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COMMISSION STAFF WORKING DOCUMENT

**2021 Rule of Law Report
Country Chapter on the rule of law situation in Austria**

Accompanying the

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

**2021 Rule of Law Report
The rule of law situation in the European Union**

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ABSTRACT

The Austrian justice system continues to benefit from a very high level of perceived independence and discussions are ongoing regarding the announced reform to introduce an independent Prosecution Service. It is important that this reform takes into account European standards regarding the independence of the prosecution. Meanwhile, changes to reduce the reporting obligations for prosecutors have been concluded. Other measures have been taken concerning compliance management systems for courts and prosecutors and an obligation to provide feedback to staff panels regarding proposals for judicial appointments. As regards recruitment standards at the administrative courts, in particular the appointment of vice-presidents and presidents, some concerns remain. Austria is making efforts to further improve the digitalisation of justice. The justice system continues to perform efficiently, showing improvements regarding administrative cases.

The implementation of the National Anti-Corruption Strategy is ongoing but some delays have been reported due to the COVID-19 pandemic. Investigations into high level political corruption have intensified following recent political scandals. However, prosecutors working on these cases have faced negative narratives from politicians. Reporting obligations for the specialised prosecution service are burdensome, leading to delays with a negative impact on the effectiveness of anti-corruption investigations, but recent amendments aim to reduce the reporting burden. New measures to prevent corruption of civil servants and top executive functions have been introduced, but measures to effectively address integrity risks for parliamentarians remain limited, with no obligation to disclose assets, interests, debts and liabilities. Though a legal framework on lobbying exists, its scope and information publically available remain limited. The control of political party financing remains a concern.

The legal framework and enabling environment for media continue to be strong, and media authorities continue to function in an independent manner. Risks to media pluralism have been identified in relation to the lack of a comprehensive and enforceable legal framework for access to documents and public information. To address this, the Government has proposed a new law on freedom of access to information. Media continue to receive high amounts of state advertising spending, but concerns persist as regards the fairness and transparency of their allocation, potential political influence in the process and insufficient reflection of media pluralism considerations. The dedicated public financial support to the media sector during the COVID-19 pandemic was widely considered as effective, but doubts about its objective distribution were raised. While some steps have been taken to improve journalists' protection during protests, their safety is increasingly threatened, in particular by online harassment and intimidation.

As regards checks and balances, steps are being taken to improve stakeholder and citizens' involvement in policy-making. In the context of the COVID-19 pandemic, the executive has been empowered to act by ordinance based on dedicated legislation, with increased parliamentary scrutiny since autumn 2020. The Constitutional Court has played an important role in reviewing these measures, annulling several of them for being insufficiently justified. The Ombudsperson, which has also played an active role in the context of the COVID-19 pandemic, is preparing for re-accreditation as the National Human Rights Institution. The Government has made efforts to further develop dialogue with civil society organisations, in particular consulting them regarding the support allocated to civil society during the COVID-19 pandemic.

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. Since 2014, 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 Court¹. The Constitutional Court ensures the constitutional review of federal and regional laws. Judicial appointments are made by the executive based on non-binding proposals by staff panels composed of judges² or plenary assemblies of a court, which draw up a ranked list of three candidates for each post³. 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 cases⁴. Austria participates in the European Public Prosecutor's Office. Lawyers are registered in one of the nine local bar associations, which are public law corporations and autonomous self-governing bodies, organised under the umbrella of the Federal Bar Association⁵.

Independence

The level of perceived judicial independence remains consistently very high and has further improved for companies. The independence of courts and judges is perceived as 'fairly or very good' by 83% of the general public and 78% of companies in 2021⁶. Overall, over the past five years, the level of perceived independence by the general public and companies has shown a consistent increase, with the exception of 2021, where it slightly decreased for the general public.

A reform to create an independent Federal Prosecution Service led by a Prosecutor General is under preparation. Following its announcement on 24 February 2021 to establish a Federal Prosecution Office under an independent Prosecutor General⁷, the Ministry of Justice has set up a working group composed of stakeholders from the judiciary and experts, which is meeting on a monthly basis as of May 2021 and will examine different constitutional and legal questions related to the reform. The group is expected to present its results in the first half of 2022, but has not been tasked with preparing a concrete draft legislative text. The reform of the prosecution service has been a long-standing demand from

¹ Several of the district and regional courts are specialised courts. This structure does not necessarily correspond to the appeals instances. See CEPEJ (2021), Study on the functioning of judicial systems in the EU Member States.

² Staff panels exist at regional and higher regional courts, the Supreme Court and administrative courts and they are also responsible for proposals for lower 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.

³ Before becoming an ordinary court judge, candidates must first apply to a post for a trainee judge and complete a traineeship (usually four years). Trainee judges are appointed by the executive on recommendation of a court president of a higher regional court. 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.

⁴ Public Prosecutor Act, §§ 8, 8a, 29-31.

⁵ Lawyers Code, Chapters III and V.

⁶ Figures 48 and 50, 2021 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%).

⁷ Input from Austria for the 2021 Rule of Law Report, p. 3.

stakeholders⁸, as the system of reporting obligations (see below) and the right of the Minister of Justice to give instructions in individual cases to prosecutors, including instructions not to prosecute cases, has been subject to criticism⁹. Stakeholders have stressed the need to ensure that the envisaged reform introduces tangible structural guarantees to ensure the independence of the new Prosecutor General in practice from any political influence by the executive or legislative¹⁰. It is important that the reform is elaborated in consultation with all relevant stakeholders and that it takes into account European standards regarding the independence of the prosecution service¹¹.

Measures to reduce the reporting obligations of prosecutors to the executive are being implemented. In line with the intention in the Government programme already noted in the 2020 Rule of Law Report¹², the Government has taken steps to reduce reporting obligations for the prosecution service, which the prosecution service and stakeholders currently consider to be burdensome and disproportionate (see also Section II)¹³. As a first step, a decree by the Vienna Senior Prosecutor's Office on reporting obligations for its subordinate prosecution offices (which had obliged them to notify major procedural steps three days before their execution), has been revoked in March 2021 at the request of the Ministry of Justice (see also section II)¹⁴. In addition, on 12 June 2021 the Ministry of Justice has issued a revision of the decree on reporting obligations that would more narrowly circumscribe them in certain circumstances, such as removing obligations to file information reports if persons of public interest are victims of crime¹⁵. However, stakeholders have noted that this might not significantly reduce the burden of the Central Public Prosecutor's Office for the Prosecution of Economic Crimes and Corruption as a large number of its cases are cases of public interest where the obligations would continue to apply¹⁶. The Minister of Justice issued 22

⁸ 2020 Rule of Law Report, country chapter on the rule of law situation in Austria, pp. 3-4 and in particular: Judges Association and Union of Judges and Prosecutors, Resources for the Rule of Law, pp. 10-11; and Prosecutors' Association, Requirements of the Prosecution Service, p. 7.

⁹ Stakeholders have in particular cited a risk of an appearance of possible political influence in the public's perception. 2020 Rule of Law Report, country chapter on the rule of law situation in Austria, pp. 3-4.

¹⁰ Concretely, the Prosecutors' Association stresses that independence should be guaranteed through the appointment procedure (with a proposal by a selection panel composed of members of the judiciary), the qualification criteria, the length and non-renewable nature of the mandate and through appropriate accountability mechanisms that exclude political influence. Prosecutors' Association (2021), Prosecutor General – requirements for an independent head of instructions. They have also raised concerns about the extent of parliamentary scrutiny powers over the prosecution, stressing that it should not extend to on-going investigations. Prosecutors' Association (2021), Prosecutor General only with respect of the separation of powers.

¹¹ 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 (2010), CDL-AD(2010)040-e, Report on European Standards as regards the Independence of the Judicial System: Part II - the Prosecution Service.

¹² 2020 Rule of Law Report, country chapter on the rule of law situation in Austria, p. 4.

¹³ In this respect, see Venice Commission (2010), CDL-AD(2010)040-e, Report on European Standards as regards the Independence of the Judicial System: Part II - the Prosecution Service, § 28, 30-31; see also 2020 Rule of Law Report, country chapter on the rule of law situation in Austria, p. 4.

¹⁴ Input from Austria for the 2021 Rule of Law Report, p. 3.

¹⁵ Decree of 12 June 2021 on the new regulation of prosecutors' reporting obligations (*Erlass vom 12. Juni 2021 über die Neuregelung der staatsanwaltschaftlichen Berichtspflichten*).

¹⁶ Currently around 40% of the WKStA's cases are subject to reporting obligations. Reporting obligations currently apply for cases of public interest due to the nature of the crime or the person concerned or due to a fundamental legal question at stake which has not yet been settled. Law on Prosecutors (*Staatsanwaltschaftsgesetz*), § 8.

instructions in individual cases in 2020 and 8 instructions as of May 2021¹⁷, all of which were in line with the opinion of the independent Council of Directives¹⁸. The next report on instructions is expected to be submitted to Parliament in summer 2021.

An obligation to provide feedback to staff panels in case of deviations from their recommendations for judicial appointments has been introduced. Amendments to the Law on Judges and Prosecutors entered into force in December 2020, codifying an obligation for the Minister of Justice to provide written feedback to staff panels, which are mainly composed of judges chosen by their peers¹⁹, in case their recommendation for judicial appointments is not followed. It also allows staff panels to submit a written reaction within two weeks²⁰. An analogous process was also established for prosecutors²¹. This responds to elements of a GRECO recommendation to strengthen the involvement of staff panels in appointment procedures²². It has been noted by GRECO²³ that staff panels are still not involved in the selection of trainee judges and there is no judicial review of the appointment procedure. There is also no involvement of staff panels (or other bodies representing the judiciary) in the selection of the Supreme Court President and Vice-President, which the Supreme Court has criticised²⁴.

Some concerns remain regarding recruitments at administrative courts, in particular regarding the appointment of court presidents and vice-presidents²⁵. Appointments for vice-presidents and presidents at the regional administrative courts generally remain the prerogative of the executive, without consistent involvement of the judiciary, as already noted in the 2020 Rule of Law Report²⁶. In March 2021 GRECO has reiterated its recommendations relating to a stronger involvement of staff panels in judicial appointments, including for administrative court (vice-)presidents²⁷. Stakeholders²⁸ continue to stress that

¹⁷ Information received by the Ministry of Justice in the context of the country visit to Austria.

¹⁸ The Council of Directives (*Weisungsrat*) is an independent advisory council for the Minister's Directive 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. Law on Prosecutors (*Staatsanwaltschaftsgesetz*), § 29 b-c.

¹⁹ See footnote 2.

²⁰ According to the Government, this is required both in case of a deviation from the ranking proposed or in case a candidate not included on the list is selected. Service Act for Judges and Public Prosecutors. (*Richter und Staatsanwaltsdienstgesetz*), § 33a.

²¹ Service Act for Judges and Public Prosecutors (*Richter und Staatsanwaltsdienstgesetz*), § 180.

²² GRECO fourth evaluation round – recommendation xi (at the time of the adoption of the GRECO Report, the amendments had not yet been adopted). See also Recommendation CM/Rec(2010)12 of the Committee of Ministers to member states on judges: independence, efficiency and responsibilities, at para. 47. See, in this context, also CJEU judgment of 20 April 2021, Case C- 896/19, *Repubblica*, ECLI:EU:C:2021:311, para. 71.

²³ GRECO fourth evaluation round – interim compliance report, recommendation x, paras. 27-32. Judges' Association and Union of Judges and Prosecutors, Resources for the Rule of Law, pp. 10-11; Association of Administrative Judges, Agenda for the administrative judiciary 2022, pp. 3-5.

²⁴ The Supreme Court considers this be contrary to the requirements of the Austrian Constitution, though in 1979 the Constitutional Court found it to be compatible with the Constitution, due to long-standing historical traditions, a view that is debated in legal scholarship. Contribution from the Austrian Supreme Court for the 2021 Rule of Law Report. See in this respect Recommendation CM/Rec(2010)12 of the Committee of Ministers to member states on judges: independence, efficiency and responsibilities, para. 47 and CCJE Opinion No. 19 (2016) on the role of court presidents, para. 38: "*the procedures for the appointment of presidents of courts should follow the same path as that for the selection and appointment of judges*".

²⁵ 2020 Rule of Law Report, country chapter on the rule of law situation in Austria, pp. 2-3.

²⁶ *Ibid.*

²⁷ GRECO fourth evaluation round – interim compliance report, recommendations x and xi, paras. 27-37.

²⁸ Contribution from the Association of Austrian Administrative Judges for the 2021 Rule of Law Report.

the lack of consistent judicial involvement in these appointments combined with broad powers and duties of court presidents, gives rise to concerns with regard to European standards²⁹. The Government and the Conference of Presidents of the Administrative Courts have clarified that in several federal states, special committees are set up by law or in practice to prepare proposals for appointments³⁰, but these do not necessarily involve (a majority of) judges. There are also calls for harmonising recruitment requirements for administrative court judges, which are regulated separately for each regional administrative court³¹. 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 practice³².

Measures are being taken to improve the integrity framework for judges and prosecutors. Following the adoption of compliance guidelines for all judicial employees in 2019³³, the courts and prosecution are currently implementing a comprehensive compliance management system, which will include the establishment of regional compliance officers which function as single points of contact for compliance issues raised by all judicial employees³⁴. A compliance e-learning programme, focussing on issues related to conflicts of interest, has been put in place and has already been completed by more than 1400 employees³⁵. GRECO has welcomed the establishment of the compliance guidelines and compliance officers, but stressed the need to clarify the confidential counselling available to judges and prosecutors on ethics matters³⁶. Furthermore, stakeholders note that the compliance guidelines were established by the executive, not the judiciary itself³⁷ and that a code of ethics for administrative judges has not been developed. GRECO further notes that, so far, no system of periodic appraisals has been introduced in Austria³⁸.

Quality

Additional resources have been allocated to the courts and prosecution service, but challenges remain at the Federal Finance Court. Following the additional posts allocated

²⁹ CCJE Opinion No. 19 (2016) on the role of court presidents, para. 38 and Recommendation Rec(2010)12 of the Committee of Ministers of the Council of Europe, para. 47.

³⁰ Input by Austria for the 2020 Rule of Law Report, pp. 20-22 and written contribution received by the Ministry of Justice in the context of the country visit. See also 2020 Rule of Law Report, country chapter on the rule of law situation in Austria, p. 3, footnotes 10 and 11.

³¹ GRECO fourth evaluation round – interim compliance report, recommendation ix; Association of Administrative Judges, Agenda for the administrative judiciary 2022, pp. 3-5. Contribution by the Association of Administrative Judges for the 2021 Rule of Law Report.

³² Since administrative court (vice)presidents do not have to be selected from among appointed administrative judges, the appointment as court president can at the same time function as the appointment as judge. Recommendation CM/Rec(2010)12 of the Committee of Ministers to member states on judges: independence, efficiency and responsibilities, para. 47.

³³ These guidelines address both employees of the Ministry of Justice and of courts, prosecution offices and the prison system and they are accessible online: <https://www.justiz.gv.at/home/justiz/compliance~79b.de.html>.

³⁴ Input from Austria for the 2021 Rule of Law Report, p. 17.

³⁵ Input from Austria for the 2021 Rule of Law Report, pp. 16-17.

³⁶ GRECO fourth evaluation round – interim compliance report, recommendations xiv and xviii, paras. 45-46 and 64-65.

³⁷ Contribution from the Association of Austrian Administrative Judges for the 2021 Rule of Law Report.

³⁸ GRECO fourth evaluation round – interim compliance report, recommendation xii. See in this respect also Recommendation CM/Rec(2010)12 of the Committee of Ministers to member states on judges: independence, efficiency and responsibilities, para. 58.

in 2020, the budget for the judiciary was again increased in 2021, including additional funding related to the impact of the COVID-19 pandemic³⁹, and recruitments for most of the additional posts created have been completed⁴⁰. Austria spends around 0.28% of GDP on its justice system⁴¹. While this increased budget responds to concerns raised by stakeholders and a Ministry of Justice study regarding previous cuts to the budget of the justice system⁴², an audit published by the Court of Audit in January 2021⁴³ confirms that at the Federal Finance Court resource challenges persist⁴⁴, especially regarding very low levels of court staff compared to other courts⁴⁵ (at only around 0.25 posts for court staff per judge), and a number of unfilled positions for judges⁴⁶, a situation which has also led to a significant backlog in the processing of the cases. The Court of Audit has addressed a number of recommendations to the Federal Finance Court and the Ministry of Finance, including to reduce administrative burdens on judges, to allow for progress in reducing backlogs and cases processing times⁴⁷.

Changes are being implemented to reduce court fees in specific areas. As noted in the 2020 Rule of Law Report, high court fees in Austria are considered by stakeholders to be a possible challenge for access to justice⁴⁸. A number of measures reducing court fees in specific areas have been implemented, including for private prosecution proceedings⁴⁹. While as part of the global reform of enforcement proceedings adopted in April 2021 court fees have been increased, some procedural steps requiring a fee have at the same time been reduced⁵⁰. Certain other specific measures related to court fees, e.g. for civil proceedings are under preparation⁵¹, but at this stage, no general evaluation of the court fee system is foreseen⁵². In 2020, court fee revenues dropped due to COVID-19 pandemic and the adjustment for inflation was temporarily postponed until May 2021, reducing their part of the judiciary's budget⁵³, which nevertheless remains high. Stakeholders point in particular to the

³⁹ EUR 65.763 million (including the penal system) were added for 2021 (including EUR 4.439 million allocated in the context of the COVID-19 pandemic). Input from Austria for the 2021 Rule of Law Report, p. 7.

⁴⁰ In 2020, additional posts for 10 judges, 40 prosecutors and 100 court staff were created. Written contribution received by the Ministry of Justice in the context of the country visit to Austria; 2020 Rule of Law Report, country chapter on the rule of law situation in Austria, pp. 4-5.

⁴¹ Figure 30, 2021 EU Justice Scoreboard.

⁴² 2020 Rule of Law Report, country chapter on the rule of law situation in Austria, p. 4.

⁴³ Court of Audit (2021), Federal Finance Court.

⁴⁴ 2020 Rule of Law Report, country chapter on the rule of law situation in Austria, p. 5.

⁴⁵ The report shows that in comparison e.g. at the Federal Administrative Court there are on average 1.6 court staff posts per judge, see p. 51.

⁴⁶ Both the Federal Finance Court (see Court of Audit (2021), p. 3) and stakeholders have pointed out that invitations to tender for vacant judicial posts require the approval of the Minister of Finance, which can create delays in practice. Stakeholders consider to be inconsistent with the national service rules for ordinary judges. Input from the Association of Austrian Administrative Judges for the 2021 Rule of Law Report.

⁴⁷ Court of Audit (2021), Federal Finance Court, pp. 65-66.

⁴⁸ 2020 Rule of Law Report, country chapter on the rule of law situation in Austria, p. 5.

⁴⁹ As part of the law on online hate speech (*Hass-im-Netz-Bekämpfungsgesetz*) adopted on 23 December 2020.

⁵⁰ *Gesamtreform des Exekutionsrechts*, adopted on 22 April 2021. Nationalrat (2021), Nationalrat beschließt umfassende Reform des Exekutionsrechts, https://www.parlament.gv.at/PAKT/PR/JAHR_2021/PK0480/index.shtml.

⁵¹ Information received by the Ministry of Justice in the context of the country visit to Austria.

⁵² While the previous Government programme had foreseen a comprehensive evaluation, the 2020-24 programme includes only a commitment to 'evaluate court fees and upcoming court fee reduction, including for private prosecution and appeals on legal remedies. Government programme 2020-2024, p. 22.

⁵³ Input from Austria for the 2021 Rule of Law Report, p. 7.

lack of cap of court fees in high value cases and the automatic inflation adjustments as potential obstacles to access to justice⁵⁴.

Offers for initial training for administrative court judges have been developed. Since 2020, the Austrian Academy for the Administrative Judiciary⁵⁵, offers a training programme for newly appointed administrative court judges, with modules on managing proceedings, professional ethics, service legislation for judges and digital justice⁵⁶. While ordinary court judges and prosecutors undergo a comprehensive four year pre-service training⁵⁷, administrative court judges are recruited after previous professional legal experience of at least five years⁵⁸. However, initial training for newly appointed administrative judges is not required by law⁵⁹ which has been criticised by stakeholders⁶⁰. It has further been recommended to put in place an annual programme for in-service training of all judges and prosecutors, which would in particular cover integrity-related elements⁶¹.

Efforts are on-going to further advance digitalisation of justice. The overall level of digitalisation of justice is high, with procedural rules for use of digital tools in civil, criminal and administrative cases fully in place⁶² and broad use of digital and electronic communication tools by courts and prosecution services⁶³. Digital solutions to initiate and follow proceedings are to large extents available in civil, administrative and criminal proceedings⁶⁴. As already noted in the 2020 Rule of Law Report⁶⁵, Austria is further advancing with implementing the ‘Justice 3.0’ project, which aims at fully moving to electronic files by 2025. As of June 2021, proceedings at 56 courts, nine prosecution offices, as well as the Supreme Court and the General Prosecutor’s Office, are fully digitalised⁶⁶. The next milestones foreseen are the exclusive use of digital files in all prosecution offices by mid-2022 and in all new civil proceedings by mid-2023⁶⁷. The new ‘*JustizOnline*’ platform launched in November 2020 provides a consolidated place for citizens to access services, such as submitting electronic applications, or consulting cases files, and it provides support to users through a chatbot tool⁶⁸. The Government is also implementing a new comprehensive digital performance reporting system with performance data on court and prosecution

⁵⁴ Contribution from the Austrian Bar Association for the 2021 Rule of Law Report and information received in the context of the country visit to Austria. 2020 Rule of Law Report, country chapter on the rule of law situation in Austria, p. 5.

⁵⁵ Created by the Conference of Presidents of the Administrative Courts, the Supreme Administrative Court, the Johannes Kepler University Linz and the Vienna University of Economics and Business in 2017.

⁵⁶ Austrian Academy for the administrative judiciary, Entry phase for newly appointed judges.

⁵⁷ Input from Austria for the 2021 Rule of Law Report, p. 8. See also footnote 3.

⁵⁸ Input from Austria for the 2021 Rule of Law Report, p. 21.

⁵⁹ Contribution from the Association of Austrian Administrative Judges for the 2021 Rule of Law Report, p. 8.

⁶⁰ See in this respect Recommendation CM/Rec(2010)12 of the Committee of Ministers to member states on judges: independence, efficiency and responsibilities, paras. 56-57; CCJE opinion No. 4 (2003) on appropriate initial and in-service training for judges at national and European levels and point 8 of the CCJE Magna Carta of Judges. Contribution from the Association of Austrian Administrative Judges for the 2021 Rule of Law Report, pp. 7-9.

⁶¹ GRECO fourth evaluation round – interim compliance report, recommendation xix.

⁶² Figure 41, 2021 EU Justice Scoreboard.

⁶³ Figures 42-44, 2021 EU Justice Scoreboard.

⁶⁴ Some remaining gaps concern the possibility of clients to access the electric file of ongoing and closed cases, especially for administrative cases. Figures 45-46, 2021 EU Justice Scoreboard.

⁶⁵ 2020 Rule of Law Report, country chapter on the rule of law situation in Austria, p. 5.

⁶⁶ Input from Austria for the 2021 Rule of Law Report, p. 9.

⁶⁷ Information received by the Ministry of Justice in the context of the country visit to Austria.

⁶⁸ Input from Austria for the 2021 Rule for Law Report, p. 9. Accessible at: <https://justizonline.gv.at/>

services, which will be made public on *JustizOnline*⁶⁹. In the context of the COVID-19 pandemic, procedural measures have been taken to allow use of video conference systems, in both civil and criminal matters, to be applied according to a ‘traffic light’ system⁷⁰.

Efficiency

The justice system continues to perform efficiently, showing improvements regarding administrative cases⁷¹. The average time to resolve litigious commercial has remained at a low level (137 days in 2019 compared 138 in 2018), with a stable clearance rate at 100,4% and a low number of pending cases, showing that the justice system is handling its caseload efficiently in this respect⁷². As regards administrative cases, efficiency indicators show further improvements, in particular as regards the clearance rate (at 110.7% in 2019 compared to 89.7% in 2018), and the number of pending cases, which has decreased, but remains overall high (at 0.8 cases per 100 inhabitants in 2019 compared to 0.9 in 2018)⁷³. Still, the average time to resolve administrative cases (440 days) remains relatively long⁷⁴.

II. ANTI-CORRUPTION FRAMEWORK

The implementation of the National Anti-Corruption Strategy and the actions foreseen in the Action Plan for 2019-2020 are ongoing. The authorities involved in the fight against corruption include the Federal Ministry of Justice, the Central Public Prosecutor’s Office for Combating Economic Crimes and Corruption (*Wirtschafts- und Korruptionsstaatsanwaltschaft – WKStA*), the Federal Ministry of the Interior and its Federal Bureau of Anti-Corruption (BAK) and Criminal Intelligence Service (BK). The Court of Audit is tasked to audit and report on financial management at national and local level, including on anti-corruption aspects as well as to monitor political parties’ finances. The legal framework includes relevant provisions in the Criminal Code and the Code of Criminal Procedure and includes specific legislation on corruption⁷⁵. This covers also cases involving foreign public officials.

The perception of public sector corruption among experts and business executives is that the level of corruption in the public sector remains relatively low. In the 2020 Corruption Perceptions Index by Transparency International, Austria scores 76/100 and ranks 5th in the European Union and 15th globally⁷⁶. This perception has been relatively stable⁷⁷ over the past five years⁷⁸.

⁶⁹ *Ibid.*

⁷⁰ OHCHR (2021), Questionnaire on the impact of the COVID-19 pandemic on the administration of justice and the free and independent exercise of the legal profession.

⁷¹ 2020 Rule of Law Report, country chapter on the rule of law situation in Austria, pp. 5-6.

⁷² Figures 6, 11 and 14, 2021 EU Justice Scoreboard.

⁷³ Figures 8, 12 and 15, 2021 EU Justice Scoreboard.

⁷⁴ This covers the Federal Finance Court, which as noted above, is facing particular challenges as regards length of proceedings.

⁷⁵ 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.

⁷⁶ Transparency International, Corruption Perceptions Index 2020 (2021), pp. 2-3. 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).

The implementation of the National Anti-Corruption Strategy is ongoing but some delays were registered during the COVID-19 pandemic. The National Anticorruption Strategy⁷⁹ was adopted in 2018 and is accompanied by an Action Plan adopted on 16 January 2019 covering the years 2019-2020⁸⁰. The main objective of the Strategy and the Action Plan for the 2019-2020 cycle is to increase and ensure the integrity and transparency in administration, politics and business. The coordination body for combating corruption decided to extend the cycle for the implementation and revision of the Strategy and its Action Plan. While the actions for 2019 are reported to have been implemented, the actions planned for 2020 suffered delays as most of them concerned conferences, meetings and trainings that could not be held during the COVID-19 pandemic⁸¹. Nevertheless, some new activities were launched instead, such as individual advice by email and telephone on compliance and integrity inquiries received from the Network of Integrity Officers members (NIO)⁸². Furthermore, the Network registered a 60% increase in membership applications among public officials during 2020⁸³.

Investigations of high-level corruption have intensified, while individual prosecutors have been subject to negative public narratives from politicians. A significant majority of all large-scale investigations in Austria are conducted by the Central Public Prosecutor's Office for Combating Economic Crimes and Corruption⁸⁴. Following high-profile political scandals, the Office has intensified its investigations into high-level political corruption. Prosecutors in charge of some of the most visible cases have been subject to negative public narratives from government representatives⁸⁵, which has been criticised by the Federal President⁸⁶, as well as by judicial associations, who noted that such public statements are detrimental to the public's perception of the judiciary's independence⁸⁷. The Federal Bureau of Anti-Corruption, which carries out police investigations and cooperates with the Central Public Prosecutor's Office for Economic Crimes and Corruption, recorded 32 new cases of alleged corruption in 2020. According to a draft legislative proposal submitted to public

⁷⁷ In 2015 the score was 76, while, in 2020, the score is 76. 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.

⁷⁸ The Eurobarometer data on corruption perception and experience of citizens and businesses as reported last year is updated every second year. The latest data set is the Special Eurobarometer 502 (2020) and the Flash Eurobarometer 482 (2019).

⁷⁹ https://www.bak.gv.at/301/praevention_education/anti_korruptionsstrategie/files/NAKS_Web.pdf.

⁸⁰ https://www.bak.gv.at/bmi_documents/2286.pdf.

⁸¹ Input from Austria for the 2021 Rule of Law Report, page. 15.

⁸² The NIO is an initiative of the Federal Bureau of Anti-Corruption (BAK) to promote awareness of integrity principles and its members include federal states, municipalities and state-owned companies. It aims to educate interested civil servants to become integrity experts in public administration.

⁸³ Input from Austria for the 2021 Rule of Law Report, p. 15.

⁸⁴ Approximately 35% of all investigations ongoing at the WKStA are large-scale proceedings and it conducts 70% of overall large-scale proceedings.

⁸⁵ See for further details Der Standard (2021) <https://images.derstandard.at/2021/02/21/Schreiben-des-Bundeskanzlers-als-PDF-Datei.pdf>. and Kurier (2020) <https://kurier.at/politik/inland/defizite-bei-korruptionsbekaempfern-kurz-ruft-zu-rundem-tisch/400746720>.

⁸⁶ See the video statement of 21 May 2021, <https://www.bundespraesident.at/aktuelles/detail/statement>. The Minister of Justice has made statements to a similar effect.

⁸⁷ See Judges' Association (2021), A long year, <https://richtervereinigung.at/wp-content/uploads/delightful-downloads/2021/03/Editorial-03-2021-1.pdf>. Most recently, the Judges' Association has deplored a trend of politicised attacks against the judiciary; <https://www.derstandard.at/story/2000126684223/richterpraesidentin-matejka-angriffe-auf-justiz-sehr-oft-grenzueberschreitend>.

consultation in March 2021⁸⁸, on-the-spot searches at the premises of public authorities would no longer be authorised, with the Central Public Prosecutor’s Office for Combating Economic Crimes and Corruption needing to file a request for “administrative assistance” instead for obtaining documents and evidence. The prosecution and stakeholders raised concerns as regards the negative impact of this provision on the capacity to collect evidence, which could impact the effectiveness of anti-corruption investigations⁸⁹. After review and analysis of all responses to the public consultations and an expert meeting with stakeholders, a revised government bill has been tabled⁹⁰.

Burdensome reporting obligations for prosecutors lead to delays and have a negative impact on the effectiveness of anti-corruption investigations⁹¹. The prosecutors of the Central Public Prosecutor’s Office for Combating Economic Crimes and Corruption (WKStA) have to report to the Senior Public Prosecutor’s Office in Vienna, three working days in advance before initiating procedural steps, according to a reinforced obligation introduced in 2019. The WKStA flagged that these additional reporting obligations are burdensome and may lead to delays in investigations⁹², as around 40% of their proceedings are subject to heavy reporting obligations⁹³. The number of reports has been rising considerably in the past years (from 1100 in 2017, to 1957 in 2018 and 2299 in 2019)⁹⁴. To address these issues, the Ministry of Justice adopted a new decree in March 2021, which partially relaxed reporting obligations, clarifying that the Public Prosecution Offices do not need to report on important procedural steps before the beginning of their execution. Corresponding amendments to the Public Prosecutors’ Act are planned for 2021⁹⁵ (see also Section I). A revision of the decree on reporting obligations has recently been issued.

Reforms are pending as regards the rules on political party financing, including the role of the Court of Audit. As noted in the 2020 Rule of Law Report, the Austrian Court of Audit has limited auditing powers and the only investigative power it has is to verify the accuracy of the political parties’ accounts⁹⁶. In a recent report, the Court of Audit criticized the regime of subsidies for the educational bodies of the political parties represented in Parliament, recommending full audit and sanctioning rights for the Court⁹⁷. While in the 2020-2024 Government Programme⁹⁸, the Government committed to undertake reforms to strengthen political party financing control, so far no concrete steps have been taken in this respect. According to stakeholders and the Court of Audit, reforms should foresee additional control

⁸⁸ The consultation period expired on 7 May 2021 and the Government will now review the proposal before submitting it to Parliament. https://www.parlament.gv.at/PAKT/VHG/XXVII/ME/ME_00104/index.shtml.

⁸⁹ See, for example, the opinion of the Supreme Court in the public consultation, which concludes: “If the purpose of the proposed regulation is not to be the prevention of criminal prosecution in general and the fight against corruption in particular, a revision (of the proposal) cannot be avoided”.

⁹⁰ https://www.parlament.gv.at/PAKT/VHG/XXVII/I/I_00937/index.shtml

⁹¹ 2020 Rule of Law Report, country chapter on the rule of law situation in Austria.

⁹² Information received in the context of the country visit to Austria. In one example given concerning a prominent case, which is also under parliamentary inquiry, the Central Public Prosecutor’s Office for Combating Economic Crimes and Corruption reported that investigative tasks constituted only 50% of the time spent on the case by the prosecution office, the other 50% being occupied to fulfil reporting obligations.

⁹³ Information received in the context of the country visit to Austria.

⁹⁴ Information received in the context of the country visit to Austria.

⁹⁵ Input from Austria for the 2021 Rule of Law Report, p. 3.

⁹⁶ 2020 Rule of Law Report, country chapter on the rule of law situation in Austria.

⁹⁷ Court of Audit (2019), Report on the political parties’ academies (*Bildungseinrichtungen der politischen Parteien*).

⁹⁸ Austrian Government (2020), Government programme 2020-2024.

and investigative powers for the Court of Audit in charge of monitoring party funding, including more transparency and accountability in the reporting process as well as a review of the sanctioning system⁹⁹.

Measures to effectively address integrity risks for Members of Parliament continue to be limited¹⁰⁰. Members of Parliament are not obliged to declare publicly their assets, interests, debts, liabilities or any other economic interests, including company investments. Moreover, there are no monitoring and sanction mechanisms to control the accuracy of declarations when published voluntarily¹⁰¹. In addition, parliamentarians are not prohibited from holding outside jobs or managerial and board positions. The Group of States against Corruption of the Council of Europe (GRECO) stressed Austria's low level of compliance when it comes to the recommendations made regarding the prevention of corruption among members of parliament, judges and prosecutors¹⁰².

New measures for preventing corruption of civil servants and top executive functions have been introduced. On 18 November 2020, a new code of conduct for the prevention of corruption in the civil service was adopted by the Council of Ministers¹⁰³. This code provides instructions to public service employees and managers on how to deal with bribery attempts, gifts and invitations, whistleblowing, lobbying as well as includes examples of compliant and non-compliant behaviour. In addition, the Code provides information on dealing with secondary employment and association activities reporting obligations and it explains data protection and confidentiality obligations. A new Federal Disciplinary Authority, which officially started work on 1 October 2020, or in some cases a joint disciplinary commission set up at the Parliamentary Administration is competent to take disciplinary decisions and decide on the suspension of federal civil servants¹⁰⁴. Disciplinary measures available under the disciplinary code applicable to federal civil servants are reprimands, small or large fines and dismissal. Regarding federal contractual employees, the personnel authority is competent to issue disciplinary measures like reprimands, termination of contract and dismissal. As regards the post-employment rules for members of Government, on 22 February 2021, a ministerial proposal was presented, which aims to introduce a three year cooling-off period for members of Government to become members or alternate members of the Constitutional Court for three years¹⁰⁵.

⁹⁹ The Court of Audit receives original and direct control and inspection rights in the event of specific indications to determine the completeness and correctness of the report of the parties and compliance with the law on parties. Furthermore, it shall receive the right to "act and examine at any time if there is a justified suspicion of a violation of the Political Parties Act".

¹⁰⁰ 2020 Rule of Law Report, country chapter on the rule of law situation in Austria, p. 9.

¹⁰¹ However, an agreement by all political parties in the National Council and the Federal Council, adopted on 24 and 30 March 2021 respectively, foresees that the Incompatibility Committee of the National Council and of the Federal Council may ask Members of Parliament to submit further information or evidence relating to their professional activities, their assets or shares in companies, their executive positions or their employment with a regional authority insofar as there is a reporting or disclosure obligation.

¹⁰² GRECO fourth evaluation round – interim compliance report.

¹⁰³ Verhaltenskodex zur Korruptionsprävention im öffentlichen Dienst „Die VerANTWORTung liegt bei mir – EINE FRAGE DER ETHIK; oeffentlicherdienst.gv.at.

¹⁰⁴ Input from Austria for the 2021 Rule of Law Report, p. 20.

¹⁰⁵ Input from Austria for the 2021 Rule of Law Report, p. 14. In this context, stakeholders have pointed out a case of former Minister of Justice and former Constitutional Court judge now under investigation in relation to activities during his time in office as Minister as raising concerns for the perception of the judiciary's independence. Contribution from the Association of Austrian Administrative Judges for the 2021 Rule of Law Report.

The lobbying legislation is under examination. As noted in the 2020 Rule of Law Report, while a legal framework on lobbying is in place, both its scope¹⁰⁶ and the information made publicly available in the lobbying register are limited¹⁰⁷. The Court of Audit recommends an evaluation of the Lobbying Act in order to examine how international standards on lobbying could be considered more comprehensively, including the introduction of a legislative footprint¹⁰⁸. The Federal Ministry of Justice has set up a working group in autumn 2020 to examine possible improvements of the legal framework¹⁰⁹.

The whistleblower reporting tool is being increasingly used. Austria set up a whistleblower reporting tool in 2013 under the operation of the Central Public Prosecutor's Office for Combating Economic Crimes and Corruption. Data from 31 December 2020 shows that over 10 945 potential criminal offences were reported in the system. Only very small proportion were found to be reported without justification (under 5%). About 40% of the reports were forwarded to other competent authorities, mostly fiscal, for follow up¹¹⁰.

The COVID-19 pandemic has had an impact on the prevention activities and increased the corruption risks in certain sectors. The actions entailed in the National Anti-Corruption Strategy could only be implemented in part. For instance, the activities of the Federal Bureau of Anti-corruption conducted through its Network of Integrity Officers could not be fully implemented, as all traditional forms of its in-classroom training had to be suspended¹¹¹. Nevertheless, the transfer of knowledge for the Network Integrity Officers (NIO) was organised through alternative channels (NIO website, emails, bilateral contacts with NIO members, etc.). The Court of Audit has launched public audits related to the COVID-19 pandemic, which focused on key areas of risks, including on the structure and financial scope of the aid measures. Prosecution services highlighted procurement of healthcare equipment and material as a specific risk area¹¹². Stakeholders pointed to large amounts allowed to be spent under emergency procurement procedures, with limited transparency requirements¹¹³.

III. MEDIA PLURALISM AND MEDIA FREEDOM

Freedom of expression and the duty, incumbent on state authorities, to grant access to information, are enshrined in the Constitution. Secondary legislation guarantees the right of journalists to protect the confidentiality of their sources¹¹⁴ and regulates the authorities' obligation to disclose information to the public¹¹⁵. The regulators for audiovisual media services, the Austrian Communications Authority (*KommAustria*) and the Austrian Regulatory Authority for Broadcasting and Telecommunications (RTR) were set up under the

¹⁰⁶ Only Specialist Lobbying Companies, In-House-Lobbyists, Self-Governing Bodies and interest groups (*Interessenverbände*) have to register and single contacts do not have to be reported as stated in 2020 Rule of Law Report, p. 9.

¹⁰⁷ 2020 Rule of Law Report, country chapter on the rule of law situation in Austria.

¹⁰⁸ Austrian Parliament, 'Bericht des Rechnungshofes betreffend Lobbying- und Interessenvertretungs-Register – Reihe BUND 2019/45 (III-65 d.B.).

¹⁰⁹ Input from Austria for the 2021 Rule of Law Report, p. 16; Austrian Parliament, '*Justizministerin Zadić kündigt Evaluierung des Lobbying-Gesetzes an*', No. 997, 6 October 2020.

¹¹⁰ Input from Austria for the 2021 Rule of Law Report, p. 17.

¹¹¹ Input from Austria for the 2021 Rule of Law Report, p. 16.

¹¹² Information received in the context of the country visit to Austria 2021.

¹¹³ Contribution from Forum Informationsfreiheit for the 2021 Rule of Law Report, p. 12 and information received in the context of the country visit to Austria 2021.

¹¹⁴ Federal Act on the Press Federal and other Publication Media (Media Act – MedienG).

¹¹⁵ Fundamental Act on the duty to grant Information (Auskunftspflichten-Grundsatzgesetz).

KommAustria Act in 2001. The KommAustria Act¹¹⁶ was recently amended to transpose the Audiovisual Media Services Directive (AVMSD)¹¹⁷.

The media regulatory authorities continue to function independently and with appropriate resources. The regulators for audiovisual media services, the Austrian Communications Authority¹¹⁸ and the Austrian Regulatory Authority for Broadcasting and Telecommunications are fully independent from the Government. Amendments to the KommAustria Act to transpose the AVMSD entered into force on 1 January 2021. They introduced, among others, new tasks for *KommAustria*, notably in the field of media literacy and accessibility. New resources attributed to the Authority were assessed sufficient in view of the new tasks¹¹⁹. The 2021 Media Pluralism Monitor (MPM) confirms a very low risk with regard to the independence and effectiveness of the Austrian media authorities¹²⁰.

Specific transparency rules for media ownership are in place, however identification of the ultimate ownership may not always be easy in practice. The Austrian Media Act¹²¹ contains detailed provisions requiring the disclosure of ownership in the news media sector¹²². However, the MPM 2021 assesses a medium risk for the indicator of media ownership transparency, noting that information on the ultimate ownership structures is not generally available, which is partly due to the legal formulation used that might be interpreted as limiting disclosure requirements to 100% stakes in media outlets¹²³. Stakeholders also flagged issues as regards the transparency of complex ownership structures for media groups¹²⁴. News media concentration is reported to be high in Austria, due, in particular, to high concentration in different media sub-sectors¹²⁵.

¹¹⁶ The Act was amended together with the Federal Act on the Broadcasting Corporation, the Federal Act on Audiovisual Media Services as well as the Federal Act on Private Radio Law by Federal Law published in the Federal Gazette I Nr. 150/2020.

¹¹⁷ Austria ranks 17th in the 2021 Reporters Without Borders World Press Freedom Index (10th among the EU Member States), one place up from the 18th position last year, but slightly lower compared to five years ago. <https://rsf.org/en/ranking#>.

¹¹⁸ KommAustria is responsible for a variety of tasks: issuing licenses to private television and radio stations, managing broadcasting frequencies, handling the legal supervision of private broadcasters, as well as preparing and launching digital broadcasting. KommAustria is further in charge of administering the Journalism Subsidies Act (1984), and monitoring compliance with the legal framework of broadcasting regulation encompassing both broadcasts of the Austrian Broadcasting Corporation (ORF) and private broadcasters. 2020 Rule of Law Report, country chapter on the rule of law situation in Austria, p. 10.

¹¹⁹ Information received by KommAustria in the context of the country visit to Austria.

¹²⁰ 2021 Media Pluralism Monitor, country report for Austria, p. 11..

¹²¹ Media Act (Mediengesetz), Federal Law Gazette No. 314/1981, as amended by: Federal Law Gazette I No. 101/2015.

¹²² The media owner must be specified by name or company name, including the purpose of the company, residential address or registered office (branch office), the names of the executive bodies and officers of the media owner authorized to represent the company and, if there is a supervisory board, its members. In addition, the ownership, shareholding, share and voting rights proportions must be stated with regard to all persons holding a direct or indirect share in the media owner. In the case of direct or indirect shareholdings of foundations, the founder and the relevant beneficiaries of the foundation must be disclosed. 2020 Rule of Law Report, Country Chapter on the rule of law situation in Austria, p. 11.

¹²³ 2021 Media Pluralism Monitor, country report for Austria, p. 12.

¹²⁴ Information received in the context of the country visit to Austria 2021.

¹²⁵ All concentration measurements for ownership and audience concentration in the audiovisual, radio and newspaper markets are between 71 and 91%. The market share of the top-4 news media owners across different media markets is 61%. The audience share of the top-4 online players is 72%. See 2021 Media Pluralism Monitor, country report for Austria, pp. 12 and 22.

High amounts of state advertising are allocated to media amidst continuing concerns about the transparency and fairness of the allocation. The allocation of state advertising is regulated by the Federal Constitutional Act on Media Cooperation and Media Funding, as well as by the Transparency in Media Cooperation and Funding Act¹²⁶. Concerns have been raised about high amounts (EUR 223 million¹²⁷) spent by Austria on state advertising, which seem to be increasing¹²⁸. The advertising is allocated according to criteria based on media coverage and circulation, following data of the previous year¹²⁹. The 2012 Media Transparency Law provides that government, public bodies and state-owned corporations shall disclose their media collaborations with a specific media owner for an amount superior to EUR 5 000 per quarter of a year. According to the findings of a report by the Court of Audit, at least one-third of public advertising contracts are not publicised due to this threshold¹³⁰. Several stakeholders and a study¹³¹ have raised concerns about the transparency and fairness of such allocation of advertising, pointing to the substantial discrepancy between the official subsidies and distributed state advertising amounts and the risk of the latter being used to exert political influence¹³². Concerns over safeguards for editorial independence continue¹³³, and stakeholders also pointed that criteria for allocation based on coverage and circulation, insufficiently take into account media pluralism¹³⁴. The MPM 2021 assessed a medium risk for the state regulation of resources and support to the media sector¹³⁵.

The dedicated public financial support to the media sector was considered as effective to compensate for the decrease in revenues due to the pandemic, however concerns remain on the fair distribution. In 2020, regular state subsidies for the media amounted to around EUR 49 million, and extraordinary subsidies due to the COVID-19 pandemic amounted to about EUR 35 million¹³⁶. The rules for the distribution of direct and indirect subsidies as such seem to be transparent¹³⁷. However, according to the MPM 2021, high-circulation tabloid

¹²⁶ The name of the recipient of the subsidies and the amount of the subsidies must be disclosed, and the Court of Audit keeps records of it, 2020 Rule of Law Report, country chapter on the rule of law situation in Austria, p. 11.

¹²⁷ 2021 Media Pluralism Monitor, country report for Austria, p. 13.

¹²⁸ Press Club Concordia, “Concordia-Stellungnahme zu 210 Millionen Medialeistungen” <https://concordia.at/concordia-stellungnahme-zu-210-millionen-medialeistungen/>; and 2021 Media Pluralism Monitor, country report for Austria, p. 8.

¹²⁹ Input from Austria for the 2021 Rule of Law Report, p. 22.

¹³⁰ Der Standard, Öffentliche Hand warb 2020 um 58 Millionen in "Krone", "Österreich"/"Oe24", "Heute" <https://www.derstandard.de/story/2000125181965/oeffentliche-hand-inserierte-2020um-58-millionen-in-krone-oesterreichoe24-heute>; and Court of Audit (2015), Sonderaufgaben des RH nach den Medientransparenzgesetzen. According to the Government, the threshold was introduced to focus on a reasonable and proportional relationship between intended aim and administrative burdens.

¹³¹ 2021 Media Pluralism Monitor, country report for Austria, p. 8; Kaltenbrunner, A. (2020) Scheinbar transparent: Analyse der Medienkooperationen der österreichischen Bundesministerien mit österreichischen Tageszeitungen 2018/2019.

¹³² Press Club Concordia, Media Policy Positions, Stellungnahmen & Positionen, <https://concordia.at/stellungnahmen-und-positionen/>; and information received in the context of the country visit to Austria.

¹³³ 2020 Rule of Law Report, country chapter on the rule of law situation in Austria, p. 12.

¹³⁴ Forum Informationsfreiheit (2021), information provided during the country visit to Austria.

¹³⁵ 2021 Media Pluralism Monitor, country report for Austria, p. 16.

¹³⁶ 2021 Media Pluralism Monitor, country report for Austria, p. 16.

¹³⁷ As also reported above, Austria seems to have in place transparent criteria as such for the distribution of direct and indirect subsidies, including state advertisements, based on coverage and circulation. 2020 Rule of Law Report, country chapter on the rule of law situation in Austria, p. 11.

newspapers seem to continue benefitting disproportionately from government subsidies, including the special subsidies granted to the media sector due to the COVID-19 pandemic¹³⁸.

The Government has proposed a reform of the freedom of access to information legislation. As already noted in the 2020 Rule of Law Report¹³⁹, a duty to grant information is enshrined in the Constitution and specified in federal law and provincial laws, however a general right to access documents does not exist in Austria. Furthermore, there are limitations to access information in practice due to the duty of secrecy established in the Constitution, a six-month time limits for public bodies to formally deny requests (after informally denying them within 8 weeks) and as well as lengthy Court proceedings in access to information cases. In February 2021, the Government has proposed a “freedom of information” law, as part of a larger package on transparency, which would reform the system and provide for the constitutional right to receive information to all citizens¹⁴⁰. The proposal has been published for public consultation until April 2021¹⁴¹. While recognizing certain improvements as regards ensuring access to documents within shorter deadlines, media and civil society stakeholders pointed to shortcomings in the draft law, notably as regards the absence of an independent oversight body and aspects related to the practical enforcement of the law¹⁴².

Austria has taken steps to improve journalists’ protection during demonstrations, however online threats and harassment remain challenges for the profession. There is no specific provision in the Austrian law concerning the safety of journalists. Since October 2020, one new alert was created on the Council of Europe Platform to promote the protection of journalism and safety of journalists concerning attacks against journalists during protests¹⁴³. The MPM 2021 assesses a low risk for the indicator on journalistic profession, standards and protection. Nevertheless, as reported by the MPM 2021 and national stakeholders¹⁴⁴, while the general standards of journalistic profession remain good, the safety of journalists is increasingly threatened, in particular by online harassment and intimidation. Stakeholders pointed to a growing use of legal threats to journalists, with the use of litigation allegedly aimed at intimidating journalists, flagged as a particular problem for freelance journalists¹⁴⁵. Complaints over the attacks against journalists during ‘anti-corona’ demonstrations have led to the creation of specific police forces for the protection of journalists during protests¹⁴⁶.

¹³⁸ 2021 Media Pluralism Monitor, country report for Austria, p. 16.

¹³⁹ 2020 Rule of Law Report, country chapter on the rule of law situation in Austria, p. 11.

¹⁴⁰ Input from Austria for the 2021 Rule of Law Report, p. 23.

¹⁴¹ The responses to the public consultation are available at: https://www.parlament.gv.at/PAKT/VHG/XXVII/ME/ME_00095/index.shtml#tab-Uebersicht.

¹⁴² Positions submitted during the public consultation: Access Info legal analysis; and Forum Informationsfreiheit “Stellungnahme zum Entwurf eines Informationsfreiheitsgesetzes”: https://www.parlament.gv.at/PAKT/VHG/XXVII/SNME/SNME_82975/imfname_943873.pdf.

¹⁴³ The alert concerns a photojournalist attacked during “anti-lockdown” protests. Austria has not replied yet. Council of Europe Platform to promote the protection of journalism and safety of journalists – Austria.

¹⁴⁴ Press Club Concordia, Stellungnahme Schutz und Sicherheit für Journalist*innen, https://concordia.at/wp-content/uploads/2020/03/Positionspapier-Sicherheit-und-Schutz-f%C3%BCr-Journalist_innen_Concordia_Feb2020.pdf.

¹⁴⁵ Information received during the country visit to Austria 2021.

¹⁴⁶ Police implement media contact officer, “Nehammer: Polizei implementiert “Medienkontaktbeamte” bei Demos”, <https://www.bmi.gv.at/news.aspx?id=4E46696F4950636869674D3D>.

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 or by way of popular initiative¹⁴⁷. The Constitutional Court carries out an *ex-post* constitutionality review of laws, which is possible both in concrete cases¹⁴⁸ 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 areas¹⁴⁹.

Steps are being taken to improve the involvement of citizens and stakeholders in policy-making. In December 2020, the Ministry for Arts, Culture, Civil Service and Sport has presented a green paper on public participation in the digital age¹⁵⁰, which was prepared in a participatory process involving experts from different sectors and civil society, and sets out a comprehensive approach and new standards for integrative public participation, by both citizens and stakeholders, in policy-making processes in a digital context. This is the first phase of a project that foresees the creation of a new guidebook for public participation in the digital age as well as a dedicated website by 2023¹⁵¹. As regards the consultation of stakeholders on legislative proposals, an agreement by all political parties in the National Council adopted on 26 March 2021¹⁵², foresees that all legislative initiatives, including those presented by members of Parliament and by the Federal Council are open for public consultation as long as the proposal is discussed in Parliament¹⁵³. Still, a general legal framework on public consultations with set timeframes before the proposal is considered in Parliament remains to be established¹⁵⁴, which means that in practice consultation periods can be shorter than recommended, according to stakeholders¹⁵⁵. The current absence of comprehensive legislation on access to information (see Section III) is also highlighted as an impediment to transparency of the legislative process by stakeholders¹⁵⁶.

The framework for taking measures related to the COVID-19 pandemic has been amended several times, with an increased role for Parliament since autumn 2020.

¹⁴⁷ 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.

¹⁴⁸ The review can take place *ex-officio* (*amtswegige Prüfung*) or on submission of another court (*Gerichtsantrag*), an individual (*Individualantrag*) or a party to a case pending before an ordinary court of first instance (*Parteienantrag auf Normenkontrolle*).

¹⁴⁹ This includes the Ombudsperson Board, the Federal Disability Ombudsperson, the Ombudsperson for Equal Treatment and the Ombudsperson for Children and Youth.

¹⁵⁰ Green Book on participation in the digital age. For further details, see also Ministry for Arts, Culture, Civil Service and Sport, Public Participation.

¹⁵¹ The aim is to provide up-to-date support to actors at all administrative levels in the planning, implementation and evaluation of targeted and high-quality participation projects. Input from Austria for the 2021 Rule of Law Report, p. 25, see also the Green Book on participation in the digital age, p. 7.

¹⁵² Amendment of the Rules of Procedure Act of 1975 (*Änderung des Geschäftsordnungsgesetzes 1975*).

¹⁵³ GRECO had also recommended provide for consultations on proposals by members of Parliament, GRECO fourth evaluation round – interim compliance report, recommendation i, paras. 8-12.

¹⁵⁴ GRECO fourth evaluation round – interim compliance report, recommendation i, paras. 8-12.

¹⁵⁵ This has been the case for, but it's not limited to, legislation in the context of the COVID-19 pandemic. See the 2020 Activity Report by the Court of Auditors which notes that 43 laws had a consultation period shorter than the recommended six weeks in 2020 and information received in the context of the country visit to Austria.

¹⁵⁶ Contribution by Forum Informationsfreiheit for the 2021 Rule of Law Report.

Measures related to the COVID-19 pandemic have been taken on the basis of a dedicated ‘COVID-19 measures law’ adopted in March 2020, and subsequently amended several times, generally in an expedited procedure¹⁵⁷. This law grants the Minister of Health the power to adopt ordinances in relation to the COVID-19 pandemic. In September 2020, amendments were introduced to strengthen Parliamentary control over the ordinances, with a requirement that more restrictive ordinances have to be validated by the main committee of the National Council before entering into force and must be limited in time¹⁵⁸. It also introduced an obligation to consult the newly established ‘Corona Commission’ (composed of representatives of the Ministries, the Federal States and public health experts) on the ordinances¹⁵⁹. Parliament has overall continued functioning according to regular procedures without special arrangements for the COVID-19 pandemic¹⁶⁰, but it often acted in an expedited manner, with legislative proposals being submitted by members of Parliament to allow to skip a consultation procedure¹⁶¹.

The Constitutional Court is playing an important role in the checks and balances and in reviewing COVID-19 measures. Following several important rulings in July 2020¹⁶², the Constitutional Court has continued to deliver judgments related to COVID-19 measures, considering a number of Government ordinances to be illegal¹⁶³. In particular, the Constitutional Court found in several cases that the justifications for the measures’ necessity were not sufficiently documented by the responsible Ministry¹⁶⁴. The Government has in reaction to this case law inserted written justifications in the ordinances themselves, including on their scientific basis and the legal reasoning¹⁶⁵. The Constitutional Court has also played an important role for upholding the right of investigative committees in Parliament to access documents¹⁶⁶. In May 2021, it requested the enforcement by the Federal President of an order in a case where the responsible Minister had not provided relevant information to the investigative committee despite a Constitutional Court judgment obliging it to share it¹⁶⁷.

¹⁵⁷ *COVID-19 Maßnahmengesetz*, last amended on 26 February 2021. Input from Austria for the 2021 Rule of Law Report, pp. 27-28.

¹⁵⁸ Four weeks or 10 days, depending on the measure. § 12, COVID-19 Measures law.

¹⁵⁹ § 10, COVID-19 Measures law.

¹⁶⁰ Beyond certain practical arrangements such as re-grouping votes at the end of several debates in plenary.

¹⁶¹ Contribution from Forum Informationsfreiheit for the 2021 Rule of Law Report, p. 18 and information received in the context of the country visit to Austria (this pre-dated the above-described new rules on consultations).

¹⁶² 2020 Rule of Law Report, country chapter on the rule of law situation in Austria, p. 13.

¹⁶³ See rulings of 1 October 2020 (V 392/2020; V 405/2020; V 428/2020; V 429/2020; G 271/2020, V 463-467/2020; G 272/2020), 26 November 2020 (E 3412/2020, E 3417/2020, E 3544/2020), 10 December 2020 (V 436/2020) and 30 March (G 380/2020, G367/2020, G7/2021). The Constitutional Court has so far received over 250 applications related to COVID-19 measures.

¹⁶⁴ Input from Austria for the 2021 Rule of Law Report, p. 28.

¹⁶⁵ Information received by the Federal Chancellery in the context of the country visit to Austria.

¹⁶⁶ Since 2015, the Constitutional Court is directly competent in disputes related to parliamentary investigative committees. Most recently, on 12 May 2021, it ruled that the Federal Chancellery had to submit a number of documents to the ‘Ibiza’ investigative committee that it had so far refused to provide. Constitutional Court (2021), *Unterlagen BKA U-Ausschuss - Der Österreichische Verfassungsgerichtshof*.

¹⁶⁷ Constitutional Court (2021), *VfGH beantragt beim Bundespräsidenten Exekution einer Entscheidung betreffend Dateien des BMF*. On 23 June 2021, the Federal President ordered the criminal court of Vienna to execute the judgment, which will now examine if the relevant documents have been fully delivered to the ‘Ibiza’ investigative committee. Austrian Federal President (2021), *Statement on the occasion of a communication of the Constitutional Court*.

The Ombudsperson Board, which is preparing for re-accreditation, has played an important role in the context of the COVID-19 pandemic. The Ombudsperson Board, who functions as the National Human Rights Institution (NHRI), was last accredited by the Global Alliance of National Human Rights Institutions (GANHRI) in 2011, with B-Status¹⁶⁸. It now plans to submit for re-accreditation in fall 2021 or spring 2022, aiming to obtain A-Status¹⁶⁹, in view of a number of reinforcements to its mandate since the last accreditation¹⁷⁰. The Ombudsman Board has taken an active role in the context of the COVID-19 pandemic and has dedicated an additional third part of its annual report, to the COVID-19 impact on good administration and human rights, published on 12 May 2021¹⁷¹. The Report highlights in particular that many COVID-19 related measures were taken on very short notice, lacking predictability and criteria, especially for measures which restricted fundamental rights¹⁷².

The Government has made efforts to further develop dialogue with civil society organisations, in particular involving them in the preparation of COVID-19 support measures for civil society. The Government has taken several steps for better involvement of civil society, in particular regarding the EUR 700 million support fund for non-profit organisation created to help the sector cope with the impact of the COVID-19 pandemic¹⁷³. This fund was set up in consultation with the organisations concerned, who consider that this process can serve as an example for future cooperation between the Government and civil society¹⁷⁴. Austria's civil society space is now again considered to be 'open'¹⁷⁵. However, stakeholders have criticised draft anti-terrorism legislation submitted to Parliament in May 2021¹⁷⁶ as regards its possible impact on freedom of association¹⁷⁷. Civil society organisations also continue to consider the rules on tax exempt status for donations to be a challenge for certain civil society actors¹⁷⁸. The Government has committed to setting up a dedicated working group to examine the tax framework for non-profit organisation, though this process has been stalled due to the COVID-19 pandemic¹⁷⁹.

¹⁶⁸ 2020 Rule of Law Report, country chapter on the rule of law situation in Austria, p. 14.

¹⁶⁹ Contribution from ENNHRI for the 2021 Rule of Law Report, p. 50.

¹⁷⁰ For example since 2012, the Ombudsman Board has the express constitutional mandate to protect and promote human rights.

¹⁷¹ Volksanwaltschaft (2021), Report to the National Council and the Federal Council 2020 – COVID-19.

¹⁷² *Ibid.*, pp. 11-12.

¹⁷³ Federal Law establishing a Federal Law on a Non-Profit Organization Support Fund and amending the COVID-19 Grant Review Law (20th COVID-19 Law).

¹⁷⁴ Statement by IGO (2020), <https://buendnis-gemeinnuetzigkeit.at/wp-content/uploads/2020/08/PA-2020-07-02-final.pdf>.

¹⁷⁵ The rating given by CIVICUS had been under review in summer 2020, having previously been downgraded to 'narrowed' in 2018. Ratings are on a five-category scale defined as: open, narrowed, obstructed, repressed and closed. See <https://monitor.civicus.org/updates/2020/09/15/austria-civic-space-rating-upgraded-open/>.

¹⁷⁶ The package includes the anti-terrorism law and an amendment of the law on the legal personality of religious organisations.

¹⁷⁷ Contribution from Dokustelle Austria, Amnesty International Austria, the European Centre for Non-Profit Law and other NGOs for the 2021 Rule of Law Report. The criticism relates in particular to the intended criminalization of religiously motivated extremist associations, which stakeholders consider to be disproportionate and potentially discriminatory.

¹⁷⁸ 2020 Rule of Law Report, country chapter on the rule of law situation in Austria, p. 14.

¹⁷⁹ Input from Austria for the 2021 Rule of Law Report, pp. 30-31.

Annex I: List of sources in alphabetical order*

* The list of contributions received in the context of the consultation for the 2021 Rule of Law report can be found at: <https://ec.europa.eu/info/policies/justice-and-fundamental-rights/upholding-rule-law/rule-law/rule-law-mechanism/2021-rule-law-report-targeted-stakeholder-consultation>.

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Annex II: Country visit to Austria

The Commission services held virtual meetings in April 2021 with:

- Association of Administrative Judges
- Association of Judges
- Association of Prosecutors
- Bar Association
- Constitutional Court
- Council on Instructions (*Weisungsrat*)
- Court of Audit
- Federal Anti-Corruption Bureau
- Federal Chancellery
- Forum Informationsfreiheit
- Interessensvertretung Gemeinnütziger Organisationen
- Media Authority
- Ministry of Justice
- Ombudsman Board
- Parliamentary Administration
- Press Club Concordia
- Press Council
- Senior Prosecutor's Office Vienna
- Specialised Prosecution Service for Combatting Corruption and Economic Crime
- Supreme Administrative Court
- Supreme Court

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

- Amnesty International
- Center for Reproductive Rights
- CIVICUS
- Civil Liberties Union for Europe
- Civil Society Europe
- Conference of European Churches
- EuroCommerce
- European Center for Not-for-Profit Law
- European Centre for Press and Media Freedom
- European Civic Forum
- European Federation of Journalists
- European Partnership for Democracy
- European Youth Forum
- Front Line Defenders
- Human Rights House Foundation
- Human Rights Watch
- ILGA-Europe
- International Commission of Jurists
- International Federation for Human Rights
- International Planned Parenthood Federation European Network (IPPF EN)
- International Press Institute
- Netherlands Helsinki Committee
- Open Society European Policy Institute
- Philanthropy Advocacy
- Protection International

- Reporters without Borders
- Transparency International EU