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from: Secretary-General of the European Commission,  
signed by Mr Jordi AYET PUIGARNAU, Director

date of receipt: 3 February 2014

to: Mr Uwe CORSEPIUS, Secretary-General of the Council of the European  
Union

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Subject: ANNEX AUSTRIA to the EU Anti-Corruption Report

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Delegations will find attached Commission document COM(2014) 38 final Annex 20.

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ANNEX 20

**ANNEX**

**AUSTRIA**

*to the*

**EU Anti-Corruption Report**

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## AUSTRIA

### 1. INTRODUCTION – MAIN FEATURES AND CONTEXT

#### *Anti-corruption framework*

**Strategic approach.** At federal level, a more determined fight against corruption emerged following the joint first and second evaluation round by the Council of Europe's Group States against Corruption (GRECO) in 2007. Following also increased public awareness due to high-profile corruption cases disclosed in 2009, Austria has made major efforts to reform its institutions to fight corruption and white-collar crime in general, and corruption has been specifically targeted as part of a strategy fighting financial crime.<sup>1</sup> In 2009, federal states' experts were given the task of developing proposals to implement the recommendations of GRECO at federal level, and to co-ordinate the anti-corruption efforts of the federal states. To date, these experts have developed shared standards on training, the prohibition of the acceptance of gifts, risk management, statistics and competences.<sup>2</sup> Despite progress towards a nationwide strategic approach, not all federal states (*Länder*) have developed measures to tackle corruption. As a positive example, Vienna lists awareness-raising and transparency as a key tool to fight corruption, supported by a hotline.<sup>3</sup> The Austrian government took an active role in promoting international efforts to fight corruption, namely by supporting the establishment of the International Anti-corruption Academy (IACA) and initiating the European contact-point network against corruption (EACN).<sup>4</sup>

Efforts to fight corruption in the public administration have focused on prevention: a code of conduct to prevent corruption has been provided for all levels of public administration.<sup>5</sup> The Government undertook public administration reform in recent years focusing on making public service more efficient and customer-friendly, and encouraging citizens to widely use e-government services.<sup>6</sup> The initiative consisted of 40 reform projects, to raise the quality of administrative services as well as to provide savings. These included e-government projects, the establishment of one-stop-shops and reorganisations.<sup>7</sup> All these measures are likely to improve the prevention efforts in the public sector. Other institutions outside the public administration also took a number of initiatives. Following recent bribery allegations, two

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1 See for instance the Evaluation report on the fifth round of mutual evaluations "Financial crime and financial investigations" - Follow-up to the report on Austria, Council of the European Union, doc. No. 5576/12.

2 See the decisions of 15 January 2009 and 23 October 2009 the Landesamtsdirektorenkonferenz (Conference of the Directors of the Governments of the Federal States), through which these tasks were delegated to a Conference of Federal States' Experts (Länderexpertenkonferenz). The Landesamtsdirektorenkonferenz of 29 October 2010 and 30 March 2012 adopted the proposals.

3 <http://www.wien.gv.at/verwaltung/internerevision/ethik.html>.

4 The IACA is an independent centre of excellence, established following the joint initiative by the United Nations Office on Drugs and Crime (UNODC), Austria, the European Anti-Fraud Office (OLAF) and other stakeholders, it aims to overcome shortcomings in knowledge and practice in the field of anti-corruption, namely by training, networking and academic research. The EACN is a European network established by the Council Decision 2008/852/JHA on EPAC, an independent forum offering a platform for anti-corruption practitioners to share their experience and cooperate across national borders in developing common strategies and high professional standards.

5 'The Responsibility rests with me' Die VerANTWORTung liegt bei mir– Bundeskanzleramt Österreich. [https://www.oeffentlicherdienst.gv.at/moderner\\_arbeitgeber/korruptionspraevention/infos/VerhaltenskodexDeutsch\\_2012\\_barrierefrei.pdf?3shqic](https://www.oeffentlicherdienst.gv.at/moderner_arbeitgeber/korruptionspraevention/infos/VerhaltenskodexDeutsch_2012_barrierefrei.pdf?3shqic).

6 The percentage of individuals aged 16 to 74 who have used the Internet, in the last three months to interact with public authorities (i.e. having used the Internet for one or more of the following activities: obtaining information from public authorities web sites, downloading official forms, sending filled in forms) remained stable at 39% between 2008-2010. <http://epp.eurostat.ec.europa.eu/tgm/table.do?tab=table&init=1&language=en&pcode=tsdgo330&plugin=1>.

7 [https://www.oeffentlicherdienst.gv.at/fakten/publikationen/verwaltung\\_in\\_oesterreich\\_2011\\_en.pdf?3sfue1](https://www.oeffentlicherdienst.gv.at/fakten/publikationen/verwaltung_in_oesterreich_2011_en.pdf?3sfue1).

Parliamentary Committees of Inquiry were established to deal exclusively with corruption allegations, while two others also touched on corruption issues.<sup>8</sup>

**Legal framework.** Following recommendations from the OECD and GRECO, new legislation was adopted in order to comply with the recommendations of these organisations. Austria also adopted a new Party Funding Act,<sup>9</sup> revised the tasks of the Audit Office in supervising party accounts, and amended its Criminal Code.<sup>10</sup> For instance, the act introduced the crime of ‘Anfüttern’ – an offence of offering, promising or granting an advantage that is not related to a specific official act, such as granting small favours to ‘sweeten’ a relationship with a public official. The most recent anti-corruption amendment to the Criminal Code and the Criminal Procedure Code was adopted in mid-July 2012.<sup>11</sup> Austria has not yet ratified the Council of Europe Criminal Law Convention on Corruption.<sup>12</sup>

**Institutional framework.** Since early 2010, anti-corruption efforts have been coordinated by the Anti-corruption Forum at federal government level. This high-level coordination committee, which meets four times a year, is composed of all competent authorities, including various federal ministries, the *Länder*, various authorities such as the specialised prosecution service for white-collar crime<sup>13</sup> (the WKStA), the federal office for preventing and fighting corruption<sup>14</sup> (the BAK), and the Financial Market Authority, as well as the private sector (Chamber of Commerce, Union of Civil Servants, Chamber of Notaries, Bar Association).<sup>15</sup>

### *Opinion polling*

**Perception surveys.** 66% of Austrian respondents (below the EU average) to the 2013 Special Eurobarometer on corruption<sup>16</sup> agree that corruption is widespread in their country (EU average: 76%). However, the 2013 Eurobarometer also showed that Austria is the only country in Western Europe where a relatively large proportion – almost one-third of the respondents – would find it acceptable to do a favour or give a gift in exchange for a public service.

**Experience of corruption.** 5% of the Austrian respondents were asked or expected to pay a bribe over the previous 12 months (EU average: 4%). Only 14% of respondents, well below the EU average of 26%, felt affected by corruption in everyday life.

**Business surveys.** According to the 2013 Eurobarometer Business Survey,<sup>17</sup> 38% of business representatives think that corruption is an obstacle to doing business, and 41% of them think nepotism and patronage is also problematic in this context. 18 % of those who participated in public procurement in the last three years reported that they were prevented from winning because of corruption. Respondents in Austria reported tailor-made specifications for particular companies in 66% of cases, which is above the EU average. Collusive bidding was

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8 Protocols and decisions of these committees are published on the web site of the Austrian parliament: [http://www.parlament.gv.at/PAKT/VHG/XXIV/A-USA/A-USA\\_00003\\_00314/index.shtml](http://www.parlament.gv.at/PAKT/VHG/XXIV/A-USA/A-USA_00003_00314/index.shtml).

9 Bundesgesetz über die Finanzierung politischer Parteien (Parteiengesetz 2012 – PartG), Federal Law Gazette I No. 56/2012, <http://www.ris.bka.gv.at/GeltendeFassung.wxe?Abfrage=Bundesnormen&Gesetzesnummer=20007889>.

10 Korruptionsstrafrechtsänderungsgesetz 2012 – KorrStrÄG 2012, BGBl I no 61/2012.

11 Korruptionsstrafrechtsänderungsgesetz 2012 – KorrStrÄG 2012, BGBl I no 61/2012.

12 Draft ratification legislation is reported to have passed in the Parliament in mid-July 2013, but the ratification document has not yet been submitted. <http://conventions.coe.int/Treaty/en/Treaties/Html/173-1.htm>

13 Wirtschafts- und Korruptionsstaatsanwaltschaft.

14 Bundesamt zur Korruptionsprävention und Korruptionsbekämpfung.

15 Evaluation report on the fifth round of mutual evaluations "Financial crime and financial investigations" - Follow-up to the report on Austria, Council document: 5576/12; Brussels, 20 January 2012. p.5.

16 2013 Special Eurobarometer 397.

17 2013 Flash Eurobarometer 374.

reported as a widespread practice by 57%. In addition, 45% of respondents noted conflicts of interest in the evaluation of bids and 35% pointed to unclear selection or evaluation criteria. According to the World Economic Forum's Global Competitiveness Report 2013-14, Austria is ranked the 16<sup>th</sup> most competitive economy in the world, out of 152 countries.<sup>18</sup>

### **Background issues**

**Law enforcement and judiciary.** Austria has focused its efforts to prevent and prosecute corruption via specialised institutions, which include the WKStA and the BAK.

**Private sector.** Austria transposed Framework Decision 2003/568/JHA on corruption in the private sector in 2008, and revised the legal framework for private sector corruption in 2012 through this law, bringing the law into line with the framework decision.<sup>19</sup>

**Financing of political parties.** Recent discussions on corruption in the context of politics have focused on (alleged) bribery of high-ranking political office holders and on illegal party funding. Criticism generated by a number of cases of illegal funding of political parties, such as the case of a prominent elected public official who was found guilty of unjust enrichment relating to political interference in exchange for a donation to his party, led to a series of reform acts. A new Political Parties Act entered into force in 2013.<sup>20</sup> An initial review of the implementation of the act, including its shortcomings, was presented in December 2013 by the Board of Audit (*Rechnungshof*).<sup>21</sup>

**Access to information.** According to the Duty to Provide Information Act of 1987,<sup>22</sup> public authorities (at all administrative levels) have to respond to requests for information without undue delay, unless the information is subject to a statutory duty of secrecy. Against a background of public discussions about the need to adopt a dedicated federal law on access to information, an initiative is undergoing political debates, to reduce the scope of this exemption and eliminate a wide range of existing grounds for statutory secrecy.<sup>23</sup>

**Whistleblowing.** Austria has been planning to improve the legal framework for providing whistleblower protection, but its initiatives have not yet led to adoption of specific legislation. For the public service, a provision in the Civil Service Act explicitly forbids taking detrimental actions against a public servant who in good faith reports a crime.<sup>24</sup> There is a general obligation for civil servants to report crimes.<sup>25</sup> Since 2010, each public servant at national level (but not all *Länder*) can submit his/her information directly to the BAK, by avoiding the management lines within his/her own administrative unit. The WKStA provides a web-based reporting mechanism which allows anonymous reporting of crimes, using the so-called Business Keeper Monitoring System (BKMS).

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18 [http://www3.weforum.org/docs/WEF\\_GlobalCompetitivenessReport\\_2013-14.pdf](http://www3.weforum.org/docs/WEF_GlobalCompetitivenessReport_2013-14.pdf).

19 COM(2011) 309 final, Second Implementation Report of FD 2003/568/JHA of 6 June 2011: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:52011DC0309:EN:HTML>.

20 Bundesgesetz über die Finanzierung politischer Parteien (Parteiengesetz 2012 – PartG), Federal Law Gazette I No. 56/2012, available from [http://www.ris.bka.gv.at/Dokumente/BgblAuth/BGBLA\\_2012\\_I\\_56/BGBLA\\_2012\\_I\\_56.pdf](http://www.ris.bka.gv.at/Dokumente/BgblAuth/BGBLA_2012_I_56/BGBLA_2012_I_56.pdf)

21 Bericht des Rechnungshofs. Reihe Bund 13/2013, Umsetzung des Parteiengesetzes 2012 durch den RH, pp. 62-76.; [http://www.rechnungshof.gv.at/fileadmin/downloads/\\_jahre/2013/berichte/teilberichte/bund/Bund\\_2013\\_13/Bund\\_2013\\_13\\_5.pdf](http://www.rechnungshof.gv.at/fileadmin/downloads/_jahre/2013/berichte/teilberichte/bund/Bund_2013_13/Bund_2013_13_5.pdf).

22 Bundesgesetz vom 15. Mai 1987 über die Auskunftspflicht der Verwaltung des Bundes und eine Änderung des Bundesministeriengesetzes 1986 (Auskunftspflichtgesetz), Federal Law Gazette No. 287/1987, last amendment: I 158/1998, [http://www.ris.bka.gv.at/Dokumente/ErV/ERV\\_1987\\_287/ERV\\_1987\\_287.pdf](http://www.ris.bka.gv.at/Dokumente/ErV/ERV_1987_287/ERV_1987_287.pdf).

23 For the development of the public debate, see: <http://www.transparenzgesetz.at/>.

24 New § 53a Beamten-Dienstrechtsgesetz:

<http://www.ris.bka.gv.at/Dokument.wxe?Abfrage=Bundesnormen&Dokumentnummer=NOR40133771>.

25 According to § 53 Beamten-Dienstrechtsgesetz, each public servant has to report possible criminal infringements to the head of the administrative unit. The same applies to public officials (§ 5 Vertragsbedienstetengesetz).

**Transparency of lobbying.** Lobbying legislation has recently been adopted which entered into force on 1 January 2013.<sup>26</sup> The new legislation introduces a compulsory register of lobbying and interest associations. The database is publicly available on the internet and maintained by the Ministry of Justice which publishes the data submitted by lobby organisations.<sup>27</sup> The law sets out basic principles of lobbying and interest representation (applicable to all groups). Additionally, lobbying firms and enterprises employing in-house lobbyists are required to apply a (publicly available) code of conduct.<sup>28</sup>

## 2. ISSUES IN FOCUS

### *Prosecution of corruption*

Austria is among the best-rated countries for the deterrent effects of successful prosecutions in corruption cases, according to the 2013 Eurobarometer. This may be due to media attention on the work of the WKStA, as well as regular reports on the activities of the BAK.

Allegations of corruption in the public sector are investigated by the BAK, as the successor to a similar body, the Federal Bureau for Internal Affairs, which was created in 2001. The BAK is an institution of the Ministry of the Interior, established outside the Directorate-General for Public Security. Vested with investigative powers, and nationwide jurisdiction in the prevention of and the fight against corruption, its chief task is the examination of allegations and complaints made against employees of the Federal Ministry of the Interior and of its subordinate departments, and investigations related to malpractice in office.<sup>29</sup> However, its competence is not limited to internal investigations within the Federal Ministry of the Interior. In addition to the BAK, the Austrian Federal Investigation Bureau (*Bundeskriminalamt*) and its regional offices also conduct investigations; they have units dealing with white-collar crime and asset forfeiture.<sup>30</sup>

In 2011, a new office was created, known as the Public Prosecution Service for White-Collar Crime and Corruption.<sup>31</sup> Prosecutors receive specialised training also while in post. The number of WKStA staff is planned to be raised to 40, however, only over half of this planned number have been employed by early 2014.

Since 2009, law enforcement authorities have put more focus (in terms of available financial and human resources) on investigating economic crimes. Both police and prosecutors are reported to lack the necessary capacity.<sup>32</sup> For the period till 2014, Austria reported providing an additional expenditure of EUR 28 million to combat corruption and economic crime,

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26 Lobbying- und Interessenvertretungs-Transparenz-Gesetz – LobbyG, available from

[http://www.ris.bka.gv.at/Dokumente/BgblAuth/BGBLA\\_2012\\_I\\_64/BGBLA\\_2012\\_I\\_64.pdf](http://www.ris.bka.gv.at/Dokumente/BgblAuth/BGBLA_2012_I_64/BGBLA_2012_I_64.pdf).

27 <http://www.lobbyreg.justiz.gv.at/>; the database is yet to include at least part of the lobby representatives of major companies.

28 Lobbying- und Interessenvertretungs-Transparenz-Gesetz – LobbyG, available from

[http://www.ris.bka.gv.at/Dokumente/BgblAuth/BGBLA\\_2012\\_I\\_64/BGBLA\\_2012\\_I\\_64.pdf](http://www.ris.bka.gv.at/Dokumente/BgblAuth/BGBLA_2012_I_64/BGBLA_2012_I_64.pdf).

<http://www.lobbyreg.justiz.gv.at/>

29 Federal Law on the Establishment and Organisation of the Federal Bureau of Anti-Corruption, (BAK-G), BGBl. I No. 72/2009.

30 Evaluation report on the fifth round of mutual evaluations "Financial crime and financial investigations" Report on Austria, 6508/2/10; REV 2, Brussels, 8 April 2010.

31 Zentrale Staatsanwaltschaft zur Verfolgung von Wirtschaftsstrafsachen und Korruption A special anti-corruption prosecution authority known as Korruptionsstaatsanwaltschaft was created in 2009, which became later (in 2011) the WKStA. For its powers, see in particular §2a. of the act on the prosecution authorities, Bundesgesetz vom 5. März 1986 über die staatsanwaltschaftlichen Behörden (Staatsanwaltschaftsgesetz - StAG) StF: BGBl. Nr. 164/1986; for its competence, see especially the criminal procedure act (Strafprozessordnung, § 20a.).

32 OECD Phase 3-report on implementing the OECD anti-bribery convention in Austria, December 2012, p. 35. <http://www.oecd.org/daf/anti-bribery/Austriaphase3reportEN.pdf>

enabling 190 extra posts to be created.<sup>33</sup> However, as illustrated above when looking at WKStA staff, the allocation of adequate resources for investigation and prosecution of corruption cases remains a challenge.

Court statistics show 78 convictions in 2012 and 90 in 2011 for criminal offences committed while holding public office, including corruption and breach of personal freedom and household privacy by an official.<sup>34</sup> In 2011, its statistics showed 701 reports of investigations run by the BAK on abuse of power,<sup>35</sup> and bribery represented only a very small proportion of them (29 cases). However, this is not a complete picture of bribery allegations, since BAK competence is limited to a specific area of public administration and authorities, and so does not cover the full spectrum of criminal offences related to corruption. These figures reflect focused efforts to discover and prosecute cases of corruption, and the track record of cases investigated show commendable progress in Austria.

Prosecutors are bound by instructions from the Minister of Justice. In certain situations set out in the law,<sup>36</sup> cases have to be referred to the higher level prosecutor who has an obligation to report to the Minister of Justice. Allegations concerning an elected representative must always be reported by the prosecutors to the Minister, unless there is no link to the political activity of the person involved. Instructions from the general prosecutor's office and the Federal Minister of Justice may be given only in writing and reasons must be given. The Minister of Justice must approve any final settlement of criminal proceedings in which there is a supra-regional public interest. Instructions are provided via the relevant unit of the Ministry of Justice. The Minister of Justice is required to report to Parliament about his/her practice of issuing instructions. The ability of the Minister of Justice to issue instructions throughout the criminal process is perceived as a potential vulnerability that might discourage prosecutors from pursuing more sensitive cases, such as those concerning allegations of political corruption. Similar concerns were raised by the OECD in the context of foreign bribery.<sup>37</sup>

The WKStA is also subject to the main rules applicable to prosecutors, and is supervised by the Federal Minister of Justice, and is therefore bound by instructions in individual cases. The difference lies in the details: supervision is exercised *a posteriori*, i.e. prosecutors submit their report only after the measures were taken and at the end of the first stage of the criminal process, setting out how it intends to proceed with the investigation, (by either filing an indictment or dismissing the case). At this stage, the Minister of Justice must decide whether to accept the recommendation, and has the authority to order further investigation. In part due to the increased public attention and to the somewhat different rules on reporting, WKStA has a reputation of having achieved a relatively independent standing within this structure, and political pressure has not been reported.

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33 Evaluation report on the fifth round of mutual evaluations "Financial crime and financial investigations" - Follow-up to the report on Austria, Council document: 5576/12; Brussels, 20 January 2012.

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[https://www.statistik.at/web\\_de/statistiken/soziales/kriminalitaet/verurteilungen\\_gerichtliche\\_kriminalstatistik/index.html](https://www.statistik.at/web_de/statistiken/soziales/kriminalitaet/verurteilungen_gerichtliche_kriminalstatistik/index.html) Statistics cover cases that were committed and prosecuted before the 2012 amendment to the Criminal Code (KorrStrÄG), therefore only cover cases related to a public office, and also include the so-called "Fahrlässige Verletzung der Freiheit der Person oder des Hausrechts" (§ 303 StGB) since the data is indicated for the full chapter "Strafbare Verletzungen der Amtspflicht". Statistics relevant for private sector bribery cannot be seen separately in the table. Most cases in this section are abuse of power cases, see GRECO Third Evaluation.

35 [http://www.bak.gv.at/cms/BAK\\_dt/service/downloads/files/Jahresberichte/BAK\\_Jahresbericht\\_2011.pdf](http://www.bak.gv.at/cms/BAK_dt/service/downloads/files/Jahresberichte/BAK_Jahresbericht_2011.pdf)

36 §8, 8a. and 29a. of the act on the prosecution authorities, Bundesgesetz vom 5. März 1986 über die staatsanwaltschaftlichen Behörden (Staatsanwaltschaftsgesetz - StAG) StF: BGBl. Nr. 164/1986.

37 OECD Phase 3-report on implementing the OECD anti-bribery convention in Austria, p. 25-32. [Joint First and Second Round Evaluation, Compliance Report on Austria, Greco RC-III \(2010\) 1E, paragraph 28.](#)

***Good practice: whistleblowing service run by the specialized prosecutors***

*In spring 2013 the WKStA set up a hotline for reporting corruption: the Business Keeper Monitoring System. The WKStA now manages this web-based reporting system where anonymous reports may be submitted and where the communication between the whistleblower and the authorities is possible, as the whistleblower's identification data cannot be traced by the authorities. The system is based on a software first tested in Lower Saxony, and has reportedly been used for disclosing important details, leading to investigations into allegations of corruption.*

In a case concerning a Member of the European Parliament, who was accused of agreeing to table amendments in exchange for undue advantages from undercover journalists posing as lobbyists in the so-called 'cash-for-amendments' sting operation involving four MEPs from different Member States, criminal proceedings were pursued in a speedy manner in Austria. These led to a conviction of first instance, followed by an appeal decision which quashed the first sentence and sent the case back to the court of first instance for a re-trial.

Law enforcement access to banking information is an essential element of the financial investigations, including those relating to corruption cases. While legal provisions and jurisprudence provide possibilities for the Austrian authorities to obtain data protected by banking secrecy,<sup>38</sup> requests by public prosecutors and law enforcement are subject to restrictive conditions that allow financial institutions to decline to supply information.<sup>39</sup> The court order must *inter alia* include a description of the facts justifying the order and proving its proportionality. Partial progress was made in 2010 and in 2012, when the conditions in Article 116 of the Criminal Procedure Code setting out the requirements for obtaining information subject to banking secrecy measures were substantially eased.<sup>40</sup> It should be noted that this procedure is not applicable in cases where corruption is connected to money laundering, where different rules apply for obtaining bank account data via the Austrian Financial Intelligence Unit).<sup>41</sup>

However, there are at least two potential problems with the system set out above. Firstly, where the bank records may serve as a significant basis in establishing major elements of the crime and the required amount of information is not yet in the possession of the authorities, it seems disproportionately difficult to submit a request. Such information can only be obtained by any means other than asking all potentially relevant financial institutions whether they have an account fitting the criteria. If the authorities do not know the bank account details of the suspect, they must turn to all bank associations in Austria with a court order. The bank associations are not obliged to contact their member banks before exhausting their right of appeal. Once the specific bank is contacted by its bank association, it also has in turn its own right of appeal. Secondly, and most importantly, obtaining information from all relevant financial institutions can be time-consuming. The current system leads to slow procedures for accessing bank records. Financial institutions, in order to protect themselves from legal actions by their clients, may systematically lodge an action for legal remedies,<sup>42</sup> which suspends the enforcement of the decision to provide access to the data requested.

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38 Bankwesengesetz, §38., BGBl. Nr. 532/1993 zuletzt geändert durch BGBl. I Nr. 70/2013.  
[http://www.jusline.at/38\\_BWG.html](http://www.jusline.at/38_BWG.html).

39 Mutual Evaluation Report – Executive Summary – Anti-Money Laundering and Combating the Financing of Terrorism – Austria, June 2009, p. 5, <http://www.fatf-gafi.org/media/fatf/documents/reports/mer/MER%20Austria%20ES.pdf>.

40 OECD Phase 3 report on the implementation of the OECD anti-bribery convention in Austria, paragraph 69.

41 OECD Phase 3 report on the implementation of the OECD anti-bribery convention in Austria, paragraph 113.

42 OECD Phase 3 report on the implementation of the OECD anti-bribery convention in Austria, paragraph 149.



In order to improve the situation, the Ministry of Justice addressed a decree on 13 August 2013 to all public prosecutors and judges containing clarifications, and providing a template for requests. Only the template containing general information needs to be forwarded to banking institutions, thus avoiding the disclosure of details which may put the investigation at risk. This may also shorten the time needed to answer such a request.

### *Foreign bribery*

While considerable progress has been made in prosecuting 'domestic' corruption, a common criticism concerns the prosecution of foreign bribery cases, where important economic interests may also be at stake.

In 2005, the evaluation team of the OECD working group on bribery<sup>43</sup> noted that six years after ratification of the OECD convention, not a single case of foreign bribery had been investigated by the Austrian authorities, despite Austrian enterprises and banks being active in Central and Eastern Europe since the 1990s. The privatizations in that region of the banking, telecommunications and energy sectors and the significant involvement of Austrian construction companies in these areas meant that these companies were participating in competitive markets vulnerable to the risk of corruption. The OECD report also showed that there was little to no awareness in the justice system and in the police about the risks of bribery in international business transactions; nor were there judges, prosecutors and the police with particular expertise in economic crime more generally. However, the Telekom case, which involved foreign as well as domestic bribery elements, has been a positive example for the leniency programme established in the criminal procedure, allowing the use of the testimony of crown witnesses and the prosecution of high-profile cases on the basis of this.<sup>44</sup> In this case, the court of first instance issued a conviction in July 2013.

The creation of the WKStA changed the situation. The public prosecutors of the WKStA are now increasingly building up the necessary expertise to thoroughly investigate foreign bribery cases. The gradual building-up of the service may explain the time lag for proceedings in cases which happened before the mid-2000s and are still under investigation. The OECD reported in December 2012 that ever since Austria became a member in 1999, 15 allegations had been discussed, and in six of these cases the investigation had been terminated or there was no investigation at all.<sup>45</sup> Since then, two cases have been concluded: one ended with a criminal conviction concerning an Austrian businessman involved in a bribery case in another EU Member State and another one concluded with an acquittal of charges of money laundering in the arms trade.

The OECD reviewers also made a number of recommendations regarding Austria's framework for the liability of companies and other entities that bribe foreign public officials. Both the Phase 2 and Phase 3 reviews recommended introducing effective, proportionate and dissuasive sanctions for legal persons, instead of the current level of penalties set as a proportion of the annual profit of the legal person in question, with a maximum of EUR 1.8

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43 OECD Phase 2 report on the application of the convention on combating bribery of foreign public officials in international business transactions and the 1997 recommendation on combating bribery in international business transactions on Austria, 16 February 2006. Available from: <http://www.oecd.org/daf/anti-bribery/anti-briberyconvention/36180957.pdf>

44 "§ 209a of the Criminal procedure act, amended in 2011.

45 OECD Phase 3-report on implementing the OECD anti-bribery convention in Austria, p. 8-12.

million.<sup>46</sup> This has been deemed insufficient in general, and particularly in those cases where the legal person may not have generated significant profits over the relevant period.<sup>47</sup>

Furthermore, OECD examiners found that in most cases where the prosecution authority submits a report to the Minister of Justice at the end of an investigation, the Minister orders more investigative steps. Despite the unique status of the WKStA, the OECD repeated its concerns in its Phase 3 report. It recommended ensuring that investigations and prosecutions of foreign bribery cannot be influenced by considerations of national economic interest, the potential effect upon relations with another State or the identity of the natural or legal persons involved, particularly in view of the Minister of Justice's decision-making authority in foreign bribery cases.<sup>48</sup>

Austria amended its legislation in 2012 in order to bring the criminal code in compliance with the OECD Anti-Bribery Convention. The OECD commended Austria for extending its jurisdiction in foreign bribery cases to all offences committed by Austrian citizens, regardless of where the bribe was offered, promised or paid. They also commended the efforts of Austria for removing the dual criminality requirement.<sup>49</sup>

The rules on accessing banking information may still represent an obstacle for foreign investigations, thereby making mutual legal assistance potentially less efficient. The Austrian authorities as part of the OECD peer review have noted banking secrecy as a leading cause for most delays in providing mutual legal assistance.<sup>50</sup>

### ***Integrity of high-level elected and appointed officials***

Detailed rules on declarations of income and assets are provided by a federal law which is applicable to, among others, members of the federal and state (*Länder*) governments, mayors, their deputies the members of the municipal council, and the members of the National Council (*Nationalrat*), of the Federal Council (*Bundesrat*) and of the *Länder* Parliaments.<sup>51</sup>

Members of the federal and the *Länder* governments, including secretaries of state, have to declare all their assets to the president of the Board of Audit after taking up the role, every two years while in office, and three months after leaving government. However, the obligation to submit such declarations is not coupled with a review mechanism to verify the accuracy of the data provided and consequently no sanctions are applied in case inaccurate data is provided. The law only states that in the cases of substantial increase in assets, the President of the Board of Audit shall report these to the President of the National Council and the President of the *Länder* Parliament respectively. The latter ones may also at any time ask the President of the Board of Audit to give a report. The declarations of assets are not publicly accessible. Conflicts of interest of government members were the subject of discussions in early 1980s and have been regulated by a general ban of any business activities since that time. If government members or secretaries of state exceptionally wish to conduct other

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46 See § 4. Verbandsgeldbuße in Verbandsverantwortungsgesetz; BGBl. I Nr. 151/2005 zuletzt geändert BGBl. I Nr. 112/2007.

47 OECD Phase 2 report, paragraph 145 et seq., OECD Phase 3-report on implementing the OECD anti-bribery convention in Austria, December 2012, paragraph 52 and sec. Available from: <http://www.oecd.org/daf/anti-bribery/Austriaphase3reportEN.pdf>.

48 OECD Phase 3 report on the implementation of the OECD anti-bribery convention in Austria, paragraph 90 to 96.

49 The Phase 3 Report on Austria by the OECD Working Group on Bribery.

50 OECD Phase 3 report on the implementation of the OECD anti-bribery convention in Austria, paragraph 149.

51 Bundesgesetz über Unvereinbarkeiten für oberste Organe und sonstige öffentliche Funktionäre (Unvereinbarkeitsgesetz 1983), last amended in 2013, BGBl. I Nr. 141/2013 <http://www.ris.bka.gv.at/Dokument.wxe?Abfrage=Bundesnormen&Dokumentnummer=NOR40140745>.

remunerated activities, they have to request the approval from the relevant committee of the National Council or the federal states' parliament.<sup>52</sup>

Members of Parliament (MPs) are not required to disclose their assets.<sup>53</sup> Recently amended provisions introduced certain rules on declaration of their interests and income. There is an obligation to declare management positions in private companies, and every year MPs also have to submit information on their average monthly income by indicating one of the five broad categories of levels of income.<sup>54</sup> The Incompatibility Committee of the Parliament decides by a simple majority whether it is possible to continue the declared activity. In the case of members of the *Länder* Parliaments, the committee of the *Länder* Parliaments is in charge of the matter. However, there is no verification mechanism to check the content of the declaration, and no sanctions for non-compliance with the rules either. MPs are expressly banned from lobbying activities, but allowed to pursue and represent business interests, provided that they follow the rules on declaring them. The law provides for sanctions in case of abuse of position, and MPs may lose office if the parliamentary committee establishes that they have abused their position for profit.

### 3. FUTURE STEPS

Austria's fight against corruption has been strengthened by institutional efforts in prevention and prosecution. Removing remaining obstacles to investigations by facilitating access to banking information where necessary would make the prosecution of both domestic and international bribery more effective. Austria recently introduced significant amendments to its criminal law and adopted a new act on political parties, the impact of which cannot yet be assessed.

The following points require further attention:

- Ensuring the necessary capacity of the **specialised prosecutors** to process corruption cases, whether domestic or foreign. Prioritising the investigation and prosecution of **foreign bribery**. Developing guidelines for prosecutors clarifying that the prosecution of foreign bribery should not be hampered by considerations of national economist interest. Increasing the level of sanctions for legal persons to make them effective, proportionate and dissuasive.
- Improving the procedure allowing **access to bank account information** in cases of suspicion of corruption; allowing law enforcement agencies to obtain data swiftly when the gravity and relevance of the case so requires.
- Introducing an effective monitoring mechanism for checking declarations of assets and interest for both **elected and appointed senior officials** that would allow for impartial verification. Providing dissuasive sanctions for non-compliance with rules on declaring interests, incomes and assets.

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52 § 2 of the Unvereinbarkeitsgesetz.

53 The MPs who are also members of the federal and the Laender governments are nevertheless subject to the asset disclosure obligations applicable to this latter category of officials.

54 Unvereinbarkeitsgesetz 1983, as amended in 2013, BGBl. I Nr. 141/2013.