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## **COMMISSION STAFF WORKING DOCUMENT**

### **2023 Rule of Law Report Country Chapter on the rule of law situation in Austria**

*Accompanying the document*

#### **COMMUNICATION FROM THE COMMISSION TO THE EUROPEAN PARLIAMENT, THE COUNCIL, THE EUROPEAN ECONOMIC AND SOCIAL COMMITTEE AND THE COMMITTEE OF THE REGIONS**

### **2023 Rule of Law Report**

#### **The rule of law situation in the European Union**

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## ABSTRACT

The Austrian justice system, which continues to have a very high level of perceived judicial independence, is undergoing important reforms. A law was adopted in December 2022 to provide for judicial involvement in the appointment of the Supreme Court president and vice-president. Legislation to ensure judicial involvement in appointments of candidate judges was also adopted. However, the need for judicial involvement in appointments of administrative court presidents has not been addressed, which continues to raise concerns. The reform of the prosecution service, with the aim of creating an independent Prosecutor General, has not advanced, with no political follow-up so far to the expert group's final report of September 2022. Amendments to reduce reporting obligations for prosecutors remain under preparation. The resources of the judiciary have been further increased and the roll-out of electronic files is advancing. The absence of a cap on court fees remains a challenge. Further improvements have been made regarding efficiency in administrative cases.

Work is ongoing to prepare a new Anti-Corruption Action Plan. The Ministry of Justice proposed strengthening the anti-corruption criminal law framework, which stakeholders welcomed while suggesting further amendments. The parliamentary investigative committee on alleged corruption concerning a governmental political party submitted its final report to the plenary in March 2023, which includes several anticorruption-related recommendations. High-level corruption investigations are proceeding, and prosecutors experience high scrutiny on individual cases. A working group was created to follow-up on asset and interest disclosure rules for members of Parliament, but no concrete results are reported so far. An important reform of the political party financing framework has been finalised, reinforcing the role of the Court of Audit. Political agreement remains outstanding on revising the current lobbying legislation, which remains limited in scope. The introduction of rules to address revolving doors, and post-employment provisions for members of Government or Parliament has not advanced.

The media regulatory authority continues to function independently. The self-regulatory Press Council experiences financial challenges, which should be relieved once a new federal law providing for more financial support will be in force. Parliament adopted a law improving the transparency of state advertising, while the fairness of its allocation remains unaddressed. A new draft law on funding of quality journalism increases the amount of funding and widens the scope of beneficiaries. A new law adopted by Parliament has drawn criticism for partly transforming one of the oldest newspapers into a medium focused on training and education. The institutional set-up of the public service media provider has been criticised for being vulnerable to politicisation, and a constitutional complaint regarding the composition of its governing foundation council is pending. While consultations continued, the freedom of information law has not advanced. Some challenges regarding the safety of journalists remain.

Several initiatives are ongoing to support public participation in policymaking processes, while there are calls for a more systematic approach. The Ombudsperson Board continues to operate effectively. The appointment and dismissal procedures for the Court of Audit President were strengthened, increasing the majorities required. Long delays in appointments for the heads of other independent bodies persist. Civil society continues to operate in a stable

environment, with a reform to improve tax rules for non-profit organisations under preparation.

## **RECOMMENDATIONS**

Overall, concerning the recommendations in the 2022 Rule of Law Report, Austria has (made):

- No further progress on continuing the reform to establish an independent Federal Prosecution Office, taking into account European standards on the independence and autonomy of the prosecution, including to ensure the independent operation of the specialised anti-corruption prosecution
- Fully implemented the recommendation to address the need for involvement of the judiciary in the procedures for appointment of the president and vice-president of the Supreme Court and made no progress on addressing the need for involvement of the judiciary in the procedures for appointment for court presidents of administrative courts taking into account European standards on judicial appointments and the selection of court presidents.
- Fully implemented the recommendation to finalise the legislative revision of the political party financing rules including to empower the Austrian Court of Audit (ACA) to audit political party finances.
- No progress yet on introducing effective rules on assets and interests' declaration for Members of Parliament, including effective monitoring and sanctioning mechanisms.
- Some progress on reforming the framework for the allocation of state advertising by public authorities at all levels, in particular to improve transparency of its distribution, with no progress on the fairness of its distribution.
- No progress on advancing with the reform on access to official information taking into account the European standards on access to official documents.

On this basis, and considering other developments that took place in the period of reference, it is recommended to Austria to:

- Take forward the reform to establish an independent Federal Prosecution Office, taking into account European standards on the independence and autonomy of the prosecution, including to ensure the independent operation of the specialised anti-corruption prosecution.
- Address the need for involvement of the judiciary in the procedures for appointment of court presidents of administrative courts, taking into account European standards on judicial appointments and the selection of court presidents.
- Introduce effective rules on assets and interests' declaration for Members of Parliament, including effective monitoring and sanctioning mechanisms.
- Adopt legislation to strengthen the framework on lobbying, including on its scope, supervision and enforcement.
- Take further steps to reform of the framework for the allocation of state advertising by public authorities at all levels, in particular to improve the fairness of its distribution.
- Advance with the reform on access to official information taking into account the European standards on access to official documents.

## I. JUSTICE SYSTEM

The Austrian justice system has two separate branches. The ordinary jurisdiction consists of 115 district courts, 20 regional courts, four higher regional courts and the Supreme Court. Austria also has a separate administrative court system with eleven first-instance administrative courts (nine regional administrative courts, one federal administrative court and the finance court) and the Supreme Administrative Court<sup>1</sup>. The Constitutional Court, i.a. ensures the review of the constitutionality of federal and regional laws and of the legality of decrees<sup>2</sup>. Judicial appointments are made by the executive based on non-binding proposals by staff panels composed of judges<sup>3</sup> or plenary assemblies of a court, which draw up a ranked list of three candidates for each post<sup>4</sup>. The Prosecution Service is a judicial authority set up in a hierarchical structure under the supervision of the Minister of Justice, who can issue both general instructions and instructions in individual cases<sup>5</sup>. Austria participates in the European Public Prosecutor's Office (EPPO). Lawyers are registered in one of the nine local bar associations, which are public law corporations and autonomous self-governing bodies, with the Federal Bar Association as an umbrella organisation<sup>6</sup>.

### Independence

**The level of perceived judicial independence in Austria continues to be very high both among the general public and companies.** Overall, 83% of the general population and 80% of companies perceived the level of independence of courts and judges to be 'fairly or very good' in 2023<sup>7</sup>. According to data in the 2023 EU Justice Scoreboard, the level remains consistently high for both the general public and companies since 2016. The perceived judicial independence among the general public remains at the same level as in 2022 and is higher than in 2016 (77%). The perceived judicial independence among companies has increased in comparison with 2022 (77%), as well as with 2016 (66%).

**A reform to provide for judicial involvement in the appointment of the Supreme Court president and vice-presidents was adopted.** The 2022 Rule of Law Report recommended to Austria to "[a]ddress the need for involvement of the judiciary in the procedures for appointment of the president and vice-president of the Supreme Court [...], taking into

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<sup>1</sup> Several of the district and regional courts are specialised courts. This structure does not necessarily correspond to the appeals instances. See CEPEJ (2022), Study on the functioning of judicial systems in the EU Member States.

<sup>2</sup> For the tasks of the Constitutional Court see Federal Constitutional Law, §§ 137-148.

<sup>3</sup> Staff panels exist at regional and higher regional courts, the Supreme Court and administrative courts and the staff panels at the regional courts are also responsible for proposals for district courts. Staff panels include the president, vice-president and three to five other members of the court, which are elected by their peers. Constitution Art. 87 paras. 2-3 and Service Act for Judges and Public Prosecutors §§ 25 to 49.

<sup>4</sup> Before becoming an ordinary court judge, candidates must first apply to a post for a candidate judge and complete a traineeship (usually four years). Candidate judges are appointed by the executive on proposal of the external senates at the Higher Regional Courts. After completing the traineeship, they can apply for a vacant post in accordance with the procedure described above. Service Act for Judges and Public Prosecutors, §§ 1 to 24. There is no judicial review of appointment decisions.

<sup>5</sup> Public Prosecutors Act, §§ 8, 8a, 29-31.

<sup>6</sup> Lawyers Code, Chapters III and V.

<sup>7</sup> Figures 49 and 51, 2023 EU Justice Scoreboard. The level of perceived judicial independence is categorised as follows: very low (below 30% of respondents perceive judicial independence as fairly good and very good); low (between 30-39%), average (between 40-59%), high (between 60-75%), very high (above 75%).

account European standards on judicial appointments and the selection of court presidents”<sup>8</sup>. As noted in the 2022 Rule of Law Report<sup>9</sup>, the absence of judicial involvement in these appointments had come under scrutiny, also in view of information released about secret political side-agreements regarding top-level judicial appointments. Following a stakeholder consultation, the Government submitted a draft reform of the appointment procedure for the Supreme Court president and vice-president to Parliament in November 2022, which was adopted on 21 December 2022, and entered into force on 1 January 2023<sup>10</sup>. The amended law<sup>11</sup> provides that these appointments, which until now were made by the Federal President upon proposal of the Federal Government or the Minister of Justice, ensure judicial involvement through a proposal by a staff panel<sup>12</sup>. This newly created staff panel includes the five elected members of the external senate of the Supreme Court<sup>13</sup> and the three elected members of the staff panel of the Supreme Court<sup>14</sup>. This reform is in line with European standards according to which the procedures for the appointment of presidents of courts should follow the same path as that for the selection and appointment of judges<sup>15</sup>. Stakeholders<sup>16</sup>, including the Supreme Court<sup>17</sup>, have welcomed this reform, which responds to a long-standing demand. The new system is being applied for the first time in 2023, as both the president and a vice-president are reaching retirement age<sup>18</sup>. Therefore, this part of the recommendation made in the 2022 Rule of Law Report has been fully implemented.

**There has been no progress to address the need for judicial involvement in appointments for administrative court presidents, which continues to raise concerns.** The 2022 Rule of Law Report recommended to Austria to “[a]ddress the need for involvement of the judiciary in the procedures for appointment [...] for court presidents of administrative courts, taking into account European standards on judicial appointments and the selection of court presidents”<sup>19</sup>. As noted in previous Rule of Law Reports<sup>20</sup>, the fact that vice-presidents and presidents are appointed without systematic involvement of the

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<sup>8</sup> 2022 Rule of Law Report, Country Chapter on the rule of law situation in Austria, p. 2.

<sup>9</sup> 2022 Rule of Law Report, Country Chapter on the rule of law situation in Austria, pp. 3-4.

<sup>10</sup> This reform was part of a larger omnibus legislation, the Second Service Law Amendment 2022 (2. *Dienstrechtssnovelle 2022*).

<sup>11</sup> These provisions are to be found in the revised article §32 of the Service Act for Judges and Prosecutors.

<sup>12</sup> Input from Austria for the 2023 Rule of Law Report, pp. 4-5.

<sup>13</sup> The External Senate at the Supreme Court consists of two ex-officio members (president and vice-president) and five judges elected by their peers, who are elected by the elected members of the staff panels at the Upper Regional Courts and the Supreme Court from among all eligible judges at the Upper Regional Courts and the Supreme Court. § 36a, Service Act for Judges and Prosecutors.

<sup>14</sup> See FN 3 on the composition of staff panels. Input from Austria for the 2023 Rule of Law Report, pp. 4-5.

<sup>15</sup> CCJE Opinion No. 19 (2016) on the role of court presidents, para. 38, which refers to the standards established in Recommendation CM/Rec(2010)12 of the Committee of Ministers of the Council of Europe to member states on judges: independence, efficiency and responsibilities.

<sup>16</sup> Contributions from the Austrian Association of Prosecutors, the Association of European Administrative Judges (Austria) and the Austrian Association of Judges for the 2023 Rule of Law Report, see also Position paper by the Austrian Association of Judges on the stakeholder consultation on the draft law.

<sup>17</sup> Contribution from the Supreme Court for the 2023 Rule of Law Report.

<sup>18</sup> Contribution from the Supreme Court for the 2023 Rule of Law Report. The calls for applications for both posts were opened on 18 April 2023 and close on 26 May.

<sup>19</sup> 2022 Rule of Law Report, Country Chapter on the rule of law situation in Austria, p. 2.

<sup>20</sup> 2022, 2021 and 2020 Rule of Law Reports, Country Chapter on the rule of law situation in Austria, pp. 4-5, pp. 4-5 and pp. 2-3, respectively.

judiciary<sup>21</sup>, combined with their broad powers and duties and the fact that they do not have to be selected from among already appointed judges<sup>22</sup>, raises concerns with regard to European standards<sup>23</sup>. These concerns continue to materialise in a number of recent appointment procedures<sup>24</sup>, with stakeholders continuing to raise the need for reform<sup>25</sup>. The authorities indicate that no specific measures have been taken in this respect, nor are they currently envisaged<sup>26</sup>. The Court of Audit also raised this issue in a recent audit of the Federal Administrative Court<sup>27</sup>. It should be recalled that, according to Council of Europe recommendations, if the executive takes decisions regarding the selection of judges, an independent and competent authority drawn in substantial part from the judiciary should be authorised to make recommendations or express opinions that the executive follows in practice<sup>28</sup>. Therefore, in the absence of concrete steps to address the persisting concerns, no progress has been made on this part of the recommendation made in the 2022 Report.

**The reform improving the involvement of the judiciary in the appointment of candidate judges has been adopted.** Amendments to the system of appointment of candidate judges, while not included, as initially planned, in the ‘First service law amendment 2022’ adopted in

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<sup>21</sup> Contribution from the Association of European Administrative Judges (Austria) for the 2023 Rule of Law Report, pp. 15-16. As further explained in the 2022, 2021 and 2020 Rule of Law Reports, Country Chapter on the rule of law situation in Austria, pp. 4-5, pp. 4-5 and pp. 2-3, respectively.

<sup>22</sup> 2020 Rule of Law Report, Country Chapter on the rule of law situation in Austria, pp. 2-3.

<sup>23</sup> CCJE Opinion No. 19 (2016) on the role of court presidents, para. 38, and Recommendation CM/Rec(2010)12 of the Committee of Ministers of the Council of Europe to member states on judges: independence, efficiency and responsibilities, para. 47.

<sup>24</sup> For example, the appointment of the president of the regional administrative court in Styria, where the call for applications did not include judicial experience as a criterion. Association of Austrian Administrative Judges, Regional Administrative Court Styria – Vacancy for the President’s post. See also as regards the currently on-going appointment procedure for the post of president of the Federal Administrative Court, where the selection procedure by the appointment committee has been concluded, but no formal decision (to be taken by the Federal Government) has been made. Association of Austrian Administrative Judges, Appointment of the new president of the Federal Administrative Court as pawn of politics.

<sup>25</sup> Contribution from the Association of European Administrative Judges (Austria) for the 2023 Rule of Law Report, p. 15 and contribution from the Austrian Association of Judges for the 2023 Rule of Law Report, p. 10. This has also been flagged by GRECO. GRECO Fourth Evaluation Round – Interim Compliance Report, recommendation xi, paras. 27-37; GRECO Fourth Evaluation Round – Second Interim Compliance Report, recommendation xi paras. 50-66.

<sup>26</sup> Input from Austria for the 2023 Rule of Law Report, p. 5, as further confirmed by the Ministry of Justice in the context of the country visit to Austria.

<sup>27</sup> The Court of Audit, citing also concerns raised by the European Commission, recommends to the Ministry of Justice to examine whether the existing rules for the appointment of the (vice-)presidents of the Federal Administrative Courts can ensure the necessary transparency and traceability of appointment decisions, and if not, to reform them. Report, Court of Audit (2023), Report on the Federal Administrative Court, p. 74. More generally, there continues to be a lack of uniformity in the recruitment procedures for regular administrative judges. While no mandatory training of new judges is foreseen, since 2020 there exists a modular introductory programme for newly appointed judges as part of the Austrian Academy of Administrative Jurisdiction, that is completed continuously. Contribution from the Association of European Administrative Judges (Austria) for the 2023 Rule of Law Report, pp 15-16 and p. 21 and written contribution from Austria for the 2023 Rule of Law Report. See in this respect, GRECO, Fourth Evaluation Round – Second Interim Compliance Report, recommendation ix, paras. 55-66.

<sup>28</sup> Recommendation CM/Rec(2010)12 of the Committee of Ministers of the Council of Europe to member states on judges: independence, efficiency and responsibilities, para. 47.



July 2022<sup>29</sup>, were finally adopted as part of the ‘Second Service Law Amendment 2022’ on 22 December 2022 and entered into force on 1 January 2023. Under the new legal regime, as reported in the 2022 Rule of Law Report<sup>30</sup>, external senates at the Higher Regional Courts will make proposals for the appointment of candidate judges (which was previously done directly by the court presidents)<sup>31</sup>, who are then appointed by the Minister of Justice<sup>32</sup>. This constitutes an improvement vis-à-vis European standards according to which, when the Government or the legislative power take decisions concerning the selection of judges, an independent and competent authority drawn in substantial part from the judiciary should be authorised to make recommendations or express opinions which the relevant appointing authority follows in practice<sup>33</sup>. Overall, stakeholders evaluate this reform positively<sup>34</sup>, and indicate that once the new system has been applied for the first time in all courts, by mid-2023, further conclusions about its functioning can be drawn and experience-sharing between the courts will be organised<sup>35</sup>.

**There has been no further progress made on the reform of the prosecution service, with the expert group’s final report yet to be followed-up.** The 2022 Rule of Law Report recommended to Austria to “[c]ontinue the reform to establish an independent Federal Prosecution Office, taking into account European standards on the independence and autonomy of the prosecution, including to ensure the independent operation of the specialised anti-corruption prosecution”<sup>36</sup>. The expert group, composed of high-level representatives of all key stakeholders of the Austrian judiciary<sup>37</sup>, and set up in spring 2021<sup>38</sup> to propose a model for such a reform, presented its final report in September 2022<sup>39</sup>. In the report, the working group proposes the introduction of an independent Prosecutor General’s Office, headed by a Prosecutor General<sup>40</sup>, who should be appointed upon a proposal from a staff panel, similar to those existing for appointments of judges (which are composed in majority

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<sup>29</sup> As had been noted in the 2022 Rule of Law Report, Country Chapter on the rule of law situation in Austria, pp. 6-7, these amendments had been included in the draft of the First Service Law Amendment 2022. However, the version adopted in July 2022 did ultimately not retain the provision on candidate judges.

<sup>30</sup> 2022 Rule of Law Report, Country Chapter on the rule of law situation, pp. 6-7.

<sup>31</sup> As stipulated in the revised §3 of the Service Act for Judges and Prosecutors. In addition, the reform formalised certain requirements for the interview to be conducted by the court president.

<sup>32</sup> §3, Service Act for Judges and Prosecutors.

<sup>33</sup> Recommendation CM/Rec(2010)12 of the Committee of Ministers of the Council of Europe to member states on judges: independence, efficiency and responsibilities, para. 47. This has also been subject to recommendations by GRECO. GRECO Fourth Evaluation Round – Interim Compliance Report, recommendation x, paras. 27-32 and GRECO Fourth Evaluation Round – Second Interim Compliance Report, recommendation x, paras. 55-54.

<sup>34</sup> Contribution from the Austrian Association of Judges for the 2023 Rule of Law Report, p. 3. Information received from the Supreme Court in the context of the country visit to Austria.

<sup>35</sup> Information received from the Austrian Association of Judges in the context of the country visit to Austria.

<sup>36</sup> 2022 Rule of Law Report, Country Chapter on the rule of law situation in Austria, p. 2.

<sup>37</sup> The working group, chaired by the Head of the Criminal Law section in the Ministry of Justice, included the President of the Supreme Court, the General Procurator, the Heads of all Senior Prosecution Offices, the Head of the WKStA, the Presidents of the Associations of Judges and of Prosecutors and of the Federal Bar as well as a number of representatives of the Ministry of Justice, the Federal Chancellery and a number of University Professors specialised in criminal law. Final Report of the expert group, p. 3-5.

<sup>38</sup> 2022 Rule of Law Report, Country Chapter on the rule of law situation in Austria, p. 5; see also Final Report of the expert group, p. 2.

<sup>39</sup> Available at <https://www.bmj.gv.at/themen/Strafrecht--Gesetze/Generalstaatsanwaltschaft0.html>.

<sup>40</sup> Final Report of the expert group, p. 18.

of representatives of the judiciary selected by their peers)<sup>41</sup>. The Prosecutor General would need to fulfil the requirements for appointment as a judge and have a minimum of ten years of experience in criminal law<sup>42</sup>. Instructions in individual criminal cases would be issued by senates of three prosecutors (from the new Prosecutor General's office), which the report notes to be inspired by the EPPO<sup>43</sup>. Parliamentary control should be possible for administrative matters and cases that have been concluded, but not for ongoing cases, which should be subject only to review by the courts<sup>44</sup>. However, no political agreement has so far been found on key aspects of the reform within the Government coalition<sup>45</sup> and only internal technical preparations of a draft have taken place, that have to await further political guidance<sup>46</sup>. Subjects of debate include particularly the parliamentary control on the Prosecutor General and whether instructions should be issued by one Prosecutor General or by senates of three prosecutors as proposed by the expert group<sup>47</sup>. It is important that the reform takes into account European standards regarding the independence and accountability of the prosecution service<sup>48</sup>. As regards parliamentary control, it should be noted that according to Council of Europe recommendations, regular reporting should not extend to an obligation to report to the Parliament on the details of individual cases<sup>49</sup>. In view of the absence of political agreement so far to take a reform forward, no further progress has been made on the recommendation made in the 2022 Rule of Law Report.

**Legislative amendments to further reduce reporting obligations for prosecutors remain under preparation at the level of the Ministry of Justice.** The legislative amendments to the Public Prosecutor's Act, which would limit 'information reporting' obligations for prosecutors ahead of major procedural steps, considered to be particularly burdensome by prosecutors<sup>50</sup>, remain under preparation in the Ministry of Justice, as they are part of a larger reform package related to criminal procedure that is pending internal finalisation<sup>51</sup>. In March 2023, GRECO recommended to Austria to ensure the operational independence of the Central Public Prosecutor's Office for Combating Economic Crimes and Corruption (WKStA), including by revising the use of regular reporting to the Ministry of Justice<sup>52</sup>.

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<sup>41</sup> More specifically, a proposal of a list of three candidates should be made by a panel composed of the five elected members of the external senate of the Prosecutor General's Office and three elected members of the staff panel of the Office. A ninth member with significant experience should be appointed as chair (either the most senior head of a Senior Prosecution Office or the Supreme Court President). The Minister of Justice on this basis proposes the candidate for appointment and has to motivate a deviation from the list of candidates. The appointment would be made by the President of the Republic, who has no discretion. Final Report of the expert group, pp. 20-23.

<sup>42</sup> Final Report of the expert group, p. 24.

<sup>43</sup> This model was chosen to create a broad basis for the decision on instructions (as is the case in courts deciding in senates) but also to increase public acceptance and the guarantees of well-founded decision-making. Final report of the expert group, pp. 28-29.

<sup>44</sup> Final Report of the expert group, p. 20.

<sup>45</sup> Input from Austria for the 2023 Rule of Law Report, p. 3-4.

<sup>46</sup> Information received from the Ministry of Justice in the context of the country visit to Austria.

<sup>47</sup> Input from Austria for the 2023 Rule of Law Report, p. 3-4.

<sup>48</sup> See in particular Recommendation CM/Rec(2000)19 of the Committee of Ministers of the Council of Europe on the Role of Public Prosecution in the Criminal Justice System and Venice Commission (CDLAD(2010)040-e), Report on European Standards as regards the Independence of the Judicial System: Part II - the Prosecution Service.

<sup>49</sup> Venice Commission Opinion CDL-AD(2022)032 on Bulgaria, para. 23.

<sup>50</sup> 2022 Rule of Law Report, Country Chapter on the rule of law situation in Austria, p. 6.

<sup>51</sup> Information received from the Ministry of Justice in the context of the country visit to Austria.

<sup>52</sup> GRECO Fifth Evaluation Round – Evaluation Report – recommendation xii, para. 140.

Based on the reporting, the Ministry of Justice can issue instructions to the prosecution and it gave instructions in individual cases in 13 instances in 2022<sup>53</sup>. The draft annual Report on instructions for 2021 is expected to be completed by the Federal Ministry of Justice by the end of June 2023 and will subsequently be presented to Parliament and published.

**Discussions on a reform of the system for the evaluation of judges continue.** As noted in the 2022 Rule of Law Report<sup>54</sup>, a pilot project was conducted in 2022 to test a new system of periodic evaluations (in parallel to the regular evaluations). It has now been concluded<sup>55</sup>. While the pilot showed some benefits as the new evaluation system appears to be more focussed on providing concrete feedback, it also revealed that the system is resource-intensive. A survey among judges in 2022 had found resistance against introducing such a new system<sup>56</sup>. Discussions between the Ministry of Justice and stakeholders continue, with no concrete further steps taken at this stage<sup>57</sup>. As regards administrative courts, concerns continue to be raised about the possibility of an automatic dismissal or early retirement in case of two ‘not satisfactory’ evaluations in consecutive calendar years<sup>58</sup>. In a judgment of March 2023<sup>59</sup>, and on a referral from the Supreme Administrative Court, the Constitutional Court found that the fact that the staff senates at administrative courts are responsible for evaluations is in compliance with the Constitution.

## Quality

**Resources for the judiciary continue to be increased, also at the Federal Finance Court, while filling vacancies, including for court staff, is a challenge.** The budget for the judiciary has been further increased in 2023, with an additional EUR 215 million (11.48% increase compared to 2022), intended in particular to cover higher personnel costs linked to wage increases and inflation, and to fill vacant and new positions<sup>60</sup>. This increase has been

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<sup>53</sup> As of 12 June 2023, 11 instructions in individual cases had been issued in 2023. Information received from the Council of Directives in the context of the country visit to Austria and written contribution from Austria for the 2023 Rule of Law Report. There was one case in 2022 where the Ministry of Justice did not fully follow the non-binding opinion of the Council of Directives, but it did not concern an instruction in an individual case. The Council of Directives is an independent advisory council for the Minister of Justice tasked with providing a non-binding opinion on all instructions in individual cases (as well as certain other types of instructions) before they are issued. § 29 b-c, Law on Prosecutors. See also 2020 Rule of Law Report, Country Chapter on the rule of law situation in Austria, p. 4.

<sup>54</sup> 2022 Rule of Law Report, Country Chapter on the rule of law situation in Austria, p. 7.

<sup>55</sup> Information received from the Ministry of Justice and the Austrian Association of Judges in the context of the country visit to Austria.

<sup>56</sup> Information received from the Austrian Association of Judges in the context of the country visit to Austria.

<sup>57</sup> Information received from the Ministry of Justice and the Austrian Association of Judges in the context of the country visit to Austria.

<sup>58</sup> Contribution from the Association of European Administrative Judges (Austria), p. 16 and 18. This evaluation (*nicht entsprechend*) is the lowest grade on the five grade scale. Evaluations in consecutive years only take place if there is an evaluation below ‘very good’. Service Act on Judges and Prosecutors, § 88. If the judge does not comply with a request for this automatic retirement, the relevant service court will be seized on the matter, see Service Act on Judges and Prosecutors, § 92. See 2022 Rule of Law Report, Country Chapter on the rule of law situation

<sup>59</sup> Judgment by the Constitutional Court of 07 March 2023, G 282-283/2022.

<sup>60</sup> Input from Austria for the 2023 Rule of Law Report, p. 7. Overall, 122 additional posts were allocated in the judiciary in 2022 (this includes 4 posts at the Data Protection Authority and 10 in correctional institutions). Written contribution from the Ministry of Justice in the context of the country visit.

broadly welcomed by stakeholders<sup>61</sup>. At the Federal Finance Court, where specific challenges had been identified in past Reports<sup>62</sup>, a significant number of vacancies has been filled, with currently 200 of 224 judges' positions filled and a call for applications for 16 further posts launched<sup>63</sup>. As regards court staff, a call for up to 20 legal assistants is planned for 2023 considering that, currently, the overall number remains low compared to the number of judges<sup>64</sup>. However, all vacancies at the Finance Court have to be authorised by the Minister of Finance before publication, even if a budget has been allocated, which can lead to delays<sup>65</sup>. Stakeholders report difficulties to fill open vacancies for judges as well as to recruit qualified court staff, after such positions had seen significant cuts under previous Governments<sup>66</sup>, citing overall issues of the attractiveness of the profession and salaries<sup>67</sup>.

**The implementation of the 'Justice 3.0' project for the roll-out of electronic files continues to advance.** The level of digitalisation of justice in Austria is overall very advanced, with comprehensive procedural rules allowing digital technology in courts, though these are less developed for administrative cases<sup>68</sup>. The roll-out of the 'Justice 3.0' digitalisation project to introduce the electronic file continues. As of June 2023, the move to electronic files has been concluded in 138 civil and criminal courts and 17 prosecution offices<sup>69</sup>, and certain types of proceedings at the Supreme Court and General Prosecutor's Office are also conducted completely digitally<sup>70</sup>. By the end of 2023, the aim is to have civil and criminal proceedings fully digitalised, while by 2025 all new cases should be fully conducted digitally. However, administrative courts do not participate in this project and instead follow individual digitalisation projects. While the regional administrative courts exchange best practices, challenges exist, linked to diverging systems used as well as the format in which documents are received from public authorities<sup>71</sup>.

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<sup>61</sup> Contribution from Austrian Association of Judges for the 2023 Rule of Law Report, p. 12. Information received i.a. from the Association of Judges and the Association of Prosecutors in the context of the country visit to Austria.

<sup>62</sup> Input from Austria for the 2023 Rule of Law Report, p. 8.

<sup>63</sup> This figure includes 1 legal assistant working on a judges' posts. 18 judges are expected to retire in 2023. The additional appointments are planned for the first quarter of 2024. Written contribution from the Ministry of Justice in the context of the country visit.

<sup>64</sup> Currently, 52 out of 56 court staff positions are filled. Written contribution from the Ministry of Justice in the context of the country visit to Austria.

<sup>65</sup> Contribution from the Association of European Administrative Judges (Austria), p. 17.

<sup>66</sup> In this respect, see the 2019 Report by the Ministry of Justice, Measures for a modern and high-quality justice system, 2020 Rule of Law Report, Country Chapter on the rule of law situation in Austria, p. 5.

<sup>67</sup> Information received in the context of the country visit to Austria. See in this respect Recommendation CM/Rec(2010)12 of the Committee of Ministers of the Council of Europe, para. 35.

<sup>68</sup> Figure 41, 2023 EU Justice Scoreboard. Digital solutions to initiate and follow proceedings are also well-developed in civil and commercial as well as criminal cases, but this is less the case for administrative cases. Figures 45-46, 2023 EU Justice Scoreboard.

<sup>69</sup> Out of the 139 district, regional and higher regional courts of the ordinary court system and the 20 prosecution offices.

<sup>70</sup> More than 750 000 files were processed exclusively digitally and more than 200 000 hearings were held digitally. Over 500 courtrooms are equipped and available for conducting hearings digitally. Input from Austria for the 2023 Rule of Law Report, p. 8 and updated provided by the Ministry of Justice in the context of the country visit to Austria.

<sup>71</sup> Information received from Association of Austrian Administrative Judges and the Regional Administrative Courts in the context of the country visit to Austria.

**Concerns continue to be raised over the lack of a cap on court fees.** As a result of the legislative amendments to reduce certain court fees adopted in April 2022<sup>72</sup>, the legally planned adjustment of court fees when the inflation rate is above 5%, which had been postponed in 2022, is expected to take place in 2023<sup>73</sup>. While in 2022 the weight of the revenue from court fees in relation to the judiciary's budget was at less than 100%, it remains overall high<sup>74</sup>. However, stakeholders continue to raise concerns over the absence of a cap on court fees<sup>75</sup> in mid- and high-value cases, which could affect access to justice<sup>76</sup>. While the Ministry of Justice has evaluated this matter comprehensively, it has not been taken forward for budgetary reasons<sup>77</sup>.

## **Efficiency**

**The justice system continues to perform well in terms of overall efficiency, with further improvements in administrative cases.** As regards litigious civil and commercial cases, the average time to resolve them has decreased, after a slight increase in the previous year and remains overall very low (135 days in 2021 compared to 156 days in 2020)<sup>78</sup>, with an improved clearance rate at 103.7% (99.8% in 2020)<sup>79</sup>. The number of pending litigious civil and commercial cases remains low (0.4 cases per 100 inhabitants), showing that the justice system overall handles its caseload efficiently<sup>80</sup>. Concerning administrative cases, the positive trend already identified in the past two Rule of Law Reports<sup>81</sup> continues, with the clearance rate remaining very high (125.2% in 2021 compared to 126% in 2020<sup>82</sup>) and a significant further reduction in the average time to resolve administrative cases (312 days in 2021 compared to 388 days in 2020<sup>83</sup>). In a recent audit, the Court of Audit noted that specifically at the Federal Administrative Courts there is still room for improvement as regards lengths of proceedings and backlogs<sup>84</sup>.

## **II. ANTI-CORRUPTION FRAMEWORK**

Austria has a National Anti-Corruption Strategy, adopted in 2018, and an accompanying Federal Action Plan 2019-2020. The relevant authorities involved in the prevention of and the

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<sup>72</sup> 2022 Rule of Law Report, Country Chapter on the rule of law situation in Austria, p. 9.

<sup>73</sup> As foreseen in §31a of the Court Fees Act. Information received by the Ministry of Justice in the context of the country visit to Austria.

<sup>74</sup> The major part of court fees (around 80% in the recent years) results from services provided by automated registers (mainly land and business registers). In 2022, 81% (and in 2021, 83%) of the judiciary's expenditure (including detention facilities) were covered by revenues from court fees. Input from Austria for the 2023 Rule of Law Report, p. 7 and written contribution from the Ministry of Justice in the context of the country visit.

<sup>75</sup> Court fees are calculated as a percentage of the value of the case and, in the absence of a cap on fees, can, therefore, be very high in high-value cases.

<sup>76</sup> Contribution from the Austria Bar Association for the 2023 Rule of Law Report, p. 12. Contribution from the CCBE for the 2023 Rule of Law Report, p. 11.

<sup>77</sup> Information received from the Ministry of Justice in the context of the country visit to Austria.

<sup>78</sup> Figure 7, 2023 EU Justice Scoreboard.

<sup>79</sup> Figure 11, 2023 EU Justice Scoreboard.

<sup>80</sup> Figure 14, 2023 EU Justice Scoreboard.

<sup>81</sup> 2022 and 2021 Rule of Law Reports, Country Chapter on the rule of law situation in Austria, p. 9 and p. 8 respectively.

<sup>82</sup> Figure 12, 2023 EU Justice Scoreboard.

<sup>83</sup> Figure 9, 2023 EU Justice Scoreboard.

<sup>84</sup> Court of Audit (2023), Report on the Federal Administrative Court.

fight against corruption include the Federal Ministry of Justice and its Coordinating Body for the Fight against Corruption, the Central Public Prosecutor's Office for Combating Economic Crimes and Corruption (WKStA), the Federal Ministry of the Interior and its Federal Bureau of Anti-Corruption (BAK) and the Criminal Intelligence Service (BK) as well as the Court of Audit. The legal framework includes relevant provisions in the Criminal Code and the Code of Criminal Procedure as well as specific legislation in the fight against corruption<sup>85</sup>.

**The perception among experts and business executives is that the level of corruption in the public sector remains relatively low.** In the 2022 Corruption Perceptions Index by Transparency International, Austria scores 71/100 and ranks 11<sup>th</sup> in the European Union and 22<sup>nd</sup> globally<sup>86</sup>. This perception has deteriorated over the past five years<sup>87</sup>. The 2023 Special Eurobarometer on Corruption shows that 60% of respondents consider corruption widespread in their country (EU average 70%) and 17% of respondents feel personally affected by corruption in their daily lives (EU average 24%)<sup>88</sup>. As regards businesses, 56% of companies consider that corruption is widespread (EU average 65%) and 23% consider that that corruption is a problem when doing business (EU average 35%)<sup>89</sup>. Furthermore, 44% of respondents find that there are enough successful prosecutions to deter people from corrupt practices (EU average 32%)<sup>90</sup>, while 40% of companies believe that people and businesses caught for bribing a senior official are appropriately punished (EU average 30%)<sup>91</sup>.

**In January 2023, a draft law to extend criminal liability in corruption cases was presented by the Ministry of Justice, which stakeholders welcomed while suggesting further amendments.** The draft law<sup>92</sup>, which was sent out for public consultation in January 2023, is expected to be tabled in Parliament by the end of June 2023<sup>93</sup>. The draft proposes strengthening the criminal law framework. It criminalises the so-called purchase of political

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<sup>85</sup> Relevant legislation includes: the Federal Act on the Establishment and Organisation of the Federal Bureau of Anti-Corruption, the Federal Statute on Responsibility of Entities for Criminal Offences and the Federal Act on Extradition and Mutual Assistance in Criminal Matters. See 2020 Rule of Law Report, Country Chapter on the rule of law situation in Austria, p. 6 and 2021 Rule of Law Report, Country Chapter on the rule of law situation in Austria, p. 8-9.

<sup>86</sup> Transparency International (2023), Corruption Perceptions Index 2022. The level of perceived corruption is categorised as follows: low (the perception among experts and business executives of public sector corruption scores above 79); relatively low (scores between 79-60), relatively high (scores between 59-50), high (scores below 50).

<sup>87</sup> In 2018 the score was 76, while, in 2022, the score is 71. The score significantly increases/decreases when it changes more than five points; improves/deteriorates (changes between 4-5 points); is relatively stable (changes from 1-3 points) in the last five years.

<sup>88</sup> Special Eurobarometer 534 on Corruption (2023). The Eurobarometer data on citizens' corruption perception and experience is updated every year. The previous data set is the Special Eurobarometer 523 on Corruption (2022).

<sup>89</sup> Flash Eurobarometer 524 on Businesses' attitudes towards corruption in the EU (2023). The Eurobarometer data on business attitudes towards corruption as is updated every year. The previous data set is the Flash Eurobarometer 507 (2022).

<sup>90</sup> Special Eurobarometer 534 on Corruption (2023).

<sup>91</sup> Flash Eurobarometer 524 on Businesses' attitudes towards corruption in the EU (2023).

<sup>92</sup> Austrian Parliament (2023), Corruption Criminal Law Amendment Act 2023 – KorrStrÄG 2023 (244/ME).

<sup>93</sup> The review period ended on 9 March 2023. The Government has revised the draft according to the outcome of the public consultation. Input from Austria for the 2023 Rule of Law Report, p. 18; information received from the Ministry of Justice in the context of the country visit to Austria.

mandates<sup>94</sup>, extends criminal liability for bribery to also cover candidates for public office, introduces higher penalties for corruption offenses, and foresees additional sanctions for certain corruption offences such as losing eligibility for office<sup>95</sup>. Stakeholders have welcomed the draft law as addressing certain existing loopholes and suggested further amendments<sup>96</sup>. For example, in contributions to the stakeholder consultation<sup>97</sup>, suggestions were made to recommend criminal liability even in the case of bribery of unsuccessful candidates (while in the draft the criminal liability depends on whether candidates actually become public officials), as well as to address criminalisation of candidate corruption also as concerns all transactions performed as part of official duties not only if such transactions are explicitly in breach of their duties), and addressing the purchase of official transactions via payments to charitable institutions.

**The final evaluation report of the 2019-2020 Action Plan accompanying and proposing amendments to the National Anti-Corruption Strategy was adopted, and the 2023-2025 Action Plan is being drafted.** The evaluation will serve as a basis for the further development of the next action plans<sup>98</sup>. In order to ensure consistency with the results of the evaluation, a strategy team, coordinated by the BAK and consisting of representatives of the Federal Chancellery, the Federal Ministry of Justice, the Federal Ministry for Arts, Culture, Civil Service and Sport as well as the BAK, amended the National Anti-Corruption Strategy, which has been sent out for comments to all participating institutions until April 2023<sup>99</sup>. The new action plan for 2023-2025 is being prepared<sup>100</sup>. The plan is expected to be adopted by the Government in summer 2023<sup>101</sup>. In 2022, the BAK continued to run and promote the Network of Integrity Officers, providing individual consultancy regarding inquiries received by network members<sup>102</sup>. Following the suspension due to the COVID-19 pandemic, in September 2022 the BAK restarted its advanced training courses with 25 participants from various fields of activity in the Federal Ministry of the Interior<sup>103</sup>.

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<sup>94</sup> By punishing purchase of political mandates, the provision aims to extend criminal liability to political parties (para. 1) and persons (para. 2) who offer, promise or grant remuneration for themselves or a third party to influence the allocation of a mandate (§ 265a StGB).

<sup>95</sup> Input from Austria for the 2023 Rule of Law Report, p. 18.

<sup>96</sup> In their opinion, the Association of Austrian Public Prosecutors and the Vienna Public Prosecutor's Office calls for the inclusion of a broader definition of remuneration in purchase of political mandates, for example including intangible services or non-monetary favours, etc.

<sup>97</sup> Transparency International Austria, Association of Austrian Public Prosecutors and Vienna Public Prosecutor's Office (2023) in their opinions on the ministerial draft. Additionally, the Austrian Court of Audit also gave a contribution to the stakeholder process to the draft law (Corruption Criminal Law Amendment Act 2023 – KorrStrÄG 2023).

<sup>98</sup> Information received from the Ministry of Justice in the context of the country visit to Austria. The Government has committed to publish the report soon.

<sup>99</sup> Information received from the Ministry of Justice in the context of the country visit to Austria. Three main amendments were highlighted by the Ministry of Justice: the duration of the action plan is extended from 2 to 3 years in order to facilitate the implementation of the findings of the evaluation; Strategy coordinators shall be nominated in each ministry, in order to ensure consistency in responsibility and competence, both for the implementation and evaluation of the Strategy; the new action plan will include a separate column on performance indicators in order to facilitate the continuous monitoring and final evaluation of the action plan itself.

<sup>100</sup> Input from Austria for the 2023 Rule of Law Report, p. 12.

<sup>101</sup> Written input from Ministry of Justice following the country visit of Austria.

<sup>102</sup> Input from Austria for the 2023 Rule of Law Report, p. 13.

<sup>103</sup> Ibidem. Moreover, in November 2022, the BAK held the autumn conference 2022 of Corruption Prevention Officers together with the Compliance Officers of the regional police directorates and the Chief Compliance

**High-level corruption investigations are proceeding, and prosecutors experience high scrutiny with regard to specific cases.** As already noted in the 2022 Report<sup>104</sup>, a number of high-level corruption investigations are ongoing and have proceeded during the reporting period<sup>105</sup>. While instances of direct attacks against prosecutors in this context were reported to have stopped by early 2022<sup>106</sup>, public scrutiny remains high, including for prosecutors' daily actions with regard to specific cases<sup>107</sup>. Prosecutors also note that a climate of political mistrust in the judiciary prevails<sup>108</sup>. More generally, the BAK detected 68 potential cases of corruption in 2022<sup>109</sup> in addition to 638 potential cases of abuse of authority<sup>110</sup>. Regarding the outcomes of criminal proceedings against legal persons for corruption offences, since 2019<sup>111</sup> one case led to conviction (in 2019), 28 to indictments and 31 to discontinuation of investigation proceedings. A total of 112 alleged corruption cases against legal persons are reported to be pending<sup>112</sup>.

**The parliamentary investigative committee on alleged corruption concerning a governmental political party has submitted its final report to the plenary.** As reported last year<sup>113</sup>, the committee was set-up in December 2021 and commenced with the first hearings in March 2022<sup>114</sup>. The evidence hearing period ended in February 2023<sup>115</sup>. On 31

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Officer of the Federal Ministry of the Interior. Education and training programs by the Federal Academy of Public Administration, focused on measures to enhance integrity in the public sector are also in place.

<sup>104</sup> 2022 Rule of Law Report, Country Chapter on the rule of law situation in Austria, p. 11.

<sup>105</sup> For example, the Annual Report of the WKStA summaries further steps in a number of high-level cases (WKStA (2023), Annual Dialogue 2021-22, press information. See also the press release of the WKStA of 30 March 2023 on investigative steps taking in the CASAG case group.

<sup>106</sup> Contribution from the Austrian Bar Association for the 2022 Rule of Law Report, p. 11 and Contribution from the Austrian Association of Judges for the 2022 Rule of Law Report, p. 11; Austrian Association of Prosecutors (2021), Prosecutors react to press conference alleging 'leftist cells' in the WKStA.

<sup>107</sup> Information received from the Association of Prosecutors and Judges Corruption, as well as from the Central Public Prosecutor's Office for Combating Economic Crimes and Corruption in the context of the country visit to Austria. Another point that the WKStA referenced as potentially impacting their work relates to an ongoing public debate on the opportunity of reforming the seizure and evaluation of data for securing evidence, especially on corruption-related cases. The public debate started on the basis of a recent study by the Bar Association, with no concrete outcome so far on the legislative level. Prosecutors underlined the practical necessity in investigations to have access to digital data, especially in corruption-related cases, where very few witnesses and documents are available, and call for clear regulation allowing the seizure of relevant evidence. See Austrian Bar Association (2022), ÖRAK calls for far-reaching reforms in the safeguarding and evaluation of data and data carriers.

<sup>108</sup> WKStA (2023), Annual Dialogue 2021-22, press information. Die Presse (2022), President of Prosecutors' Association sees investigative bodies weakened.

<sup>109</sup> 2 cases of alleged corruptibility (art. 304 of the Criminal Code), 2 cases of alleged acceptance of an advantage (art. 305), 1 case of alleged acceptance of an advantage for the purpose of exerting influence (art. 306) and 7 cases of alleged bribery (art. 307), 1 case of alleged offering an advantage (art. 307a), 6 cases of alleged acceptance of gifts and alleged bribery of employees or agents (art. 309) and 29 cases of alleged breaches of official secrecy (art. 310). The remaining 20 alleged cases are divided among the other cases that fall under the BAK's exclusive jurisdiction. Compared to 82 cases in 2020 – see 2022 Rule of Law Report, Country Chapter on the rule of law situation in Austria, p. 11.

<sup>110</sup> Input from Austria for the 2023 Rule of Law Report.

<sup>111</sup> Data refer to the period 01 January 2019 – 23 November 2022. Input from Austria for the 2023 Rule of Law Report, pp. 19-20.

<sup>112</sup> Data until 23 November 2022, Input from Austria for the 2023 Rule of Law Report, pp. 19-20.

<sup>113</sup> 2022 Rule of Law Report, Country Chapter on the rule of law situation in Austria, p. 11.

<sup>114</sup> Austrian Parliament (2021), Demand for the establishment of a committee of inquiry: ÖVP corruption investigation committee; Austrian Parliament (2021), ÖVP corruption investigation committee.



March 2023, the committee published a report to be discussed by the plenary of the National Council<sup>116</sup>. On 27 April 2023, the National Council unanimously took note of the final report of the committee, including five parliamentary group reports, thus concluding the work of the parliamentary committee. The final report includes recommendations and conclusions, recommending i.a. the creation of a Freedom of Information Act and transparent procedures for applications for top positions, as well as the establishment of an independent federal prosecutor's office and a cooling off period for Ministers to become members of the Constitutional Court<sup>117</sup>. Parliamentary groups' reports recommend i.a. setting up an absolute maximum limit for state advertising spending, ensuring sufficient resources for the WKStA and the expansion of documentation obligations<sup>118</sup>.

**Resources of prosecution service for anti-corruption prosecutions are stable.** The WKStA has a total of 44 prosecutorial positions<sup>119</sup>. In order to properly address the increasing complexity of cases, the WKStA relies on a number of financial, business and IT experts<sup>120</sup> and has identified the need for additional resources in this respect. As noted above (see Section I), no further legislative steps have been taken at this stage to reduce reporting obligations, which remain burdensome specifically for the anti-corruption prosecution. The resources of the BAK have remained largely stable<sup>121</sup>. As of December 2022, the BAK has 124 employees<sup>122</sup>. Cooperation between prosecution and the police continues smoothly, including as regards exchange of data. As for the cooperation with the EPPO, no particular challenge has been reported<sup>123</sup>.

**There has been no progress yet on introducing rules on assets and interests' disclosure for members of Parliament, despite a working group having been set up.** The 2022 Rule of Law Report recommended to Austria to “introduce effective rules on assets and interests' declaration for Members of Parliament, including effective monitoring and sanctioning

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<sup>115</sup> The investigative committee met for a total of 48 meetings, including Rules of Procedure meetings. 82 witnesses were interviewed. Several relevant figures were heard, such as former party members, the acting Chancellor and former Ministers of Justice and Finance.

<sup>116</sup> Report of the investigative committee regarding the clarification of allegations of corruption against members of the ÖVP government.

<sup>117</sup> The report recommends a ‘cooling-off’ period for ministers and for persons with ‘legislative responsibility’ who apply to be members of the Constitutional Court. Austrian Parliament (2023), ÖVP corruption inquiry committee: National Council takes note of final report.

<sup>118</sup> The parliamentary groups' reports are published together with the report of the investigative committee.

<sup>119</sup> A total of 50 public prosecutors are appointed at the WKStA. Written contribution from the WKStA in the context of the country visit to Austria.

<sup>120</sup> Information received from the Central Public Prosecutor's Office for Combating Economic Crimes and Corruption in the context of the country visit to Austria. The WKStA also informed that applications procedures are ongoing in order to fill additional IT experts' posts. More specifically, ten economic/business experts are working at the WKStA, while ten experts for information technology are working for the Ministry of Justice (therefore, they are not employed by the WKStA but the WKStA can request their support). The WKStA can eventually rely on external experts if special expertise is needed in an individual case/investigation either in the economic or the IT field. Written contribution from the WKStA in the context of the country visit to Austria.

<sup>121</sup> Input from Austria for the 2023 Rule of Law Report, p. 11.

<sup>122</sup> Ibidem. In the 2022 Rule of Law report the BAK declared 103 posts. Moreover, compared to 2021, the expenditure budget of the BAK increased from EUR 9 188 210.24 (actual costs in 2021) to EUR 9 926 000 (estimate of costs in 2022).

<sup>123</sup> EPPO contribution to the 2023 Rule of Law report (Overview of cooperation between the EPPO and EU Member States' authorities).

mechanisms”<sup>124</sup>. The Code of Conduct for Members of the National Council and Members of the Federal Council, which regroups existing legal provisions, remains the main tool to guide declarations<sup>125</sup>. A parliamentary working group was mandated to follow up on the 2022 Rule of Law recommendation and has held several meetings to this end. No concrete timeline or substantive elements were provided so far<sup>126</sup>. Beside the Code of Conduct, there are internal guidelines for members of Parliament on the existing legal provisions in relation to gifts and other advantages and the Annex 1 to the Code of Conduct contributes to guiding members of Parliament on reporting requirements pursuant to the Incompatibility and Transparency Act (i.e. gifts’ declarations)<sup>127</sup>. In view of the absence of more concrete results, no progress has been made yet on the recommendation in the 2022 Rule of Law Report.

**Lobbying legislation remains limited in scope, and political agreement is outstanding to address this issue.** Both GRECO<sup>128</sup> and stakeholders<sup>129</sup> have been underlining the need for a reform of the current regulation on lobbying for several years. As reported in previous Rule of Law Reports<sup>130</sup>, the legislation of lobbying dates back to 2013 and its scope is limited<sup>131</sup>. No follow-up has been given to the outcome of a working group on the lobby register<sup>132</sup> of the Federal Ministry of Justice since the conclusion of its work in August 2021<sup>133</sup> as no agreement has been reached at a political level on further steps<sup>134</sup>. Civil society organisations qualify the existing framework as poor, in particular regarding sanctions and controls<sup>135</sup>. As highlighted also by GRECO in 2023<sup>136</sup>, the Court of Audit conducted an audit on lobbying in

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<sup>124</sup> 2022 Rule of Law Report, Country Chapter on the rule of law situation in Austria, p. 2.

<sup>125</sup> Austrian Parliament (2021), Code of Conduct for Members of the National Council and Members of the Federal Council. 2022 Rule of Law Report, Country Chapter on the rule of law situation in Austria, p. 13.

<sup>126</sup> Ibidem. In September 2022 the recommendation was discussed by the President’s Conference of the National Council (formed by the three Presidents of the National Council and the chairpersons of all parliamentary groups). The President’s Conference subsequently instructed a parliamentary working group (consisting of officials of both the parliamentary groups and the parliamentary administration) to follow-up on the recommendation in more detail. Within this working group, the recommendation was discussed in meetings on 15 September, 6 October and 29 November 2022, and the latest meeting was in February 2023. Future meetings are foreseen but no timeline is known yet. The working group is not exclusively focused on following-up on the recommendation.

<sup>127</sup> Information received from the Parliamentary Administration in the context of the country visit to Austria.

<sup>128</sup> GRECO Fifth Evaluation Round Report, recommendation vi, para 87; GRECO Fourth Evaluation Round – Interim Compliance Report, recommendations ii, paras. 13-17 and GRECO Fourth Evaluation Round – Second Interim Compliance Report, recommendations ii, paras. 13-17.

<sup>129</sup> Information received from Antikorruptionsbegehren and Transparency International Austria in the context of the country visit to Austria.

<sup>130</sup> 2020 Rule of Law Report, Country Chapter on the rule of law situation in Austria, p. 9; 2021 Rule of Law Report, Country Chapter on the rule of law situation in Austria, p. 12; 2022 Rule of Law Report, Country Chapter on the rule of law situation in Austria, p. 14.

<sup>131</sup> Only Specialist Lobbying Companies, In-House-Lobbyists, Self-Governing Bodies and interest groups have to register and single contacts do not have to be reported as stated in 2020 Rule of Law Report, p. 9.

<sup>132</sup> 2021 Rule of Law Report, Country Chapter on the rule of law situation in Austria, p. 12. The working group was set up in 2020.

<sup>133</sup> Information received from the Court of Audit in the context of the country visit to Austria.

<sup>134</sup> Information received from the Ministry of Justice in the context of the country visit to Austria.

<sup>135</sup> Information received from Transparency International Austria and the Forum Informationsfreiheit in the context of the country visit to Austria. Transparency International Austria (2022), TI press release – Lobbying rules of the game for politics.

<sup>136</sup> GRECO Fifth Evaluation Round Report, recommendation vi, para 85.

2019, which identified loopholes in the system, notably the limited range of information disclosed in registry<sup>137</sup>, lack of supervision and enforcement.

**The introduction of rules to address “revolving doors” and post-employment provisions for members of Government or Parliament has not advanced.** As already reported in previous years<sup>138</sup>, no further steps have been made on the legislative proposal introducing a three-year cooling-off period for members of Government who aim to become members or alternate members of the Constitutional Court. The proposal is part of a Transparency Package on which political consensus has not been reached so far (see Section 3)<sup>139</sup>. The Federal Chancellery had indicated that it intends to present a revised draft by end of June 2023<sup>140</sup>. Overall, as highlighted by GRECO<sup>141</sup>, beside the specific provisions of constitutional law<sup>142</sup>, there is no post-employment restriction for ministers and state secretaries<sup>143</sup>, nor an effective supervision mechanism regarding these rules is in place, therefore revolving doors provisions remain very limited.

**An important reform of the political party financing framework has been adopted, reinforcing the role of the Court of Audit.** The 2022 Rule of Law Report recommended to Austria to “finalise the legislative revision of the political party financing rules including to empower the Austrian Court of Audit (ACA) to audit political party finances”<sup>144</sup>. Amendments to the Parliamentary Groups Funding Act were adopted by Parliament in July 2022 and entered into force on 1 January 2023<sup>145</sup>. The amended legislation prohibits parliamentary groups to accept donations (including payments and benefits in kind, as well as living subsidies), with the exception of specific provisions<sup>146</sup>. A new obligation requiring the parties to provide their statutes in the public party register is set to enter into force in January 2024<sup>147</sup>. According to the new regime, the definition of “party affiliated organisation” has been extended in order to cover indirect connections<sup>148</sup>. Moreover, the National Council adopted amendments to the Political Parties’ Act in July 2022, which aims at increasing the

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<sup>137</sup> For example, no publicity requirement is foreseen for contracts with lobbyists, only accessible to senior level officials.

<sup>138</sup> 2020 Rule of Law Report, Country Chapter on the rule of law situation in Austria, pp. 8-9; 2021 Rule of Law Report, Country Chapter on the rule of law situation in Austria, p. 11; 2022 Rule of Law Report, Country Chapter on the rule of law situation in Austria, p. 14.

<sup>139</sup> 2022 Rule of Law Report, Country Chapter on the rule of law situation in Austria, p. 14.

<sup>140</sup> Contribution from Austria for the 2023 Rule of Law Report.

<sup>141</sup> GRECO Fifth Evaluation Round Report, recommendation ix, paras 122-126.

<sup>142</sup> Former members of government are excluded from certain positions for five years, such as in the Supreme Court, the Administrative Courts, the Supreme Administrative Court as well as the Constitutional Court.

<sup>143</sup> Secretaries general and ministerial advisors are subject to the rule of the Civil Service Employment Act. Notably, for a period of six months, which in any case does not apply to s does not apply to ministers and state secretaries. As underlined by GRECO (p. 34), six months is a very short cooling-off period, considering that most GRECO members establish longer cool-off periods for PTEF (generally two years).

<sup>144</sup> 2022 Rule of Law Report, Country Chapter on the rule of law situation in Austria, p. 2.

<sup>145</sup> Federal Law Gazette for the Republic Of Austria (2022). Federal Act amending the Federal Act on the Financing of Political Parties (Parties Act 2012 – PartG), the Media Act and the Constitutional Court Act 1953 (VfGG). Input from Austria for the 2023 Rule of Law Report, p. 16.

<sup>146</sup> Specific circumstances include e.g. particular contributions and funds granted under the Parliamentary Groups Funding Act itself, membership fees, and funds by political parties and other non-discriminatory public funds. Apart from what mentioned, the acceptance of donations is generally limited to the value of EUR 150 (cf. sec. 5a of the Parliamentary Groups Funding Act, Federal Law Gazette I no. 142/2022).

<sup>147</sup> Amendment of the Federal Act on the Financing of Political Parties (§ 1(4)). Information received from the Ministry of Justice in the context of the country visit to Austria.

<sup>148</sup> Amendment of the Federal Act on the Financing of Political Parties (§ 2).

transparency of political party financing<sup>149</sup>, and strengthening the role and tasks of the ACA, as independent external auditor<sup>150</sup>. In particular, the audit rights of the ACA for parties' statements of accounts have been extended for cases where the declarations appear incorrect or incomplete and to allow it to investigate suspicions independently of the statements of account<sup>151</sup>. Overall, civil society welcomed the reinforced role of the ACA, however stressing the lack of criminal sanctions to punish misconduct and the absence of provisions regarding disclosure before the elections of campaign financing<sup>152</sup>. In light of the important steps taken, the 2022 recommendation to finalise the revision of the political party financing rules and empower the Court of Audit has been fully implemented.

**The amendments to the Political Parties' Act increase possibilities to request special audits by the Court of Audit.** On 1 January 2023, revised provisions entered into force that allow MPs to request special audits to the ACA<sup>153</sup>. According to the new rules, such audits can still be requested by at least 20 MPs, and in case a parliamentary group consists of less than 20 members, the parliamentary group itself can submit the request if all the members agree<sup>154</sup>. The limitation to a maximum three ongoing special audits is removed, although a limitation on the number of request that MPs can submit is in place<sup>155</sup>. To properly fulfil the new tasks, the ACA's budget was increased, thus enabling the Court to employ additional staff: the annual budget for 2023 amounts to EUR 42.4 million<sup>156</sup>. The ACA considers that the current staff and budget provisions allow it to satisfactory carry out its tasks<sup>157</sup>.

**The law aiming at transposing the Whistleblowers Directive was adopted, and a web-based reporting system is being tested.** The law aiming at transposing the Whistleblowers Directive was adopted on 16 February 2023<sup>158</sup>. Civil society points to possible difficulties to interpret the scope of legislation that falls under whistleblower protection, in order and to understand whether the content of a whistleblower report is covered by the framework, and therefore whether protection is granted<sup>159</sup>. The Federal Ministry of Justice plans to go live

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<sup>149</sup> Federal Act on the Financing of Political Parties (Political Parties Act 2012 – PartG) was amended by the federal law published on 27 July 2022 (Federal Law Gazette I 125/2022).

<sup>150</sup> Input from Austria for the 2023 Rule of Law report, p. 16.

<sup>151</sup> Previously, the ACA could only commission an independent auditor (chartered accountant) to review the figures in such cases. §10, Political Parties Act. See also, Austrian Parliament (2023), How and by whom is party financing controlled.

<sup>152</sup> Information received from the Forum Informationsfreiheit in the context of the country visit to Austria.

<sup>153</sup> The regulations on the possibility to request special audits by the Court of Audit are laid down in § 99 of the Rules of Procedure of the National Council.

<sup>154</sup> Input from Austria for the 2023 Rule of Law Report, p. 32. Moreover, members of Parliament will be able to support another demand for a special audit once the Court of Audit will have delivered its report or after 24 months will have passed.

<sup>155</sup> An MP can only support one request for an audit at a time and no new ones until the audit is completed (or in the 24 months after submission of the request, if the analysis takes longer) (BGBl. Nr. 410/1975, § 99).

<sup>156</sup> The annual budget of the ACA, which is adopted by the National Council, amounted to EUR 37.4 million in 2022.

<sup>157</sup> Information received from ACA in the context of the country visit to Austria.

<sup>158</sup> Input from Austria for the 2023 Rule of Law Report, p. 17. To be noted that at the level of the Federal provinces (Länder), the adoption of legislative measures aiming to transpose the Whistleblower-Directive was finalized in 2022.

<sup>159</sup> Information received from Transparency International Austria and Forum Informationsfreiheit in the context of the country visit to Austria. The complexity of the text has been also underlined by opposition parties. They also consider that due to the complex wording, there are uncertainties regarding the scope of application of the law, and it would be therefore difficult to determine whether a reference would fall within

with the web-based whistleblowers system by mid-July 2023, no later than the statutory implementation deadline of 26 August 2023<sup>160</sup>. The BAK will act as single authority competent to receive reports and statistics; the system is expected to be fully operational by August 2023. The WKStA manages its own online whistleblower reporting tool, which is reported to be working well<sup>161</sup>. Coordination between the existing channel of the WKStA and the new one established under the BAK remains to be clarified<sup>162</sup>.

**The National Council discussed the citizens’ initiative “Rule of Law and Anti-Corruption Referendum” in February 2023.** As reported last year<sup>163</sup>, civil society introduced a request for a popular initiative<sup>164</sup> on the topic of corruption. As it reached the 100 000 signatures required for discussion in Parliament, a first reading in the plenary of the National Council took place in September 2022. The Justice Committee of the National Council started the preliminary deliberation in October 2022 and a resulting report was discussed during the plenary in February 2023<sup>165</sup>. Although a number of demands included in the initiative are already being addressed<sup>166</sup>, the opposition criticised the prolonged stagnation of other important reforms<sup>167</sup>. The initiative calls for strengthening the rule of law, as well as for enhancing transparent procedures on public procurement and on lobbying legislation<sup>168</sup>. Civil society commented positively on the increased public awareness about the topic of corruption among the general public as a result of the initiative, as well as the momentum for recent legislative changes<sup>169</sup>.

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the scope of protection of the law (Austrian Parliament (2023), Electoral reform: Federal Council does not object to National Council decision).

<sup>160</sup> Input from Austria for the 2023 Rule of Law Report, p. 17. As of October 2022, the introductory page of the electronic whistleblower system had been accessed over 827 111 times. See consolidated Federal Law on Whistleblower protection.

<sup>161</sup> In the period 20 March 2013 – 28 February 2023, the reporting tool of the WKStA registered a total of 14640 cases, of which 13411 of unknown identity. WKStA (2023), WKStA Report on online reporting tool.

<sup>162</sup> Information received from the Central Public Prosecutor’s Office for Combating Economic Crimes and Corruption in the context of the country visit to Austria.

<sup>163</sup> 2022 Rule of Law Report, Country Chapter on the rule of law situation in Austria, p. 15.

<sup>164</sup> The popular initiative (*Volksbegehren*) is a form of legislative proposals by citizens. The initiative on “Rule of Law and Anti-Corruption” was opened up for signatures of the wider population in May 2022, following a registration phase. The popular initiative calls for reforms on integrity in politics, strengthening the rule of law and the independence of the judiciary or the investigative and control authorities, a comprehensive anti-corruption and transparency legislation as well as freedom of the press, media promotion and against advertising corruption. On 19 January 2023, the Justice Committee of the National Council dealt with the 72 demands of the initiatives. As mentioned in the input from Austria for the 2023 Rule of Law Report, p. 20 and on [AntiKorruptionsvolksbegehren.at](https://www.anti-korruption.at), the initiative asks for constitutional independence for the Central Public Prosecutor’s Office for Combating Economic Crimes and Corruption (WKStA) and the introduction of a Federal Public Prosecutor’s Office.

<sup>165</sup> Information received from Antikorruptionsbegehren in the context of the country visit to Austria.

<sup>166</sup> The opposition refer to the criminalisation of the so-called purchase of political mandates.

<sup>167</sup> The opposition insisted to carry out reforms on long outstanding issues such as an independent federal prosecutor (Austrian Parliament (2023), Rule of Law & Anti-Corruption Referendum: Debate on Reforms).

<sup>168</sup> Anti-corruption Referendum (2023), Rule of Law & Anticorruption claims. The Flash Eurobarometer on Businesses’ attitudes towards corruption in the EU shows that 17% of companies in Austria (EU average 26%) think that corruption has prevented them from winning a public tender or a public procurement contract in practice in the last three years. This is 9 percentage point below the EU average. Procurement was also identified as a particular area of corruption-related risks by the Specialised Prosecution Service for Economic Crime and Corruption in the context of the country visit to Austria.

<sup>169</sup> Ibidem. Notably, the reform of the political party financing framework and the government draft law for the reform of the criminal law on corruption.

### III. MEDIA PLURALISM AND MEDIA FREEDOM

The right to freedom of expression and the duty, incumbent on state authorities, to grant access to information, are enshrined in the Constitution<sup>170</sup>. However, a general right to access documents does not exist in Austria. The Austrian Communications Authority (*KommAustria*) serves as independent regulator for audiovisual media services; its administrative body is the Austrian Regulatory Authority for Broadcasting and Telecommunications (RTR)<sup>171 172</sup>.

**The media regulator continues to function independently.** There have been no changes in the legal framework concerning the independent authority *KommAustria* since last year's Rule of Law Report<sup>173</sup>. The regulator currently considers its resources to be sufficient, but notes that potential new tasks following from EU legislation, notably the Terrorist Content Online Regulation and the Digital Services Act, could imply significant additional needs; it indicates that it expects to receive such additional resources if needed<sup>174</sup>. A draft law which was presented in November 2022 already provides for more human and financial resources for *KommAustria* and its administrative body RTR for the fulfilment of additional tasks under the Terrorist Content Online Regulation<sup>175</sup>. Nearly all print media participate in the oversight system of the Press Council, the self-regulatory body for print media<sup>176</sup>.

**A new draft law on funding of quality journalism in print and online media increases the amount of funding and widens the scope of beneficiaries while a new law adopted by Parliament which partly transforms the *Wiener Zeitung* into a medium focused on training and education has drawn criticism.** The Government draft for a law on funding of quality journalism, which passed the committee stage in Parliament in April 2023, provides for annual funding of EUR 20 million, based on the number of journalists and on special criteria like regional coverage; additionally, training facilities and institutions that promote media literacy as well as self-regulatory bodies are supported<sup>177</sup>. It has been criticised, however, for not requiring recipients of funding to participate in the oversight system of the Press Council or to prove adherence to ethical standards; nonetheless, the presence of quality assurance systems can lead to increased funding<sup>178</sup>. The financial support for the Press

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<sup>170</sup> Article 13 of the Fundamental State Law; Article 20(4) of the Federal Constitutional Law. Both laws have constitutional rank.

<sup>171</sup> The RTR is a non-profit state-owned company, which among other things operationally supports *KommAustria*.

<sup>172</sup> Austria ranks 29<sup>th</sup> in the 2023 Reporters without Borders World Press Freedom Index compared to 31<sup>st</sup> in the previous year.

<sup>173</sup> 2022 Rule of Law Report, Country Chapter on the rule of law situation in Austria, p. 16. See also 2023 Media Pluralism Monitor, Country report Austria, pp. 12-13.

<sup>174</sup> Information received from *KommAustria* in the context of the country visit to Austria.

<sup>175</sup> Article 2 of the draft law for the fight against the distribution of terrorist content online.

<sup>176</sup> The only newspaper which has been cited not to be member of the Press Council is the tabloid *Kronen Zeitung*, which, however, is the Austrian newspaper with the highest circulation.

<sup>177</sup> Draft Law on the promotion of quality journalism. The current funding amounts to EUR 8.7 million and does not extend to online-only media, see Austrian RTR, Overview over the 2022 funding decisions, and the Press Funding Law 2004.

<sup>178</sup> Presseclub Concordia (2022), Opinion on the draft law on quality journalism and on transparency of media cooperation and funding, p. 3; Information received from the Press Council in the context of the country visit to Austria; §§ 4, 5 of the draft law.

Council has not been substantially increased since 2009<sup>179</sup> and the new law would not change this. To compensate, inter alia, for inflation the Press Council indicated its funding would need to be almost doubled to allow for stable operation<sup>180</sup>. The new law would create a reserve in case of funds unused for individual media which the regulator can use for supporting the Press Council, but no certain increase corresponding to the cited needs is envisaged<sup>181</sup>. With another law, which was adopted by Parliament in April 2023, the Government also wants to contribute to the promotion of quality journalism and innovation in the media by establishing the Media Hub Austria, funded with EUR 6 million, as part of a state-owned company<sup>182</sup>. The Media Hub shall provide training programmes for journalists and support for media founders<sup>183</sup>. The law also partly transforms one of Austria's oldest newspapers, the *Wiener Zeitung* (which is currently owned by the Government and serves also as official gazette but is editorially independent<sup>184</sup>) into a medium focused on training and education and publishing mainly online<sup>185</sup>. In addition, as has been the case since 2020, the state-owned company will also host a 'content agency' responsible for providing information of public interest in a comprehensible manner and for creating media products, such as newsletters, for the Federal Government and Government-owned enterprises<sup>186</sup>. Some stakeholders had criticised the draft law for bringing journalistic training under the control of the Chancellery and for mixing the education of journalists with public relations for the Government<sup>187</sup>. The legislative text that was adopted, however, establishes that the Media Hub shall provide an 'independent and future-oriented practice programme' for journalists<sup>188</sup>.

**Some progress has been made regarding the allocation of state advertising with a new law increasing its transparency, but the issue of fairness has not been addressed.** The 2022 Rule of Law Report recommended to Austria to "[r]eform the framework for the allocation of state advertising by public authorities at all levels, in particular to improve the fairness and transparency of its distribution"<sup>189</sup>. In 2022, the public authorities in Austria spent EUR 201 million for advertising (10 percent less than the previous year), of which EUR 29.6 million were paid to one media group<sup>190</sup>. Stakeholders consider this to constitute a

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<sup>179</sup> In 2009, § 12a was introduced into the Press Funding Law, which provides for an annual support of EUR 0.15 million to a representative self-regulatory facility for print media. In 2022, the Press Council received EUR 173,000, see RTR, Overview over the 2022 funding decisions.

<sup>180</sup> Information received from the Press Council in the context of the country visit to Austria: the amount should be increased by EUR 100 000 to 150 000.

<sup>181</sup> Information received from the Federal Government in the context of the country visit to Austria; § 21 of the draft law on quality journalism.

<sup>182</sup> Written contribution from the Federal Government in the context of the country visit to Austria; §§ 4, 10(1) No. 3 of the law on the *Wiener Zeitung*.

<sup>183</sup> See § 4 of the law on the *Wiener Zeitung*.

<sup>184</sup> § 1 of the editorial statute of the *Wiener Zeitung*.

<sup>185</sup> See § 3 of the law on the *Wiener Zeitung*.

<sup>186</sup> See § 8 of the law on the *Wiener Zeitung*.

<sup>187</sup> See Presseclub Concordia (2022), Opinion on the draft law on the *Wiener Zeitung*; information received from Presseclub Concordia and the Press Council during the country visit; Reporters without Borders (2022), 'Appeal' against draft law on the *Wiener Zeitung*.

<sup>188</sup> See § 4(2) of the law on the *Wiener Zeitung*.

<sup>189</sup> 2022 Rule of Law Report, Country Chapter on the rule of law situation in Austria, p. 2.

<sup>190</sup> Data from the RTR, cited by Der Standard (2023), Nehammer administration paid advertising for EUR 28.9 million; 2023 Media Pluralism Report, Country report Austria, p. 20, confirms the number of EUR 201 million and says the biggest beneficiaries would be the ORF, popular and free daily newspapers, Google and Facebook.

risk for media independence<sup>191</sup>. In April 2023, Parliament adopted a new law on transparency of media cooperation and funding<sup>192</sup>. It abolishes the threshold of EUR 5 000 which currently exempts public authorities that spend less than this amount per quarter from disclosing their advertising spending<sup>193</sup>. With the new law, the threshold of EUR 5 000 serves instead to trigger additional transparency obligations, and if a further threshold of EUR 150 000 per contract is surpassed the public authority must publish a report on its website describing, among others, why the advertising contributed to cover the public's need for information<sup>194</sup>. However, despite the concerns expressed in this regard in the previous Rule of Law reports<sup>195</sup>, the reform does not introduce any changes to increase fairness in the allocation of state advertising; there is also no cap for advertising spending in favour of a certain media outlet<sup>196</sup>. Consequently, some progress has been made on the recommendation made in the 2022 Rule of Law Report.

**There have been no changes in the legal framework concerning transparency of media ownership.** The Media Law requires periodic media providers (including providers of websites) to disclose all their direct or indirect shareholders, including the percentages of shares and voting rights<sup>197</sup>. The media market concentration remains high<sup>198</sup>; the market share of the top four news media owners across different media markets amounts to 62%, among the online news media outlets this number is lower at 46%<sup>199</sup>.

**The institutional set-up of the public service media has been criticised by stakeholders for being vulnerable to politicisation and a constitutional complaint is pending regarding the composition of the Foundation Council.** The institutional set-up of the public service media provider ORF has not changed<sup>200</sup>, and concerns continue to be raised by stakeholders on the composition of the governing Foundation Council according to the political majorities<sup>201</sup>. Stakeholders presented some recent events as illustrating the risks of politicisation of the public broadcaster. In November 2022, the editor-in-chief of the news

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<sup>191</sup> Contribution from Presseclub Concordia for the 2022 Rule of Law Report, p. 16; Information received from the Press Council in the context of the country visit to Austria.

<sup>192</sup> Law to amend the law on transparency of media cooperation and funding.

<sup>193</sup> Information received from the Federal Government in the context of the country visit to Austria; Amendment of § 2(4) of the law on transparency of media cooperation and funding according to the new law.

<sup>194</sup> Information received from the Federal Government in the context of the country visit to Austria; Amendment of § 2(1b) of the law on transparency of media cooperation and funding according to the new law.

<sup>195</sup> 2022 Rule of Law Report, Country Chapter on the rule of law situation in Austria, p. 17, with reference to the previous editions.

<sup>196</sup> Information received from the Federal Government and from Presseclub Concordia in the context of the country visit to Austria; Law to amend the law on transparency of media cooperation and funding.

<sup>197</sup> § 25 of the Media Act. The 2023 Media Pluralism Monitor, Country report Austria, p. 16, mentions, however, that 'information on the ultimate ownership structures of media companies is not generally available'.

<sup>198</sup> According to the Media Pluralism Monitor 2023, Country report Austria, p. 15, this is partly due to merger laws having been ineffective for decades.

<sup>199</sup> 2023 Media Pluralism Monitor, Country report Austria, p. 15.

<sup>200</sup> See for that set-up 2022 Rule of Law Report, Country Chapter on the rule of law situation in Austria, p. 18.

<sup>201</sup> Contribution from Presseclub Concordia for the 2023 Rule of Law Report, p. 17; Der Standard (2022), ORF Foundation Council: That's how we are (commentary of a former member of the Foundation Council); 2022 Rule of Law Report, Country Chapter on the rule of law situation in Austria, p. 18. According to European Parliament's Flash Eurobarometer: News & Media Survey 2022, p. 37, 56% of respondents in Austria stated that they trust public TV and radio stations, above the EU average of 49%.



department of ORF resigned because chats between him and the then-vice-chancellor caused the perception that he was receptive to the politician's ideas regarding staff allocation<sup>202</sup>. In February 2023, the director of the ORF studio of the Lower Austria region resigned over accusations that he influenced the news coverage in favour of the regional governor and the ruling party in the region during his time as editor-in-chief<sup>203</sup>. Regional directors are appointed by the Foundation Council upon a proposal of the Director General who in turn is also appointed by the Foundation Council. Nonetheless it should be noted that, in both cases, the resignations were pushed for by the editorial offices which enjoy statutorily guaranteed independence<sup>204</sup>. The Constitutional Court is expected to rule this year on the constitutionality of the composition of the Foundation Council upon a complaint by the Government of Burgenland<sup>205</sup>. New editorial regulations which are in force since 1 July 2022 strengthen the position of the journalists of the ORF vis-à-vis their superiors<sup>206</sup>. Following a judgment of the Constitutional Court which found the current financing system to be unconstitutional<sup>207</sup>, the Government has announced that the ORF will be financed by a household fee as of 1 January 2024 (instead of a fee for only those with TV and radio sets as is currently the case) which is expected to be considerably lower than the current fee<sup>208</sup>. In turn, the ORF had to commit to make savings of EUR 325 million<sup>209</sup>.

**While consultations have continued, no progress has been made related to the freedom of information law.** The 2022 Rule of Law Report recommended to Austria to “[a]dvance with the reform on access to official information taking into account the European standards on access to official documents”<sup>210</sup>. As reported already in the two previous Rule of Law Reports, the Federal Government had proposed a draft law in 2021 and initiated consultations, which are still ongoing<sup>211</sup>. The law should also apply to the regions and municipalities, which appear to be particularly reluctant to agree to the new law<sup>212</sup>, as they fear an unmanageable administrative burden<sup>213</sup>. The main criticism of stakeholders is the fact that the draft law does not provide for an independent body that citizens can turn to and that can advise authorities on the application of the law<sup>214</sup>. Also, the list of exceptions is

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<sup>202</sup> See ORF (2022), ORF editor-in-chief Schroms resigns.

<sup>203</sup> See Kurier (2023), ORF editors' council 'relieved' after resignation of Ziegler.

<sup>204</sup> § 32 of the Law on the ORF obliges the ORF to respect the independence of the staff responsible for the programme.

<sup>205</sup> Preview of the Austrian Constitutional Court for the first semester of 2023, case G 215/2022. Burgenland is one of the nine provinces of Austria.

<sup>206</sup> According to § 9(4) of the statute, three independent complaints against a superior can lead to the editors' assembly to express a denial of trust against that superior, which can be followed by a recommendation by the ethics council whether to keep that superior. The ultimate decision lies with the Director General.

<sup>207</sup> Constitutional Court, judgment of 30 June 2022, G 226/2021, ECLI:AT:VFGH:2022:G226.2021.

<sup>208</sup> It is reported that the new household fee will be around EUR 15 per month instead of the current fee of EUR 22.45, see ORF (2023), 'ORF contribution' replaces GIS.

<sup>209</sup> Information received from the ORF and the Presseclub Concordia in the context of the country visit to Austria; official statements of media minister Raab on 23 March 2023, as reported by ORF (2023), 'ORF contribution' replaces GIS and by the Frankfurter Allgemeine Zeitung (2023), ORF fee is reduced to EUR 15 per month.

<sup>210</sup> 2022 Rule of Law Report, Country Chapter on the rule of law situation in Austria, p. 2.

<sup>211</sup> 2021 Rule of Law Report, Country Chapter on the rule of law situation in Austria, p. 15; 2022 Rule of Law Report, Country Chapter on the rule of law situation in Austria, p. 19.

<sup>212</sup> GRECO Fifth Evaluation Report, Austria, p. 22.

<sup>213</sup> Written contribution from the Federal Government.

<sup>214</sup> Forum Informationsfreiheit (2021), Draft law to abolish official secrecy does not ensure change of culture in the administration; GRECO Fifth Evaluation Report, Austria, p. 23.

considered to be too extensive by stakeholders<sup>215</sup>. A veto clause would allow any regional government to block any future amendment<sup>216</sup>. The Federal Chancellery has indicated that it intends to present a revised draft by June 2023<sup>217</sup>. No concrete details are available at this stage. Consequently, no progress has been made related to the recommendation from last year's Rule of Law Report.

**Whilst the situation has improved with the pandemic fading out, some challenges as to the safety of journalists remain.** There have been no physical assaults reported on the Council of Europe Platform to promote the protection of journalism and safety of journalists or by the Media Freedom Rapid Response for 2022 and 2023<sup>218</sup>. However, the general climate remains tense, with online harassment remaining an issue<sup>219</sup>, notably against journalists of the public broadcaster ORF<sup>220</sup>. The Federal Government initiated a political declaration for the renewed commitment to strengthen the implementation of the United Nations Plan of Action on the Safety of Journalists and the Issue of Impunity which was adopted at a conference in Vienna in November 2022<sup>221</sup>. Strategic lawsuits against public participation (SLAPPs) against journalists have not been a systematic issue in Austria so far, although some individual cases have been registered (see also Section 4)<sup>222</sup>.

#### **IV. OTHER INSTITUTIONAL ISSUES RELATED TO CHECKS AND BALANCES**

Austria is a federal republic with a bicameral parliament, composed of the National Council (*Nationalrat*) and the Federal Council (*Bundesrat*). Legislative proposals can be submitted by the Government, by members of both chambers of parliament, as well as by way of popular initiative<sup>223</sup>. The Constitutional Court carries out an ex-post constitutionality review of laws, which is possible both in concrete cases<sup>224</sup> and as an abstract review of a law, based on appeals by the federal or a regional Government or by a third of the members of either parliamentary chamber. Several different Ombudspersons contribute to upholding fundamental rights in different areas<sup>225</sup>.

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<sup>215</sup> Information received from Transparency International and the Publishers' Association in the context of the country visit to Austria.

<sup>216</sup> Information received from Forum Informationsfreiheit in the context of the country visit to Austria.

<sup>217</sup> Information received from the Federal Government in the context of the country visit to Austria.

<sup>218</sup> See also 2023 Media Pluralism Monitor, Country report Austria, p. 12, which says that assaults "have declined sharply" after the end of demonstrations related to the measures against the pandemic.

<sup>219</sup> Information received from Presseclub Concordia in the context of the country visit to Austria. The Presseclub Concordia set up an online reporting system for attacks against journalists already in 2021.

<sup>220</sup> Information received from the ORF in the context of the country visit to Austria.

<sup>221</sup> Information received from the Federal Government in the context of the country visit to Austria; see also Austrian Federal Ministry for European and International Affairs (2022), Safety of Journalists: Protecting media to protect democracy – High-level Conference, Vienna, 4 November 2022.

<sup>222</sup> Information received from Presseclub Concordia, the ORF and the Publishers Association in the context of the country visit to Austria.

<sup>223</sup> This requires signatures by 100 000 voters or by one sixth each of the voters in three provinces. Input from Austria for the 2020 Rule of Law Report, p. 50.

<sup>224</sup> The review can take place ex-officio or on application by another court, an individual or a party to a case pending before an ordinary court of first instance.

<sup>225</sup> This includes the Ombudsperson Board, the Federal Disability Ombudsperson, the Ombudsperson for Equal Treatment and the Ombudsperson for Children and Youth.

**Initiatives to support public participation in policymaking processes are ongoing, while there are calls for a more systematic approach.** Austria, as noted in previous Reports<sup>226</sup>, has continued to pursue a project on ‘participation in the digital age’ as part of which, as a second phase, a practical guide is set to be published in the first half of 2023. In a third phase, a website on public participation in the digital age, which should provide resources for civil servants carrying out such participatory processes, will be set up, which is scheduled to be launched by early 2024<sup>227</sup>. A number of participatory processes to support the preparation of new policies have also been carried out, with the preparation of a reform of the law on voluntarism noted as being a particularly inclusive process by stakeholders<sup>228</sup>. However, civil society organisations (CSOs) note that such dialogue is strongly dependent on the individual Ministries and a more systematic approach with a regulatory framework for civil dialogue is needed<sup>229</sup>. The lack of comprehensive legislation on access to information also remains an impediment to transparency of the legislative process. As regards the consultation on draft legislation before it is submitted to Parliament as a Government draft, a legally binding provision in an ordinance of the Federal Chancellor provides that the consultation period shall normally be six weeks<sup>230</sup>; a ministerial circular also recalls the need to set appropriate deadlines, in principle of six weeks<sup>231</sup>. However, stakeholders note that this is often not respected in practice<sup>232</sup>. GRECO has recommended to Austria in 2023 to establish adequate statutory timelines for consultations<sup>233</sup>.

**On 1 January 2023, Austria had three leading judgments of the European Court of Human Rights pending implementation, a decrease of three compared to the previous year<sup>234</sup>.** At that time, Austria’s rate of leading judgments from the past 10 years that remained pending was at 22% (compared to 26% in 2022), and the average time that the judgments had been pending implementation was 1 year and 3 months (compared to 4 years and 7 months in 2022)<sup>235</sup>. The change is a result of the closure of two leading cases in March

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<sup>226</sup> 2022 Rule of Law Report, Country Chapter on the rule of law situation in Austria, p. 20.

<sup>227</sup> Input from Austria for the 2023 Rule of Law Report, p. 34.

<sup>228</sup> Franet (2022), Country research - Legal environment and space of civil society organisations in supporting fundamental rights – Austria, pp. 3-4. Information received from Bündnis für Gemeinnützigkeit in the context of the country visit to Austria.

<sup>229</sup> Contribution from European Civic Forum (Austria) for the 2023 Rule of Law Report, pp. 9-11.

<sup>230</sup> Section 9 para. 3 of the Ordinance of the Federal Chancellor on Principles of Regulatory Impact Assessments (Federal law Gazette II No. 489/2012).

<sup>231</sup> Federal Chancellery, Circular regarding the setting of appropriate consultation periods, GZ BKA-600.614/0002-V/2/2008.

<sup>232</sup> Contribution from European Civic Forum (Austria) for the 2023 Rule of Law Report, p. 10 and information received from the Bar Association and Bündnis für Gemeinnützigkeit in the context of the country visit. In addition, a consultation procedure is generally addressed to selected participants. While since 2017 an extended consultation process that allows also organisations and individuals that are not explicitly invited to contribute, to provide their views, this process is not always applied. GRECO Fifth Round Evaluation Report – recommendation v, paras. 77-81.

<sup>233</sup> GRECO Fifth Round Evaluation Report – recommendation v.

<sup>234</sup> The adoption of necessary execution measures for a judgment by the European Court of Human Rights is supervised by the Committee of Ministers of the Council of Europe. It is the Committee’s practice to group cases against a State requiring similar execution measures, particularly general measures, and examine them jointly. The first case in the group is designated as the leading case as regards the supervision of the general measures and repetitive cases within the group can be closed when it is assessed that all possible individual measures needed to provide redress to the applicant have been taken.

<sup>235</sup> All figures are calculated by the European Implementation Network and are based on the number of cases that are considered pending at the annual cut-off date of 1 January 2023. See the Contribution from the European Implementation Network for the 2023 Rule of Law Report, p. 1.

2022 that had been previously pending for over 10 years<sup>236</sup>. On 15 June 2023, the number of leading judgments pending implementation has increased to five<sup>237</sup>.

**The Ombudsperson Board continues to operate effectively.** The sub-committee for accreditation of the Global Alliance of National Human Rights Institutions (GANHRI), in its decision to accredit the Ombudsperson Board with A-Status in March 2022<sup>238</sup>, had made recommendations related to the appointment procedure of the Board and for ensuring pluralism and diversity in its membership<sup>239</sup>. No steps are currently announced to follow-up on these recommendations as regards the legislative framework. However, the Board has re-launched its structural dialogue with CSOs that was interrupted due to the pandemic<sup>240</sup>. Overall, the Board continues to find its resources adequate, with a significant increase in staff between 2019 and 2023, and reports that its recommendations are generally followed by the authorities<sup>241</sup>.

**The appointment and dismissal procedures for the President of the Court of Audit were strengthened, while there are long delays in appointments for the heads of other independent bodies.** The procedure for appointment and dismissal of the President of the Court of Audit has been amended (as part of the party financing reform adopted in July 2022), increasing the required majority for both decisions to two-third of votes in the National Council<sup>242</sup>. This provides a strengthened safeguard for the President's position in view of the Court of Audit's newly increased powers. There have been delays in other appointment procedures for independent authorities, notably for the Federal Anti-Corruption Bureau where until the appointment of a new head in August 2022 the position had not been filled for over two years<sup>243</sup>. This is also the case for the competition authority, where the appointment of a new director has been pending since 2021<sup>244</sup>.

**The framework for civil society remains stable and a reform to improve tax rules for non-profit organisations is under preparation.** Civil society space in Austria continues to

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<sup>236</sup> Judgments of the European Court of Human Rights of 9 November 2006, *Stojakovic v. Austria*, 30003/02, had been pending since 2007 and has been implemented as of 8 March 2022; of 15 July 2010, *Mladoschovitz v. Austria*, 38663/06, had been pending since 2010 and has been implemented as of 8 March 2022.

<sup>237</sup> Data according to the online database of the Council of Europe (HUDOC-EXEC).

<sup>238</sup> Report and Recommendations of the Virtual Session of the Sub-Committee on Accreditation (SCA), 14-25 March 2022, pp. 12-14.

<sup>239</sup> With respect to the gender balance of its membership, the Ombudsperson Board reports that with the new appointment of a woman as one of the three Ombudspersons in July 2022, an improvement in the gender balance has been achieved. The Ombudsperson Board consists of three Ombudsperson, one of which is currently a woman. However, there are no rules on gender balance within the Board. Contribution from ENNHRI (Austria) for the 2023 Rule of Law Report, pp. 70-72.

<sup>240</sup> An NGO Forum as organised in May 2022 related to (among other topics) the Charter of Social Rights. Contribution from ENNHRI (Austria) for the 2023 Rule of Law Report, pp. 67-68.

<sup>241</sup> Information received from the Austrian Ombudsperson Board in the context of the country visit to Austria. The follow-up varies on the nature of the recommendation, as the Board has various mandates, and e.g. legislative recommendations by nature require a more lengthy/complex follow-up.

<sup>242</sup> Input from Austria for the 2023 Rule of Law Report, pp. 31-32.

<sup>243</sup> Anti-corruption Referendum (2022), Infamous Anniversary – Head of the Federal Bureau for Combating Corruption has not been filled for two years.

<sup>244</sup> Parliament Correspondence (2022), Federal Competition Authority – Heated Debate on the Activity Report 2021.

be considered as ‘open’<sup>245</sup>. As noted in the 2022 Rule of Law Report, since spring 2022, an expert group for the modernisation of the taxation of non-profit organisation has taken up its work<sup>246</sup>, and has met on a regular basis. A draft proposal is planned to be presented in summer 2023, with legislation planned to be adopted at the end of 2023 or early 2024<sup>247</sup>. The reform would in particular aim to broaden the purposes and types of non-profit organisations that can benefit from tax deductibility for their donors<sup>248</sup> and modernise the tax framework of non-profit organisations overall, to produce more legal certainty and ease the administrative burden<sup>249</sup>. As regards funding, CSOs face challenges in the context of high inflation, and have recommended the extension of inflation mitigation measures for the corporate sector to non-profits as well, which was already done regarding energy subsidies<sup>250</sup>. While the practice is not considered to be widespread, a number of individual legal actions identified as SLAPP cases against CSOs have been noted, related to climate activists<sup>251</sup> and animal rights organisations<sup>252</sup>. In one case, this has led several UN Special Rapporteurs to start a dialogue with Austria related to possible restrictions to freedom of expression, assembly and association<sup>253</sup>. Concerning the impact of anti-terrorism legislation that civil society raised as a possible concern, as noted in the 2022 Report<sup>254</sup>, stakeholders indicated that no chilling effect coming from this legislation has materialised in practice<sup>255</sup>.

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<sup>245</sup> Rating given by Civicus, Austria. Ratings are on a five-category scale defined as: open, narrowed, obstructed, repressed and closed.

<sup>246</sup> The expert group consists of 7 representatives of the Ministry of Finance and the tax administration and 7 representatives of stakeholders (3 large charity organisations, 2 interest groups, 1 tax consultant, 1 professor).

<sup>247</sup> Information received from the Federal Government in the context of the country visit to Austria.

<sup>248</sup> Currently, organisations working, for example, in the fields of human rights, civil and political rights, democracy, transparency and adult education (inside Austria) are not covered. Information received from Forum Informationsfreiheit, Bündnis für Gemeinnützigkeit, Amnesty International Austria and Transparency International Austria in the context of the country visit to Austria.

<sup>249</sup> Input from Austria for the 2023 Rule of Law Report, pp. 33-34.

<sup>250</sup> Contribution from European Civic Forum (Austria) for the 2023 Rule of Law Report, pp. 8-9 and 11.

<sup>251</sup> Franet (2022), Country research - Legal environment and space of civil society organisations in supporting fundamental rights – Austria pp. 5-6.

<sup>252</sup> VGT Press release (2022), Protest against Spar SLAPP case and interim order that makes any criticism impossible.

<sup>253</sup> Contribution from OHCHR for the 2023 Rule of Law Report (Austria). Letter by the Special Rapporteurs to Austria of 20 May 2022, Ref. AL AUT 2/2022.

<sup>254</sup> 2022 Rule of Law Report, Country Chapter on the rule of law situation in Austria, p. 23.

<sup>255</sup> Information received from Amnesty International Austria and Dokustelle Austria in the context of the country visit to Austria.

## Annex I: List of sources in alphabetical order\*

\* The list of contributions received in the context of the consultation for the 2023 Rule of Law Report can be found at [https://commission.europa.eu/publications/2023-rule-law-report-targeted-stakeholder-consultation\\_en](https://commission.europa.eu/publications/2023-rule-law-report-targeted-stakeholder-consultation_en).

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## **Annex II: Country visit to Austria**

The Commission services held virtual meetings in March 2023 with:

- Amnesty International Austria
- Antikorruptionsbegehren (Anti-Corruption Referendum)
- Association of Administrative Judges
- Association of Judges
- Association of Prosecutors
- Austrian Press Council
- Bar Association
- Bündnis für Gemeinnützigkeit
- Court of Audit
- Dokustelle Austria
- Federal Chancellery
- Federal Anti-Corruption Bureau
- Forum Informationsfreiheit
- KommAustria (Media Regulator)
- Ministry of Arts, Culture, Civil Service and Sport
- Ministry of Finance
- Ministry of Justice
- Parliamentary Administration
- Press Club Concordia
- Public Service Broadcaster (ORF)
- Regional Administrative Court Lower Austria
- Senior Prosecutor's Office Vienna
- Supreme Administrative Court
- Supreme Court
- The Austrian Ombudsboard
- Transparency International Austria
- Verband Österreichischer Zeitungen (Publishers' Association)
- Weisungsrat (Council on instructions to prosecutors)
- WkStA (Specialised Prosecution Service for Economic Crime and Corruption)

\* The Commission also met the following organisations in a number of horizontal meetings:

- ALDA (European Association for Local Democracy)
- Amnesty International
- Civil Liberties Union for Europe
- Civil Society Europe
- Culture Action Europe
- European Centre for Press and Media Freedom
- European Civic Forum
- European Federation of Journalists
- European Partnership for Democracy

- European Youth Forum
- Free Press Unlimited
- Front Line Defenders
- ILGA Europe
- International Commission of Jurists
- International Federation for Human Rights (FIDH)
- International Planned Parenthood Federation European Network
- International Press Institute
- JEF Europe
- Osservatorio Balcani e Caucaso Transeuropa
- Philea
- Reporters Without Borders
- SOLIDAR
- Transparency International EU