

UNODC – CU 2015/58/DTA/CEB, Sixth intersessional meeting of the Working Group, 31.8.-2.9.2015

Austria has constantly taken various measures, exceeding the mere legal implementation, which should contribute to the practical implementation of Articles 9, 10 and 14 of the UNCAC.

Article 9 – Public procurement and management of public finances

In accordance with its national and the EU laws, the Austrian public procurement is based on the principles of economy, relevance and efficiency. Furthermore, the fundamental freedoms under the Community Law, in particular the principle of non-discrimination and the principles of free and fair competition, shall be taken into account in public procurement.

Moreover, a specific procurement workflow is applied in the Austrian Federal Ministry of the Interior. The benefits and aims of this procurement workflow are the acquisition, processing and evaluation of all procurements in the field of the Austrian Federal Ministry of the Interior and its subordinate bodies. Data (analyses, reports) are simplified. This allows for a better steering (optimization of the procurement costs) and insight into processes as well as into procedures and enables the involvement of the superior which enhances the transparency in procurements procedures.

Article 10 – Public Reporting

The Austrian Federal Bureau of Anti-Corruption (BAK) issues an annual report which is published on the homepage of the BAK¹ and, in doing so, corresponds to the promotion of transparency in public administration according to Art 10 lit c of the UNCAC. Additionally, information on all important events are published on the homepage of the BAK under the heading “News”².

Article 14 – Measures to prevent money-laundering

The anti-money laundering (AML) provisions in Austria (the particular regulations for the customer identification, the monitoring and reporting of transactions as well as the supervision and the penalization of breaches of those provisions) are regulated in different administrative laws, which are applicable for each reporting entity. In detail those are:

- Articles 40-41 Banking Act (BWG)
- Articles 43-52 Management Accounting Law (BiBuG)
- Article 25 para. 5 Stock Exchange Act (BörseG)
- Articles 365m-z Trade Act 1994 (GewO 1994)
- Articles 25 and 25a Gambling Act (GSpG)
- Articles 36a-37a Code of Notaries (NO)
- Articles 8a-9a Code of Lawyers (RAO)
- Articles 98a-h Insurance Supervision Act (VAG)
- Articles 20 and 21 Securities Supervision Act (WAG)

¹ http://www.bak.gv.at/cms/BAK_dt/service/downloads/start.aspx

² http://www.bak.gv.at/cms/BAK_dt/_news/start.aspx

- Article 98a-j Public Accountants' Statute of Professional Practice (WTBG)
- Article 19 Payments Services Act (ZaDiG) and
- Article 17c para. 2 Customs Law Implementation Act (ZollR-DG)

These administrative laws establish a comprehensive domestic regulatory and oversight regime to prevent and detect money-laundering. The provisions prescribed in the laws include the identification of the customer, the beneficial owner, the trustee and the trustor. In addition, the reporting entities have to inquire background information on the business relation. They have to apply the “know your customer” principle and keep the records for five years. The monitoring of the transactions/ of the customer relation has to be realized pursuant to the “risk based approach”.

The Austrian Financial Intelligence Unit (A-FIU), established by Article 4 para. 2 BKA-G (Criminal Intelligence Service Act), has a double function as the central investigation department within the AML/Anti-Terrorist Financing (ATF) system. On the one hand it serves as national centre for the receipt, analysis and dissemination of suspicious transaction reports and other information relevant to money laundering, associated predicate offences and terrorist financing, transmitted by reporting entities, or when the perpetration of non-disclosure of a trust-relationship is suspected. In this function, the A-FIU has been vested with the right to obtain any and all information from reporting entities, if that information appears necessary to clarify circumstances indicating ML or TF (see Article 41 para. 2 Banking Act). This power is not affected by the fact whether an SAR/STR (suspicious action report/ suspicious transaction report) has been drawn up or not. That means that the FIU can obtain necessary information independently, as long as there is suspicion of ML/TF activities.

On the other hand, the A-FIU as AML-department is the central responsible department for fighting money laundering in Austria. In that function, the A-FIU determines standardized AML procedures in the law enforcement sector (for example by releasing decrees and official instructions). A very crucial point is that all the law enforcement organizations in Austria have the duty to report every process in connection to money laundering to the A-FIU. This fact makes the FIU the focal point for diverse AML/CTF related information. For instance, according to Article 17c para. 2 Customs Law Implementation Act (ZollR-DG), the customs administration has to report to the FIU, if suspicious cash transactions are registered. Declarations of cash transactions to the customs authorities have to be made, when an amount of EUR 10.000,- is exceeded.

Furthermore, several finance-based businesses have to apply the AML/CFT requirements, especially all financial sectors and non-financial sectors such as dealers in precious goods.

Besides its role on the national level, the A-FIU is also the competent partner to provide relevant information to its international counterparts. It is therefore not necessary that any predicate offence has been committed in Austria, due to the fact that predicate offences might have been committed outside the Austrian jurisdiction. For information exchange, the A-FIU can use ESW, FIU.NET as well as INTERPOL and EUROPOL channels, without involving any third parties. Moreover, there is close cooperation with the Austrian Asset Recovery Office (ARO). The organization of Austrian criminal police allows for the flexible forming of multi-disciplinary investigation groups or task forces, whenever circumstances require. In this context, it should also be mentioned that the A-FIU is one of the funding Members of the EGMONT Group and that Austria is currently being evaluated by the

FATF (On Site Visit in November 2015). The A-FIU also actively participates in projects and operational networks such as AMON (Anti Money-Laundering Network).

All Austrian FIU officials are criminal police officers. They have had criminal police training and a lot of practical experience in fighting different types of crime, which allows them to conduct a qualified analysis of reported facts and circumstances, especially with regard to predicate offences.

Concerning the coordination challenges among relevant agencies responsible for combating money-laundering with regard to global, regional and bilateral cooperation, the following can be said:

In Austria, the competences in the fight against money laundering and terrorist financing are distributed between different stakeholders. These are in particular, the Financial Intelligence Unit (FIU), other organization units within the Ministry of the Interior, the Federal Ministries of Finance, Justice and Economy, and the competent regulation authorities such as the Financial Market Authority.

Irrespective of case-related (operative) national cooperation, national cooperation in the policy-making sector takes place in many different ways.

It is a central concern of the involved stakeholders to grant a transparent information flow in regard to the AML (anti money laundering) and ATF (anti terrorist financing) discussion and the policy making process. One of the ways to ensure exchange of relevant information is regular meetings between the stakeholders. In this regard, regular meetings take place (at least twice a year, if circumstances don't require a more frequent exchange). Beyond that, ad-hoc meetings are held as required.

According to the already mentioned Article 41 Paragraph 4 Austrian Banking Act (BWG), the A-FIU is to inform the financial institutions about methods and indications of ML and TF, and provide feedback concerning the quality of reports received. Similar sessions are included in other administrative laws applicable to different reporting entities. This information is passed to the reporting entities during trainings and within the scope of annual reports. Regular trainings have the additional effect that information about appropriate steps that should be taken by policy makers to improve the AML/ATF systems can be communicated directly and without any complications.

Furthermore, training activities held with other authorities and organisation units are used for discussing policy making processes as well.

That flexibility, which is significantly influenced by the quite centralized organisation of the Austrian AML/CFT system, is a huge benefit for national cooperation and coordination. As most of the stakeholders are personally acquainted with each other, processes can be accelerated easily, by adding personal communication and/or spontaneous meetings.

Information on other preventive anti-corruption measures

Compliance in public administration

As the first organizational unit in public administration, the Austrian Federal Ministry of the Interior (Moi) established a compliance system in mid-2013 after comprehensive preliminary work. In addition to the Chief Compliance Officer of the Moi, a network of compliance officers for all Federal Police Directorates and appropriate trainings are part of this system. The Austrian Federal Ministry of

the Interior shares its expertise gained during the implementation of the compliance system with other bodies of the Austrian public administration.

Compliance trainings of the BAK

Since autumn 2013, the BAK has constantly carried out trainings for various organizational units of the MoI and its subordinate bodies. On the one hand, the trainings aim at raising the awareness of the civil servants on the topic corruption, on the other hand, they contribute to a better understanding of compliance. In addition to basics on the compliance system of the MoI, the phenomenon of corruption and its psychological motives, effective mechanisms of corruption prevention are presented and the new legal situation in terms of the criminal law on corruption is illustrated. These trainings increase the ability of employees to act correctly (legal certainty) and meet the needs of the participants thanks to the well-matched lectures. The trainings are divided into three modules which depend on each other. Among other things, the procurement workflow of the MoI as a tool for transparent monitoring and execution of procurement procedures is presented.