using these benefits, and
3. in the absence of permissive standards in terms of Z 1, local or national gifts of a low value, unless the offence is committed in a commercial manner."

## Accepting benefits for influence (§ 306)

(1) A public officer or arbitrator, who, except in the case of §§ 304 and 305, intends to allow his work as a public officer to be influenced, and requests a benefit for himself or a third party, or accepts an undue benefit (§ 305 Paragraph 4) or the promise of one, shall be punished with up to two years imprisonment.

(2) Anyone who commits an offence regarding a benefit which exceeds 3,000 Euros in value, shall be punished with a term of imprisonment from six months to five years, and anyone who commits an offence in which the benefit exceeds 50,000 Euros shall be punished with a term of imprisonment from one to ten years.

(3) Anyone who only accepts an insignificant benefit or the promise of one, shall not be punished in accordance with Paragraph 1, unless the offence is committed for commercial purposes.

## Bribery (§ 307)

(1) Anyone who offers, promises or grants a public officer or arbitrator a benefit for himself or a third party, for the unlawful act or omission of an official function, shall be punished with up to three years imprisonment. Similarly, anyone who offers, promises or grants a benefit to an expert (§ 304 Paragraph 1) for himself or a third party in exchange for the restitution of an incorrect finding or opinion shall be punished.

(2) Anyone who commits an offence regarding a benefit which exceeds 3,000 Euros in value, shall be punished with a term of imprisonment from six months to five years, and anyone who commits an offence in which the benefit exceeds 50,000 Euros shall be punished with a term of imprisonment from one to ten years.

## Undue benefits (§ 307a)

(1) Anyone who offers, promises or grants a public officer or an arbitrator an undue benefit (§ 305 Paragraph 4) for himself or a third party for the dutiful act or omission of an official function, shall be punished with up to two years imprisonment.

(2) Anyone who commits an offence regarding a benefit which exceeds 3,000 Euros in value, shall be punished with a term of imprisonment up to three years, and anyone who commits an offence in which the benefit exceeds 50,000 Euros shall be punished with a term of imprisonment from six months to five years.

## Undue benefits for influence (§ 307b)

(1) Anyone who, except in cases in §§ 307 and 307a, deliberately offers, promises or grants a public officer or an arbitrator an undue benefit (§ 305 Paragraph 4) for himself or a third party in order to influence him in his duties as a public officer, shall be punished with up to two years imprisonment.

(2) Anyone who commits an offence regarding a benefit which exceeds 3,000 Euros in value, shall be punished with a term of imprisonment of up to three years, and anyone who commits an offence in which the benefit exceeds 50,000 Euros shall be punished with a term of imprisonment from six months to five years.



#### Forbidden intervention (§ 308)

(1) Therefore, anyone who requests, accepts or is promised a benefit for himself or a third party, in seeking to have an undue influence on the decision-making of a public officer or an arbitrator, shall be punished with up to two years imprisonment.

(2) Therefore, anyone who offers, promises or grants a benefit to someone else in order to have an undue influence on the decision-making of a public officer or an arbitrator will also be punished. (3) Anyone who commits an offence regarding a benefit which exceeds 3,000 Euros in value, shall be punished with a term of imprisonment of up to three years. Anyone who commits an offence in which the benefit exceeds 50,000 Euros shall be punished with a term of imprisonment from six months to five years.

(4) Exerting an influence on the decision-making of a public officer or arbitrator is undue if it is targeted towards the unlawful act or omission of an official function or if it is linked to the offer, promise or grant of an undue benefit (§ 305 Paragraph 4) for the public officer or a third party.

(5) The offender shall not be punished, in accordance with the preceding paragraphs, if the offence is punishable with a more severe penalty under another provision.

#### Acceptance of gifts and bribery of public officers or authorised persons (§ 309)

(1) A public officer or authorised person in a company, who requests, accepts or is promised a benefit in commercial transactions for himself or a third party in exchange for the unlawful act or omission of a legal function, shall be punished with a term of imprisonment of up to two years.

(2) Anyone who offers, promises or grants a public officer, or an authorised person within a company, a benefit for himself or a third party in exchange for the unlawful act or omission of a legal function, shall also be punished.

(3) Anyone who commits an offence regarding a benefit which exceeds 3,000 Euros in value, shall be punished with a term of imprisonment of up to three years, if the benefit exceeds 50,000 Euros they shall be punished with a term of imprisonment of up to five years.

When assessing the non-deductibility of expenses and costs with a foreign nexus, the following rules apply:

1. The rule in sec. 20(1)(5)(a) Income Tax Act 1988 [German acronym: EStG 1988] covers only acts that are punishable under the referenced sections of the Criminal Code [German acronym: StGB].

2. A punishable offence may be found where the case involves the acceptance of a gift or the bribery of foreign official acting in a sovereign capacity in exchange for an act which is contrary to his or her duty. This also includes officials acting in the realm of private economic management or acting outside their immediate area of responsibility in connection with their role as officials. Where the criminal character of a payment is not obvious, then ex officio investigations are absolutely required where there are well-founded suspicions present that the elements of gift acceptance and/or bribery of foreign officials are made out.

3. As to the other offences referred to with a foreign nexus, ex officio investigations are only required to determine whether the benefit provided constitutes the completion of the elements of a criminal offence if a criminal prosecution has been opened in Austria.”

1525

#### **1 Please provide examples of the implementation of those measures, including related court or other cases, available statistics etc.**

Article 80 Fiscal Penal Code states that the tax authorities have to report any suspicion of a fiscal offense to the fiscal penal authorities. The unlawful deduction of expenses that constitute bribes may be a fiscal offense.

### **36. Technical Assistance**

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The following questions on technical assistance relate to the article under review in its entirety.

1529

- 1** Please outline actions required to ensure or improve the implementation of the article under review and describe any specific challenges you might be facing in this respect.

**1530** Do you require technical assistance for the implementation of this article? If so, please specify the forms of technical assistance that would be required. For example:

- 0** (NO) No assistance would be required

1531

- 1** Is any technical assistance already being provided to you? If so, please provide a general description of the nature of the assistance, including donor information.

## 13. Participation of society

### 37. Paragraph 1 of article 13

1. Each State Party shall take appropriate measures, within its means and in accordance with fundamental principles of its domestic law, to promote the active participation of individuals and groups outside the public sector, such as civil society, non-governmental organizations and community-based organizations, in the prevention of and the fight against corruption and to raise public awareness regarding the existence, causes and gravity of and the threat posed by corruption. This participation should be strengthened by such measures as:

- (a) Enhancing the transparency of and promoting the contribution of the public to decision-making processes;
- (b) Ensuring that the public has effective access to information
- (c) Undertaking public information activities that contribute to non-tolerance of corruption, as well as public education programmes, including school and university curricula;
- (d) Respecting, promoting and protecting the freedom to seek, receive, publish and disseminate information concerning corruption. That freedom may be subject to certain restrictions, but these shall only be such as are provided for by law and are necessary:
  - (i) For respect of the rights or reputations of others;
  - (ii) For the protection of national security or ordre public or of public health or morals.

**1520** Is your country in compliance with this provision?

- 0** (Y) Yes

1522

- 1** Please describe (cite and summarize) the measures/steps your country has taken, if any, (or is planning to take, together with the related appropriate time frame) to ensure full compliance with this provision of the Convention.

The Co-ordinating Body on Combating Corruption (“Koordinationsgremium zur Korruptionsbekämpfung”) not only comprises of representatives of governmental bodies, but also includes representatives of the Federal Chamber of Economy, the Federal Bar Association, the Notary Chamber the public service union and Transparency International - Austrian Chapter. The participation of the civil society in this body is not only of high value but also crucial for one major milestone achieved this year, the additional national Action Plan for non-governmental bodies and organizations, who voluntarily commit to the actions laid down in the plan. For further information,

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please see answer to Article 5 paras. 1 and 2.

**Public information platforms of the Federal Bureau of Anti-Corruption (BAK):**

There are various BAK public information platforms that keep the public informed about current corruption issues and in this way act both as information and prevention tools.

On the one hand, the BAK homepage provides information on current issues and legislation, innovations in the fight against corruption and current events and publications. On the other hand, the Facebook page of the BAK, which also presents current events in the field of corruption, reaches a different target group and thus covers as large a circle of people as possible.

In addition, print media in the form of publications such as the BAK Annual Report, the Anti-Corruption Day Publication and event-related, topic-specific information folders and brochures (corruption prevention, compliance advisory services, National Anti-Corruption Strategy, newsletters, etc.) are produced at regular intervals and presented and distributed at various events.

Other active measures relating to public information programmes include the "Code of Conduct to go", a small-format, easy-to-read brochure which is also used as part of basic police training and thus establishes an initial contact with this topic, and the non-electronic "fit4compliance" game in Annex I E. , which was designed for pupils and young people and prepares them playfully for

various dilemmas in everyday life.

Events and training courses on combating corruption and raising awareness of the concept of "corruption" are also offered by the BAK and take place as part of the annual BAK advanced training course (see also response to Article 7, paragraph 1 d.), the training for corruption prevention officers (CPOs) (see also response to Article 6, paragraph 1 b) and the Network of Integrity Officers (NIO) (see also response to Article 5, paragraph 2 and Article 7, paragraph 1 d.). In addition, anti-corruption training courses can also be accessed via an in-house e-learning tool, such as the module on criminal law on corruption for police basic training. For further information, see response to Article 7, paragraph 1 d.)

Active preventive public relations work is also carried out at school events where school classes from higher school levels are informed about the facts of corruption and can actively participate in intensive workshops to familiarize themselves with the topic. For further information, see Annex I D. and response to Article 7, paragraph 1 d.)

Research projects together with universities and preventive advisory talks with organizations are another aspect of preventive work, in which the BAK analyses risks and offers recommendations to the organizations concerned.

**BAK App:** The BAK developed an app prototype in cooperation with "Höhere Technische Lehranstalt" or HTL (secondary technical school) in Mistelbach, Lower Austria. The aim of the app is to sensitize young people to matters regarding corruption, ethics and integrity.

School students were intensely involved in the app's development process, for the app to turn out as target-group-oriented as possible. Programming and conceptual preparatory work was carried out by student teams as part of their final exams.

The app features twelve character levels, to be explored and completed one after the other in a fun and playful way. Each character confronts the user with 10 to 15 different situations, with three possible solutions each, one of which the player will choose. The app puts users in everyday dilemma situations with regard to corruption or ethically correct behaviour. Once the player has made a decision, this choice has an impact on future decisions, which illustrates, among other things, the problem of structural corruption. Depending on decisions made, the app user wins a certain amount of points. Upon successful completion of one character, the player unlocks the next

level. The following hierarchy of characters (levels) is available: high school student - university student - insurance agent - teacher - athlete - car mechanic - bar owner - police officer - civil servant at a district authority - doctor - bank clerk - politician.

### **Primary and secondary education**

Citizenship education in Austrian Schools covers ALL fields of politics and teachers have various tools available.

On corruption a comprehensive material is available in the series “polis aktuell”. The issue 1/2013 contains information on the subject of corruption and its effects (definition, forms, political and social consequences, legislation ...) as well as teaching example and more resources available. The manual is available free of charge and links to more information and organizations dealing with the topic. The teaching and learning material helps to raise awareness and to inform the school community but also a larger public on the aspects of corruption. The booklet was developed and written in cooperation with the Austrian office of Transparency International. Furthermore, addressing press freedom, the independence of the media and their control function make an important contribution to understand the origins and effects of corruption.

For dealing with SDG 16.5 “Substantially reduce corruption and bribery in all their forms” the Austrian Service Centre for Citizenship Education also provides information and assistance for teachers: [www.politik-lernen.at/sdg16](http://www.politik-lernen.at/sdg16) <<http://www.politik-lernen.at/sdg16>>

Citizenship education spans the arc of knowledge transfer to the active advocacy for the rule of law.

Even if the term “corruption” or “anti-corruption” does not appear explicitly in the syllabi, the topic is nevertheless given sufficient space in subjects like “Civic/Citizenship Education” as well as in form of a cross-curricular approach in different teaching-sequences, -settings or “anti-corruption” workshops.

Below are **examples of some syllabus contents of various educational programmes**: Elementary school: The curriculum of the elementary school e.g. contains references and contents for the age-appropriate treatment of the given topic, which are described in the teaching principles as well as in the subject curriculum. In the subject curriculum for general knowledge, the topics of political education are dealt with age-appropriately and building on from the first to the fourth grade. Pupils acquire knowledge, skills and attitudes which are fundamental for participation in the shaping of a democratic society and for peaceful coexistence of all people, i.e. foster awareness of what is “wrong” or “right”, discuss the need for regulations and rules in larger communities, sensitize for correct behaviour towards possible seduction and violence, discuss about how people behave in certain roles or situations; develop ideas about responsible behaviour, ...

There are also a lot of contents in the curriculum of new secondary school addressing public integrity and, in this context, prevention of corruption e.g. in the subjects “Citizenship education” or “Geography and Economics”:

The aim is to empower pupils to perceive democratic participation and participation in different areas of life and society, to develop the ability to formulate relevant and value-based judgments as well as to assume social responsibility and to reflect on their own. Furthermore, there is focus on the relationships of human coexistence (structure, power, communication, norms ...), focus on the evaluation of economic issues from an ethical point of view, etc. As a matter of fact, young people are offered opportunities to acquire judgement and decision-making competence in order to shape their lives in a meaningful way.

Relevant contents and learning outcomes can also be found in the curriculum of special-needs-school or the professional preparation year, i.e. pupils should be enabled to understand the need for regulations and rules in communities as well as to observe their own behaviour and role towards others, to know about the basic connections between work, money-making and spending as well as how to behave correctly towards possible seduction and violence

In addition to this, the curricula of secondary academic schools contain contents related to “corruption”. The subject of “corruption” and other related topics are taught in class. The curricula of secondary academic schools form the basis for this. These curricula provide an in-depth discussion of democracy, human rights and European fundamental values, as well as opportunities for political participation and shaping.

As part of the Curricula 2020 project, the UN's Sustainable Development Goals and crosscutting issues such as political education are to be anchored more firmly in the curricula of elementary

schools, new secondary schools and secondary academic schools.

Furthermore, corruption is prevented through participative processes. The following measures can be mentioned in this context:

- the process of reviewing curricula
- the publication of curricula
- the involvement of teachers in curriculum working groups
- stakeholder involvement
- the involvement of the social partners

These measures strengthen the public's understanding of transparent decision-making processes and comprehensively inform and involve the public.

In order to support the shaping of personal and civic values teaching on “anti-corruption”, “ethical behaviour” or “public integrity” takes also place in all VET-schools and colleges in different subjects such as e.g. “Economy and Law”, “Civic/Citizenship Education” or in the cluster “Society and Culture” as well as in form of a cross-curricular approach. Particular emphasis is put on building up a comprehensive concept of democracy, on a critical reflection of current topics from the economy, politics, society and culture, a critical analysis of lifestyles and their individual life situations in relation to society and politics. Thus, students should be enabled to reflect connections between political, economic and cultural transition processes. The teaching principles defined in the curricula state that “school in general has to fulfil educational missions and training tasks, which cannot simply be assigned to one individual teaching subject, but can only be tackled through cross-curricular and interdisciplinary teaching. Corruption can be seen as falling into this category. Additionally the subject “Economy and Law” implicitly deals with corruption by bringing up and discussing issues such as sham companies and illicit earnings. Further teaching principles include the development of social competences (social responsibility among others) as well as personal competences. The corresponding subject is the interdisciplinary compulsory training exercise “Social and Personal Competencies”, where ethical matters are brought up.

### **Tertiary/Higher education**

In the area of tertiary education, there are three relevant measures for the prevention of corruption.

#### National Anti-Corruption Strategy (NACS) - Action Plan 2019-2020

The government in early 2019 adopted the National Anti-Corruption Strategy. The following measures of the Action Plan 2019-2020 are relevant for universities:

Anti-corruption training in education: Ongoing anti-corruption training events for students and the expansion of the existing anti-corruption training courses for students at universities are planned for 2019-2020.

The prevention of corruption and the promotion of integrity will be increasingly integrated into university curricula in 2019-2020.

A comprehensive analysis of the transparency and compliance measures for third party funding at Austrian universities is planned for 2019-2020.

Public relations work and information on the dangers of corruption and anti-corruption measures are to take place on an ongoing basis in 2019-2020.

#### Association for Combating Corruption Transparency International - Austrian Chapter (TI-AC)

Introduction of the working group Academic Governance to strengthen transparency and thus the independence and resistance to corruption of the Austrian higher education sector. It is a multi-stakeholder platform for representatives of all interest groups involved (e.g. federal ministries, universities and university conferences) who work together on this topic.

Between March and September 2016, fundamental questions concerning third-party funding at Austrian universities were developed by the working group "Academic Governance" and answered by the majority of Austrian universities.

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In the future, the working group is planning a more comprehensive study, which will examine the exact financial flows, their origin, purpose and influence on Austrian universities and their research.

The Public Corporate Governance Codex:

The management has to comply with the law regulations and the company's internal guidelines and has to work towards their observance by the employees.

Every university has to make provision for an appropriate corruption prevention. A corresponding staff unit has to be located in the management.

Every university has to set up an internal audit according to international standards

Every university has to publish a yearly Corporate Governance report.

**Publication of all audit reports of the Austrian Court of Audit:**

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

In the audit of the "Lobbying and Interest Representation Register", the Austrian Court of Audit also emphasized the importance of taking sufficient awareness-raising measures in connection with the instrument of "Lobbying".

Every staff member of the Austrian Court of Audit and the Audit Courts of the *Länder* has to graduate in the subject "Prevention of Corruption" within the compulsory basic training on academic level.

1525

**1 Please provide examples of the implementation of those measures, including related court or other cases, available statistics etc.**

The Federal Bureau of Anti-Corruption (BAK) provides anti-corruption training, events and workshops for VET-schools and Colleges. In cooperation with the BAK a live stream was broadcast in 2018, which reached about 49,000 students and about 5,500 teachers of Schools and Colleges of Business Administration at the time of sending. The live stream is still available via: <https://www.facebook.com/hak.has.cc/>

**BAK App:** In order to promote "CORRECT OR CORRUPT?" in the best possible way via social networks and social media among the target group and to inform potential users on the download portals (Apple and Google Play Store) about the functionalities and content of the app in a target-group oriented manner, an animated promotion video (duration: approx. 45 seconds) was also produced.

In addition, a competition related to the app was advertised together with the MoI. Young people between the age of 14 and 20 were able to win one day at the Austrian Airborne Police if they submitted the high score they had achieved to the BAK. The campaign was run on the Facebook channels and Instagram account of the Ministry of the Interior. Also, postcards were distributed at certain events. The winner visited the Austrian Airborne Police in the first quarter of 2019.

All institutions of tertiary/higher education offer courses that focus on or at least touch the topics of corruption prevention and compliance. Specific examples can be found in the enclosed document

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“List of relevant laws, policies and/or other measures cited in the responses to the self-assessment” under point III. (Information on tertiary educational institutions).

### 38. Paragraph 2 of article 13

2. Each State Party shall take appropriate measures to ensure that the relevant anti-corruption bodies referred to in this Convention are known to the public and shall provide access to such bodies, where appropriate, for the reporting, including anonymously, of any incidents that may be considered to constitute an offence established in accordance with this Convention.

**1520 Is your country in compliance with this provision?**

**0 (Y) Yes**

**1522**

**1 Please describe (cite and summarize) the measures/steps your country has taken, if any, (or is planning to take, together with the related appropriate time frame) to ensure full compliance with this provision of the Convention.**

The Federal Bureau of Anti-Corruption (BAK) always strives to raise awareness and inform the public about its reporting mechanism.

In 2013 the Austrian Federal Ministry of Constitutional Affairs, Reforms, Deregulation and Justice (BMVRDJ) launched a portal ([www.bkms-system.net/wksta](http://www.bkms-system.net/wksta)), which especially provides representatives of the civil society a tool to report wrongdoing anonymously. For further details please see answer to Article 8 para. 4."

#### **Publication of audit reports of the Austrian Court of Audit:**

The publication of audit reports of the Austrian Court of Audit which contains also recommendations in the field of corruption prevention promotes transparency by initiating public discussions. There is also the possibility for citizens to report their concerns to the Court of Audit as the competent body for fighting corruption by phone, email and social media. Anonymous notifications are also possible. In summer 2019, the third campaign for promoting the participation of citizens was made. In this way, citizens are invited to send suggestions for audits. About a quarter of these suggestions was included in the 2019 Audit Program of the Austrian Court of Audit.

**1525**

**1 Please provide examples of the implementation of those measures, including related court or other cases, available statistics etc.**

The BAK's Single Point of Contact (SPOC) contact details are published on several pages on the BAK's official website. For further information, see reply to Article 8, paragraph 4. In addition, the BAK mentions the SPOC's contact details in most of its educational programmes, lectures and presentations and during its workshops with pupils. A BAK film was also developed for this purpose, which, among other things, draws attention to the possibility of reporting suspicious circumstances to the BAK via its SPOC.

### 39. Technical Assistance

The following questions on technical assistance relate to the article under review in its entirety.

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1529

- 1** Please outline actions required to ensure or improve the implementation of the article under review and describe any specific challenges you might be facing in this respect.

**1530** Do you require technical assistance for the implementation of this article? If so, please specify the forms of technical assistance that would be required. For example:

- 0** (NO) No assistance would be required

1531

- 1** Is any technical assistance already being provided to you? If so, please provide a general description of the nature of the assistance, including donor information.

## 14. Measures to prevent money-laundering

### 40. Subparagraph 1 (a) of article 14

1. Each State Party shall:

(a) Institute a comprehensive domestic regulatory and supervisory regime for banks and non -bank financial institutions, including natural or legal persons that provide formal or informal services for the transmission of money or value and, where appropriate, other bodies particularly susceptible to money -laundering, within its competence, in order to deter and detect all forms of money -laundering, which regime shall emphasize requirements for customer and, where appropriate, beneficial owner identification, record -keeping and the reporting of suspicious transactions;

**1520** Is your country in compliance with this provision?

- 0** (Y) Yes

1522

- 1** Please describe (cite and summarize) the measures/steps your country has taken, if any, (or is planning to take, together with the related appropriate time frame) to ensure full compliance with this provision of the Convention.

The Financial Markets Anti-Money Laundering Act (Finanzmarkt-Geldwäschegesetz - FM-GwG) forms the legal basis for the Austrian regulatory and supervisory regime for banks and non-bank financial institutions. The scope of the FM-GwG covers credit institutions, financial institutions, insurance undertakings, investment firms, Alternative Investment Fund Managers, e-money institutions, payment institutions, the Austrian Post with regard to its money transfer services and financial institutions pursuant to points a) to d) of Article 3 (2) of Directive (EU) 2015/849 with their place of incorporation in another Member State with business operations conducted through branches or branch establishments located in Austria as well as branches or branch establishments of such financial institutions that are authorised in third countries (Article 1 and Article 2 no. 1 and 2 FM-GwG). These are considered to be obliged entities. The Financial Market Authority (FMA) ensures the compliance of the obliged entities with the FM-GwG (Article 31 FM-GwG).

#### Due diligence obligations

The due diligence obligations of the obliged entities pursuant to Article 6 para. 1 FM-GwG comprise identifying the customer and verifying the customer's identity on the basis of documents, data or information obtained from a reliable and independent source and identifying the beneficial owner and taking reasonable measures to verify that person's identity so that the obliged entity is

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satisfied that it knows who the beneficial owner is, including, as regards legal persons, trusts, companies, foundations and similar legal arrangements, taking reasonable measures to understand the ownership and control structure of the customer. Obligated entities also must assess and obtain information on the purpose and intended nature of the business relationship; obtain and check information about the source of the funds used; identify and verify the trustor and trustee; conduct ongoing monitoring of the business relationship, including scrutiny of transactions undertaken throughout the course of that relationship and regularly check availability of all required information, data and documents that are required under the federal act, and update such information data and documents.

The obliged entities have to apply customer due diligence pursuant to Art. 6 FM-GwG when establishing a business relationship and when executing any transactions which are not conducted within the scope of a business relationship and which involve an amount of at least EUR 15,000 or a euro equivalent value, regardless of whether the transaction is carried out in a single operation or in multiple operations between which there is an obvious connection; or which involves a transfer of funds as defined in Article 3 (9) of Regulation (EU) 2015/847 exceeding EUR 1,000. Moreover,

entities have to conduct customer due diligence for each deposit into savings deposits, and for each withdrawal of savings deposits if the amount deposited or withdrawn is at least EUR 15,000 or a euro equivalent value; if the institution suspects or has reasonable grounds to suspect that the customer belongs to a terrorist organisation or the customer objectively participates in transactions which serve the purpose of money laundering. Customer due diligence also has to be carried out when there are doubts as to the veracity or adequacy of previously obtained customer identification data (Article 5 FM-GwG). The customer due diligence requirements, including the identification of beneficial owners, thus apply to all accounts.

Pursuant to Article 4 para. 1 FM-GwG, the obliged entities shall identify and assess the potential risks of money laundering and terrorist financing, to which they are exposed, on the basis of data and information taking into account all risk factors, in particular those that relate to customers, countries or geographical areas, products, services, transactions and delivery channels as well as other new or developing technologies, both for new and already existing products. In so doing, they shall take into account findings of the national risk assessment (Article 3) and of the report of the European Commission on the risks of money laundering and terrorist financing affecting the internal market (Article 6 (1) of Directive (EU) 2015/849). The investigation and assessment in relation to new products, practices and technologies shall in any case take place prior to their roll-out. The steps involved in the investigations and assessment shall be proportionate to the nature and size of the obliged entities.

### **Retention requirements**

The obliged entities are required to retain copies of the documents and information, which are necessary to comply with the customer due diligence requirements, for a period of five years after the end of the business relationship with their customer or after the date of an occasional transaction. They are also required to retain receipts and records of transactions required to investigate transactions, for a period of five years after the end of the business relationship with their customer or after the date of an occasional transaction (Article 21 para. 1 FM-GwG). The obliged entities shall be required to delete all personal data, which they have processed solely for the purposes of this federal act, upon expiry of the retention periods in accordance with para. 1, unless the regulations set out in other federal acts require or allow a longer retention period. No data shall be allowed to be deleted until any pending investigative, main or appeal proceedings in relation to Articles 165, 278a, 278b, 278c, 278d or 278e StGB have been ended in a legally binding manner, if the obliged entity has demonstrably become aware of the proceedings (Article 21 para. 2 FM-GwG).

### **Suspicious activity reports**

Pursuant to Article 16 para. 1 FM-GwG, the obliged entities shall inform the Financial Intelligence Unit (Geldwäschemeldestelle) without delay upon their own initiative by means of a suspicious activity report, if they know, suspect or have reasonable grounds to suspect that an attempted,

upcoming, ongoing or previously conducted transaction is related to asset components originating from one of the criminal activities; an asset component originates from one of the criminal activities listed in Article 165 Criminal Code (Strafgesetzbuch - StGB) (including asset components which stem directly from a criminal act on the part of the perpetrator) or a customer has violated the obligation to disclose trust relationships pursuant to Article 6 para. 3; or the attempted, upcoming, ongoing or previously conducted transaction or the assets are connected to a criminal organisation pursuant to Article 278a StGB, a terrorist organisation pursuant to Article 278b StGB, a terrorist crime pursuant to Article 278c StGB or terrorist financing pursuant to Article 278d StGB.

### **Guidance and other obliged entities**

Apart from the binding legal requirements for banks and financial institutions, the FMA publishes Circulars, which set out the FMA's legal opinion and provide supervised entities with precise guidance about how to practically apply the provisions of the Financial Markets Anti-Money Laundering Act. In 2019, it published a Circular on Reporting Requirements for the Prevention of Money Laundering and Terrorist Financing and a Circular on Internal Organisation for the Prevention of Money Laundering and Terrorist Financing. In 2018, the FMA published a Circular on Customer Due Diligence Requirements for the Prevention of Money Laundering and Terrorist Financing as well as a Circular on Risk Assessment for the Prevention of Money Laundering and Terrorist Financing.

In addition to the FM-GwG, other legislation sets out AML obligations of designated non-financial businesses and professions (DNFBPS, i.e. casinos, lawyers, notaries, accountants, real estate agents and persons trading in goods). The relevant laws are: Trade Act (Gewerbeordnung - GewO), Gambling Act (Glücksspielgesetz - GSpG) as well as laws at the level of the federal states (Landesgesetze) pertaining to gambling services that include AML/CFT requirements, Notarial Code (Notariatsordnung - NO), Lawyer's Act (Rechtsanwaltsordnung - RAO), Disciplinary Statute for lawyers and lawyer-candidates (Disziplinarstatut für Rechtsanwälte und Rechtsanwaltsanwärter - DSt) and Act on the Profession of Chartered Public Accountants and Tax Consultants (Wirtschaftstreuhänderberufsgesetz - WTBG). Like the FM-GwG, they transpose the Directive (EU) 2015/849 of the European Parliament and of the Council of 20 May 2015 on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing (the 4<sup>th</sup> Anti-Money Laundering Directive).

### **The Register of Beneficial Owners**

The Register of Beneficial Owners was established on 15 January 2018 based on the Beneficial Owners Register Act (Wirtschaftliche Eigentümer Registergesetz - WiEReG).

The Register of Beneficial Owners is an implementation of Articles 30 and 31 of Directive (EU) 2015/849 (4<sup>th</sup> Anti-Money Laundering Directive). The Beneficial Owners Register Act implements the Register for Companies and Other Legal Persons and the Register for Trusts, which were provided for in the 4<sup>th</sup> AMLD, in a central register. The Register is maintained by the registry authority established by the Federal Ministry of Finance. This authority not only safeguards the data protection rights of data subjects but also has extensive analytic capabilities for the purpose of ensuring the accuracy and completeness of the data and preventing money laundering and terrorist financing. Technically, the Register is established by the Bundesanstalt Statistik Austria based on the Commercial Register for administrative purposes so that the greatest possible synergy effects can be realised. The Registry Authority also provides extensive information material on beneficial ownership, including a comprehensive decree with respect to identifying, verifying the identity and reporting beneficial owners, which presented the legal opinion of the Finance Ministry on a wide range of questions, which was published on 26 April 2018.

The WiEReG took effect on 15 January 2018. This means that, as of this date, legal entities can send reports to the Register via the one-stop-shop Business Service Portal called Unternehmensserviceportal (USP). For all legal entities that are exempt from reporting pursuant to Article 6 WiEReG the data regarding beneficial owners was automatically imported from the Commercial Register, the Register of Associations and the Supplementary Register for Others as of the reference date of 15 January 2018. However, this automatic report only applies if the beneficial

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owners are already recorded in the Commercial Register or the Register of Associations and can be imported by automated means.

Under Article 3 WiEReG, legal entities are required to identify and check the identities of their beneficial owners. To make it easier to comply with this obligation, Article 4 WiEReG obliges the legal and beneficial owners to send the necessary documents and information to the legal entities.

Under Article 5 WiEReG, legal entities themselves must report the data about the beneficial owners to the Register electronically via the 'Unternehmensserviceportal' (USP). Every legal entity is clearly identified upon registration with the Unternehmensserviceportal. In addition, there is the option of having a representative of the party acting in a professional capacity make the report.

The final deadline for the initial report of Beneficial Owners of legal entities and trusts was 15 August 2018. This date also marked the start of the automated coerced penalties. The Registry Authority follows a multi-pronged approach to ensure data quality. Due to their own due diligence obligations, legal professionals have extensive knowledge regarding beneficial ownership and are able to report the beneficial owners of their clients. The Registry Authority also checks the key statistical data on a weekly basis and conducts analyses of received reports in order to identify formal errors and suspicious reports, so that the registry authority may focus on presumably wrong reports.

Pursuant to Article 9 para. 1 WiEReG, the entities listed hereafter shall be considered as obliged entities within the meaning of this Federal Act and shall be authorised to inspect the Register in accordance with para. 2:

credit institutions pursuant to Article 2 no. 1 FM-GwG, wind-down entities pursuant to Article 162 BaSAG, wind-down units that were established pursuant to Article 2 GSA, wind-down units pursuant to Article 83 BaSAG and insurance undertakings pursuant to Article 2 no. 2 lit. b FM-GwG;

credit institutions and financial institutions pursuant to Article 2 nos. 1 and 2 FM-GwG that are supervised by the FMA pursuant to Article 25 para. 1 FM-GwG, where such entities are not captured under no. 1;

financial institutions pursuant to Article 2 no. 2 FM-GwG that are not supervised by the FMA pursuant to Article 25 para. 1 FM-GwG;

holders of government-approved licences pursuant to Article 14 and Article 21 GSpG;

authorised operators for gaming machines and betting companies, that have been established on the basis of an authorised under regional law, in accordance with the regulations set out under regional law.

attorneys;

notaries;

external auditors pursuant to Article 1 para. 1 no. 1 WTBG 2017;

tax advisors pursuant to Article 1 para. 1 no. 2 WTBG 2017;

balance sheet accountants, accounts and payroll accountants pursuant to Article 1 Balance Sheet Accounting Act 2014 (BiBuG 2014; Bilanzbuchhaltungsgesetz 2014);

commercial traders including auctioneers provided that they accept payments in cash of at least Euro 10 000 pursuant to Article 365m1 para. 2 no. 1 GewO 1994;

real estate agents pursuant to Article 365m1 para. 2 no. 2 GewO 1994;

business consultants pursuant to Article 365m1 para. 3 no. 3 GewO 1994;

insurance brokers pursuant to Article 365m1 para. 2 no. 4 GewO 1994;

the Austrian Treasury (Österreichische Bundesfinanzierungsagentur);

Pursuant to Article 9 para. 2 WiEReG, obliged entities shall only be allowed to inspect the Register in application of due diligence obligations for the prevention of money laundering and terrorism towards their customers. Furthermore, obliged entities shall be allowed pursuant to para. 1 nos. 6 to 10 to inspect the Register for the purposes of advising their clients with regard to the determination, reviewing and reporting of the beneficial owners of their clients and for the purposes of advising beneficial owners with regard to the applications submitted pursuant to Article 10a and Article 14 para. 5 WiEReG.

### **National Risk Assessment 2015 and Update of National Risk Assessment**

According to Article 3 para. 2 FM-GwG, a national risk assessment shall be drawn up and maintained on an ongoing basis. The basis of the national risk assessment shall consist of the contributions of the coordinating committee (see also the answer to Article 14, subpara. 1(b)), who shall draw up such contributions in relation to their respective competences. In drawing up the national risk assessment, the findings of the report of the European Commission on the risks of money laundering and terrorist financing affecting the internal market pursuant to Article 6 (1) of Directive (EU) 2015/849 shall be taken into account. Austria's last national risk assessment, carried out in accordance with FATF standards, was published in 2015. The coordinating committee is in the process of drawing up a new national risk assessment.

### **Transposition of the 5<sup>th</sup> Anti-Money Laundering Directive**

At the time of submitting the self-assessment checklist, the Austrian Parliament was in the process of adopting the transposition of the 5<sup>th</sup> Anti-Money Laundering Directive into national law, amending notably the FM-GwG and the WiEReG. This legislation further strengthens the Austrian AML/CFT framework. Among other measures, the FM-GwG will include virtual asset services providers among the obliged entities and tighten as well as clarify enhanced due diligence obligations. Similar transpositions will occur for all relevant AML/CFT legislation.

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**1 Please provide examples of the implementation of those measures, including related court or other cases, available statistics etc.**

The Financial Market Authority (FMA) supervises the financial sector's AML/CFT systems using a risk-based approach. In 2018, the FMA carried out 60 on-site measures: 30 on-site inspections and 30 examinations (29 concerning banks and financial institutions and one concerning the agent of a payment institution). In addition, the FMA conducted ten management interviews. The FMA initiated 168 supervisory proceedings, 141 of which were examination procedures and 15 were procedure to restore a lawful state of affairs. In 2018, the FMA also carried out eight administrative sanctions. In both 2017 and 2016, the FMA issued seven administrative sanctions.

**41. Subparagraph 1 (b) of article 14**

1. Each State Party shall:

...

(b) Without prejudice to article 46 of this Convention, ensure that administrative, regulatory, law enforcement and other authorities dedicated to combating money - laundering (including, where appropriate under domestic law, judicial authorities) have the ability to cooperate and exchange information at the national and international levels within the conditions prescribed by its domestic law and, to that end, shall consider the establishment of a financial intelligence unit to serve as a national centre for the collection, analysis and dissemination of information regarding potential money - laundering.

**1520 Is your country in compliance with this provision?**

**0 (Y) Yes**

**1522**

**1 Please describe (cite and summarize) the measures/steps your country has taken, if any, (or is planning to take, together with the related appropriate time frame) to ensure full compliance with this provision of the Convention.**

According to Art. 3 Financial Markets Anti-Money Laundering Act (Finanzmarkt-Geldwäschegesetz - FM-GwG), a coordinating committee shall be established at the Federal Ministry of Finance to develop measures and strategies for the prevention of money laundering and terrorist financing, to identify, assess, understand and mitigate the risks prevailing in Austria with regard to money laundering and terrorist financing as well as all data protection issues. The Federal Ministries for Justice, for the Interior, for Science, Research and Economy, for Europe, Integration and Foreign Affairs, as well as the Financial Market Authority and the Austrian Central Bank shall nominate at least one member and a deputy member. The chairperson and their deputy shall be nominated by the Federal Minister of Finance. The chairperson shall convene the coordination committee at least twice per calendar year. The members of the coordination committee may also request it to be convened in the event of material reasons prevailing.

Based on the amendment of the distribution of responsibilities of the Criminal Intelligence Service (CIS) the Austrian central body for receiving and evaluating suspicious transaction reports (STRs) [known as the Austrian Financial Intelligence Unit or A-FIU] got reorganized on 1 December 2018. The A-FIU functions as an independent office, which is located within the CIS (ministry of interior).

Pursuant to Art. 16 of the Austrian Money Laundering Act, obliged entities do have the duty to report suspicious transaction reports to the A-FIU. The FIU is then responsible for carrying out targeted and comprehensive analysis to determine whether the reported circumstances are related to money laundering and/or terrorist financing. If the FIU has indications that an ongoing or future transaction is related to money laundering or terrorist financing, it also possesses the authority to prevent the transaction from being executed (Art. 17 paragraph 4 Austrian Money Laundering Act). On a domestic level, the A-FIU cooperates with other organizational units within the CIS, subordinate units from the police, the Federal Office for the Protection of the Constitution and Counter Terrorism, the Federal Bureau of Anti-Corruption, the ministry of finance and regulatory and supervisory authorities.

On an international level the A-FIU exchanges information on two possible ways. Within the EU, the FIU community uses FIU.net for the exchange of information. The information exchange with third states takes place via Egmont Secure Web (ESW).

The FMA may cooperate mutually with authorities in Member States and third countries that perform the duties that correspond to the FMA's duties, and shall share all information, where the

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sharing of the information serves the purposes of supervision of financial markets. Such information shall also include information about shareholders, members of the management board, the supervisory board, the administrative board, and the executive directors of the obliged entities as well as information relating to the customers of the obliged entities. The FMA may also exercise its powers under federal law exclusively for the purposes of cooperation or exchange of information in accordance with this paragraph, even if the conduct that is the subject of the investigation does not constitute a breach of a regulation applicable in Austria (Article 25 para. 5 FM-GwG). The submission of information to authorities in third countries pursuant to para. 5 is only permissible if they are subject to or have agreed to an equivalent level of professional secrecy that corresponds to the professional secrecy pursuant to the respective European legal acts that govern the activities of obliged entities (Article 25 para. 6 FM-GwG).

Furthermore, AML/CFT legislation for other obliged entities also contains provisions on cooperation at the national and international level.

1525

**1 Please provide examples of the implementation of those measures, including related court or other cases, available statistics etc.**

Austria provides assistance to countries who request it, and the Austrian authorities regularly ask their foreign counterparts for information and evidence. The FMA regularly engages in co-operation and information exchange in AML/CFT matters with foreign counterparts, both on a multilateral and bilateral basis. This cooperation is timely and constructive. According to Austria's last FATF MER all feedback received from delegations was positive, and indicated that the information provided was both useful and prompt.

As AML/CFT forms part of the FMA's larger integrated supervisory framework, co-operation for AML/CFT purposes is covered by the broader (prudential) information exchange policy of the FMA. The FMA is signatory to a large number of bilateral and multilateral Memoranda of Understanding regarding the whole range of its competencies in the supervision of the financial market (banking, insurance and securities markets supervision).

The FMA is an active member in the European Supervisory Authorities' Joint Committee Sub-Committee on Anti-Money Laundering (AMLC), which convenes up to 3 times per year. The AMLC serves as a forum of formal and informal exchange between EU member states' supervisors.

On a bilateral basis, the FMA receives various AML/CFT related information requests from foreign supervisors. Requests generally take one of two forms: information requests relating to specific supervised entities or more general requests e.g. pertaining to supervisory policy or national AML/CFT frameworks.

AML/CFT related requests by foreign counterparts are internally forwarded to the AML/CFT division, which answers the requests as swiftly as possible or within the timeframe stated in the request.

Furthermore, the FMA conducts on-site examinations abroad (Foreign branches and subsidiaries of obliged entities according to Article 1 FM-GwG) in order to check compliance with group-wide strategies.

The Austrian FIU publishes an annual report on its activities, where further information including detailed statistics can be found.

Annual reports 2004 - 2017 (in German)  
<<https://bundeskriminalamt.at/308/start.aspx>>

## 42. Paragraph 2 of article 14

2. States Parties shall consider implementing feasible measures to detect and monitor the movement of cash and appropriate negotiable instruments across their borders, subject to safeguards to ensure proper use of information and without impeding in any way the movement of legitimate capital. Such measures may include a requirement that individuals and businesses report the cross-border transfer of substantial quantities of cash and appropriate negotiable instruments.

**1520 Is your country in compliance with this provision?**

**0 (Y) Yes**

**1522**

**1 Please describe (cite and summarize) the measures/steps your country has taken, if any, (or is planning to take, together with the related appropriate time frame) to ensure full compliance with this provision of the Convention.**

Currently Austria applies Regulation (EC) No 1889/2005 of the European Parliament and of the Council of 26 October 2005 on controls of cash entering or leaving the Community (OJ L 309, 25.11.2005, p. 9-12) - Annex 1. Additional the Austrian Customs Law Implementation Act constitutes as follows:

### Customs supervision

Article 17. (1) Goods are subject to customs supervision if this is provided in the Customs Code, in other Community law legal instruments or in other federal law provisions, or the goods are subject to prohibitions or restrictions with regard to possession or shipment (transportation) in traffic crossing the borders of the area of application.  
(2) Containers and means of transportation for which there is reason to believe that they contain goods mentioned in par. 1 are also subject to customs supervision.

Article 17a. (1) Customs supervision may further be directed and performed with regard to persons for whom it is to be assumed due to certain facts that they prepare, commit or have committed or are involved in a customs violation in the area of application, places where warehouses may be established that give justified reason to assume that they serve for transactions that are contrary to the tasks to be performed by the customs authorities, goods movements, which are reported to possibly serve for transactions that represent customs violations, means of transport that give justified reason to assume that they are used for operations that represent customs violations.  
Customs supervision within the meaning of this provision must only be directed and performed if customs violations (§ 4 par. 2 line 14) are concerned.

(2) The transport of goods that are subject to transport restrictions or are prohibited from or through the federal territory (controlled delivery within the meaning of § 71 of the federal Law on legal cooperation in criminal matters with the member states of the European Union - EU-JZG) is admissible under customs law, provided that it is approved in accordance with § 72 EU-JZG by the competent public prosecutor's office after consultation with the customs authority. Any further measures for the prevention of individual customs violations may be refrained from if it can be assumed that this may contribute to the clarification of customs violations liable to prosecution in connection with import, export and transit, on the condition that it does not endanger the life and health of third parties, and that provisions are made to fully cover any loss resulting from the action. For this purpose, the consignment can be intercepted and be released for further transport in such a manner that its original content remains untouched, is removed or is fully or partly replaced. The

performance of a controlled delivery by customs authorities within the meaning of this paragraph requires that the competent authority has given an order and that no additional risk for the charge of duties occurs. (Federal Law Gazette I 2004/26)

### **Supervision of cross-border cash transactions**

Article 17b. (1) Within the scope of the general measures of customs supervision, cash and cash-equivalent means of payment, which are brought into, through or out of the area of application, are also subject to customs supervision. Cash-equivalent means of payment are:

transferable bearer instruments including payment instruments with bearer clause such as traveller's checks, transferable instruments (including checks, promissory notes and payment orders), either with bearer clause, endorsed without restriction, made out to a fictitious payee or in any other form causing the transfer of the legal title upon handover;

incomplete documents (including checks, promissory notes and payment orders), which are signed but do not indicate the payee's name, as well as

gold and other precious metals. (Federal Law Gazette I 2006/99)

(2) At the customs bodies' request, persons must provide information whether they carry cash or equivalent means of payment at a value of 10,000 Euro or more. In this case, information must also be provided at request on their origin, the beneficiary and their intended use.

(Federal Law Gazette I 2004/26, Federal Law Gazette I 2006/99)

(3) To the extent that the Community's external border coincides with the borders of the area of application according to § 3, travellers must orally declare any cash and cash-equivalent means of payment according to article 3 of Directive (EC) no. 1889/2005 on control of cash entering or leaving the Community, Official Journal no. L 309 of 25.11.2005 p. 9, and the information required by the mentioned directive must be contained. However, the declarant may also submit the information in written form. (Federal Law Gazette I 2006/99)

(4) To the extent and in accordance with § 15 par. 1 and 3, the bodies of the public security agency are responsible to perform the supervision of cross-border cash transactions crossing the external Community border. (Federal Law Gazette I 2006/99)

Article 17c. (1) If certain facts give rise to the assumption that cash or equivalent means of payment are introduced for the purpose of money laundering or financing terrorism, the customs bodies are authorized in case of danger in delay to seize the cash or means of payment for the time being. They must immediately report the seizure to the competent public prosecutor's office. If the latter declares that the requirements of a seizure according to Articles 98 para. 2 and 143 para. 1 StPO [Code of Criminal Procedure] or a preliminary injunction in accordance with Article 144a StPO are not met, the seizure must be terminated without delay. Otherwise, the preliminary seizure ceases to be effective after expiry of six months since its passing, or as soon as the court has finally decided on a request for seizure or a preliminary injunction. (Federal Law Gazette I 2006/99)

(2) In connection with the performance of the control of cash or equivalent means of payment, which are brought into, through or out of the area of application, the customs authorities may collect, process and use personal data. The customs authorities must pass the data on to the competent prosecuting authority, the money laundering registration office and to the Federal Office for the Protection of the Constitution and Fight against Terrorism, to the extent that this is necessary to perform their statutory tasks.

(Federal Law Gazette I 2004/26, Federal Law Gazette I 2006/99)

### **Sanctions for a breach of obligations in transactions**



Sanctions for non-compliance are set out in the Finanzstrafgesetz (Fiscal Penal Act - FinStrG):

§ 48b. (1) Any person who deliberately or negligently violates a registration requirement or otherwise gives false or incomplete information with regard to the customs supervision of cash transactions is in breach of his or her obligations in cash transactions. (Federal Law Gazette I 2007/99)

(2) The offence is punished with a fine not exceeding 50,000 Euros for intent and 5,000 for negligence. (Federal Law Gazette I 2007/99)

(Federal Law Gazette I 2004/26)

Regulation (EU) 2018/1672 of the European Parliament and of the Council of 23 October 2018 on controls on cash entering or leaving the Union and repealing Regulation (EC) No 1889/2005 (OJ L 284/6) was published on 12 November 2018 and will be applicable on 3 June 2021 (Annex 2). Amendments of the respective Articles of the Austrian Customs Law Implementation Act are under preparation in order to assure compliance with the new EU - Regulation.

1525

**1 Please provide examples of the implementation of those measures, including related court or other cases, available statistics etc.**

Statistics and other information on declared cross-border cash transfers;  
In the year 2018:

3542 declarations of Euro 3.081.419.055

Declarations on entering: 1787

Declarations on leaving: 1755

Statistics and other information on detected undeclared cross-border cash transfers.

In the year 2018:

56 recordings of Euro 2.407.810

Nr of recordings on entering: 40

Nr of recordings on leaving: 16

### **43. Paragraph 3 of article 14**

3. States Parties shall consider implementing appropriate and feasible measures to require financial institutions, including money remitters:

(a) To include on forms for the electronic transfer of funds and related messages accurate and meaningful information on the originator;

- (b) To maintain such information throughout the payment chain; and
- (c) To apply enhanced scrutiny to transfers of funds that do not contain complete information on the originator.

**1520 Is your country in compliance with this provision?**

**0 (Y) Yes**

**1522**

**1 Please describe (cite and summarize) the measures/steps your country has taken, if any, (or is planning to take, together with the related appropriate time frame) to ensure full compliance with this provision of the Convention.**

Austria directly applies Regulation (EU) 2015/847 on information accompanying transfers of funds. This Regulation sets out that, inter alia:

The payment service provider of the payer shall ensure that transfers of funds are accompanied by the following information on the payer: (a) the name of the payer; (b) the payer's payment account number; and (c) the payer's address, official personal document number, customer identification number or date and place of birth (Article 4 para. 1). The payment service provider of the payer shall ensure that transfers of funds are accompanied by the following information on the payee: (a) the name of the payee; and (b) the payee's payment account number (Article 4 para. 2).

Intermediary payment service providers shall ensure that all the information received on the payer and the payee that accompanies a transfer of funds is retained with the transfer (Article 10).

The payment service provider of the payee shall implement effective procedures to detect whether the fields relating to the information on the payer and the payee in the messaging or payment and settlement system used to effect the transfer of funds have been filled in using characters or inputs admissible in accordance with the conventions of that system (Article 7 para. 1). The payment service provider of the payee shall implement effective risk-based procedures, including procedures based on the risk-sensitive basis referred to in Article 13 of Directive (EU) 2015/849, for determining whether to execute, reject or suspend a transfer of funds lacking the required complete payer and payee information and for taking the appropriate follow-up action. Where the payment service provider of the payee becomes aware, when receiving transfers of funds, that the information referred to in Article 4(1) or (2), Article 5(1) or Article 6 is missing or incomplete or has not been filled in using characters or inputs admissible in accordance with the conventions of the messaging or payment and settlement system as referred to in Article 7(1), the payment service provider of the payee shall reject the transfer or ask for the required information on the payer and the payee before or after crediting the payee's payment account or making the funds available to the payee, on a risk-sensitive basis (Article 8 para. 1).

The payment service provider of the payee shall take into account missing or incomplete information on the payer or the payee as a factor when assessing whether a transfer of funds, or any related transaction, is suspicious and whether it is to be reported to the Financial Intelligence Unit (FIU) in accordance with Directive (EU) 2015/849 (Art. 9).

Pursuant to Article 25 para. 1 FM-GwG, the FMA ensures the compliance of Regulation (EU) 2015/847 by credit institutions and financial institutions.

**1525**

**1 Please provide examples of the implementation of those measures, including related court or other cases, available statistics etc.**

In 2017, the Joint Committee of the three European Supervisory Authorities (EBA, EIOPA and ESMA - ESAs) published Joint Guidelines under Article 25 of Regulation (EU) 2015/847 on the measures payment service providers should take to detect missing or incomplete information on the

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payer or the payee, and the procedures they should put in place to manage a transfer of funds lacking the required information. In accordance with Article 16(3) of the ESAs Regulations, competent authorities and financial institutions must make every effort to comply with the guidelines. The FMA complies with these guidelines.

#### 44. Paragraph 4 of article 14

4. In establishing a domestic regulatory regime and supervisory regime under the terms of this article, and without prejudice to any other article of this Convention, States Parties are called upon to use as a guideline the relevant initiatives of regional, interregional and multilateral organizations against money -laundering.

1520 **Is your country in compliance with this provision?**

0 (Y) Yes

1522

**1 Please describe (cite and summarize) the measures/steps your country has taken, if any, (or is planning to take, together with the related appropriate time frame) to ensure full compliance with this provision of the Convention.**

Austria is a founding member of the Financial Action Task Force and is subject to regular Mutual Evaluations, including follow-up reports, on the compliance of the Austrian AML/CFT system with the FATF recommendations. In 2016, Austria was subject to a Mutual Evaluation Report based on the 2012 FATF Recommendations and using the 2013 Methodology. Subsequently, Austria was re-rated on 10 Recommendations in 2017 and on two Recommendations in 2018.

Austria is also a member of the OECD and the IMF, both of which have integrated AML/CFT issues into their work (the OECD through its Peer Reviews on Transparency and Exchange of Information for Tax Purposes - which includes beneficial ownership - and the IMF through its Financial Sector Assessment Program (FSAP) and Article IV Consultation).

In addition, Austria is a member of the European Union and therefore transposes all EU Directives, including AML/CFT legislation, into national law and directly applies EU Regulations.

1525

**1 Please provide examples of the implementation of those measures, including related court or other cases, available statistics etc.**

In the 2016 FATF Mutual Evaluation Report, Austria received the following Effectiveness Ratings: 2 (=low), 6 (=moderate) and 3 (=substantial). It received the following Technical Compliance Ratings: 14 (=partially compliant), 14 (=largely compliant) and 12 (=compliant). Following the twelve re-ratings received in 2017 and 2018, Austria now has the following Compliance Ratings: 4 (=partially compliant), 18 (=largely compliant) and 18 (=compliant). The Effectiveness Ratings are unchanged compared to the Mutual Evaluation Report.

The IMF's 2018 Article IV Consultation included an appraisal of Austria's AML/CFT system, with the following conclusion: "A stronger Anti-Money Laundering/Combating the Financing of Terrorism (AML/CFT) framework will help Austria sustain its position as a financial centre. The authorities need to continue strengthening their AML/CFT regime in line with their action plan adopted in response to the 2016 Financial Action Task Force (FATF) Mutual Evaluation Report. Several Action Plan items have already been addressed by legislative measures over the course of the last two years. These improvements were acknowledged by the FATF in the first follow-up report in December 2017. Austria should further enhance the effectiveness of the AML/CFT framework by improving investigation and prosecution of money laundering and the use of financial intelligence. As a next step, Austria should implement the 5<sup>th</sup> EU AML Directive. This will further improve Austria's AML/CFT with a view to the current AML/CFT risk landscape (anonymity of virtual currencies and the lack of transparency of beneficial ownership and high-risk countries)." (p. 12)

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In 2018, the OECD Global Forum on Transparency and Exchange of Information for Tax Purposes carried out the Second Round Peer Review Report on the Exchange of Information on Request. This review followed a 2015 First Round Supplementary Report. In both reviews, Austria was rated compliant in seven elements and largely compliant in three elements, leading to an overall rating of largely compliant.

In 2017, the ESAs issued Joint Guidelines on the characteristics of a risk-based approach to anti-money laundering and terrorist financing supervision, and the steps to be taken when conducting supervision on a risk-sensitive basis (The Risk-Based Supervision Guidelines). In accordance with Article 16(3) of the ESAs' Regulations, competent authorities and financial institutions must make every effort to comply with the Guidelines. The FMA complies with these guidelines.

#### 45. Paragraph 5 of article 14

5. States Parties shall endeavour to develop and promote global, regional, subregional and bilateral cooperation among judicial, law enforcement and financial regulatory authorities in order to combat money -laundering.

**1520** Is your country in compliance with this provision?

**0** (Y) Yes

**1522**

**1** Please describe (cite and summarize) the measures/steps your country has taken, if any, (or is planning to take, together with the related appropriate time frame) to ensure full compliance with this provision of the Convention.

The Austrian FIU is participating and partially leading the following national and international committees:

National:

National coordinating committee (all ministries involved in ML/TF matters - ministry of interior, ministry of finance, ministry of justice, ministry of economy, National Bank, supervisory authority)

Quality assurance committee (ministry of interior, ministry of finance, ministry of justice, police directorates)

Public Private Partnership Initiative (regular meetings between the A-FIU and the obliged entities)

International:

FATF participation from the A-FIU

EGMONT Group participation

Membership and compliance WG

Information exchange WG

Technical assistance and Training WG

FIU Platform meetings

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FIU is participating within the Advisory WG and the FIU.net solution roadmap WG

Bilateral cooperation (on a case by case basis)

The Federal Ministry of Finance as well as the FMA participate in the Expert Group on Money Laundering and Terrorist Finance, which brings together national experts and the European Commission on various topics related to AML/CFT.

According to Article 25 para. 4 FM-GwG, the FMA shall cooperate within the meaning of Regulations (EU) no 1093/2010, (EU) no 1094/2010 and (EU) no 1095/2010 with the European Supervisory Authorities and with the other participants of the European System of Financial Supervision (ESFS) pursuant to Article 1 (3) of Regulation (EU) no 1092/2010, and shall make all information available to them without delay necessary for the performance of their duties in accordance with the aforementioned Regulations that they require on the basis of Directive (EU) 2015/849.

1525

- 1 Please provide examples of the implementation of those measures, including related court or other cases, available statistics etc.**

Please see above for examples concerning the FIU.

The Federal Ministry of Finance organises study visits and exchanges on AML/CFT issues with other foreign authorities. For example, on 23<sup>rd</sup> and 24<sup>th</sup> July 2019 Austria has hosted a study visit dedicated to AML/CFT for Kosovar authorities. This study trip was organised in response to a request from UNODC Kosovo and will give an overview of the Austrian AML/CFT system.

The FMA participates at meetings, study visits as well as EU Twinning Projects with other foreign authorities. For instance, the FMA presented its AML/CFT system to authorities from Serbia, Ukraine as well as Bosnia and Herzegovina in the first half of 2019.

## 46. Technical Assistance

The following questions on technical assistance relate to the article under review in its entirety.

1529

- 1 Please outline actions required to ensure or improve the implementation of the article under review and describe any specific challenges you might be facing in this respect.**

**1530 Do you require technical assistance for the implementation of this article? If so, please specify the forms of technical assistance that would be required. For example:**

- 0 (NO) No assistance would be required**

1531

- 1 Is any technical assistance already being provided to you? If so, please provide a general description of the nature of the assistance, including donor information.**

## V. Asset recovery

### 51. General provision

#### 225. Article 51

1. The return of assets pursuant to this chapter is a fundamental principle of this Convention, and States Parties shall afford one another the widest measure of cooperation and assistance in this regard.

**1520** Is your country in compliance with this provision?

**0** (Y) Yes

**1524**

- 1** Please describe (cite and summarize) the measures/steps your country has taken, if any, (or is planning to take, together with the related appropriate time frame) to ensure full compliance with this provision of the Convention, including identifying both any legal authorities/procedures for accepting requests for asset recovery and assessing that these requests are reasonably substantiated and supplemented as well as any time frame established under domestic laws and procedures for their execution, taking into account requests received from countries with similar or different legal systems and any challenges faced in this context.

At the outset, we would like to point out that upon ratification of an international Convention by Austria, the provisions contained therein can - under certain conditions - be directly applicable by Austrian authorities. This is also true with regard to the UNCAC, in particular the provisions set forth in Chapter V.

Furthermore, it should be emphasized that those provisions are anyway in line with the relevant provisions of Austrian law, namely the Code of Criminal Procedure (CCP) and the Extradition and Mutual Legal Assistance Law (ARHG). Translations of these laws into the English language are attached.

In detail, the different provisions of Chapter V are implemented in Austrian law as follows:

Article 51 is a general provision stating the obligation of the States Parties to cooperate with each other in the return of confiscated property or assets. As is shown in the explanations to Articles 52 to 57, Austria is in compliance with this obligation.

In Austria, Asset Recovery exists since 1997, when provisions concerning Confiscation ("skimming") of criminal proceeds in the Penal Code came into force. During the last years these legal provisions in Penal Code (PC) and Code of Criminal Procedure (CCP) have been amended due to own experiences made by Law Enforcement and due to new EU regulations.

Asset Recovery in general is a task for all police dealing with criminal investigation as Austria follows an "All Crime-Approach": proceeds from any kind of crime shall be taken away from the criminals, beginning with small kinds of theft or fraud, selling small amounts of drugs, up to serious cases of crime, corruption and so on.

Asset Recovery at a higher level is done mainly by specialized criminal investigators either in the central Asset Recovery Office - ARO, which is established in the Austrian Criminal Police Head Quarter, called Criminal Intelligence Service Austria (CIS), or on regional level in local police commands.

The Austrian ARO was established in 2003 with the creation of the CIS and has been notified to the European Commission according Council Decision 2007/845/JHA of 6 December 2007 concerning cooperation between Asset Recovery Offices of the Member States in the field of tracing and

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identification of proceeds from, or other property related to, crime.

At Federal Level - ARO is staffed with a Legal Adviser as Head of ARO and 6 criminal/financial investigators. The main tasks of the ARO are

support services and operative investigations to establish and seize property obtained through criminal acts;

interrogation of suspects and witnesses, coercive measures, in particular participation in searches of premises, sorting and analysis of documents to be used as evidence;

drawing up money flow analysis;

control and coordination of national and international investigations in the field of asset recovery.

In every of the nine regional authorities (Regional Criminal Police HQ - LKA) one investigation unit fighting „white collar“ crime and one investigation unit fighting fraud among others are established. Investigations in „white collar“ crime include the fields of economic crime, money laundering, corruption, asset recovery, investment fraud and subsidy fraud.

Criminal investigations in the field of asset recovery are done in strict coordination with the responsible office of the prosecutor who is the head of investigations and brings the case before Court.

Compulsory measures are regulated in Chapter 8 of the Code of Criminal Procedure (CCP).

In order to avoid deliberate transfers of ownership and the consequent exclusion of confiscation, it will be important to prevent such acts through the swiftest possible seizure (Sicherstellung) or sequestration (Beschlagnahme) of the objects.

In October 2002, a conference was held in Dublin co-hosted by the Criminal Assets Bureau Ireland and Europol. Workshops were held between practitioners in law enforcement (police, prosecutors, magistrates, financial investigators...) and the objective was to present recommendations dealing with the subject of identifying, tracing and seizing the profits of crime. One of the recommendations arising in the workshops was to look at the establishment of an informal network of contacts and a cooperative group in the area of criminal asset identification and recovery. The name agreed for the group was the Camden Assets Recovery Inter-Agency Network (the Camden Court Hotel Dublin being the original location of the workshops where the initiative started). The official start of CARIN took place during the CARIN Establishment Congress in The Hague, 22-23 September 2004.

In seeking to meet its aim CARIN will:

- establish a network of contact points;
- focus on the proceeds of all crimes, within the scope of international obligations;
- establish itself as a centre of expertise on all aspects of tackling the proceeds of crime;
- promote the exchange of information and good practice;

undertake to make recommendations to bodies such as the European Commission and the Council of the European Union, relating to all aspects of tackling the proceeds of crime;

- act as an advisory group to other appropriate authorities;
- facilitate, where possible, training in all aspects of tackling the proceeds of crime;
- emphasise the importance of cooperation with the private sector in achieving its aim;

CARIN comprises 55 countries and jurisdictions and 9 international organizations, Europol runs the permanent secretariat.

In the meantime also regional CARIN style networks have been installed in Latin America, South-Africa, East-Africa, West-Africa and in the Asian-Pacific region. The exchange of information runs via the secretariats.

It was an idea and a plan in 2006 during CARIN's Annual Conference in Hof near Salzburg, to establish national asset recovery offices in every country. Council Decision 2007/845/JHA of 6 December 2007 concerning cooperation between Asset Recovery Offices of the Member States in the field of tracing and identification of proceeds from, or other property related to, crime, followed.

Each Member State shall set up or designate a national Asset Recovery Office, for the purposes of the facilitation of the tracing and identification of proceeds of crime and other crime related property which may become the object of a freezing, seizure or confiscation order made by a competent judicial authority in the course of criminal or, as far as possible under the national law of the Member State concerned, civil proceedings.

Member States shall ensure that their Asset Recovery Offices cooperate with each other by exchanging information and best practices, both upon request and spontaneously. To speed up the process the European AROs use the SIENA-channel supported by Europol to fulfil all the requirements of the "Swedish Initiative" and to answer to requests within the timeframe of Framework Decision 2006/960/JHA.

Over ten years ago, in November 2008 the European Commission adopted the Communication on the proceeds of organized crime, which proposes ten strategic priorities to strengthen the fight against organized crime by enhancing confiscation and asset recovery. The Communication foresees inter alia initiatives for an increased cooperation among EU AROs and for new tools related to the identification and tracing of assets. It proposes that EU AROs should meet regularly within an informal Platform in order to ensure effective exchange of information, coordination and cooperation. Since then representatives of AROs meet at least twice a year to discuss best practices and developments in Asset Recovery.

Other Networks like the Egmont Group or FIU-net use certain channels for providing information on money laundering, and other networks like for fighting serious and organized crime do similar.

Austrian police can exchange information with police other than from European Union according its Police Cooperation Act (Polizei-Kooperationsgesetz; Pol-KG) to identify, trace and seize property deriving from crime.

1526

- 1 Please provide examples of the implementation of those measures, including related court or other cases, statistics etc.

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**Case Example:**

It is worth to mention an example of excellent police cooperation and mutual legal assistance including the creation of a Joint Investigation Team (JIT) to underline the effectiveness of Austrian legislation and the work of law enforcement.

In Austria, the Vienna Public Prosecution Service has instituted criminal proceedings against the Austrian nationals Hans Wolfgang Riedl and Walter Wolf on a charge of having bribed Slovenian public officials in connection with the delivery of 135 light-wheeled tanks from the Finnish company PATRIA VEHICLES OY to the Slovenian government for 278 million euros in 2006. It is alleged that bribes running into millions have been paid to eliminate the Slovenian competitor.

When PATRIA was awarded the contract in late 2006, Riedl transferred over 2,23 million euros to Wolf's private account in Leibnitz (Austria). However, the transaction eventually failed, because the local bank clerk made an anti-money laundering suspicious transaction report (STR). Investigations started in Austria, Finland and Slovenia.

In 2009, the law enforcement authorities in Finland, Slovenia and Austria concluded a contract establishing a joint investigation team and subsequently exchanged their investigative results.

In the trial Wolfgang Riedl was found guilty and was sentenced to three years' imprisonment, the amount of EUR 1,319,109.72 of his assets is declared forfeited. The conviction of Wolfgang Riedl was affirmed by the Austrian Supreme Court.

**226. Technical Assistance**

The following questions on technical assistance relate to the article under review in its entirety.

1529

- 1** Please outline actions required to ensure or improve the implementation of the article under review and describe any specific challenges you might be facing in this respect.

**1530** Do you require technical assistance for the implementation of this article? If so, please specify the forms of technical assistance that would be required. For example:

- 0** (NO) No assistance would be required

1531

- 1** Is any technical assistance already being provided to you? If so, please provide a general description of the nature of the assistance, including donor information.

**52. Prevention and detection of transfers of proceeds of crime****227. Paragraph 1 of article 52**

1. Without prejudice to article 14 of this Convention, each State Party shall take such measures as may be necessary, in accordance with its domestic law, to require financial institutions within its jurisdiction to verify the identity of customers, to take reasonable steps to determine the identity of beneficial owners of funds deposited into high-value accounts and to conduct enhanced scrutiny of accounts sought or maintained by or on behalf of individuals who are, or have been, entrusted with prominent public functions and their family members and close associates. Such enhanced scrutiny shall be reasonably designed to detect suspicious transactions for the purpose of reporting to competent authorities and should not be so construed as to discourage or prohibit financial institutions from doing business with any legitimate customer.

**1520 Is your country in compliance with this provision?****0 (Y) Yes****1522****1 Please describe (cite and summarize) the measures/steps your country has taken, if any, (or is planning to take, together with the related appropriate time frame) to ensure full compliance with this provision of the Convention.**

For an overview of the AML/CFT framework as well as of the due diligence obligations of obliged entities (including with regard to beneficial ownership), please refer to the answer to Article 14 paragraph 1(a).

According to Annex III no. 2 point a Financial Markets Anti-Money Laundering Act (Finanzmarkt-Geldwäschegesetz - FM-GwG) private banking, which generally encompasses high-value accounts, is an indicator of potentially higher risk that an obliged entity has to take into account when assessing risks of money laundering and terrorist financing.

In accordance with Article 13 para. 1 FM-GwG, the obliged entities may rely on third parties for the fulfilment of the customer due diligence obligations set out in Article 6 para. 1 nos. 1 to 5 and 7, provided that no indications exist to suggest that the listed obligations will not be fulfilled to a comparable standard. However, the ultimate responsibility for meeting those obligations shall remain with the obliged entity, which relies on the third party. The obliged entities shall ensure that they obtain the necessary information without delay with regard to the customer due diligence obligations set out in Article 6 para. 1 nos. 1 to 5 and 7 from the third parties upon whom they are reliant. Furthermore, they shall be required to take appropriate steps to ensure that the third party is able to forward them upon request copies of the documentation used to satisfy these due diligence obligations as well as other relevant documentation on the identity of the customer or the beneficial owner(s) (Article 13 para. 2 FM-GwG). However, obliged entities shall be prohibited from relying on third parties established in high-risk third countries. This shall not apply for branches or branch establishments of third parties incorporated in Austria or in another Member State and their subsidiaries, where those branches or branch establishments or subsidiaries fully comply with the group-wide policies and procedures (Article 13 para. 4 last subpara. FM-GwG). As this provision transposes the requirements of the 4<sup>th</sup> AMLD, similar transpositions also exist in the AML/CFT legislation covering DNFBPs.

People entrusted with prominent public functions, their family members and persons known to be close associates are politically exposed persons (PEP) according to Article 2 para. 6 FM-GwG. In the case of business relationships with politically exposed persons the obliged entities have to obtain the approval of their senior management before establishing or continuing business relationships with such persons, take adequate measures to establish the source of wealth and source of funds that are involved in business relationships or transactions with such persons and subject the business relationship to enhanced ongoing monitoring (Art. 11 para. 1 no. 2 FM-GwG). In addition to the customer due diligence obligations set out in Art. 6 FM-GwG, the obliged entities shall have in place appropriate risk management systems, including risk-based procedures, to be able to determine whether the customer, the beneficial owner of the customer, or the trustor of the customer is a politically exposed person and to apply these procedures prior to establishing the business relationship as well as to apply them at regular intervals during the ongoing business relationship.

There is only one provision in the FM-GwG that stipulates a differentiated treatment between foreign and domestic PEPs: If the beneficial owner of the customer pursuant to Article 2 no. 1 point b sub-point cc WiReG has been identified, then Article 11 para. 1 no. 2 FM-GwG shall not apply in the case of Austrian politically exposed persons, where no risk factors exist that indicated an increased level of risk (Art 11 para. 1 last subparagraph). However, it needs to be stressed that this exception only applies in the case of companies without owners, when the natural persons who belong to the management board shall be considered as beneficial owners, provided that no grounds exist that show that the company is either directly or indirectly under the control of one or several

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other natural persons. In addition, Article 11 para. 1 is still applicable, meaning that the customer must be recognised as a politically exposed person and has to be classified as a high-risk customer.

The enhanced due diligence obligations set out in Article 9 and Article 11 FM-GwG are to be applied using a risk-based approach and do not constitute a discouragement or prohibition from doing business with legitimate customers.

The transposition of the 5<sup>th</sup> AMLD into national law will include an obligation (Article 3 para. 10 FM-GwG) for the Ministry of Europe, Integration and Foreign Affairs to annually draw up a list of public functions that are to be regarded as important public offices as defined in Article 2 no. 6 point h FM-GwG. Important public offices according to Art. 2 no. 6 point h FM-GwG encompass “directors, deputy directors and members of the board or an equivalent function of an international organisation”. Natural persons who exercise or have exercised such a function are considered politically exposed persons (Article 2 no. 6 FM-GwG). Thus, there will be a precise way to determine each natural person who is a politically exposed person according to Article 2 no. 6 point h FM-GwG.

1526

**1 Please provide examples of the implementation of those measures, including related court or other cases, statistics etc.**

The fulfilment and implementation of the abovementioned obligations by the supervised entities is supervised by the FMA on a regular basis. The FMA conducts periodic on-site measures as well as takes the necessary steps on an off-site level. If deficiencies occur or are detected then the appropriate measures (such as penalties) are taken.

## 228. Subparagraph 2 (a) of article 52

2. In order to facilitate implementation of the measures provided for in paragraph 1 of this article, each State Party, in accordance with its domestic law and inspired by relevant initiatives of regional, interregional and multilateral organizations against money -laundering, shall:

(a) Issue advisories regarding the types of natural or legal person to whose accounts financial institutions within its jurisdiction will be expected to apply enhanced scrutiny, the types of accounts and transactions to which to pay particular attention and appropriate account -opening, maintenance and record -keeping measures to take concerning such accounts; and

**1520 Is your country in compliance with this provision?**

**0 (Y) Yes**

1522

**1 Please describe (cite and summarize) the measures/steps your country has taken, if any, (or is planning to take, together with the related appropriate time frame) to ensure full compliance with this provision of the Convention.**

Article 9 para. 1 Financial Markets Anti-Money Laundering Act (Finanzmarkt-Geldwäschegesetz - FM-GwG) sets out three groups of natural or legal persons on whom obliged entities are required to conduct enhanced due diligence:

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Cross-border correspondent relationships with respondent institutions incorporated in third countries, politically exposed persons, customers whose place of incorporation or residence is in a non-cooperative country or territory;

natural or legal persons domiciled in high-risk third countries (as set out in the Commission Delegated Act (EU) 2016/1675 on the list of high-risk third countries);

on the basis of the obliged entity's risk assessment or in another manner. In this case, the risks of money laundering and terrorist financing relating to types of customers, geographic areas, and particular products, services, transactions or delivery channels shall be assessed and at least the factors of potentially higher risk situations set out in Annex III taken into account. Annex III includes a detailed overview of factors that indicate higher-risk situations.

Moreover, obliged entities are required to examine, as far as reasonably possible, the background and purpose of all complex and unusually large transactions, and all unusual patterns of transactions, which have no apparent economic or lawful purpose. In particular, obliged entities shall increase the degree and nature of monitoring of the business relationship, in order to determine whether those transactions or activities appear suspicious (Article 9 para. 3 FM-GwG). Specific enhanced due diligence requirements are set out in Article 9 to 12 FM-GwG for the different types of legal and natural persons.

Pursuant to Article 4 para. 1 FM-GwG, when carrying out the risk assessment at company level, the obliged entities have to take into account the findings of Austria's national risk assessment as well as the report of the European Commission on the risks of money laundering and terrorist financing affecting the internal market (Article 6 (1) of Directive (EU) 2015/849).

The record-keeping requirements are the same as the ones set out in the answer to Article 52, paragraph 3.

1526

**1 Please provide examples of the implementation of those measures, including related court or other cases, statistics etc.**

The Financial Market Authority (FMA) 2018 Circular on Customer Due Diligence Requirements for the Prevention of Money Laundering and Terrorist Financing as well as the Circular on Risk Assessment for the Prevention of Money Laundering and Terrorist Financing provides guidance to the financial sector on enhanced CDD requirements.

In 2017, the ESAs issued Joint guidelines under Articles 17 and 18(4) of Directive (EU) 2015/849 on simplified and enhanced customer due diligence and the factors credit and financial institutions should consider when assessing the money laundering and terrorist financing risk associated with individual business relationships and occasional transactions (the Risk Factors Guidelines). They also include guidance on how to apply simplified and enhanced customer due diligence. In accordance with Article 16(3) of the ESAs Regulations, competent authorities and financial institutions must make every effort to comply with the guidelines.

**229. Subparagraph 2 (b) of article 52**

2. In order to facilitate implementation of the measures provided for in paragraph 1 of this article, each State Party, in accordance with its domestic law and inspired by relevant initiatives of regional, interregional and multilateral organizations against money -laundering, shall:

...

(b) Where appropriate, notify financial institutions within its jurisdiction, at the request of another State Party or on its own initiative, of the identity of particular natural or legal persons to whose accounts such institutions will be expected to apply enhanced scrutiny, in addition to those whom the financial institutions may otherwise identify.

**1520** Is your country in compliance with this provision?

**0** (Y) Yes

**1522**

**1** Please describe (cite and summarize) the measures/steps your country has taken, if any, (or is planning to take, together with the related appropriate time frame) to ensure full compliance with this provision of the Convention.

For a description of enhanced due diligence obligations with regard to politically exposed persons, please refer to the answer to Article 52 para. 1.

**1526**

**1** Please provide examples of the implementation of those measures, including related court or other cases, statistics etc.

Please refer to the answer to Article 52 para. 1.

**230. Paragraph 3 of article 52**

3. In the context of paragraph 2 (a) of this article, each State Party shall implement measures to ensure that its financial institutions maintain adequate records, over an appropriate period of time, of accounts and transactions involving the persons mentioned in paragraph 1 of this article, which should, as a minimum, contain information relating to the identity of the customer as well as, as far as possible, of the beneficial owner.

**1520** Is your country in compliance with this provision?

**0** (Y) Yes

**1522**

**1** Please describe (cite and summarize) the measures/steps your country has taken, if any, (or is planning to take, together with the related appropriate time frame) to ensure full compliance with this provision of the Convention.

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The obliged entities are required to retain copies of the documents and information, which are necessary to comply with the customer due diligence requirements, for a period of five years after the end of the business relationship with their customer or after the date of an occasional transaction. They shall also retain receipts and records of transactions required to investigate transactions, for a period of five years after the end of the business relationship with their customer or after the date of an occasional transaction (Article 21 para. 1 FM-GwG).

The FMA may instruct by means of a Regulation that longer retention periods shall apply following a detailed review of their necessity and proportionality, if this is necessary to prevent, uncover or investigate money laundering or terrorist financing, or if this is necessary for specific types of obliged entities on the basis of particular circumstances. The retention periods shall not be allowed to exceed ten years (Article 21 para. 3 FM-GwG).

Personal data that is processed by obliged entities on the basis of this federal act solely for the purposes of the prevention of money laundering and terrorist financing shall not be allowed to be processed further in such a way that is incompatible with those purposes. This personal data shall not be allowed to be processed for other purposes, for example for commercial purposes (Article 21 para. 4 FM-GwG). It should be noted that these provisions apply to all accounts, including to those of politically exposed persons.

The legal requirements of the FM-GwG governing the record-keeping of financial institutions are a transposition of the 4<sup>th</sup> AMLD. Analogous requirements exist in other pieces of legislation covering DNFBPs as they also transpose the 4<sup>th</sup> AMLD (for instance Article 365y Trade Act and Article 98 Act on the Profession of Chartered Public Accountants and Tax Consultants).

1526

**1 Please provide examples of the implementation of those measures, including related court or other cases, statistics etc.**

For an overview of supervisory measures in the area of AML/CFT, please refer to the answers to Article 14.

## 231. Paragraph 4 of article 52

4. With the aim of preventing and detecting transfers of proceeds of offences established in accordance with this Convention, each State Party shall implement appropriate and effective measures to prevent, with the help of its regulatory and oversight bodies, the establishment of banks that have no physical presence and that are not affiliated with a regulated financial group. Moreover, States Parties may consider requiring their financial institutions to refuse to enter into or continue a correspondent banking relationship with such institutions and to guard against establishing relations with foreign financial institutions that permit their accounts to be used by banks that have no physical presence and that are not affiliated with a regulated financial group.

**1520 Is your country in compliance with this provision?**

☒ (Y) Yes

1522

**1 Please describe (cite and summarize) the measures/steps your country has taken, if any, (or is planning to take, together with the related appropriate time frame) to ensure full compliance with this provision of the Convention.**

The Financial Market Authority (FMA) supervises the Austrian financial sector. In order to obtain a license, a credit institution's place of establishment and head office have to be located in Austria (Article 5 para. 1 no. 14 Banking Act - BWG) and the centre of at least one director's vital interests

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has to lie in Austria (Article 5 para. 1 no. 10 BWG). Any person who conducts banking transactions pursuant to point (1) of Article 4(1) of Regulation (EU) No 575/2013 without the required authorisation commits an administrative offence and shall be punished by the FMA with a fine of up to EUR 5 million or up to twice the amount of the benefit derived from the breach, to the extent that this can be quantified (Article 98 para. 1 BWG). Any person who conducts banking transactions other than those referred to in para. 1 without the required authorisation commits an administrative offence and shall be punished by the FMA with a fine of up to EUR 100 000 (Article 98 para. 1a BWG).

Pursuant to Article 12 para. 1 FM-GwG, obliged entities shall not enter into or continue a correspondent relationship with a shell bank, and shall take appropriate measures to ensure that they do not engage in or continue correspondent relationships with a credit institution or financial institution, which is known to permit its accounts to be used by a shell bank.

1526

**1 Please provide examples of the implementation of those measures, including related court or other cases, statistics etc.**

For an overview of supervisory measures in the area of AML/CFT, please refer to the answers to Article 14.

## 232. Paragraph 5 of article 52

5. Each State Party shall consider establishing, in accordance with its domestic law, effective financial disclosure systems for appropriate public officials and shall provide for appropriate sanctions for non-compliance. Each State Party shall also consider taking such measures as may be necessary to permit its competent authorities to share that information with the competent authorities in other States Parties when necessary to investigate, claim and recover proceeds of offences established in accordance with this Convention.

**1520 Is your country in compliance with this provision?**

☒ (Y) Yes

## 233. Paragraph 6 of article 52

6. Each State Party shall consider taking such measures as may be necessary, in accordance with its domestic law, to require appropriate public officials having an interest in or signature or other authority over a financial account in a foreign country to report that relationship to appropriate authorities and to maintain appropriate records related to such accounts. Such measures shall also provide for appropriate sanctions for non-compliance.

**1520 Is your country in compliance with this provision?**

☒ (Y) Yes

1522

**1 Please describe (cite and summarize) the measures/steps your country has taken, if any, (or is planning to take, together with the related appropriate time frame) to ensure full compliance with**

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**this provision of the Convention.**

Please see the information provided on Article 7, Article 8 and Article 11, in particular regarding “Termination of employment”, “Additional occupations” and “Duties of retired civil servants”.

## 234. Technical Assistance

The following questions on technical assistance relate to the article under review in its entirety.

1529

- 1** Please outline actions required to ensure or improve the implementation of the article under review and describe any specific challenges you might be facing in this respect.

1530 Do you require technical assistance for the implementation of this article? If so, please specify the forms of technical assistance that would be required. For example:

- 0** (NO) No assistance would be required

1531

- 1** Is any technical assistance already being provided to you? If so, please provide a general description of the nature of the assistance, including donor information.

## 53. Measures for direct recovery of property

### 235. Subparagraph (a) of article 53

Each State Party shall, in accordance with its domestic law:

(a) Take such measures as may be necessary to permit another State Party to initiate civil action in its courts to establish title to or ownership of property acquired through the commission of an offence established in accordance with this Convention;

1520 Is your country in compliance with this provision?

- 0** (Y) Yes

1522

- 1** Please describe (cite and summarize) the measures/steps your country has taken, if any, (or is planning to take, together with the related appropriate time frame) to ensure full compliance with this provision of the Convention.

Article 53 deals with measures aimed at directly recovering property or assets gained by the commission of an offence under the Convention, or getting compensation by the civil courts.

Under Section 1 of the Austrian Code of Civil Procedure, States - like other legal persons - can act as Parties in court proceedings and, therefore, are in a position to enforce claims regarding their property or assets or to get compensation before the civil courts, as provided in sub-paras. a) and b).

Under sub-para c), States Parties have to secure that rights of another State Party to property or assets subject to confiscation can be recognized in the course of confiscation proceedings. This obligation is complied with by the provisions of Section 20 para. 1 of the Austrian Criminal Code in connection with Section 444 of the Code of Criminal Procedure (CCP).



**236. Subparagraph (b) of article 53**

Each State Party shall, in accordance with its domestic law:

...

(b) Take such measures as may be necessary to permit its courts to order those who have committed offences established in accordance with this Convention to pay compensation or damages to another State Party that has been harmed by such offences; and

**1520** Is your country in compliance with this provision?

☒ (Y) Yes

**237. Subparagraph (c) of article 53**

Each State Party shall, in accordance with its domestic law:

...

(c) Take such measures as may be necessary to permit its courts or competent authorities, when having to decide on confiscation, to recognize another State Party's claim as a legitimate owner of property acquired through the commission of an offence established in accordance with this Convention.

**1520** Is your country in compliance with this provision?

☒ (Y) Yes

**238. Technical Assistance**

The following questions on technical assistance relate to the article under review in its entirety.

**1529**

**1** Please outline actions required to ensure or improve the implementation of the article under review and describe any specific challenges you might be facing in this respect.

**1530** Do you require technical assistance for the implementation of this article? If so, please specify the forms of technical assistance that would be required. For example:

☒ (NO) No assistance would be required

**1531**

**1** Is any technical assistance already being provided to you? If so, please provide a general description of the nature of the assistance, including donor information.

## 54. Mechanisms for recovery of property through international cooperation in confiscation

### 239. Subparagraph 1 (a) of article 54

1. Each State Party, in order to provide mutual legal assistance pursuant to article 55 of this Convention with respect to property acquired through or involved in the commission of an offence established in accordance with this Convention, shall, in accordance with its domestic law:

(a) Take such measures as may be necessary to permit its competent authorities to give effect to an order of confiscation issued by a court of another State Party;

1520 Is your country in compliance with this provision?

☒ (Y) Yes

1522

1 Please describe (cite and summarize) the measures/steps your country has taken, if any, (or is planning to take, together with the related appropriate time frame) to ensure full compliance with this provision of the Convention.

This provision regulates the recovery of property or assets obtained by an offence under the Convention by way of international cooperation, i.e. by giving effect to a confiscation order issued by a court of the requesting State Party. Giving effect to a confiscation order issued by a foreign court upon request by another State Party is dealt with in Section 64 et seq. of the Extradition and Mutual Legal Assistance Law (ARHG).

Art. 54 para. 1 provides that in order to be in a position to give effect to a foreign confiscation order, State Parties shall take such measures as may be necessary to freeze or seize property or assets on the basis of a freezing or seizure order or any other reasoned decision issued by a court or another competent authority of the requesting State Party. Such measures are possible under Austrian law under Sections 111 - 115 Code of Criminal Procedure (CCP) in conjunction with Section 50 et seq. of the Extradition and Mutual Legal Assistance Law (ARHG). Pursuant to Section 58 of the Extradition and Mutual Legal Assistance Law (ARHG) such measures shall be time-limited, of which fact the requesting authority shall be informed.

### 240. Subparagraph 1 (b) of article 54

1. Each State Party, in order to provide mutual legal assistance pursuant to article 55 of this Convention with respect to property acquired through or involved in the commission of an offence established in accordance with this Convention, shall, in accordance with its domestic law:

...

(b) Take such measures as may be necessary to permit its competent authorities, where they have jurisdiction, to order the confiscation of such property of foreign origin by adjudication of an offence of money-laundering or such other offence as may be within its jurisdiction or by other procedures authorized under its domestic law; and

1520 Is your country in compliance with this provision?

☒ (Y) Yes

**241. Subparagraph 1 (c) of article 54**

1. Each State Party, in order to provide mutual legal assistance pursuant to article 55 of this Convention with respect to property acquired through or involved in the commission of an offence established in accordance with this Convention, shall, in accordance with its domestic law:

...

(c) Consider taking such measures as may be necessary to allow confiscation of such property without a criminal conviction in cases in which the offender cannot be prosecuted by reason of death, flight or absence or in other appropriate cases.

**1520 Is your country in compliance with this provision?**

**0 (Y) Yes**

**1522**

**1 Please describe (cite and summarize) the measures/steps your country has taken, if any, (or is planning to take, together with the related appropriate time frame) to ensure full compliance with this provision of the Convention.**

Under Article 54 para. 1 (c) UNCAC, confiscation may also take place in cases where the offender cannot be prosecuted by reasons of death, flight or absence. It should, however, be noted that this provision is not obligatory. Nevertheless, under Austrian law this is possible in the framework of asset recovery pursuant to Section 20 Criminal Code not requiring a conviction. In such a case, asset recovery is carried out in separate proceedings (pursuant to Section 445 et seq. CCP). Consequently, a foreign confiscation order can be enforced on the basis of Section 64 et seq. of the Extradition and Mutual Legal Assistance Law (ARHG) also in such cases.

**242. Subparagraph 2 (a) of article 54**

2. Each State Party, in order to provide mutual legal assistance upon a request made pursuant to paragraph 2 of article 55 of this Convention, shall, in accordance with its domestic law:

(a) Take such measures as may be necessary to permit its competent authorities to freeze or seize property upon a freezing or seizure order issued by a court or competent authority of a requesting State Party that provides a reasonable basis for the requested State Party to believe that there are sufficient grounds for taking such actions and that the property would eventually be subject to an order of confiscation for purposes of paragraph 1 (a) of this article;

**1520 Is your country in compliance with this provision?**

**0 (Y) Yes**

**243. Subparagraph 2 (b) of article 54**

2. Each State Party, in order to provide mutual legal assistance upon a request made pursuant to paragraph 2 of article 55 of this Convention, shall, in accordance with its domestic law:

...

(b) Take such measures as may be necessary to permit its competent authorities to freeze or seize property upon a request that provides a reasonable basis for the requested State Party to believe that there are sufficient grounds for taking such actions and that the property would eventually be subject to an order of confiscation for purposes of paragraph 1 (a) of this article; and

**1520** Is your country in compliance with this provision?

☒ (Y) Yes

**244. Subparagraph 2 (c) of article 54**

2. Each State Party, in order to provide mutual legal assistance upon a request made pursuant to paragraph 2 of article 55 of this Convention, shall, in accordance with its domestic law:

...

(c) Consider taking additional measures to permit its competent authorities to preserve property for confiscation, such as on the basis of a foreign arrest or criminal charge related to the acquisition of such property.

**1520** Is your country in compliance with this provision?

☒ (Y) Yes

**245. Technical Assistance**

The following questions on technical assistance relate to the article under review in its entirety.

**1529**

**1** Please outline actions required to ensure or improve the implementation of the article under review and describe any specific challenges you might be facing in this respect.

**1530** Do you require technical assistance for the implementation of this article? If so, please specify the forms of technical assistance that would be required. For example:

☒ (NO) No assistance would be required

**1531**

**1** Is any technical assistance already being provided to you? If so, please provide a general description of the nature of the assistance, including donor information.

## 55. International cooperation for purposes of confiscation 246. Paragraph 1 of article 55

1. A State Party that has received a request from another State Party having jurisdiction over an offence established in accordance with this Convention for confiscation of proceeds of crime, property, equipment or other instrumentalities referred to in article 31, paragraph 1, of this Convention situated in its territory shall, to the greatest extent possible within its domestic legal system:

(a) Submit the request to its competent authorities for the purpose of obtaining an order of confiscation and, if such an order is granted, give effect to it; or

(b) Submit to its competent authorities, with a view to giving effect to it to the extent requested, an order of confiscation issued by a court in the territory of the requesting State Party in accordance with articles 31, paragraph 1, and 54, paragraph 1 (a), of this Convention insofar as it relates to proceeds of crime, property, equipment or other instrumentalities referred to in article 31, paragraph 1, situated in the territory of the requested State Party.

1520 Is your country in compliance with this provision?

0 (Y) Yes

1522

1 Please describe (cite and summarize) the measures/steps your country has taken, if any, (or is planning to take, together with the related appropriate time frame) to ensure full compliance with this provision of the Convention.

This provision regulates the enforcement of a foreign confiscation order.

Pursuant to para. 1, the requested State Party shall have the choice, based on the model of similar provisions in the Council of Europe Convention on Money Laundering, Search, Seizure and Confiscation of the Proceeds from Crime, Federal Legal Gazette (hereinafter FLG), III No. 153/1997, and in the UN Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances, FLG. III No. 154/1997, whether to enforce the foreign confiscation order in an indirect manner, that is by submitting the request to its competent authorities for the purpose of obtaining a domestic confiscation order (see sub-para. a) or directly (see sub-para. b). As outlined in the explanations to Art. 54, Austria is in a position to enforce a foreign confiscation order in accordance with the provisions of Art. 64 et seq. of the Extradition and Mutual Legal Assistance Law (ARHG).

Para. 2 refers to taking provisional measures for being in a position to giving effect to an eventual order of confiscation upon request by another State Party. In this context, reference is made to the provisions of Art. 54. Before lifting any provisional measure taken pursuant to para. 2, the requested State Party shall, wherever possible, give the requesting State Party an opportunity to present its reasons in favour of continuing the measure (para. 8). This is guaranteed by the provisions of Section 58 of the Extradition and Mutual Legal Assistance Law (ARHG) (see the ultimate half sentence of this provision).

Para. 3 clarifies that the cooperation for the purpose of giving effect to a foreign confiscation decision constitutes a measure of mutual assistance, wherefore the provisions of Art. 46 of this Convention are applicable, *mutatis mutandis*. Therefore, requests for giving effect to foreign confiscation orders shall contain the information set forth in Art. 46 para. 15 as well as the information required pursuant to para. 3, in particular a description of the property to be

confiscated, the estimated value of the property and, to the extent possible, its location; furthermore, a legally binding confiscation order shall be enclosed.

In view of the applicability of the provisions of Art. 46 to the proceedings for enforcing a foreign confiscation order, as stipulated in Art. 55 para. 3, it follows that enforcement may be refused on the grounds set forth in paragraphs 9 and 21 of Art. 46. Furthermore, pursuant to Art. 55 para. 7, such cooperation may also be refused or relevant provisional measures lifted if the requesting State Party does not provide sufficient and timely evidence or if the property is of a *de minimis* value only. Moreover, the rights of *bona fide* third parties must not be prejudiced (see para. 9).

1526

- 1 Please provide examples of the implementation of those measures, including related court or other cases, statistics etc.**

## 247. Paragraph 2 of article 55

2. Following a request made by another State Party having jurisdiction over an offence established in accordance with this Convention, the requested State Party shall take measures to identify, trace and freeze or seize proceeds of crime, property, equipment or other instrumentalities referred to in article 31, paragraph 1, of this Convention for the purpose of eventual confiscation to be ordered either by the requesting State Party or, pursuant to a request under paragraph 1 of this article, by the requested State Party.

**1520 Is your country in compliance with this provision?**

- 0 (Y) Yes**

1522

- 1 Please describe (cite and summarize) the measures/steps your country has taken, if any, (or is planning to take, together with the related appropriate time frame) to ensure full compliance with this provision of the Convention.**

See overall response under para.1.

**248. Paragraph 3 of article 55**

3. The provisions of article 46 of this Convention are applicable, mutatis mutandis, to this article. In addition to the information specified in article 46, paragraph 15, requests made pursuant to this article shall contain:

(a) In the case of a request pertaining to paragraph 1 (a) of this article, a description of the property to be confiscated, including, to the extent possible, the location and, where relevant, the estimated value of the property and a statement of the facts relied upon by the requesting State Party sufficient to enable the requested State Party to seek the order under its domestic law;

(b) In the case of a request pertaining to paragraph 1 (b) of this article, a legally admissible copy of an order of confiscation upon which the request is based issued by the requesting State Party, a statement of the facts and information as to the extent to which execution of the order is requested, a statement specifying the measures taken by the requesting State Party to provide adequate notification to bona fide third parties and to ensure due process and a statement that the confiscation order is final;

(c) In the case of a request pertaining to paragraph 2 of this article, a statement of the facts relied upon by the requesting State Party and a description of the actions requested and, where available, a legally admissible copy of an order on which the request is based.

**1520 Is your country in compliance with this provision?**

**0 (Y) Yes**

**1522**

**1 Please describe (cite and summarize) the measures/steps your country has taken, if any, (or is planning to take, together with the related appropriate time frame) to ensure full compliance with this provision of the Convention.**

See response under para.1.

**249. Paragraph 4 of article 55**

4. The decisions or actions provided for in paragraphs 1 and 2 of this article shall be taken by the requested State Party in accordance with and subject to the provisions of its domestic law and its procedural rules or any bilateral or multilateral agreement or arrangement to which it may be bound in relation to the requesting State Party.

**1520 Is your country in compliance with this provision?**

**0 (Y) Yes**

**1522**

**1 Please describe (cite and summarize) the measures/steps your country has taken, if any, (or is planning to take, together with the related appropriate time frame) to ensure full compliance with this provision of the Convention.**

See response under para.1.

## 250. Paragraph 5 of article 55

5. Each State Party shall furnish copies of its laws and regulations that give effect to this article and of any subsequent changes to such laws and regulations or a description thereof to the Secretary-General of the United Nations.

**1520** Is your country in compliance with this provision?

☒ (Y) Yes

**1527**

**1** Please provide a reference to the date these documents were transmitted, as well as a description of any documents not yet transmitted.

Pursuant to par. 5, each State Party shall furnish the texts of its laws and regulations that give effect to Art. 55 to the Secretary-General of the United Nations. In accordance with this provision, Austria has provided the texts of Sections 50 et seq., including Section 58 of the Extradition and Mutual Legal Assistance Law (ARHG), and the texts of Sections 64 et seq. of the Extradition and Mutual Legal Assistance Law (ARHG) as well as the relevant texts of the Austrian Criminal and Procedural Codes to the UN-SG.

## 251. Paragraph 6 of article 55

6. If a State Party elects to make the taking of the measures referred to in paragraphs 1 and 2 of this article conditional on the existence of a relevant treaty, that State Party shall consider this Convention the necessary and sufficient treaty basis.

**1520** Is your country in compliance with this provision?

☒ (Y) Yes

**1522**

**1** Please describe (cite and summarize) the measures/steps your country has taken, if any, (or is planning to take, together with the related appropriate time frame) to ensure full compliance with this provision of the Convention.

See response under para.1.

## 252. Paragraph 7 of article 55

7. Cooperation under this article may also be refused or provisional measures lifted if the requested State Party does not receive sufficient and timely evidence or if the property is of a *de minimis* value.

**1520** Is your country in compliance with this provision?

☒ (Y) Yes

**1522**

**1** Please describe (cite and summarize) the measures/steps your country has taken, if any, (or is planning to take, together with the related appropriate time frame) to ensure full compliance with this provision of the Convention.

See response under para.1.

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## 253. Paragraph 8 of article 55

8. Before lifting any provisional measure taken pursuant to this article, the requested State Party shall, wherever possible, give the requesting State Party an opportunity to present its reasons in favour of continuing the measure.

**1520** Is your country in compliance with this provision?

☐ (Y) Yes

**1522**

**1** Please describe (cite and summarize) the measures/steps your country has taken, if any, (or is planning to take, together with the related appropriate time frame) to ensure full compliance with this provision of the Convention.

See response under para.1.

## 254. Paragraph 9 of article 55

9. The provisions of this article shall not be construed as prejudicing the rights of bona fide third parties.

**1520** Is your country in compliance with this provision?

☐ (Y) Yes

**1522**

**1** Please describe (cite and summarize) the measures/steps your country has taken, if any, (or is planning to take, together with the related appropriate time frame) to ensure full compliance with this provision of the Convention.

See response under para.1.

## 255. Technical Assistance

The following questions on technical assistance relate to the article under review in its entirety.

**1529**

**1** Please outline actions required to ensure or improve the implementation of the article under review and describe any specific challenges you might be facing in this respect.

**1530** Do you require technical assistance for the implementation of this article? If so, please specify the forms of technical assistance that would be required. For example:

☐ (NO) No assistance would be required

**1531**

**1** Is any technical assistance already being provided to you? If so, please provide a general description of the nature of the assistance, including donor information.

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## 56. Special cooperation

### 256. Article 56

Without prejudice to its domestic law, each State Party shall endeavour to take measures to permit it to forward, without prejudice to its own investigations, prosecutions or judicial proceedings, information on proceeds of offences established in accordance with this Convention to another State Party without prior request, when it considers that the disclosure of such information might assist the receiving State Party in initiating or carrying out investigations, prosecutions or judicial proceedings or might lead to a request by that State Party under this chapter of the Convention.

**1520** Is your country in compliance with this provision?

☒ (Y) Yes

**1522**

- 1** Please describe (cite and summarize) the measures/steps your country has taken, if any, (or is planning to take, together with the related appropriate time frame) to ensure full compliance with this provision of the Convention.

This provision encourages taking measures to be able to forward information on proceeds of offences established in accordance with this Convention to another State Party without prior request for mutual assistance, when disclosure of such information might assist the receiving State Party in initiating or carrying out investigations, prosecutions or judicial proceedings or might lead to a request by that State Party under this Chapter of the Convention. Austria is in a position to do so in accordance with Art. 59a of the Extradition and Mutual Legal Assistance Law (ARHG).

### 257. Technical Assistance

The following questions on technical assistance relate to the article under review in its entirety.

**1529**

- 1** Please outline actions required to ensure or improve the implementation of the article under review and describe any specific challenges you might be facing in this respect.

**1530** Do you require technical assistance for the implementation of this article? If so, please specify the forms of technical assistance that would be required. For example:

☒ (NO) No assistance would be required

**1531**

- 1** Is any technical assistance already being provided to you? If so, please provide a general description of the nature of the assistance, including donor information.

## 57. Return and disposal of assets

### 258. Paragraph 1 of article 57

1. Property confiscated by a State Party pursuant to article 31 or 55 of this Convention shall be disposed of, including by return to its prior legitimate owners, pursuant to

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paragraph 3 of this article, by that State Party in accordance with the provisions of this Convention and its domestic law.

**1520 Is your country in compliance with this provision?**

**0 (Y) Yes**

**1522**

**1 Please describe (cite and summarize) the measures/steps your country has taken, if any, (or is planning to take, together with the related appropriate time frame) to ensure full compliance with this provision of the Convention.**

Paragraph 1 clarifies that confiscated property or assets shall, in principle, be disposed of by the requested State Party in accordance with its domestic law. Pursuant to Section 64, para. 7 of the Extradition and Mutual Legal Assistance Law (ARHG) money amounts seized, property forfeited and items confiscated shall go to the State treasury.

However, in accordance with fundamental principles of their domestic law, State Parties shall provide for the possibility to return confiscated property or assets (Art. 57 para. 2). Art. 57 para. 3 specifies the cases in which this applies:

Pursuant to para. 3 (a) confiscated property or assets shall be returned to the requesting State Party contrary to paragraph 1 when the confiscation order is based upon an offence as referred to in Art. 17 of the Convention (embezzlement, misappropriation or another diversion of property by a public official) or the offence of laundering of proceeds of crime (Art. 23) and confiscation was effected through international cooperation by executing a final confiscation decision issued by a court of the requesting State Party.

It follows from the reference to the offences specified in Art. 17 of the Convention and to the laundering of proceeds of such crimes that in such cases the requesting State Party has suffered damage, which is why in these cases the return of property or assets is possible even without a foreign confiscation order (see Art. 52 ARHG). The waiver by the requested State Party of receiving a final confiscation order issued by a court, as referred to in para. 3 (a) may be considered as a basis for such an approach.

Furthermore, it should be mentioned that pursuant to its Section 1 the provisions of the Extradition and Mutual Legal Assistance Law (ARHG) are only applicable if international agreements do not stipulate otherwise. As pointed out in the beginning of the explanations concerning Chapter V, the provisions of para. 3 (a) which differ from Section 64, para. 7 of the Extradition and Mutual Legal Assistance Law (ARHG) are domestically directly applicable; hence, no implementation measures were required.

If the confiscated property or assets are the proceeds of any other offence under this Convention, it shall be returned to the requesting State Party in accordance with para. 3 (b), namely if confiscation was effected through international cooperation by executing a final confiscation decision issued by a court of the requesting State Party and this State Party reasonably establishes its prior ownership of such confiscated property or assets, or if the requested State Party recognizes damage to the requesting State Party as a basis for returning the confiscated property or assets. Therefore, in the latter case, returning the confiscated property or assets to the requesting State Party is at the discretion of the requested State Party.

Pursuant to para. 3 (c), in all other cases, returning confiscated property or assets to the requesting State Party, returning such property or assets to its prior legitimate owners or compensating the victims of the crime shall only be given priority consideration.

Pursuant to paragraph 4, the requested State Party may deduct from the confiscated property or assets to be returned to the requesting State Party reasonable expenses incurred in bringing effect to the foreign confiscation order unless States Parties decide otherwise. Austria shall make use of such

possibility.

Pursuant to paragraph 5, States Parties may give special consideration to concluding agreements, on a case-by-case basis, for the final disposal of confiscated property or assets. The purpose of this provision is to rule out that the confiscated property or assets will be returned to a government, which is suspected to be a party to committing acts of corruption. There is, however, no obligation to conclude such agreements.

## 259. Paragraph 2 of article 57

2. Each State Party shall adopt such legislative and other measures, in accordance with the fundamental principles of its domestic law, as may be necessary to enable its competent authorities to return confiscated property, when acting on the request made by another State Party, in accordance with this Convention, taking into account the rights of bona fide third parties.

**1520** Is your country in compliance with this provision?

**0** (Y) Yes

**1522**

**1** Please describe (cite and summarize) the measures/steps your country has taken, if any, (or is planning to take, together with the related appropriate time frame) to ensure full compliance with this provision of the Convention.

See response under para.1.

## 260. Subparagraph 3 (a) of article 57

3. In accordance with articles 46 and 55 of this Convention and paragraphs 1 and 2 of this article, the requested State Party shall:

(a) In the case of embezzlement of public funds or of laundering of embezzled public funds as referred to in articles 17 and 23 of this Convention, when confiscation was executed in accordance with article 55 and on the basis of a final judgement in the requesting State Party, a requirement that can be waived by the requested State Party, return the confiscated property to the requesting State Party;

**1520** Is your country in compliance with this provision?

**0** (Y) Yes

**1522**

**1** Please describe (cite and summarize) the measures/steps your country has taken, if any, (or is planning to take, together with the related appropriate time frame) to ensure full compliance with this provision of the Convention.

See response under para.1.

**261. Subparagraph 3 (b) of article 57**

3. In accordance with articles 46 and 55 of this Convention and paragraphs 1 and 2 of this article, the requested State Party shall:

...

(b) In the case of proceeds of any other offence covered by this Convention, when the confiscation was executed in accordance with article 55 of this Convention and on the basis of a final judgement in the requesting State Party, a requirement that can be waived by the requested State Party, return the confiscated property to the requesting State Party, when the requesting State Party reasonably establishes its prior ownership of such confiscated property to the requested State Party or when the requested State Party recognizes damage to the requesting State Party as a basis for returning the confiscated property;

**1520** Is your country in compliance with this provision?

**0** (Y) Yes

**1522**

**1** Please describe (cite and summarize) the measures/steps your country has taken, if any, (or is planning to take, together with the related appropriate time frame) to ensure full compliance with this provision of the Convention.

See response under para.1.

**262. Subparagraph 3 (c) of article 57**

3. In accordance with articles 46 and 55 of this Convention and paragraphs 1 and 2 of this article, the requested State Party shall:

...

(c) In all other cases, give priority consideration to returning confiscated property to the requesting State Party, returning such property to its prior legitimate owners or compensating the victims of the crime.

**1520** Is your country in compliance with this provision?

**0** (Y) Yes

**1522**

**1** Please describe (cite and summarize) the measures/steps your country has taken, if any, (or is planning to take, together with the related appropriate time frame) to ensure full compliance with this provision of the Convention.

See response under para.1.

**263. Paragraph 4 of article 57**

4. Where appropriate, unless States Parties decide otherwise, the requested State Party may deduct reasonable expenses incurred in investigations, prosecutions or judicial proceedings leading to the return or disposition of confiscated property pursuant to this article.

**1520** Is your country in compliance with this provision?

☐ (Y) Yes

**1522**

**1** Please describe (cite and summarize) the measures/steps your country has taken, if any, (or is planning to take, together with the related appropriate time frame) to ensure full compliance with this provision of the Convention.

See response under para.1.

**264. Paragraph 5 of article 57**

5. Where appropriate, States Parties may also give special consideration to concluding agreements or arrangements, on a case -by -case basis, for the final disposal of confiscated property.

**1520** Is your country in compliance with this provision?

☐ (Y) Yes

**1522**

**1** Please describe (cite and summarize) the measures/steps your country has taken, if any, (or is planning to take, together with the related appropriate time frame) to ensure full compliance with this provision of the Convention.

See response under para.1.

**265. Technical Assistance**

The following questions on technical assistance relate to the article under review in its entirety.

**1529**

**1** Please outline actions required to ensure or improve the implementation of the article under review and describe any specific challenges you might be facing in this respect.

**1530** Do you require technical assistance for the implementation of this article? If so, please specify the forms of technical assistance that would be required. For example:

☐ (NO) No assistance would be required

**1531**

- 1** Is any technical assistance already being provided to you? If so, please provide a general description of the nature of the assistance, including donor information.

## 58. Financial intelligence unit

### 266. Article 58

States Parties shall cooperate with one another for the purpose of preventing and combating the transfer of proceeds of offences established in accordance with this Convention and of promoting ways and means of recovering such proceeds and, to that end, shall consider establishing a financial intelligence unit to be responsible for receiving, analysing and disseminating to the competent authorities reports of suspicious financial transactions.

#### 1520 Is your country in compliance with this provision?

**0** (Y) Yes

#### 1522

- 1** Please describe (cite and summarize) the measures/steps your country has taken, if any, (or is planning to take, together with the related appropriate time frame) to ensure full compliance with this provision of the Convention.

Pursuant to section 4 paragraph 2 Criminal Intelligence Service Act the Austrian Financial Intelligence Unit was set up as an organizational unit of the Criminal Intelligence Service (CIS) in 2010 (§ 4 Abs 2 BKA-G, Federal Law Gazette I No. 37/2010). Since the entry into force of the amendment of the schedule of responsibilities of the Criminal Intelligence Service on 1 December 2018, the Austrian FIU (A-FIU) functions as an autonomous office within the premises of the CIS.

The A-FIU receives suspicious transaction reports (STRs) from their obliged entities pursuant to different laws. Once a suspicious transaction report related to money laundering or terrorism financing has been received, the reported information is analysed in order to identify the initial suspicion. To improve the quality of the operational and strategic analysis functions the A-FIU decided to buy goAML (a software that was designed for data collection, data management, data analysis, document management, workflow and statistical needs) which is currently in the implementing phase. Every analysis of the received information leads to an analysis report. "Substantial" analysis reports are disseminated to the competent law enforcement authorities for further investigations. This filter function of the FIU is intended to relieve the law enforcement authorities, allowing them to better concentrate on the complex proceedings, which often require time-consuming investigations.

#### 1526

- 1** Please provide examples of the implementation of those measures, including related court or other cases, statistics etc.

More detailed information and statistics can be found in the FIU's annual reports, which are available at the following address:

2004 - 2018 (in German)

<https://bundeskriminalamt.at/308/start.aspx>

## 267. Technical Assistance

The following questions on technical assistance relate to the article under review in its entirety.

1529

- 1** Please outline actions required to ensure or improve the implementation of the article under review and describe any specific challenges you might be facing in this respect.

**1530** Do you require technical assistance for the implementation of this article? If so, please specify the forms of technical assistance that would be required. For example:

- 0** (NO) No assistance would be required

1531

- 1** Is any technical assistance already being provided to you? If so, please provide a general description of the nature of the assistance, including donor information.

## 59. Bilateral and multilateral agreements and arrangements

### 268. Article 59

States Parties shall consider concluding bilateral or multilateral agreements or arrangements to enhance the effectiveness of international cooperation undertaken pursuant to this chapter of the Convention.

**1520** Is your country in compliance with this provision?

- 0** (Y) Yes

1522

- 1** Please describe (cite and summarize) the measures/steps your country has taken, if any, (or is planning to take, together with the related appropriate time frame) to ensure full compliance with this provision of the Convention.

Under Article 59, State Parties shall undertake international cooperation in the area of returning property or assets by concluding bilateral or multilateral agreements or other arrangements. This involves in particular coordination, exchange of information and networking by the competent authorities.

In this regard, it should be noted that Austria has a wider framework of conventions and agreements at various levels.

Furthermore, the existing legal bases in the framework of the European Union, as well as the cooperation with Interpol, Europol and Eurojust, and Austria's active participation in the Financial Action Task Force (FATF) should be mentioned as relevant to matters of returning property or assets.

UNCAC - List of Agreements and Arrangements - Ministry of the Interior

(Implicit references to corruption included e.g. economic crime, money laundering)

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Convention on the stepping up of cross-border cooperation, particularly in combating terrorism, cross-border crime and illegal migration - Federal Law Gazette III - No. 159/2006

Contracting Parties: the Republic of Austria, the Kingdom of Spain, the Federal Republic of Germany, the Kingdom of Belgium, the Grand Duchy of Luxembourg, the Republic of Finland, the Republic of Slovenia, the French Republic, Hungary, the Kingdom of the Netherlands, the Republic of Estonia, Romania, the Slovak Republic, the Republic of Bulgaria

Some of the Convention's provisions were integrated into binding EU law (Prüm Decisions, 2008/615/JHA and 2008/616/JHA)

#### Albania

Existing:

Agreement between the Austrian Federal Government and the Council of Ministers of the Republic of Albania on police cooperation - Federal Law Gazette III No. 134/2007

Police Cooperation Convention for Southeast Europe - Federal Law Gazette III No. 152/2011

Memorandum of Understanding between the Federal Minister of the Interior of the Republic of Austria and the Minister of Interior of the Republic of Albania on enhancing cooperation in the field of internal security - signed on 27 January 2010

#### Algeria

Existing:

Memorandum of Understanding between the Federal Bureau of Anti-Corruption of the Federal Ministry of the Interior of the Republic of Austria (BAK) and the National Organ for Preventing and Combating Corruption of the People's Democratic Republic of Algeria (ONPLC) in the area of corruption prevention - signed on 12 September 2014

Planned:

Memorandum of Understanding between the Federal Minister of the Interior of the Republic of Austria and the Minister of Interior and Local Government of the People's Democratic Republic of Algeria on cooperation in the field of cross-border organized crime

#### Andorra

Planned:

Memorandum of Understanding between the Federal Ministry of the Interior of the Republic of Austria and the Ministry of Justice and Interior of the Principality of Andorra on enhancing bilateral cooperation in the field of internal security

#### Azerbaijan

Existing:

Agreement on police cooperation between the Federal Minister of the Interior of the Republic of Austria and the Minister of Internal Affairs of the Republic of Azerbaijan - Federal Law Gazette III No. 44/2006

Memorandum of Understanding between the Federal Ministry of the Interior of the Republic of Austria and the Ministry of Internal Affairs of the Republic of Azerbaijan on deepening and further developing mutual relations - signed on 12 April 2000

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## Belarus

## Planned:

Agreement between the Federal Minister of the Interior of the Republic of Austria and the Minister of Interior of the Republic of Belarus on cooperation in the field of internal security

## Bolivia

## Existing:

Memorandum of Understanding between the Federal Minister of the Interior of the Republic of Austria and the Minister of Interior of the Republic of Bolivia in the framework of combatting crime - signed on 24 November 1999

## Bosnia and Herzegovina

## Existing:

Agreement between the Federal Ministry of the Interior of the Republic of Austria and the Ministry of Security of Bosnia and Herzegovina on police cooperation - Federal Law Gazette III No. 99/2007

Police Cooperation Convention for Southeast Europe - Federal Law Gazette III No. 152/2011

Memorandum of Understanding between the Federal Ministry of the Interior of the Republic of Austria and the Ministry for Internal Affairs of Bosnia and Herzegovina - signed on 19 November 1996

Memorandum of Understanding between the Federal Minister of the Interior of the Republic of Austria and the Minister of Security of Bosnia and Herzegovina - signed on 27 January 2010

Memorandum of Understanding between the Federal Bureau of Anti-Corruption of the Federal Ministry of the Interior of the Republic of Austria (BAK) and the Agency for Prevention of Corruption and Coordination of the Fight against Corruption (APIK) in the area of the prevention of corruption - signed on 24 June 2014

## Bulgaria

## Existing:

Agreement between the Federal Government of the Republic of Austria and the Government of the Republic of Bulgaria on police cooperation - Federal Law Gazette III No. 206/2002

Police Cooperation Convention for Southeast Europe - Federal Law Gazette III No. 152/2011

Protocol on cooperation between the Federal Ministry of the Interior of the Republic of Austria and the Ministry of Interior of the Republic of Bulgaria in the field of combatting corruption - signed on 25 June 2004

Memorandum of Understanding between the Federal Minister of the Interior of the Republic of Austria and the Minister of Interior of the Republic of Bulgaria on bilateral cooperation after the accession of Bulgaria to the European Union - signed on 12 July 2007

Memorandum of Understanding between the Federal Minister of the Interior of the Republic of Austria, Dr. Ernst Strasser and the Minister of Interior of the Republic of Bulgaria, Prof. Georgi Petkanov on bilateral cooperation - signed on 17 October 2003

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## Cape Verde

Existing:

Memorandum of Understanding between the Federal Ministry of the Interior of the Republic of Austria and the Ministry of Justice of the Republic of Cape Verde on deepening and further developing mutual relations - signed on 25 February 2000

## Canada

Existing:

Memorandum of Understanding between the Financial Transactions and Reports Analysis Centre of Canada and the Austrian Financial Intelligence Unit concerning the exchange of financial intelligence related to money laundering and terrorist financing - signed on 31 January 2017

## China

Existing:

Agreement on cooperation between the Federal Minister of the Interior of the Republic of Austria and the Ministry of Public Security of the People's Republic of China - Federal Law Gazette III No. 97/2019  
<<http://www.ris.bka.gv.at/Ergebnis.wxe?Abfrage=BgbAuth&Bgblnummer=97/2019&SucheNachTeil3=True>>

## Costa Rica

Planned:

Agreement between the Republic of Austria and the Republic of Costa Rica on police cooperation

## Croatia

Existing:

Agreement between the Republic of Austria and the Republic of Croatia on police cooperation - Federal Law Gazette III No. 141/2008

Agreement between the Federal Minister of the Interior of the Republic of Austria and the Minister of Interior of the Republic of Croatia on cooperation in the fight against international organized crime, international illegal drug trafficking and international terrorism - in force since 23 March

1994

Police Cooperation Convention for Southeast Europe - Federal Law Gazette III No. 152/2011

## Czech Republic

Existing:

Agreement between the Republic of Austria and the Czech Republic on police cooperation and the second supplement of the European Convention on Mutual Assistance in Criminal Matters of 20 April 1959 - Federal Law Gazette III No. 121/2006

Agreement between the Republic of Austria and the Czech Republic on amending and supplementing the Agreement between the Republic of Austria and the Czech Republic on police  
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cooperation and the second supplement of the European Convention on Mutual Assistance in Criminal Matters of 20 April 1959 - Federal Law Gazette III No. 55/2016

#### El Salvador

Existing:

Joint declaration of the vice presidents of the Republics of El Salvador, Guatemala, Honduras, of the Minister of Development, Industry and Trade of Nicaragua, the ambassador of Panama and the Federal Minister of the Interior of the Republic of Austria - signed on 2 October 2002

#### Estonia

Existing:

Agreement between the Federal Ministry of the Interior of the Republic of Austria and the Ministry of Interior of the Republic of Estonia on cooperation in the fight against international organized crime, international illegal drug trafficking und international terrorism - in force since 7 July 1998

#### Georgia

Existing:

Agreement between the Federal Minister of the Interior of the Republic of Austria and the Ministry of Internal Affairs of Georgia on police cooperation - Federal Law Gazette III No. 124/2010

Memorandum of Understanding between the Federal Ministry of the Interior of the Republic of Austria and the Ministry of Internal Affairs of Georgia on deepening and further developing mutual relations - signed on 19. March 1999

#### Germany

Existing:

Agreement between the Republic of Austria and the Federal Republic of Germany on cross-border cooperation on danger prevention by police and in criminal matters -Federal Law Gazette III No. 210/2005

#### Guatemala

Existing:

Joint declaration of the vice presidents of the Republics of El Salvador, Guatemala, Honduras, of the Minister of Development, Industry and Trade of Nicaragua, the ambassador of Panama and the Federal Minister of the Interior of the Republic of Austria - signed on 2 October 2002

#### Honduras

Existing:

Joint declaration of the vice presidents of the Republics of El Salvador, Guatemala, Honduras, of the Minister of Development, Industry and Trade of Nicaragua, the ambassador of Panama and the Federal Minister of the Interior of the Republic of Austria - signed on 2 October 2002

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## Iraq

### Planned:

Memorandum of Understanding between the Federal Ministry of the Interior of the Republic of Austria and the [xxx] of the Republic of Iraq on enhancing bilateral cooperation in the field of internal security

## Israel

### Planned:

Agreement between the Government of the Republic of Austria and the Government of the State of Israel on cooperation on public security

## Italy

### Existing:

Agreement between the Austrian Federal Government and the Government of the Italian Republic on police cooperation - Federal Law Gazette III No. 52/2000

Agreement between the Government of the Republic of Austria and the Government of the Italian Republic on police cooperation - Federal Law Gazette III No. 47/2017

## Japan

### Existing:

Statement of Cooperation between the Austrian Financial Intelligence Unit, the Federal Ministry of the Interior of the Republic of Austria, and the Japan Financial Intelligence Center of the National Public Safety Commission of Japan concerning the exchange of financial intelligence related to money laundering and terrorist financing - signed on 4 July 2017

## Jordan

### Existing:

Agreement between the Federal Minister of the Interior of the Republic of Austria and the Minister of Interior of the Hashemite Kingdom of Jordan on police cooperation - in force since 1 September 2018

## Qatar

### Planned:

Memorandum of Understanding on cooperation in the field of security between the Federal Ministry of the Interior of the Republic of Austria and the Ministry of Interior of the State of Qatar

## Kosovo

## Existing:

Agreement between the Federal Minister of the Interior of the Republic of Austria and the Minister of Interior of the Republic of Kosovo on police cooperation - Federal Law Gazette III No. 65/2010

## Kyrgyz Republic

## Existing:

Memorandum of Understanding between the Federal Minister of the Interior of the Republic of Austria and the Ministry of Internal Affairs of the Kyrgyz Republic - signed on 28 January 1999

## Planned:

Agreement between the Austrian Federal Government and the Government of the Kyrgyz Republic on cooperation in the field of combatting crime

## Latvia

## Existing:

Agreement between the Austrian Federal Government and the Government of the Republic of Latvia on police cooperation - Federal Law Gazette III No. 19/2004

Agreement between the Federal Minister of the Interior of the Republic of Austria and the Ministry of Interior of the Republic of Latvia on cooperation in the fight against international organized crime, international illegal drug trafficking and international terrorism - in force since 16 July 1997

## Lebanon

## Existing:

Agreement between the Austrian Federal Government and the Government of the Lebanese Republic on police cooperation - signed on 10 July 2003

## Lithuania

## Existing:

Agreement between the Federal Minister of the Interior of the Republic of Austria and the Minister of Interior of the Republic of Lithuania on cooperation in the fight against international organized crime and international illegal drug trafficking - in force since 20 June 2001

## Planned:

Memorandum of Understanding between the Federal Bureau of Anti-Corruption of the Federal Ministry of the Interior of the Republic of Austria (BAK) and the Special Investigation Service of the Republic of Lithuania

## Malaysia

## Existing:

Memorandum of Understanding between the Federal Bureau of Anti-Corruption of the Federal Ministry of the Interior of the Republic of Austria (BAK) and the Malaysian Anti-Corruption Commission (MACC) - signed on 23 May 2014

## Morocco

## Existing:

Agreement between the Federal Minister of the Interior of the Republic of Austria and the Minister of State, Minister of Interior of the Kingdom of Morocco on cooperation in the field of security - in force since 13 November 1998

## Planned:

Memorandum of Understanding between the Federal Ministry of Europe, Integration and Foreign Affairs of the Republic of Austria and the Federal Ministry of the Interior of the Republic of Austria and the Ministry of Foreign Affairs and International Cooperation of the Kingdom of Morocco on cooperation in the fields of security and combatting crime

Memorandum of Understanding between the Federal Ministry of the Interior of the Republic of Austria and [...] of the Kingdom of Morocco on enhancing bilateral cooperation in the field of internal security

## Moldova

## Existing:

Agreement between the Austrian Federal Government and the Government of the Republic of Moldova on cooperation in the field of combatting crime - Federal Law Gazette III No. 99/2011

Police Cooperation Convention for Southeast Europe - Federal Law Gazette III No. 152/2011

Memorandum of Understanding between the Federal Ministry of the Interior of the Republic of Austria and the Ministry for Internal Affairs of the Republic of Moldova - signed on 19 July 2007

## Montenegro

## Existing:

Agreement between the Federal Ministry of the Interior of the Republic of Austria and the Ministry of Interior of the Republic of Montenegro on police cooperation - Federal Law Gazette III No. 10/2005

Police Cooperation Convention for Southeast Europe - Federal Law Gazette III No. 152/2011

Memorandum of Understanding between the Federal Ministry of the Interior of the Republic of Austria and the Ministry of the Interior and Public Administration of the Republic of Montenegro on strengthening cooperation in the field of internal security - signed on 6 November 2009

## Nicaragua

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Existing:

Joint declaration of the vice presidents of the Republics of El Salvador, Guatemala, Honduras, of the Minister of Development, Industry and Trade of Nicaragua, the ambassador of Panama and the Federal Minister of the Interior of the Republic of Austria - signed on 2 October 2002

#### North Macedonia

Existing:

Agreement between the Federal Minister of the Interior of the Republic of Austria and the Ministry of Internal Affairs of the Republic of North Macedonia on police cooperation - Federal Law Gazette III No. 94/2011

Police Cooperation Convention for Southeast Europe - Federal Law Gazette III No. 152/2011

Memorandum of Understanding between the Federal Ministry of the Interior of the Republic of Austria and the Ministry of Internal Affairs of North Macedonia - signed on 5 March 1998

Memorandum of Understanding between the Federal Ministry of the Interior of the Republic of Austria and the Ministry of Internal Affairs of the Republic of North Macedonia - signed on 6 November 2009

Memorandum of Understanding between the Federal Ministry of the Interior of the Republic of Austria and the Ministry of Internal Affairs of the Republic of North Macedonia - signed on 20 March 2015

#### Panama

Existing:

Joint declaration of the vice presidents of the Republics of El Salvador, Guatemala, Honduras, of the Minister of Development, Industry and Trade of Nicaragua, the ambassador of Panama and the Federal Minister of the Interior of the Republic of Austria - signed on 2 October 2002

#### Peru

Existing:

Agreement between the Federal Minister of the Interior of the Republic of Austria and the Minister of Internal Affairs of the Republic of Peru on police cooperation - signed on 3 August 2002

Memorandum of Understanding between the Federal Ministry of the Interior of the Republic of Austria and the Ministry of Internal Affairs of the Republic of Peru on deepening and further developing mutual relations - signed in 20 March 2000

#### Poland

Existing:

Agreement between the Austrian Federal Government and the Government of the Republic of Poland on cooperation regarding the prevention and combatting of crime - Federal Law Gazette III No. 139/2003

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## Romania

## Existing:

Agreement between the Austrian Federal Government and the Government of Romania on cooperation in the fight against international organized crime, international illegal drug trafficking, international terrorism and other purposes in the service of criminal justice - in force since 1 January 2000

Police Cooperation Convention for Southeast Europe - Federal Law Gazette III No. 152/2011

Protocol on cooperation between the Federal Ministry of the Interior of the Republic of Austria and the Ministry of Administration and Interior of Romania in the field of combatting corruption - signed on 17 March 2005

Memorandum of Understanding between the Federal Minister of the Interior of the Republic of Austria and the Minister of State, Minister of Administration and Interior of Romania, on supporting Romania in the preparations for the accession to the European Union - signed on 14 December 2004

Joint Declaration between the Federal Minister of the Interior of the Republic of Austria Liese Prokop, the Minister of Interior of the Hungarian Republic Mónika Lamperth and the Minister of Administration and Interior of Romania Vasile Blaga on enhancing cooperation - signed on 17 March 2005

Joint Declaration between the Federal Minister of the Interior of the Republic of Austria and the Minister of Administration and Interior of Romania on enhancing bilateral cooperation in the field of internal security in the context of the full implementation of the Schengen-Acquis in Romania - signed on 25 February 2010

## Russia

## Existing:

Protocol on cooperation of the Federal Ministry of the Interior of the Republic of Austria and the Ministry of Internal Affairs of the Russian Federation in the years 2017-2019 - signed on 29 May 2017

Agreement between the Federal Minister of the Interior of the Republic of Austria and the Ministry of Internal Affairs of the Union of Soviet Socialist Republics on cooperation in the fight against illegal drug trafficking and organized crime - in force since 11 January 1990

## Planned:

Agreement between the Government of the Republic of Austria and the Government of the Russian Federation on cooperation in combatting crime

## Switzerland/Liechtenstein

## Existing:

Agreement between the Republic of Austria, the Swiss Confederation and the Principality of Liechtenstein on cross-border cooperation of the security and customs authorities - Federal Law Gazette III No. 120/2001

Agreement between the Republic of Austria, the Swiss Confederation and the Principality of

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Liechtenstein on cross-border police cooperation - Federal Law Gazette III No. 78/2017

#### Serbia

##### Existing:

Agreement between the Federal Ministry of the Interior of the Republic of Austria and the Ministry of Interior of the Republic of Serbia on cooperation in the fight against international organized crime, international illegal drug trafficking and international terrorism - Federal Law Gazette III No. 20/2005

Police Cooperation Convention for Southeast Europe - Federal Law Gazette III No. 152/2011

Memorandum of Understanding between the Federal Ministry of the Interior of the Republic of Austria and the Ministry of Interior of the Republic of Serbia on strengthening cooperation in the field of internal security - signed on 6 November 2009

#### Slovakia

##### Existing:

Agreement between the Republic of Austria and the Slovak Republic on police cooperation - Federal Law Gazette III No. 72/2005

Agreement between the Republic of Austria and the Slovak Republic by which the Agreement between the Republic of Austria and the Slovak Republic of 13 February 2004 is amended and supplemented -Federal Law Gazette III No. 118/2015

Agreement between the Federal Minister of the Interior of the Republic of Austria and the Ministry of Interior of the Slovak Republic on cooperation in the fight against international organized crime, international illegal drug trafficking and international terrorism - in force since 30 June 1993

#### Slovenia

##### Existing:

Agreement between the Republic of Austria and the Republic of Slovenia on police cooperation - Federal Law Gazette III No. 51/2005

Police Cooperation Convention for Southeast Europe - Federal Law Gazette III No. 152/2011

Agreement between the Federal Minister of the Interior of the Republic of Austria and the Ministry of Interior of the Republic of Slovenia on cooperation in the fight against international organized crime, international illegal drug trafficking and international terrorism - signed on 23 June 1995

##### Planned:

Protocol to amend the Agreement between the Republic of Austria and the Republic of Slovenia on police cooperation

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## South Africa

Existing:

Agreement between the Austrian Federal Government and the Government of the Republic of South Africa on police cooperation - Federal Law Gazette III No. 143/2004

## Spain

Existing:

Agreement between the Federal Minister of the Interior of the Republic of Austria and the Minister of Interior of the Kingdom of Spain on cooperation in the fight against terrorism, international illegal drug trafficking and organized crime - in force since 9 July 1987

## Syria

Existing:

Cooperation Agreement between the Federal Minister of the Interior of the Republic of Austria and the Ministry of Interior of the Syrian Arab Republic on combatting international organized crime and international illegal drug trafficking - in force since 1 April 2001

## Thailand

Existing:

Memorandum of Understanding between the Federal Ministry of the Interior of the Republic of Austria and the Royal Thai Police on enhancing bilateral cooperation in the field of internal security - signed on 9 July 2012

Memorandum of Understanding between the National Anti-Corruption Commission of the Kingdom of Thailand and the Federal Ministry of the Interior of the Republic of Austria - signed on 10 December 2013

## Tunisia

Existing:

Memorandum of Understanding between the Federal Ministry of the Interior of the Republic of Austria and the Ministry of Interior of the Republic of Tunisia on cooperation in the field of security - signed on 3 September 2014

Planned:

Agreement between the Republic of Austria and the Republic of Tunisia on police cooperation

## Turkey

Existing:

Agreement between the Austrian Federal Government and the Government of the Republic of Turkey on cooperation in the fight against international illegal drug trafficking, international terrorism and international organized crime - in force since 15 July 1993

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Planned:

Agreement between the Republic of Austria and the Republic of Turkey on police cooperation

#### Turkmenistan

Existing:

Memorandum of Understanding on cooperation between the Federal Ministry of the Interior of the Republic of Austria and the Ministry of Internal Affairs of the Republic of Turkmenistan - signed on 28 June 2000

#### Ukraine

Existing:

Agreement between the Austrian Federal Government and the Cabinet of Ministers of Ukraine on cooperation in the field of combatting crime - Federal Law Gazette III No. 97/2015

Agreement between the Federal Minister of the Interior of the Republic of Austria and the Ministry of Internal Affairs of Ukraine on cooperation in the fight against illegal drug trafficking and organized crime - in force since 8 September 1992

Memorandum of Understanding (MoU) between the Financial Intelligence Unit of the Republic of Austria and the State Financial Monitoring Service of Ukraine concerning cooperation in the area of counteraction to legalization (laundering) of the proceeds from crime, financing of terrorism and financing of proliferation of weapons of mass destruction - signed on 25 January 2019

Joint Declaration on the implementation of the outcomes of the meeting between the Federal Minister of the Interior of the Republic of Austria and the Minister of Internal Affairs of Ukraine on 13 November 2003 in Kiev - signed on 13 November 2003

#### Hungary

Existing:

Agreement between the Republic of Austria and the Republic of Hungary on cooperation in the prevention and combatting of cross-border crime - Federal Law Gazette III No. 99/2006

Protocol between the Republic of Austria and Hungary to amend the Agreement between the Republic of Austria and the Republic of Hungary on cooperation in the prevention and combatting of cross-border crime - Federal Law Gazette III No. 165/2018

Police Cooperation Convention for Southeast Europe - Federal Law Gazette III No. 152/2011

Joint Declaration of the Federal Minister of the Interior of the Republic of Austria Liese Prokop, the Minister of Interior of the Republic of Hungary Mónika Lamperth and the Minister of Administration and Interior of Romania Vasile Blaga on enhancing cooperation - signed on 17 March 2005

Memorandum of Understanding between the Federal Bureau of Anti-Corruption of the Federal Ministry of the Interior of the Republic of Austria (BAK) and the National Protective Service (NVSZ) on cooperation in the fight against corruption and prevention of corruption - signed on 16

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Declaration of Lutzmannsburg on the enhancing of cooperation between the Federal Ministry of the Interior of the Republic of Austria and the Ministry of Interior of the Republic of Hungary in the field of combatting corruption - signed on 23 February 2002

#### Uzbekistan

Existing:

Agreement between the Austrian Federal Government and the Government of the Republic of Uzbekistan on cooperation in the field of security and in combatting corruption - Federal Law Gazette III No. 91/2002

Memorandum of Understanding between the Federal Ministry of the Interior of the Republic of Austria and the Ministry of Internal Affairs of the Republic of Uzbekistan on the deepening and further developing of mutual relations - signed on 11 February 1997

#### Vatican

Existing:

Memorandum of Understanding between the Financial Information Authority (AIF) of the Holy See/Vatican City State and the Financial Intelligence Unit of Austria (A-FIU) - signed on 14 July 2016

#### IACA

Existing:

Memorandum of Understanding between the Federal Bureau of Anti-Corruption of the Federal Ministry of the Interior of the Republic of Austria (BAK) and the International Anti-Corruption Academy - signed on 30 March 2011

## 269. Technical Assistance

The following questions on technical assistance relate to the article under review in its entirety.

1529

- 1** Please outline actions required to ensure or improve the implementation of the article under review and describe any specific challenges you might be facing in this respect.

1530

**Do you require technical assistance for the implementation of this article? If so, please specify the forms of technical assistance that would be required. For example:**

- 0 (NO)** No assistance would be required

1531

- 1** Is any technical assistance already being provided to you? If so, please provide a general description of the nature of the assistance, including donor information.

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