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## FOURTH EVALUATION ROUND

Corruption prevention in respect of members of  
parliament, judges and prosecutors

### EVALUATION REPORT

### AUSTRIA

Adopted by GRECO at its 73<sup>rd</sup> Plenary Meeting  
(Strasbourg, 17-21 October 2016)

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## EXECUTIVE SUMMARY

1. Over the last decade, Austria has implemented a series of more ambitious anti-corruption policies. Specialised bodies have been created in the police and prosecution to deal with corruption and economic crime, the legal framework has been strengthened progressively and corruption is increasingly discussed openly. These are particularly welcome developments. Recent opinion polls on citizens' perception of, and experience with corruption in the core public institutions provide a mixed picture. More than 30% of respondents still consider it acceptable to offer a gift or a favour in order to obtain something from the public administration or a public service, which is significantly higher than the EU average. Political institutions are perceived as particularly affected by integrity problems. For the justice system, the level of perception of corruption is lower than the EU average.

2. Anti-corruption policies for parliamentarians are still at an early stage. It should be recalled that before 1 January 2013, bribery of parliamentarians was criminalised very narrowly. Also on that date, Austria introduced rules on lobbying and it expanded the declaration system applicable to MPs, with the publication of declarations. The public is now informed of the MPs' accessory activities and interests, and their level of income. These arrangements need to be further developed as regards the information disclosed and the supervision. Other than that, there are no rules for the management of conflicts of interest when they arise, nor a code of conduct which would contribute to improving the public perception of elected officials and which would deal with problematic situations at an early stage (before they become a crime). Likewise, Austria needs to put in place a framework to deal with gifts and other benefits which can be awarded in practice to MPs to support/finance their parliamentary or political work. It is equally important for Austria to have appropriate enforcement measures in place with regard to the existing and yet-to-introduce preventive mechanisms.

3. Turning to the judiciary, Austria has put in place on 1 January 2014 a fully-fledged system of administrative courts. This important reform is a welcome development but Austria still needs to guarantee the principle of public hearings for these courts, and to introduce a coherent status for administrative judges which would in particular include conditions of service, and a set of rights and obligations approximated with that of ordinary court judges. That said, even in respect of the latter, the present report concludes that improvements are desirable: the role of the Executive branch of power in the selection and appointment process concerning judges and prosecutors needs to be reduced, incompatibilities with other functions need to be laid down in law and proper integrity assessments and periodic appraisals need to be introduced (which should then be used for decisions on career progression) for all judges. Judges and prosecutors have their respective code of conduct but these are not conceived as living and practical documents which can offer useful guidance in daily work. In respect of judges, it was also found that the persons or bodies responsible for the implementation and supervision of various obligations – notably on professional secrecy, gifts, accessory activities and the management of conflicts of interest – have not been clearly defined (for prosecutors, this is less of an issue given their hierarchical organisation). Prosecutors became part of the judiciary in 2009 and Austria established recently a body (*Weisungsrat*) advising the Minister of Justice on instructions in individual cases. This is an important development to ensure that the judiciary is not only free, but also seen to be free from political influence. Finally, the report recommends that additional training be introduced on integrity measures for all judges and prosecutors.

## **I. INTRODUCTION AND METHODOLOGY**

4. Austria joined GRECO in 2006. Since its accession, Austria has been subject to evaluation in the framework of GRECO's Joint First and Second (in November 2007) and Third (in June 2011) Evaluation Rounds. The relevant Evaluation Reports, as well as the subsequent Compliance Reports, are available on GRECO's homepage ([www.coe.int/greco](http://www.coe.int/greco)).

5. GRECO's current Fourth Evaluation Round, launched on 1 January 2012, deals with "Corruption Prevention in respect of Members of Parliament, Judges and Prosecutors". By choosing this topic, GRECO is breaking new ground and is underlining the multidisciplinary nature of its remit. At the same time, this theme has clear links with GRECO's previous work, notably its First Evaluation Round, which placed strong emphasis on the independence of the judiciary, the Second Evaluation Round, which examined, in particular, the public administration, and the Third Evaluation Round, which focused on corruption prevention in the context of political financing.

6. Within the Fourth Evaluation Round, the same priority issues are addressed in respect of all persons/functions under review, namely:

- ethical principles, rules of conduct and conflicts of interest;
- prohibition or restriction of certain activities;
- declaration of assets, income, liabilities and interests;
- enforcement of the applicable rules;
- awareness.

7. As regards parliamentary assemblies, the evaluation focuses on members of national Parliaments, including all chambers of Parliament and regardless of whether the Members of Parliament are appointed or elected. Concerning the judiciary and other actors in the pre-judicial and judicial process, the evaluation focuses on prosecutors and on judges, both professional and lay judges, regardless of the type of court in which they sit, who are subject to national laws and regulations.

8. In preparation of the present report, GRECO used the responses to the Evaluation Questionnaire (GrecoEval4(2016)2) by Austria, as well as other data available from open sources. In addition, a GRECO evaluation team (hereafter referred to as the "GET"), carried out an on-site visit to Austria from 4-8 April 2016. The GET was composed of Ms Aneta ARNAUDOVSKA, Judge, Director of the Academy for Judges and Public Prosecutors, substitute member of the CCJE ("the former Yugoslav Republic of Macedonia"), Mr Rashad KURBANOV, Head of the Department of scientific support for the Secretariat of the Delegation of the Russian Federation to the European Commission for Democracy through Law (Venice Commission) at the Institute of Legislation and Comparative Law (Russian Federation), Ms Birgit THOSTRUP CHRISTENSEN, Head of Legal Services Office in the Danish Parliament (Folketing) (Denmark) and Mrs Panagiota VATIKALOU, Investigative Judge on corruption cases, Court of First Instance of Chania (Greece). The GET was supported by Mr Christophe SPECKBACHER from GRECO's Secretariat.

9. The GET discussed the justice system during interviews with representatives of the Federal Ministry of Justice (including departments responsible for general administration, criminal material and procedural law, civil law, internal audit, human resource development and human resource management of the courts and prosecution offices, the handling of large scale and other cases which need to be reported by prosecutors), Federal Chancellery (departments responsible for general and special public service legislation and salary schemes), civil and criminal courts (district and first instance, appeal and supreme courts including disciplinary panels), first instance and appeal courts in commercial matters and in labour and social matters (lay judges and career judges), administrative courts including the Supreme Administrative Court, the Constitutional Court, the prosecution service (a senior prosecution office, the Procurator

General, the special office for economic crime and corruption), the Legal Protection Commissioner (*Rechtsschutzbeauftragter*) of Justice, the Federal Anti-Corruption Bureau (Federal Ministry of Interior). The GET discussed the situation of parliamentarians and parliamentary mechanisms with representatives of the Federal Parliament's general administration, the services of the Speaker of both houses, the chairs of the committee on incompatibility and of the justice committee of both houses, and senior figures of the political parties represented in parliament. Moreover, the GET held interviews with representatives of unions and professional associations of judges and prosecutors, the association of lay judges, civil society organisations (the Austrian Chapter of Transparency International, the NGO *Meine Abgeordneten*), the media (radio and newspaper), the University of Vienna.

10. The main objective of the present report is to evaluate the effectiveness of measures adopted by the authorities of Austria in order to prevent corruption in respect of Members of Parliament, Judges and Prosecutors and to further their integrity in appearance and in reality. The report contains a critical analysis of the situation in the Austria, reflecting on the efforts made by the actors concerned and the results achieved, as well as identifying possible shortcomings and making recommendations for further improvement. In keeping with the practice of GRECO, the recommendations are addressed to the authorities of the Austria, which are to determine the relevant institutions/bodies responsible for taking the requisite action. Austria has no more than 18 months following the adoption of this report, to report back on the action taken in response.

## II. CONTEXT

11. According to the 2013 Special Eurobarometer on corruption<sup>1</sup> Austria is one of the countries where perceptions of national public institutions has improved the most since 2011. That said, 73% of respondents still believed that corruption is widespread in national public institutions (EU average: 80%) and more than 30% consider it acceptable to offer a gift or a favour in order to obtain something from the public administration or a public service, which is significantly higher than the EU average. At the same time, the percentage of those who were asked to pay in those situations was significantly lower than the EU average. In the previous edition of the Corruption Eurobarometer (2011)<sup>2</sup> which covered the specific situation of political and judicial institutions, 27% of respondents considered that giving and taking of bribes, and the abuse of positions of power for personal gain are widespread in the justice system (EU average: 32%) and 64% that this was the case of politicians at national level (EU average: 57%). According to the latest edition (2015) of the Corruption Perception Index published by Transparency International, Austria is on rank 16 out of 167. In comparison with the situation in the last three to four years, the trend is slightly upwards but it is globally steady if one looks further back at the situation in 2006, when Austria joined GRECO and ratified the UN Convention against Corruption. In a study of January 2011 on the extent and forms of corruption in Austria, commissioned by the Federal Ministry of Justice<sup>3</sup>, it was pointed out that corruption remained little studied and a grey area in various respects.

12. This is particularly true for acts affecting the integrity of parliamentarians. One needs also to bear in mind that it is only since January 2013 that bribery of MPs has been criminalised broadly and not just in relation to particular situations in the exercise of their functions (e.g. voting). The last decade or so has indeed been a period of consolidation and implementation of more ambitious anti-corruption policies in Austria, with the creation of specialised bodies in the police and prosecution to deal with corruption and economic crime. Open debates have progressively been organised on the phenomenon and forms of corruption<sup>4</sup>. The media have reported sometimes in great detail about cases involving political figures, in a country traditionally perceived domestically as affected by nepotism and favours in the context of excessive party loyalty and the existing close ties between political public bodies and the business sector<sup>5</sup> and excessive politicisation of public institutions<sup>6</sup>. Civil society representatives met during the visit pointed to the fact that politicians are still too often perceived as persons motivated by their own career and economic situation and who seek to develop relationships and influence for their own benefit, the accumulation of mandates (up to 20 or so in some extreme cases) and possibly an attractive employment opportunity in the economic sector after their

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<sup>1</sup> [http://ec.europa.eu/public\\_opinion/archives/ebs/ebs\\_397\\_en.pdf](http://ec.europa.eu/public_opinion/archives/ebs/ebs_397_en.pdf)

<sup>2</sup> [http://ec.europa.eu/public\\_opinion/archives/ebs/ebs\\_374\\_en.pdf](http://ec.europa.eu/public_opinion/archives/ebs/ebs_374_en.pdf)

<sup>3</sup> Study directed by DDR. Hubert Sickinger, Institut für Konfliktforschung. [Link to the study](#) in German published on the website of a Land's administration. The study took into account i.a. empirical information generated by the concrete cases processed in Austria and a variety of existing polls on the perception and experience of persons and businesses with corruption: Transparency International, EU Barometer, World Bank and EBRD "Business Environment and Enterprise Performance Surveys" (BEEPS).

<sup>4</sup> For an early publication, see Martin Kreutner (ed.) (Federal Bureau for Internal Affairs): "The Corruption Monster – *Ethik, Politik und Korruption*", 2006.

<sup>5</sup> The supervisory board of publicly controlled enterprises at national level include automatically members of the federal legislature (the same goes at provincial/local level).

<sup>6</sup> Certain expressions are well known in Austria to refer to these phenomena. *Freunderlwirtschaft* means literally "friendship-based economy". The above-mentioned study of January 2011 refers also to *Parteibuchwirtschaft* to describe forms of clientelism whereby clients commit to support a party in exchange for the readiness of its mandate-holders to support their interests on the occasion of decisions. Another concept commonly found in public discussions is that of *Proporz*: as mentioned in the joint First and Second Round Evaluation Report on Austria of 2008 (paragraph 49 and footnote) when discussing Austrian anti-corruption bodies, "This is an informal agreement between political parties whereby officials are appointed in the administration and state services according to the political weight of each party. This has traditionally had important implications on the political affiliation of civil servants. although the influence of the "Proporz" system was not as significant as it used to be in the past, political support could still contribute to swifter career progression for a prosecutor or a police officer (or a judge, to a lesser extent) to the detriment of a more committed and well-performing colleague who is not of the "right political colour"."

mandate. Civil society representatives also shared their concerns about the many gaps in the mechanisms for the protection of the integrity of MPs. The above study of 2011, pointed to certain practices as additional risk factors: financing an association linked to an elected official, sponsoring the elected official, certain forms of lobbying<sup>7</sup>. But also to relations between local and national elected officials on the one hand, and the business sector on the other hand, which have involved bribes, favours and other benefits<sup>8</sup>. The last decade was marked at the same time by a number of criminal proceedings against elected officials and members of leading businesses. However, the proportion of those terminated without a court verdict – amid allegations of political interference and ineffective criminal law bodies – led to a major general parliamentary enquiry into political corruption in Austria. The work was apparently interrupted in October 2012 without a final report and conclusions being released. An unofficial report done by one of the political groups concluded that the enquiry had at least shed some light on several dubious or corrupt practices since the year 2000, including in connection with the passing of legislation and decrees, hidden political financing and questionable support to individual politicians<sup>9</sup>. At the same time, it deplored that the parliament and its members had not demonstrated the political culture needed to stop malpractices in government<sup>10</sup>.

13. As for the judiciary, the study of January 2011 on the extent and forms of corruption in Austria, commissioned by the Federal Ministry of Justice, observed that distinctions need to be made. As regards judges and prosecutors “with an academic background”, there have been no criminal proceedings in the period reviewed (2002-2009) for offences of bribery or other enrichment-generating acts; the only cases recorded concerned three judges who had allegedly misused their office (two were acquitted). On the other side, there have been several such proceedings, with convictions, brought against bailiffs, judicial officers<sup>11</sup>, district prosecutors<sup>12</sup>, court clerks. These took various forms of misuse of office including tip-offs and leaking out of information, non-accomplishment of procedural acts, manipulation of judicial documents, not forwarding collected amounts of money to legitimate creditors. Two of these cases involved a bribery offence. During the visit, it was indicated to the GET that in recent years the members of the judiciary had become much aware of the need to preserve integrity also in the public perception. Cases involving prominent political and economic figures are often perceived as not handled in the appropriate manner due to a lack of means, to the leaking of information, to the absence of an independent prosecution service, to the excessive pressure exerted by the media and the alleged offender through the media. Certain appointments in the judiciary are perceived as based on political considerations (including for the administrative courts and the highest court for civil and penal matters).

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<sup>7</sup> Traditionally, there are close ties between the parties and certain categories of structures representing social and economic interests: federal and provincial chambers of commerce, industry associations, agricultural associations, workers associations. MPs in parliament are often members of these. Since the 1990s, there has been a multiplication of business entities specialised in lobbying but also in public relations, which renders the delimitation of lobbying activities quite difficult. It becomes particularly problematic when lobbyists offer material and other benefits to elected officials or civil servants.

<sup>8</sup> The study comprises a poll conducted in respect of business (page 231) where respondents have acknowledged the existence of dubious but also clearly corrupt practices.

<sup>9</sup> The work stopped reportedly in a context of political tensions about the scope of the enquiry, the sources of information to be taken into account, the termination of work without a final report and so on. The Parliament decided to publish the protocols of the different sessions; see [https://www.parlament.gv.at/PAKT/VHG/XXIV/A-USA/A-USA\\_00003\\_00314/#tab-Uebersicht](https://www.parlament.gv.at/PAKT/VHG/XXIV/A-USA/A-USA_00003_00314/#tab-Uebersicht) and one of the political groups released on the website of its party a consolidated report giving an overview of findings and conclusions: <https://www.gruene.at/themen/justiz/korruption-hat-680-seiten>

<sup>10</sup> The above report from an individual political group alleges that despite prominent cases triggering broad media coverage about alleged misconduct involving senior officials and public businesses, all of the five enquiry committees established by the parliament since 2007 to look into those interrupted their work prematurely due to excessive party discipline of the ruling formations.

<sup>11</sup> These are civil servants of the courts entrusted with support functions including, in practice, a variable proportion of work delegated by the judges depending on their own workload

<sup>12</sup> Civil servants entrusted with prosecutorial functions for the less severe offences at the lowest court level.



### **III. CORRUPTION PREVENTION IN RESPECT OF MEMBERS OF PARLIAMENT**

#### Overview of the parliamentary system

14. In accordance with the Federal Constitution<sup>13</sup>, the parliament is bicameral and composed of the *Nationalrat* or National Council (lower house) and the *Bundesrat* or Federal Council (upper house). The chambers comprise 183 and 61 members, respectively. Members of the lower house are designated through direct elections (party lists), those of the upper house are elected by the members of the parliament of the *Länder* or provinces which they represent. According to article 56(1) of the Federal Constitution, members of the federal parliament are not bound by any imperative mandate in the exercise of their function. The proportion of female MPs is slightly more than 30% for both chambers.

#### Transparency of the legislative process

15. Both chambers have a right of legislative initiative but in practice, the vast majority of draft laws originates from the Federal Government. There are no legally binding rules for the publication of ministerial draft laws; for Federal Government bills, these have to be published as annexes to the stenographic records. In practice, however, ministerial draft laws are also published and lead to a public consultation on the proposal. After submission to the National Council as Federal Government bills, these drafts are published on the Parliament's website. Bills emanating from parliamentarians become items of business for the respective chamber. In accordance with the respective rules of the chambers, they shall be deemed part of the deliberations in public sittings and as such they are published as part of the Stenographic Records. In practice they are published on the Parliament's website immediately after submission.
16. The functioning of the chambers is regulated by their respective general Rules of Procedure and other legally binding texts dealing with specific subjects such as the functioning of parliamentary enquiry committees<sup>14</sup>. Consultations on ministerial draft laws is reportedly a long-standing and general practice in Austria although there are no rules on who has to be consulted and within which timeframe. In practice, the list of addressees who are invited to submit opinions on draft laws comprises a wide range of public and private institutions and interest groups, which usually include other ministries, provincial governments, the Court of Audit, chambers of commerce, chambers of industry, the chamber of labour, unions, religious communities, NGOs, etc. The opinions expressed during consultations are published on the Parliament's website. They often lead to negotiations and public debates, once the bills have become known to the media. However, further proceedings (including information on how the consultation procedure impacted on the bill) are usually not published. Consultations on bills submitted by parliament members are organised only in exceptional cases. It is an option most often used by the Constitutional Committee of the National Council when it deliberates on members' bills on constitutional issues. The Committee has to vote on the proposal if it wants to organise a consultation. Explanatory notes (of a predominantly legal nature), notes on Regulatory Impact Assessment and comparative tables (law in force, suggested amendments) are usually sent out along with the draft. Particular addressees and the general public are invited to comment on the members' bill. These comments are published on the Parliament's website.
17. For preliminary consideration of draft laws and other subjects, deliberations take place in committees, which are composed according to the principle of proportional

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<sup>13</sup> Text in English and German:

[https://www.ris.bka.gv.at/Dokumente/Erv/ERV\\_1930\\_1/ERV\\_1930\\_1.pdf](https://www.ris.bka.gv.at/Dokumente/Erv/ERV_1930_1/ERV_1930_1.pdf)

<sup>14</sup> <https://www.parlament.gv.at/ENGL/PERK/RGES/>

representation of the parties and by election. In principle, committee meetings take place in camera and audio-video recordings are prohibited. These meetings can be classified as "non-public", "restricted" or "confidential" (for these last two categories, it depends on the level of confidentiality of the data and documents involved in the discussions – the system of classification mirroring that of the EU). The GET was informed that most closed meetings are categorised as "non-public" and that press releases are always produced except for committee meetings which are "confidential". These cover all topics addressed, speakers (including a summary of their contributions) and votes. Only the plenary meetings lead to detailed stenographic records, which are then published. At the request of a certain number of members (20 or more in the National Council, 5 or more in the federal Council), voting shall be by nominative. The results of the votes are published in the Stenographic Records. In the case of the National Council, there are a few specific exceptions to the principle of confidentiality (for instance as regards the EU affairs committee) or where the publicity of debates is left to the discretion of the committee concerned, for instance in the case of hearings of experts and witnesses in relation to the preliminary deliberation of significant bills and treaties (Section 37a(1) of the National Council's Rules of procedure). In the case of the Federal Council (Sections 13b(3) and 31(1) of the Federal Council's Rules of Procedure), the only exception concerns the EU affairs committee.

18. According to the Federal Constitution (articles 32 and 47), plenary debates in both chambers are always open to the public. Although the chambers have discretion to debate also behind closed doors, this would reportedly never happen in practice. The Parliament provides for a live-stream of plenary sittings and these will usually be broadcasted by the public broadcasting company (ORF). Meeting records (called "Stenographic Records") are published on the Parliament's website and are available in the parliamentary library. The "Official Records" of the sittings are limited to the items of business deliberated upon, the issues voted on, the results of the votes, and the decisions taken.
19. During the visit, the GET discussed the practical implications of the above rules. It was explained that in principle, draft laws are to be discussed in three readings. Amendments to the substance of a draft may only be proposed in parliament in the second reading, and in the third (and last) reading it is not possible to bring up new items which have not been discussed earlier. In principle, additional changes discussed at this last stage are of a technical nature and last minute amendments affecting the substance and impact of a text are apparently not an issue in practice. Nor are expedited procedures provided for under the rules, even though the process can be more or less extended in practice; the authorities commented after the visit that the first reading may be omitted in most cases. The GET was concerned that public consultations and appropriate timelines for such purposes are not clearly guaranteed. For governmental initiatives, holding consultations is only a practice and it would certainly deserve to be laid down in writing. As indicated earlier, for parliamentary drafts there are no rules whatsoever and consultations are organised only in exceptional cases: excessive discretion is thus left in principle to the chambers (and to political factors) to decide whether to publish draft legislation and to hold public consultations. Civil society representatives met by the GET confirmed that improvements can be made in the above areas and they pointed to the fact that actually, where consultations are held, the timeframes applied in practice are usually too short to perform informed and meaningful consultations. Ten days for the consultations would be common practice. Representatives of the parliament indicated that according to their internal guidelines, a period of six weeks must normally be awarded for discussions and consultations but they acknowledged that these are often not complied with. The GET considers that for a comprehensive set of amendments, even a period of six weeks can be too short and there may be a need to provide for a longer timeline in exceptional cases. Also, during discussions with the media, civil society and

academics, it was pointed out that the logic and objective of certain amendments is occasionally unclear and possibly dictated by hidden interests. In any event, it would appear that the theory and the practice of consultations are not in accord. The GET recalls that insufficient time for consultation prevents those involved from understanding the actual purpose and implications of certain legislative amendments, and thus from providing added value to the process. It is equally important in a democracy to ensure an adequate level of checks and balance and for a legislative process to be as transparent as possible, in particular to limit risks of excessive influence of particular interests on the process. In the light of the above, **GRECO recommends to ensure through appropriate, predictable and reliable rules that legislative drafts emanating both from government and from parliament are processed with an adequate level of transparency and consultation including appropriate timelines allowing for the latter to be effective.**

#### Remuneration and economic benefits

20. The table below provides an overview of the current levels of remuneration and other benefits for parliamentarians. For comparison purposes, in 2014 the average annual gross salary of a remunerated employment in Austria was EUR 26,273.

	Main remuneration	Other benefits
<b>Members of the National Council</b>	EUR 8,583.3 per month, 14 times a year, i.e. EUR 120,166 per year	<p>Reimbursement of expenses up to a maximum current amount of EUR 4,367 per month, 14 times a year, i.e. EUR 61,139 per year for employing assistants under a contractual relationship. That amount also includes the employer contributions/taxes. Refund is effected in such a way that the salaries are paid directly to the parliamentary assistants and the taxes and social security contributions are directly paid to the tax office/social security institution.</p> <p>Reimbursement of travel-, accommodation costs, office costs etc. up to EUR 524 per month, 12 times a year, i.e. EUR 6,288 per year. For each additional half hour of travel time that amount increases by EUR 262 per month, EUR 3,144 per year. The individual claims for reimbursement of expenses of the members of parliament are not published for reasons of data protection</p> <p>Workplace provided in the Parliament building and possibility to also claim reimbursement of costs of an office, e.g. in the electoral district</p>
<b>Members of the Federal Council</b>	50% of the above i.e. EUR 60,083 per year	Same as above, except the arrangements for parliamentary assistants.
<b>Special situation for senior positions</b>	<p>-President of the National Council: 210% of the above</p> <p>Second and Third President of the National Council 170%</p> <p>Chairperson of a parliamentary group on the National Council 170%</p> <p>President of the Federal Council 100%</p> <p>A deputy of the chairperson of the Federal Council 70%</p> <p>A chairperson of a parliamentary group in the Federal Council 70%</p>	The three Presidents of the National Council and the President of the Federal Council are entitled – during the term of office – to an official car; for private use of the official car a monthly contribution has to be paid.

21. There are no specific benefits such as housing benefits or tax benefits. The emoluments of a member of the National Council are in line with the salary of a senior executive public official; the emoluments of a member of the Federal Council are more or less comparable to the salary of a person holding an academic degree of the middle career track in public service. Official trips on behalf of the President of the National Council or the Federal Council are in addition reimbursed according to the provisions applicable to public officials.
22. After the end of the term of office, members of both chambers who have no other professional activity and who hold no other political office are entitled to the continued payment of 75% of their most recent emolument for a maximum period of three months.
23. The GET noted that the hiring of assistants is regulated in a uniform manner for the National Council by the Federal Act on the Employment of Parliamentary Assistants (there are no assistants in the Federal Council). In a form, the MP who is hiring an assistant requests his/her registration and the subsequent payment of the salary. Besides the indication of administrative information, the MP states in the declaration that the candidate-assistant is not in a position that would preclude a remuneration by parliament, for instance by being a relative of the MP or a person already employed by a public entity or any other public or private entity over which the MP has a decisive influence, or by being an employee of a political party or group etc. In an attachment to the form, the candidate-assistant must make the same declaration. The GET welcomes the existence of such arrangements.
24. On the other side, additional support granted to MPs or parliamentary groups remains a grey area in Austria and there is no clear view on how it is currently to be treated. The GET got confirmation on-site that there is no framework in place to deal with additional support from external sources, in addition to the benefits provided by the parliamentary budget. This question is further discussed below under the heading on gifts (see paragraphs 28 et seq.).

#### Ethical principles and rules of conduct

25. When taking up their duties, members of parliament take the following oath: "I promise to be faithful to the Republic, to fully endorse and comply with the law and to perform my duties conscientiously." Refusing to fully endorse the content of the oath can be a ground for the loss of the mandate in accordance with article 141 of the Constitution. Moreover, the Rules of procedure of each chamber provide that MPs can be called to order where they violate the decorum or undermine the dignity of the house, where they use abusive language, do not comply with the speakers' orders or the obligation to observe secrecy under the Information Rules Act (article 102 of the rules of the National Council, article 70 of those of the Federal Council). Other than that, there are no special ethical principles or core values concerning the integrity of MPs.
26. The on-site discussion showed that some consideration had already been given to the introduction of a general code of ethics and on the conduct expected from MPs. The Parliament would probably adopt such a document (or one for each chamber) in case there was an additional "push". The GET considers that many situations arising in practice can be taken into account in such a document, including to illustrate what it means to "undermine the dignity of the house" or "to comply with the law and to perform [my] duties conscientiously". Special emphasis could be put on improving the perception of elected officials in Austria, for instance to counter the perception of nepotism and clientelism. The implementation of improvements recommended in the present report is likely to also raise new questions and a need for additional explanations and concrete illustrations. Often, it is clear that there have been insufficient in-depth discussions until now and that guidance would thus

be timely on such subjects as the conduct to adopt in connection with the offer of gifts, hospitality and other occasional benefits, but also more significant advantages such as an employment opportunity presented during the mandate, for instance. The GET wishes to stress that ideally, a code of conduct (or ethics) should be a practical and "living" document, with examples of concrete situations, which can be updated as the regulatory framework and the context evolves. Comparative best practices also insist often on the need to ensure the "ownership" and endorsement of such a text by individuals, and on the ability for parliamentary leadership to ensure the proper implementation. Last but not least, since an important aspect of such a code would be the relations with citizens, entrepreneurs, media and other public institutions etc. it is equally important that they know what to expect from parliamentarians. As pointed out earlier, it can also only contribute to the positive image of elected officials. **GRECO recommends i) that a code of conduct (or ethics) be developed for members of parliament and communicated to the public; ii) ensuring there is a mechanism both to promote the code and to provide advice and counselling to MPs, but also to enforce such standards where necessary.**

#### Conflicts of interest

27. As mentioned in paragraphs 47 et seq., a system of periodic declarations was introduced in 2012 (effective as from 2013) that entails the publication of information on income and certain accessory activities concerning MPs (and other categories of officials). Aside from that, there is no policy on how to deal with situations which involve a punctual conflict of interest which would arise in connection with the consideration of a specific matter. The GET also came to the conclusion that this subject-matter, including the possible consequences to be drawn from the declaration system, have not been discussed up to now. For instance, there was no clear view as to whether it would be problematic for an MP who has a connection to certain economic interests, personally or through his/her spouse, when legislation or amendments are presented on the subject-matter. The GET considers that the above-mentioned declaratory obligation is only one component of a policy for the management of conflicts of interest. It needs to be complemented, especially with further rules on the consequences to be drawn when a conflict arises between the interests of the MP (or of persons close to him/her) and a matter under consideration, handled in the context of the parliamentary activities but also possibly in the management of parliamentary structures and resources. Such rules would give an indication about when to abstain from a decision or initiative, or to declare the existence of a conflict. **GRECO recommends i) to clarify the implications for members of parliament of the current system of declarations of income and side activities when it comes to conflicts of interest not necessarily revealed by these declarations; and in that context ii) to introduce a requirement of ad hoc disclosure when a conflict between specific private interests of individual MPs may emerge in relation to a matter under consideration in parliamentary proceedings – in the plenary or its committees – or in other work related to their mandate.**

#### Prohibition or restriction of certain activities

##### *Gifts and other benefits*

28. There are no preventive or administrative rules in the regulation of the chambers that would provide for prohibitions or restrictions for MPs to accept gifts and other advantages, or a specific procedure to be followed for reporting and authorising, for declaring or for returning undesired or unacceptable benefits.
29. The Austrian authorities refer to the criminal code provisions on bribery of public officials which have been applicable to assembly members, since the last

amendments which entered into force on 1 January 2013 have extended the concept of “public official” also to members of parliament at State and regional / municipal level. As it was already pointed out in the Third Round Evaluation Report and the subsequent reports in the compliance procedure, the Austrian Criminal Code (CC) covers passive bribery in connection with specific actions / inactions in the course of official duties, whether they involve a breach of duty by the official (article 304 CC) or not (article 305 CC), as well as the acceptance of undue benefits with the intent to be influenced in one’s work (article 306 CC) – the latter implies no link to a specific action or inaction as it relates to some form of “grooming” or “baiting”. All three provisions foresee a scale of aggravating factors and higher terms of imprisonment based on the financial value of the benefit (above 3 000 euros, above 50 000 euros). Both under article 305 CC and 306 CC (but not under article 304 CC), there are exculpatory circumstances defined with reference to the context and value of the advantage:

Article 304 CC	Article 305, para. 4 CC	Article 306, para.3 CC
All bribes potentially attract liability	<p>(4) No improper advantages are:</p> <ol style="list-style-type: none"> <li>1. advantages the acceptance of which is permitted by law or which are granted in the course of events attended because of an official or legitimate interest,</li> <li>2. advantages for charitable purposes (Section 35 of the Austrian Fiscal Code (<i>Bundesabgabenordnung</i>/BAO) on the use of which the public official or arbitrator exerts no specific influence, or</li> <li>3. in the absence of allowing provisions as defined in no. 1, gifts of low value customary in the relevant country, unless the offence is committed on a commercial [regular] basis.</li> </ol>	<p>(3)“A person who only accepts or causes another one to promise him a low-value advantage shall not be punished as defined in paragraph (1), unless the offence is committed on a commercial [regular] basis.”</p>

30. In the absence of a breach of duties, criminal liability is thus excluded for bribery in the following situations: a) the advantage is permitted by law; b) the advantage is “granted in the course of events attended because of an official or legitimate interest”; c) there is no law on permitted advantages but the value is low and it is a customary practice, unless the offence is committed on a regular basis. In case of an advantage offered to entertain a positive attitude (“grooming”, “baiting”), liability is also excluded for low value advantages unless the offence is committed on a regular basis. The authorities explain that with regard to members of public assemblies, since 2013 the above incriminations apply in relation to a broad range of acts or activities which go beyond the mere buying of a vote, for instance in connection with the submission of amendments or making decisions during informal preliminary talks etc. See also paragraph 63 et seq. hereinafter on enforcement measures.
31. In respect of parliamentarians, the absence of specific legal provisions in the sense of the above article 305 paragraph (4)4 and (4)3 CC means that these criminal law provisions are applicable in a general manner. Thus, an advantage of “low value” is understood in academic work and court practice as anything which has a value of less than 100 euros. Under articles 305 and 306 CC, requesting a benefit is always improper irrespective of the value; the 100 euros value threshold only applies in connection with the acceptance or the receiving of such a benefit and under article 304 CC (i.e. acts involving a breach of duty), the benefit is always illegal, irrespective of its value. The GET recalls that as it was pointed out in the context of the Third Round Evaluation of Austria, the value-based approach of the country’s incriminations can generate certain difficulties to apprehend adequately or with proportionate sanctions certain forms of undue benefits (favours, academic titles,

preferential treatment, career prospects etc.) which cannot be given a clear market value. Although Austria has made it clear that any intangible forms of bribes attract liability, where a value cannot be attributed the bribery act would only entail the lower level of penalty. And would thus be prosecutable under the shortest statute of limitation.

32. The GET took note of the authorities' position that under the criminal law provisions on bribery, advantages which are not related to a specific official duty and which are not accepted with the intent to be influenced in one's future work remain permissible irrespective of their amount. The GET considers that in practice, it may be difficult to draw a clear demarcation line between legitimate and illegitimate gifts on that basis. This is why a reporting mechanism requiring the declaration of gifts and other benefits and/or seeking approval for keeping those permissible (which amounts to showing a good intention) can be a useful complement. Moreover, there can be situations where protocol gifts of a certain value should normally not benefit the recipient him/herself but the institution and should therefore be reported. Representatives of parliament entrusted with central functions confirmed that they had never seen an MP reporting a situation on the above-related matters. On other occasions, it was pointed out that there is no court practice as yet which could give additional indications as to what is permitted or not in practice and that guidance would be desirable. Moreover, as pointed out earlier (see paragraph 24) there is no framework to regulate additional resources made available to parliamentarians, for instance in-kind support (additional assistants, official cars, premises) or direct or indirect financial support. Some of these forms of support are sometimes designated in Austria as "sponsoring" (see also the study of January 2011 mentioned in paragraph 12). During discussions, it was underlined that such practices can be problematic not just from the perspective of the democratic functioning of a parliament but also from that of the transparency of political financing and the effectiveness of rules in that area. The GET was told that as a result of the absence of any arrangements in parliament, MPs may in principle benefit from any form of external support. But there was no clear view as to how to reconcile this permissibility with the provisions on bribery<sup>15</sup>.
33. In conclusion, the GET welcomes that for the purposes of bribery and other corruption-related offences, members of public assemblies are now on an equal footing with the other categories of public officials. That said, Austria relies excessively on the dissuasive effect of these criminal law provisions when it comes to regulating gifts and other benefits. The GET recalls that the purpose of preventive measures is to deal with potentially problematic situations, before the individual conduct attracts criminal liability. Also, GRECO has consistently insisted on the need for a policy to preserve the objective integrity of State institutions (as perceived by the public). Last but not least, Austria has been making important reforms in recent years to improve the transparency and supervision of political financing<sup>16</sup>; these should not be undermined by certain practices and regulatory gaps concerning the support provided directly to individual parliamentarians or parliamentary groups. As a minimum, similar standards of transparency and supervision should apply in both cases. **GRECO recommends that internal rules and guidance be provided within parliament on the acceptance, valuation and disclosure of gifts, hospitality and other advantages, including external sources of support provided to parliamentarians, and that compliance by parliamentarians be properly monitored, consistent with the rules on political financing.**

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<sup>15</sup> In particular the principle that benefits which are permitted by law do not entail criminal liability, that is under the provisions on bribery which do not involve a breach of duty.

<sup>16</sup> The process is still on-going under GRECO's compliance procedures in the Third Evaluation Round.

### *Incompatibilities, accessory activities and financial interests*

34. In accordance with the federal Constitution, the mandate of a member of either house is incompatible with that of a member of the respective other chamber or of the European Parliament (article 59) and with the following functions: Federal President (article 61), President of the Court of Audit (article 122(5)), a member of the Ombudsman Board (article 148g(5)), of the Supreme Court (article 92(2)), the Constitutional Court (article 147(4) and (5)), of an administrative court (article 134(5)). At the same time, the Constitution explicitly provides that a member of either house can simultaneously be a member of the Federal Government or State Secretary (in practice, however, the MP will renounce his/her seat for the term of a government office and upon termination of the government mandate, s/he is entitled to resume the mandate as an MP) or a member of a Land's parliament.
35. As for accessory activities, parliamentarians in general are free to exert/retain any occupation; a declaration duty applies (see below the section on Declaration of assets, income, liabilities and interests). A strict prohibition to exert any other gainful occupation exists for certain members of the National Council (the President and the chairpersons of the political groups) in accordance with article 2 of the Act on incompatibilities and transparency (hereinafter AIT). This obligation which also applies to other categories of Austrian senior officials does not apply to members of the Federal Council<sup>17</sup>. A further restriction provided under Section 6 para. 3 AIT is that occupations in the supervisory board of businesses supervised by the Court of Accounts (i.e. those where the State is financially involved) can only be performed without remuneration.
36. As pointed out below under the heading on third party contacts and lobbying a new article 1a was included in the AIT in 2012 which prohibits – in combination with article 4 item 1 of the Act on Transparency of Lobbying and Interest Representation – members of both chambers from accepting lobbying contracts. Austria needs to make this prohibition more consistent since it can easily be circumvented at the moment.
37. The GET noted that in respect of MPs, the system of incompatibilities – which has been in existence for several decades – has progressively evolved over time from a system providing for various prohibited side activities, to a system which has been made essentially declaratory in 2012. The AIT now provides for a limited number of such (incompatible) activities and its focus was put on transparency since MPs are required to disclose a broad range of professional occupations and responsibilities. It is important that the new obligations in place are applied effectively and recommendations have been made below to accompany the change of approach adopted by Austria. The GET also learnt that in the current context of limited restrictions on side-activities, it can happen that an MP exerts 10 to 20 mandates concurrently by combining local, regional and national functions, in addition to functions in the business or not-for-profit sector. This is one factor which has particularly contributed to the perception of elected officials pursuing primarily personal ambitions and objectives. A larger number of public responsibilities is also inevitably affecting the ability of such parliamentarians to be fully involved in their work. Austria may wish to examine the possible introduction of limitations on the number of mandates a member of parliament can hold.

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<sup>17</sup> "Article 2 (Constitutional provision - may only be amended or repealed if at least half of the members of the National Council are present and by a majority of at least two thirds of votes:

(1) During their term of office the members of the federal government, State Secretaries, members of a provincial government (in Vienna the Mayor and the Acting City Councillors), the President of the National Council, the chairpersons of the parliamentary groups on the National Council (the managing chairperson, if appointed), the President of the Court of Audit, the members of the Ombudsman Board and the Acting Presidents of the Provincial School Councils (City School Council for Vienna) are not allowed to engage in gainful occupation."



### *Contracts with State authorities*

38. There are no rules restricting or prohibiting the possibility for MPs to enter either directly or through a business interest into contracts with state authorities. This issue is actually overshadowed by the absence of proper rules on conflicts of interest. It is clear that when Austria examines this matter (see paragraph 27 above), consideration could be given to also include possible restrictions concerning MPs who are or want to enter a business relationship with public authorities.

### *Post-employment restrictions*

39. There are no rules restricting or prohibiting the possibility for MPs after their term of office to be employed in a certain position or sector or to engage in other paid or non-paid activities. The GET is aware that in Austria, there is a strong preference for a system where parliamentarians keep a close relation to society, instead of a system characterised by professionalization of politics. At the same time, there appears to be a strong perception in Austria that those who enter into politics pursue at the same time personal career objectives by means of employment opportunities in the business sector, for instance. This can create additional risks for the integrity of parliamentarians when offers emanate from a sector which is lobbying for certain reforms, or from an entity carrying out a lobbying business. Austria may wish to examine whether so-called "cooling-off" periods need to be introduced, which would prevent temporarily an MP from taking up certain functions after the end of a parliamentary mandate<sup>18</sup>. The adoption of a code of conduct or ethics, as it was recommended earlier, could also contribute to limit risks by providing indications on how to deal with offers of employment.

### *Third party contacts and lobbying*

40. There are no restrictions or prohibitions for MPs on the manner in which they may have contacts with third parties who may try to influence their decisions, such as rules on the impartiality and rules that address discussions outside the official processes with lobbyists, interest groups, unions, NGOs etc.
41. The only rules in place concern situations where MPs act themselves as lobbyists. The Austrian authorities refer to the Act on incompatibilities and transparency (hereinafter AIT) and to the Act on Transparency of Lobbying and Interest Representation (hereinafter ATLIR). The former was amended in 2012 and the latter introduced the same year, in the aftermath of a series of public controversies<sup>19</sup>, with effect as of 1 January 2013<sup>20</sup>. The Austrian authorities point out that with these legal changes, a new article 1a of the AIT – in combination with article 4 item 1 of the ATLIR – prohibits members of both chambers and of the provincial parliaments from accepting lobbying contracts. They also refer to the fact that lobbyists (lobbying enterprises, business enterprises using the services of lobbyists, self-governing bodies or interest groups) must register with the Lobbying

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<sup>18</sup> See also on this subject the position paper of Transparency International Austria, footnote 22 hereinafter

<sup>19</sup> See the Sunday Times affair: Journalists acting under cover had unmasked three members of the European Parliament who expressed their readiness to take money in exchange for amendments and insider lobbying activities; one of them was an Austrian; see for instance <http://www.ft.com/cms/s/0/c34e40a4-5324-11e0-86e6-00144feab49a.html#axzz44Z8QzzWM>. See also the Telekom case, on alleged dubious payments of millions of euros to a lobbyist and a strong suspicion that money was channeled back to politicians or people close to them; see for instance <http://www.dw.com/en/former-austrian-chancellor-resigns-amid-corruption-scandal/a-15365554>

<sup>20</sup> The full text (in German language) of the AIT is available at <https://www.ris.bka.gv.at/GeltendeFassung.wxe?Abfrage=Bundesnormen&Gesetzesnummer=10000756> and that of the ATLIR at: <https://www.ris.bka.gv.at/GeltendeFassung.wxe?Abfrage=Bundesnormen&Gesetzesnummer=20007924>

and Interest Group Register of the Federal Ministry of Justice, parts of which are publicly accessible via the internet<sup>21</sup>.

42. The GET notes that actually, the ATLIR – because it constitutes a general legal framework regulating lobbying activities – contains further obligations placed on lobbyists, for instance: a prohibition for a variety of bodies concerned with lobbying (as defined in the law) to undertake lobbying activities without prior registration and a duty to keep and update certain data, including on contracts with their customers – this information is not made available to the public; b) the duty to disclose the interests represented when establishing contacts with public/elected officials; c) a prohibition to exert any inappropriate pressure on the officials lobbied; d) a duty for the entities involved to adopt a code of conduct.
43. The system in place was often presented during the on-site visit as insufficient to guard against risks for the integrity of MPs<sup>22</sup>. It has been alleged that certain categories of businesses and professions other than those formally designated (and thus required to register) refer to their activity as “lobbying” to disguise certain questionable or illegal practices. Moreover, since the lobbying register only makes public a list of entities and individuals, the public has no access to information concerning who lobbies who, when and how, something which was confirmed during the on-site discussions since this information is not meant to become public under the ATLIR. Likewise, MPs and other categories of persons who are approached by and have contacts with lobbyists are themselves not subject to any requirements, for instance: registering/declaring such contacts, when they occur, including information on the interests defended by the lobbyist, checking whether the lobbyist is actually registered and so on. It has also been pointed out that the chambers do not exert any form of supervision in practice, especially as to whether the entities or persons exerting lobbying in parliament are actually registered or whether the information declared by lobbyists is updated and reliable. It also remains unclear if MPs themselves (have to) check whether a lobbyist who approaches them is properly registered. The GET was told that since non-compliance entails no negative consequences (sanctions, exclusion from parliament, blacklisting etc.), there is no real need to perform any checks. In the GET’s view, these gaps need to be filled.
44. Moreover, the AIT since 2013 seeks to prohibit MPs from being themselves involved into professional lobbying activities. Since the restriction imposed by its new Section 1a is for national (and provincial) MPs not to accept lobbying contracts, it would still be possible for an MP to be employed by a business entity in a position which involves lobbying work, including under the activity of public relations, counselling and so on. The GET is not in a position to confirm either interpretation of the said provision. It noted that Section 1a of the AIT actually goes on by indicating that besides the prohibition of lobbying contracts, MPs are free to represent political and economic interests provided the legal reporting requirements are fulfilled. But as pointed out above, there are no reporting requirements for MPs with regard to lobbying specifically. Last but not least, the profession of legal advisers, barristers and similar functions are not captured by the law where they provide lobbying services: as a result, it remains possible for an MP who exerts one of these activities to perform lobbying work. It is therefore clear that the framework on lobbying and contacts with third parties needs to be significantly improved to be effective and to better meet the objectives established by the legislature in 2012. **GRECO recommends that the legal framework applicable to lobbying be reviewed so as to i) improve the transparency of such activities (also for the public) and the consistency of requirements including the legal**

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<sup>21</sup> [www.lobbyreg.justiz.gv.at](http://www.lobbyreg.justiz.gv.at)

<sup>22</sup> The Austrian chapter of Transparency International has even published a position on this subject <http://www.ti-austria.at/forschung-tools/lobbying-in-oesterreich.html>

**prohibition for parliamentarians themselves to act as lobbyists, and to ensure proper supervision of these declaratory requirements and restrictions ii) to provide for rules on how members of parliament have contacts with lobbyists and other persons seeking to influence parliamentary work.**

#### *Misuse of confidential information*

45. On 1 January 2015, the Act on Information Rules for the National Council and Federal Council of December 2014<sup>23</sup> entered into force. Implementing regulations are contained in the Information Regulation Order adopted for both chambers which was published on 24 March 2015<sup>24</sup>. These rules provide for the way sensitive information is to be managed, and they contain the same arrangements which can be found in certain administrations in other European countries, including a categorisation of sensitive information and documents (restricted, confidential, secret and top secret), a duty to observe secrecy and to avoid unauthorised access to such information, a system and procedure for the classification / reclassification / declassification, a definition of groups of persons entitled to have access to the different categories of information, sanctions (call to order, fines in the range of 500 to 1 000 euros, imprisonment of up to three years) and so on. The implementing regulations deal with such matters as the listing of authorised persons, the marking of documents, secured storage areas, distribution and processing, destruction and so on. In addition to the above, the Rules of procedure of each chamber contain specific provisions applicable for instance to the work of investigative committees, of public and closed committee meetings (defined by reference to the level of confidentiality of documents and information handled during those meetings). The GET noted that the leaking out of information has been an occasional issue in the past and a concern which is still topical in Austria. It would appear that the above act has filled some important gaps in this respect.

#### *Misuse of public resources*

46. The replies to the questionnaire indicate that as a general rule, if resources are used unjustly, they will be claimed back. Special provisions are contained also in Section 10 of the Parliamentary Assistants Act according to which resources that were unjustly used by a member of the National Council will be withheld from the emoluments of that member under the Act on the limitation of emoluments of public office holders<sup>25</sup>. The GET understood from the information provided above that these arrangements concern only one of the chambers with respect to the resources allocated for the funding of assistants. Although the on-site interviews did not reveal particular issues with regard to the individual misuse of parliamentary resources, Austria may wish to ensure that proper rules are in place to deal with the broadest range of situations.

#### Declaration of assets, income, liabilities and interests

47. With the 2012 amendments to the Act on incompatibilities and transparency (hereinafter AIT) – which came into force on 1 January 2013 – Austria has expanded the declaration system applicable to MPs and opted for increased transparency. It now contains an indication of the category of income and of a broad range of occupations, when these are remunerated or when they involve managerial responsibilities, and the information is made public. For the sake of a

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<sup>23</sup> Text in German available at :

<https://www.ris.bka.gv.at/GeltendeFassung.wxe?Abfrage=Bundesnormen&Gesetzesnummer=20009039>

<sup>24</sup> <https://www.ris.bka.gv.at/GeltendeFassung.wxe?Abfrage=Bundesnormen&Gesetzesnummer=20009120>

<sup>25</sup> The full text in German is available at: <https://www.ris.bka.gv.at/GeltendeFassung.wxe?Abfrage=Bundesnormen&Gesetzesnummer=10001474>

rapid overview, the GET has summed-up the main arrangements in the following table:

	Situation of the MP	Situation of spouse, children...
<b>Assets (incl. real estate) and financial interests</b>	No <sup>(1)</sup>	No
<b>Liabilities</b>	No <sup>(1)</sup>	No
<b>Gifts (incl. property given for free, legacies)</b>	No	No
<b>Income</b>	Yes (5 categories); income from investments not included	No
<b>Occupational activities in the public or private sector, remunerated or not</b>	Yes: a) leading positions in a few designated types of legal entities; b) any other activity, whether as an employee or self-employed person, including as an elected or appointed official; also situations where the MP is a financial beneficiary of a company or other legal person etc. c) any leading function exerted on a voluntary basis	No
<b>Offers of such occupational activities</b>	No	No
<b>Business contracts with state bodies</b>	No	No
<b>Other interests or relationship which could be source of a conflict of interest</b>	No	No

(1) Other categories of officials (members of the federal or *Länder* government, the Mayor and council members of Vienna) are required to declare certain categories of their assets and liabilities, but not MPs.

48. In accordance with Section 6, the MP must declare the above information to the President of the house of which s/he is a member. MPs must enter and submit their declarations electronically via a specific information network. These do not include data on family members (spouse, children). The declarations are compiled in a consolidated PDF document, updated on-goingly and available on-line on the website of the parliament under the heading on members of parliament<sup>26</sup>. The publication has been a legal obligation since 1 January 2013, under Section 9 of the Act on the limitation of emoluments of public office holders. A database run by a civil society since 2011 mirrors the above and complements it with further information<sup>27</sup>.
49. The deadline for the declaration of occupational activities is one month from the moment of joining the house and the same applies in case of subsequent changes concerning the commencement of, or resignation from an occupation. The declaration duty ends as soon as the person ceases to be an MP.
50. Section 6 paragraph 2 of the AIT lists separately three groups of occupational activities which must be declared. These concern: a) under item 1 any "executive position" held with a stock corporation, limited liability company, foundation (*Stiftung*) or savings bank (*Sparkasse*); b) under item 2 and insofar as pecuniary benefits are generated: any other activities involving a working relationship including as an employee, but also as a self-employed or independent worker; where the activity is carried out in relation with a company or legal entity, the latter must also be disclosed<sup>28</sup>; c) under item 3, any other executive function exerted on

<sup>26</sup> List for the National Council: <https://www.parlament.gv.at/POOL/SWBRETT/ZUSD/BezBegrBVGPar9-NR.pdf>

List for the federal Council: <https://www.parlament.gv.at/POOL/SWBRETT/ZUSD/BezBegrBVGPar9-BR.pdf>

<sup>27</sup> The database is accessible at <https://www.meineabgeordneten.at/>

<sup>28</sup> These are listed in detail under Section 6 paragraph 2 for members of the National Council and of the Federal Council: a) Service or employment relationships: includes employment relationships, independent service contracts or contracts for work; b) Self-employed or freelance activities; c) Activities as a public official who is elected or appointed to a political office: includes all (paid) political offices held by a member of parliament, except for those exercised on the basis of a mandate, i.e. political offices such as, e.g. (Vice) Mayor, municipal councillor, city councillor, (deputy) head of an association of municipalities, Federal Minister, Federal Party

a voluntary basis, and the declarant is required to indicate the employing entity. For the above declaration purposes, a guidance document of three pages published online<sup>29</sup> provides for a series of definitions. "Executive position" means a position involving control functions and an increased degree of responsibility, e.g. manager or member of a managing body, such as executive board members or supervisory board members of a stock corporation. The term "pecuniary benefits" includes all emoluments (financial or in kind), remuneration and similar benefits which do not just cover the actual expenses of an individual. Reimbursement of specific expenses against presentation of invoices and reimbursement of expenses on a lump-sum basis which does not exceed the actual expenses incurred, e.g. for necessary travel costs and other necessary disbursements, is not considered a pecuniary advantage. Another guidance document of 12 pages, available only on the Parliament's intranet and which was communicated after the visit, provides for even more detailed explanations.

51. The income from the declared activity must be reported annually, by 30 June, by stating the corresponding income category based on the total average monthly gross emoluments (as defined above) of the previous calendar year (Section 6(4) and (5) AIT). Section 6 paragraph 4 of the AIT establishes as follows the categories of income: Category 1: from EUR 1 to EUR 1,000; Category 2: from EUR 1,001 to EUR 3,500; Category 3: from EUR 3,501 to EUR 7,000; Category 4: from EUR 7,001 to EUR 10,000; Category 5: more than EUR 10,000. The declaration system concerns consolidated amounts; there is no itemisation based on the different sources of income.
52. The GET welcomes the existence, since 2013, of the above declaration system, which pursues various purposes: preventing incompatibilities, conflicts of interest and situations of unjustified enrichment. That said, the system in place only gives a partial image of the information which is normally needed for a robust system for the prevention of conflicts of interest. But also for the scrutiny of possible (unjustified) enrichment and risks of corruption: as pointed out in the subsequent chapter of the present report on supervision, the Act on incompatibilities and transparency - AIT (Section 9) establishes the principle that MPs may be deprived of their mandate "if they misuse their position with a view to making profit" (see also paragraph 58 et seq.). In particular, MPs are not required to declare any information on assets, debts and liabilities and the actual patrimonial situation of MPs is thus completely left out of the system although it would logically complement what has to be declared in relation to the income and professional interests. Therefore, it remains currently unknown whether an MP participates financially in a company or another legal entity – even in a significant amount – and has thus an interest in a certain sector of activity. This information is not necessarily captured, by the occupational activities to be declared. The GET has also in mind that the writing-off of debts, for instance, and other favours awarded by financial and other businesses, are among the categories of dubious practices which have been observed in Austria in connection with elected officials. Also, the situation of spouses and close relatives is left out of the declaration system; a policy for the management of conflicts of interest should normally take into account

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Leader, District Party Leader, provided that this involves pecuniary advantages; in all other cases it has to be examined whether a duty to report the activity as laid down in article 6(2) no. 3 exists; d) work as an executive officer of a statutory or voluntary interest group: here jobs involving controlling tasks and an increased degree of responsibility with statutory or voluntary interest groups are concerned, e.g. (Vice) Presidents of the Economic Chambers, Labour Chambers, Chambers of Agriculture, the Medical Chamber, the Austrian Trade Union (ÖGB), etc.; e) all other activities involving pecuniary advantages, except for the management of one's own assets i.e. income/pecuniary advantages from capital assets or mere rental are not included. However, in the case of a commercial enterprise a reporting duty does apply (e.g. facility management of one's own house for remuneration, running a bed & breakfast). Political offices such as district party leader, federal party leader etc. must be reported.

<sup>29</sup> Each chamber has published its own document, but the content is identical:  
<https://www.parlament.gv.at/POOL/SWBRETT/25020/0010/BezBegrBVGPar9Erkl-NR.pdf>

those situations which involve persons who are closely related to senior public officials. All the above calls for improvements.

53. As regards the activities to be declared under Section 6 paragraph 2, items 1, 2 and 3 of the AIT, the law appears unnecessarily complex, especially when it comes to the distinction between certain senior managerial functions under item 1 (those occupied in stock corporations, limited liability companies, foundations, savings banks) whether or not they generate benefits, and any other occupation generating benefits under item 2. Austrian law actually provides for a broad range of legal constructions<sup>30</sup> and the concept of "savings banks" (*Sparkasse*) may exclude other categories of banks (retail banks, commercial banks, investment banks etc.) and other businesses offering banking services. The GET was told that the legislature had focused on the above four categories of entities because these are the most common ones in Austria. The GET notes that this categorisation dates back to a few decades ago when Austria prohibited the parallel involvement of MPs in relation to these categories of businesses. In the current context, it could be out-of-date to disclose certain important interests represented by MPs, irrespective of the existence of remuneration.
54. A guidance document of three pages produced by the parliament and available publicly<sup>31</sup> underlines that only those activities which are "active" must be declared but it does not give further details on this subject. For the sake of transparency it would certainly be preferable that the situation be clarified further for those activities exerted only occasionally (as a consultant or remunerated speaker for instance) and that information possibly be disclosed also for those MPs who have suspended or "delegated" their business and other professional responsibilities during their mandate. Especially since the present report calls for broader disclosure duties, including in respect of assets, it would be preferable that this is made clear. The above situation thus also calls for improvements. The guidance document also does not specify whether declarations are meant to take into account the declarants' situation beyond the Austrian borders. The AIT is silent on this subject and members of the parliamentary services met by the GET assumed that the AIT was not limited to the domestic situation of the MP. After the visit, the Austrian authorities provided a copy of another 12 page guiding document available on the intranet only (a so-called *Leitfaden*); it states explicitly that activities abroad must be treated in the same manner as those exerted domestically.
55. Also, the AIT does not establish the principle of the declaration of all sources of income; the information to be declared concerns only the revenue generated by the functions mentioned in the declaration. Income from other sources or deriving from movable or immovable assets are thus not covered although such information can be pertinent from the perspective of integrity policies. Several representatives met on site also regretted the absence of detailed figures and of a more precise indication of the respective sources of funding (which would give a clearer picture of the actual private interests surrounding the declarant). It is clear that the mere indication of the category of monthly average income is not a satisfactory solution. The GET also recalls that in the context of the Fourth Round, GRECO has already stressed repeatedly that a declaration system should lead to the publication of sufficiently detailed figures. Moreover, during the interviews, it was sometimes pointed out that certain intermediary categories of income were inappropriately defined. It is also obvious that for the upper echelon (more than 10,000 euro

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<sup>30</sup> All of the following are legal persons, with the exception of the first: a) *Gesellschaft bürgerlichen Rechts* (non-trading partnership); b) *Offene Gesellschaft* (OG) (general partnership); c) *Kommanditgesellschaft* (KG) (limited partnership); d) *Stille Gesellschaft* (silent partnership); e) *Aktiengesellschaft* (AG) (public limited company); f) *Gesellschaft mit beschränkter Haftung* (GmbH) (limited liability company); g) *Erwerbs- und Wirtschaftsgenossenschaft* (cooperative and industrial and provident society); h) Verein (association); i) European Public Company (*Societas Europaea* - SE); j) European Economic Interest Grouping (EEIG)

<sup>31</sup> See footnote 29



income per month), further upwards variations over time remain invisible, which creates an imbalance between declarants. Overall, this system of categories of income does not contribute as much as it should to the overall objectives of the declaration system. Also, when Austria amends the system, further aspects would deserve to be considered such as the situation of those MPs who have left and of other items which could possibly be included as a result of further improvements recommended in the present report. In the light of the considerations contained in the various paragraphs above, **GRECO recommends (i) that the existing regime of declarations be reviewed in order to include consistent and meaningful information on assets, debts and liabilities, more precise information on income (ii) that consideration be given to widening the scope of the declarations to also include information on spouses and dependent family members (it being understood that such information would not necessarily need to be made public).** The Austrian authorities may also wish to ensure that the guidance documents, both the short version published on-line and the more comprehensive version ("*Leitfaden*") available on the Parliament's intranet deal consistently with the cross-border situation of MPs.

### Supervision

56. As a general rule, the speaker of each chamber is responsible for the overall discipline during parliamentary work. The Rules of procedure of each chamber (article 102 of the rules of the National Council, article 70 of those of the Federal Council) thus provide that MPs can be called to order where they violate the decorum or undermine the dignity of the house, where they use abusive language, or when they do not comply with the speakers' orders or with the secrecy duties deriving from the Information Rules Act.
57. As regards the supervision over the declarations filed in accordance with the Act on incompatibilities and transparency (hereinafter AIT), as amended in 2012, the AIT provides for the establishment of an Incompatibility Committee within each of the two federal chambers. These committees have been in place at least since 1983<sup>32</sup> as the GET noted. Similar committees exist within the parliament of the *Länder*.
58. First of all, as regards **incompatibilities**, the committees are responsible for checking all declarations made according to Section 6(2) no. 1 and Section 6a AIT and to prohibit or approve, as the case arises, the exercise of another occupation which might be incompatible with the exercise of a parliamentary mandate. Where a case of incompatibility is detected, the Committees examine the case and must adopt a motion within three months, inviting the MP concerned to put an end to the situation (Section 7 AIT). Upon notification by the speaker of the house, the MP must then take the necessary measures within three months to end the situation that is giving-up the activity concerned or resigning as an MP. Decisions on incompatibilities are taken by the committees by simple majority and the general procedural rules for committee meetings apply accordingly. However, the Committee's reports are not published on the internet; they are only distributed to the members of the Committee in the form of printouts. The GET considers that, in principle, the AIT also entrusts the committees – at least since 1983 – with a control function concerning possible cases of **illegitimate enrichment**. Since section 9 of the AIT prohibits the misuse of official functions for the purpose of seeking profit, Section 10 paragraph 2 provides that the committees are responsible for dealing with such cases. Should MPs refuse to comply with decisions of the parliamentary (or provincial) committees concerning a situation of incompatibilities, or where the committees conclude that there has been a case of illegitimate enrichment under Section 9 AIT, the committees may file an application

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<sup>32</sup> Text of the original law in 1983 [https://www.ris.bka.gv.at/Dokumente/BgblPdf/1983\\_330\\_0/1983\\_330\\_0.pdf](https://www.ris.bka.gv.at/Dokumente/BgblPdf/1983_330_0/1983_330_0.pdf)

with the Federal Constitutional Court to deprive the MP of his/her parliamentary mandate.

59. These committees are composed of members of the respective chamber. In the case of the National Council, the members are elected according to the principle of proportionality at the beginning of the legislative period. In the case of the Federal Council, the composition of the Committee is only renewed by election if the composition of the Federal Council changes as a result of a provincial election. The two committees have no special resources at their disposal, apart from the assistance provided by members of the Parliamentary Administration, who are thus familiar with that area. This personnel is also available for questions or matters related to declaration requirements at any time. At the beginning of a legislative period, the Parliamentary Administration provides substantial information to MPs about the general parliamentary mechanisms and the rights and obligations of MPs.
60. The GET noted the absence of any official practice with the above arrangements although the parliamentary Incompatibility Committees have been in place for several decades to deal both with situations of incompatibilities and of illegitimate profit under the Act on incompatibilities and transparency (hereinafter AIT). The GET learnt during the on-site visit that the few cases of incompatibilities which have arisen so far concerning MPs were treated informally, for instance through inter-personal contacts, without major discussions by the federal parliamentary committees. It was also pointed out that most cases had been brought up by journalists or other sources, although this may not reflect the official views of the Austrian authorities. As regards possible situations of illegitimate profit under Section 9 and 10 of the AIT, parliamentary representatives pointed out that additional implementing provisions would be needed as a minimum, since the exact purpose of such a mechanism remained unclear to them. They acknowledged that as things stand, the information that is to be declared does not allow assessing variations in the financial and patrimonial situation of MPs. In any event, they considered that the committees are not meant to conduct checks or investigations, even if declarations would contain obvious erroneous information on side activities and the level of income. Discussions with further Austrian interlocutors showed that there is a clear perception that the parliament is not prepared or equipped to ensure some sort of supervision due to political and other factors.
61. The GET also noted that in the AIT, supervisory responsibilities are not always consistent or clearly spelled out. It remains unclear for instance, whether all situations of incompatibilities are to be monitored by the incompatibility committees. For instance, as regards activities under Section 6 paragraph 2, only those which involve a leading function in four categories of businesses/entities are explicitly to be examined as to their permissibility, according to a strict reading of Section 6 paragraph 6. The AIT is also silent on whether the incompatibility committees are required to conduct checks on the information on income, possibly as a result of their responsibility under Sections 9 and 10. It also remains to be clarified who is responsible – if anyone at all – for the supervision of compliance with other requirements such as those of Section 1a on the prohibition for national (and provincial) parliamentarians to get involved themselves into contractual lobbying activities: the incompatibility committees, as a result of their specific responsibilities, or the speaker or bureau of the house in the context of general supervision.
62. Although the published information is well kept in an electronic format, easily accessible and visibly updated at regular intervals, it was indicated during the visit that it is not difficult to spot questionable declarations in the two lists published by the parliament. Especially if one crosses the information with other sources or just checks the consistency of the information submitted. For instance, there are many declarations showing no income at all, for some of these even declarations where



one or more remunerated activities are listed. The on-site discussions showed that for certain activities or types of benefits, it is not always clear, including among MPs, whether these must be declared or not. It is thus important that well detailed and accurate guidance documents provide for the necessary clarification, also to avoid unnecessary difficulties when determining the good or bad faith of declarants when applying subsequent enforcement measures. To conclude, various changes need to be made by Austria to improve the declaration system for the reasons mentioned in the various paragraphs above. According to public perceptions (see paragraphs 11 et seq.), it has also become crucial for Austria to take decisive measures to restore public faith in the political institutions. Against this background, **GRECO recommends i) that the future declarations of income, assets and interests be monitored by a body provided with the mandate, the legal and other means, as well as the level of specialisation and independence needed to perform this function in an effective, transparent and proactive manner and ii) that such a body be able to propose further legislative changes as may be necessary, and to provide guidance in this area.**

#### Enforcement measures and immunity

63. Overall, given the level of development of integrity policies and measures regarding MPs, Austria does not have a comprehensive system to enforce the existing integrity-related arrangements. Specific sanctions exist only in respect of the unauthorised disclosure of confidential information: as mentioned before, the Act on Information Rules for the National Council and Federal Council of December 2014 provides for a range of measures: calls to order, fines – even though the highest is only 1 000 euros – and imprisonment of up to three years (see paragraph 45). There are no similar arrangements – which could also include the suspension of emoluments or the exclusion from certain parliamentary responsibilities – to deal with possible breaches of other pertinent rules. This concerns in particular possible violations of duties defined in the Act on incompatibilities and transparency (hereinafter AIT), some of which can lead to the MP being stripped of his/her mandate upon a decision of the Federal Constitutional Court. Although this declaration system constitutes the core element of the Austrian preventive system, it is not used in practice and the incompatibility committees do not exert an effective supervision. As a result, the information is basically submitted by declaring parliamentarians under their own responsibility and there are no sanctions in case of false declarations or just to force an MP to submit all the information needed, for instance. It is clear that proper sanctions are needed to ensure – as necessary – the enforcement of requirements of the AIT and of other preventive mechanisms to be introduced in response to the present report. This would contribute also to strengthening public trust in those arrangements and in the parliamentary institutions, provided the public can learn about those enforcement measures instead of these being discussed informally in parliament or in closed committees. **GRECO recommends that infringements of the main present and future rules in respect of integrity of parliamentarians, including those concerning the declaration system under the Act on incompatibilities and transparency, carry adequate sanctions and that the public be informed about their application.**
64. For the rest, Austria relies largely on the general criminal law sanctions, especially those for bribery and other corruption-related offences, and thus on the criminal justice system to investigate and prosecute cases brought up by the media including as a result of leaks or tips. The GET was also informed on-site that the parliament was examining draft legislation aiming at aligning the legal situation of MPs and members of government on that of civil servants concerning the loss of a mandate / employing relationship, which would be applicable in case of an unconditional penalty of more than 6 months imprisonment (instead of one year

imprisonment or more, currently) or in case of a suspended sentence involving more than one year imprisonment. Certain political groups even supported a lower threshold. These amendments were adopted after the visit and they will enter into force on 1 January 2017.

65. Against the above background, federal MPs benefit from immunities under article 57 of the federal constitution. Traditionally, a distinction is made between a) „professional immunity“: members of the National Council may never be called to liability for votes cast in the course of their function; for opinions expressed orally or in writing, they may only be called to liability by the National Council; b) “extra-professional immunity” (non-liability immunity) : in case of a punishable act (under criminal or other proceedings) – and unless they are caught whilst committing the offence<sup>33</sup> – they may only be arrested, or their premises searched, with the agreement of the National Council. For the rest, they may be prosecuted for a punishable act, without the approval of the National Council, only when the act is obviously unconnected to the political activity of the deputy. The authority concerned must however seek a decision by the National Council on the existence of such a connection if the member in question or a third of the members belonging to the standing committee entrusted with these matters so demands. Also, at the request of the latter, every procedural act shall immediately cease or be discontinued. A request for the lifting of the immunity is considered granted if within 8 weeks the parliament fails to take a decision. The Members of the Federal Council enjoy during their mandate the immunity granted to members of their provincial parliament. The GET was informed that in the last four years, the federal Parliament had received 27 requests for the waiving of an immunity concerning a broad range of alleged offences, for instance unauthorised access to data, incitement to embezzlement, money laundering, falsification of evidence, copyright fraud or dissemination of false information during elections. 22 requests have been met.
66. The GET recalls that in the joint First and Second round Evaluation, improvements were recommended to ensure the existence of guidelines and objective criteria as well as adequately grounded decisions on the lifting of immunities. The compliance procedure ended without Austria having implemented a recommendation on improvements in that respect. During the present visit, the GET was informed that the immunity tended to be lifted more easily in recent years and that the *Länders* had actually abolished the “extra-professional immunity”. The GET also understood that a similar change was initiated in the National Council and that despite a broad consensus in the end of 2012, the reform could not be finalised in time before the previous legislative period ending in 2013. It is important that the system of immunities does not constitute an impediment to the enforcement of integrity measures discussed in the present report: these provide for certain sanctions which would normally be complemented as a result of the recommendation contained in paragraph 63. Moreover, if the current practice was to change, and procedural immunity was misused to hamper the investigation of corruption offences, the issue would merit another review as a source of concern for GRECO.

#### Training and awareness

67. New MPs and, as a rule, all MPs after each parliamentary election, are provided by the parliamentary administration with information and reference documents concerning the internal rules, their rights and obligations and so on. New MPs are also offered systematically personal briefings and assistance. As pointed out earlier, declarations are filed electronically through a specific information network and

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<sup>33</sup> Even in case of *flagrante delicto*, the authority concerned must immediately notify the President of the National Council and at the Council’s request (or that of the competent standing committee), the arrest must be suspended or the legal process as a whole be dropped.

database for parliamentarians. The database contains the relevant regulations as well as information on existing declaration requirements. The database also contains the contact details of parliamentary staff who can provide information at any time. During the on-site discussions, individual parliamentarians with whom the GET met expressed satisfaction with the efforts done by the parliamentary administration in this regard. When Austria introduces additional mechanisms to promote transparency and to further reduce risks for the integrity of parliamentarians, it is obvious that additional efforts will be needed to explain those changes and to give practical guidance on the concrete implications of the changes. A recommendation was made in paragraph 26 to the effect of elaborating a code of conduct containing practical guidance and of raising awareness among MPs on the standards expected of them.

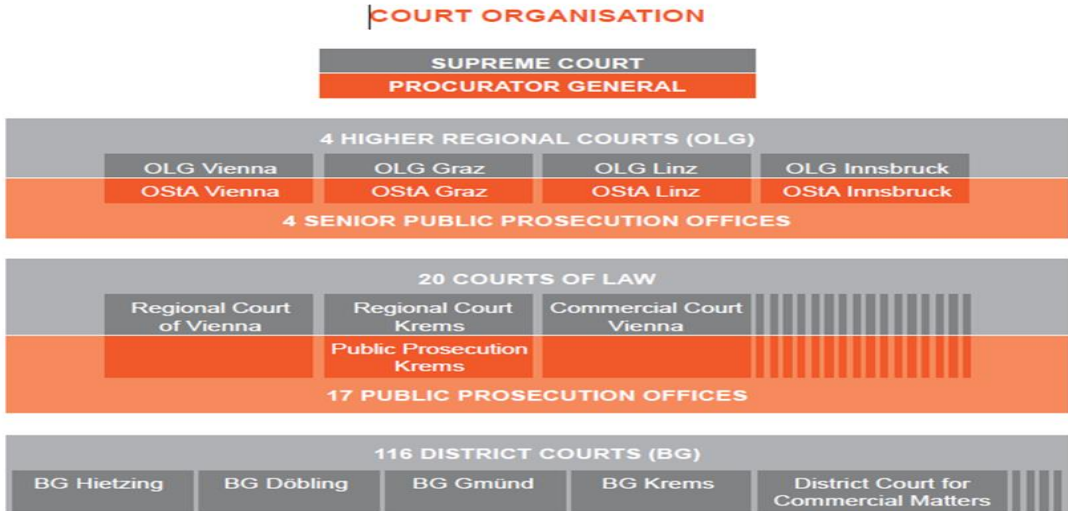
**IV. CORRUPTION PREVENTION IN RESPECT OF JUDGES**

Overview of the judicial system

- 68. Austria is a federal State and its justice system, organised in its main features by the Federal Constitution<sup>34</sup>, is largely regulated by federal laws and thus harmonised to a large extent across the whole country for ordinary courts. This is particularly the case for the status, career, rights and obligations of judges and prosecutors which is mainly regulated in the federal Service Act for Judges and Public Prosecutors<sup>35</sup>; some pertinent provisions are also contained more sporadically in further laws, for instance the Courts Organisation Act<sup>36</sup> which deals with self-withdrawals of judges. This is not yet the case for members of the administrative courts. The upper courts of the provinces also retain important responsibilities for the appointment and disciplinary procedures since the country has no central council or self-management body for the judiciary. Austria abolished the institution of the investigating judge with the substantial criminal justice reform which entered into force on 1 January 2008. The responsibility for the investigation was thus transferred entirely to the prosecutors even though certain decisions must emanate from the judge (especially those entailing a restriction of freedom of movement).
- 69. After more than two decades of discussions on the need to reform the justice system in administrative matters, especially due to decisions of the European Court of Human Rights, Austria designed in 2012-2013 a comprehensive reform, which became effective on 1 January 2014. It has put an end to a system of more than one hundred committees and other review bodies which existed within the administrative agencies.

*Categories of courts and jurisdiction levels*

- 70. As regards “**ordinary**” courts, the judicial system is composed of the courts and of the prosecution services which are discussed in chapter V of the present report. The pyramidal system of first, second and supreme instance courts, with the corresponding prosecution service, is as follows:



<sup>34</sup> Text in English and German: [https://www.ris.bka.gv.at/Dokumente/ErV/ERV\\_1930\\_1/ERV\\_1930\\_1.pdf](https://www.ris.bka.gv.at/Dokumente/ErV/ERV_1930_1/ERV_1930_1.pdf)  
<sup>35</sup> Text in German <https://www.ris.bka.gv.at/GeltendeFassung.wxe?Abfrage=Bundesnormen&Gesetzesnummer=10008187&FassungVom=2016-09-09>  
<sup>36</sup> Text in German <https://www.ris.bka.gv.at/GeltendeFassung.wxe?Abfrage=Bundesnormen&Gesetzesnummer=1000009>

71. In first instance, there are 116 District Courts and 20 courts of law, which have specific sections responsible for civil, penal and commercial matters. District courts, as a rule, deal with cases of lesser importance and hearings are always conducted by one career judge. Courts of law hear cases with one or more career judges, sitting sometimes on panels together with lay judges (or with a jury composed of 8 citizens). Appeals are heard, in second instance, by the four higher regional courts and in last resort a regards the proper application of the law, by the Supreme Court. These second and third levels do not imply the participation of lay judges in the rendering of decisions.
72. Austria also has a system of labour and social courts, which is based on the above structure, with certain specific features. In first instance, cases are heard by the courts of law sitting in formations of labour or social courts: lay judges appointed by their peers sit on panels together with a career judge<sup>37</sup>. As in the case of commercial courts, only in Vienna there is a full-time specific court for labour and social matters with the similar combination of career judges and lay judges (sometimes they are also called "associate judges" for the three categories of courts). In second and third instance, cases are heard by the competent section of the higher regional court or Supreme Court, but without the involvement of lay judges.
73. The **administrative justice** system is based on the Administrative Justice Reform Act of 2012<sup>38</sup>, a number of implementing acts and regulations of the federal State and the *Länder*, and amendments to the Federal Constitution (its chapter VII)<sup>39</sup>. The reform of 2014 has established a new system of eleven administrative courts of first instance. The procedure of all administrative courts with the exception of the Federal Financial Court, are regulated by a federal law<sup>40</sup>. The structure is now as follows: a) one court (*Verwaltungsgericht*) for each of the nine provinces: these nine courts hear cases concerning i.a. rulings and decisions of the general (regional) administrative authorities; these courts are regulated by federal legislation and by individual provincial legislation for their organisation and the statute of judges and other personnel; b) one court entrusted with the review of the federal agencies' decisions – the Federal Administrative Court (*Bundesverwaltungsgericht*) which is regulated by federal legislation<sup>41</sup>; and c) one court with special jurisdiction for the review of administrative decisions in tax matters – the Federal Financial Court (*Bundesfinanzgericht*), which is regulated by specific federal legislation<sup>42</sup>; d) appeals against these 11 courts can be lodged with the Supreme Administrative Court (*Verwaltungsgerichtshof*), which is regulated by specific federal law<sup>43</sup>; its members are equated with the judges of the Supreme Court and the federal Service Act for Judges and Public Prosecutors applies accordingly. This is a court of last resort which was the only administrative court in the country before the reform. It is competent to review only important questions of law. The first instance administrative courts decide by single judges; federal or provincial legislation may however provide that the administrative court pronounces judgment through chambers and with the involvement of expert lay-judges. The Supreme Administrative Court renders decisions in chambers to be determined by law; cases are always heard by panels of judges, comprising five persons in most cases (in certain cases, the panel comprises three or nine members). The administrative courts are also regulated by their individual rules of procedure.

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<sup>37</sup> In first instance, cases are heard by a panel composed of one career judge and two lay judges, and in second instance by a panel composed of three career judges and two lay judges.

<sup>38</sup> *Verwaltungsgerichtsbarkeit-Novelle* 2012

<sup>39</sup> See footnote 13 for the text in English

<sup>40</sup> [Federal Act on the procedure of administrative courts](#) of 1991

<sup>41</sup> [Act on the Federal Administrative Court](#) of 2013

<sup>42</sup> [Act on the Federal Financial Court](#) of 2013

<sup>43</sup> [Act on the Supreme Administrative Court](#) of 1985

74. The highest judicial body is the **Federal Constitutional Court**. Its task is to examine compliance with the Constitution including the fundamental rights enshrined therein. It is called upon to review the constitutionality of Federal and Provincial laws, electoral matters, the lawfulness of regulations of administrative bodies or the constitutionality of judgments and decisions of administrative courts of first instance; the Constitutional Court thus shares appellate jurisdiction in administrative matters with the Supreme Administrative Court. In contrast to the other courts, the 14 judges at the Constitutional Court do not serve on a professional, but on an honorary basis. Only outstanding personalities who already completed a successful legal career in another function may be appointed members of the court. All of the judges at the Constitutional Court may continue to exercise their previous professions (e.g. as judges or university professors, however not as civil servants, who must be released from their official duties). The Constitutional Court therefore only convenes for "sessions" of three weeks, which are usually held four times a year. The GET noted that as in other countries, the Constitutional Court is a juridical-political institution: eight members including the chair and deputy chair are chosen by the Government, and three members by each chamber of parliament, who are all subsequently appointed by the federal president.

#### Other institutions

75. Austria also has since 1997 the institution of the **Legal Protection Commissioner** [*Rechtsschutzbeauftragter*]. There are four such bodies. For the purposes of the present evaluation, the main one is the Commissioner for justice under the criminal procedure code (article 47a, 147 und 195), who is seconded by three deputies. The four members are appointed for a mandate of three years by the Minister of Justice. Their mandate can be renewed without limitation<sup>44</sup>. The office of the commissioner authorises and supervises the implementation of covert investigations and surveillance measures. Other tasks include the review of proceedings which have been terminated and as from 1 January 2016, the office also reviews proceedings terminated upon a ministerial instruction.

#### *Independence of the judiciary and the administration of courts*

76. The vast majority of judges and prosecutors are career professionals and they form a consolidated group of persons. As indicated earlier, the ordinary and administrative courts also make use of **lay judges** and criminal proceedings before the penal courts involve a **jury system** for the hearing of serious crimes. In total, there are about 1 800 professional judges in Austria. Approximately 53 % are women; the situation is improving in recent years as regards the share of those holding senior positions. They are supported in the ordinary and in the administrative courts by **judicial officers (Rechtspfleger)**. The organisational legislation provides that certain, precisely specified tasks can be assigned to this category of personnel. The competent judge can however reserve to him/herself any business or take over any tasks delegated to a support staff or give instructions for the accomplishment of the work. The Constitution (Article 88a) also provides for a system of **support judges (Sprenge Richter)**, to be designated in each court circuit among the career judges. They are not assigned full-time to a specific court and can be used to overcome temporary case overload and situations arising from judges on sick leave etc. In each judicial district, their number is limited to 3% of the total number of judges. At the level of the Regional courts and at district courts with more than 10 permanent judges, **substitute judges (Ersatzrichter)** can be designated among the career judges to provide, where necessary, temporary support in a neighbouring district staffed with a small number of judges; usually, this concerns the more junior judges. The justice system does not make use of law

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<sup>44</sup> The current Commissioner – who was Procurator General (see chapter V) until his retirement – was reappointed in 2015 for the fifth time; [Link to the official press release](#) published on that occasion.

specialists (barristers, notaries, academics) to perform temporary judicial functions. Where these want to become judges in an ordinary court, they are dispensed of the initial preparatory and practical phase applicable to candidate judges but they must pass the competition and tests like any other young recruit (see hereinafter the section on recruitment).

77. Articles 87 and 88 of the Federal Constitution establish the principles of judicial independence and non-removability / irrevocability of judges in the ordinary courts.

**Article 87.** (1) Judges are independent in the exercise of their judicial office.

(2) In the exercise of a judicial office, the judge is required to deal with the judicial workload attributed to him/her in accordance with the law and the modalities of case allocation, with the exception of matters related to administrative management which are not to be discharged by chambers or commissions according to the law.

(3) Business shall be allocated in advance among the judges of the ordinary courts for the period provided by federal law. Any such matter allocated to a judge may be removed only by a formal decision of the competent chamber in case the judge is prevented from discharging his/her responsibilities or s/he is unable to cope with these duties within a reasonable time in consideration of the workload concerned.

**Article 88.** (1) A federal law will determine an age limit upon whose attainment judges will permanently retire.

(2) Otherwise judges may be removed from office or transferred against their will, or be subjected to compulsory retirement only in the cases and ways prescribed by law and upon a formal judicial decision. These provisions do not however apply to transfers and retirements which become necessary through a change in the organisation of the courts. In such a case the law will lay down within what period judges can be transferred and sent into retirement without the formalities otherwise prescribed.

78. Judges are thus independent in the exercise of their judicial office, they can be transferred or sent to retirement only in the circumstances provided by law and upon a judicial decision. Cases can only be reallocated following a decision of the competent chamber establishing that the judge concerned is unable to cope with the workload. Support judges and substitute judges, because of their specific status, therefore do not fully benefit from the principle of non-removability. For the rest, since they are career judges, they enjoy life-long tenure and the same statute as all other judges, which is provided for in the (federal) Service Act for Judges and Public Prosecutors. This also includes the general duties of impartiality, integrity and so on.
79. Administrative judges enjoy in principle the same guarantees since article 134 paragraph 7 of the federal constitution extends the applicability of the main provisions of articles 87 and 88 also to "members of the administrative courts and of the Supreme administrative court". Members of the federal administrative courts also benefit from the general guarantees and statute contained in the above (federal) Service Act for Judges and Public Prosecutors. On the other side, the position of members of the nine provincial administrative courts is largely determined by the legislation of the *Länder* which employs them. In accordance with the above article 87 of the Constitution, their legislation is also free to determine the conditions of service termination.
80. The complexity of the legislative architecture applicable to administrative courts, which combines general laws and court-specific laws, has made it difficult even for the Austrian authorities to provide a systematic global overview. The situation concerning certain courts, in particular the federal financial court and the regional administrative courts remains largely undocumented. The GET noted that although the Federation has jurisdiction to legislate and regulate the functioning of the judiciary, the federal framework has left many spaces open to be filled by the legislation of the *Länder* when it comes to the conditions of employment of judges. The on-site discussions showed that these regional courts and their members are

thus regulated in a fragmented manner, including as regards appointments. When the administrative courts were introduced, the posts were filled by the *Länder* government without the involvement of judicial panels and sometimes with a public perception of a political bias. The GET was informed that even if such panels should by now be in place as this is one of the (minimalist) requirements established by the federal Constitution, there might still be some cases where the executive retains excessive discretion over appointments and promotions (the case of Vienna was mentioned<sup>45</sup>). A recommendation was issued hereinafter (see paragraph....) to the effect of reviewing the method for the selection of judges in Austria.

81. It would also appear that administrative judges see themselves as a professional group of its own and that the existing code of conduct for judges does not apply to them. One of the unions of administrative judges has itself documented a series of problematic situations inherent to the incomplete reform process<sup>46</sup>. It would appear that most *Länder* have not adopted proper service legislation for members of the administrative courts (Vienna would be a notable exception). As a consequence, except for Vienna, judges are employed on a contractual basis and the rights and obligations are the general ones applicable to civil servants of the respective Land. The absence of consolidated service rules prevents career possibilities across the country and the remuneration may vary by a factor of two from one Land to the other. This would hinder career changes and professional evolution across the country and it would make certain *Länder* unattractive for practitioners. It remains unclear in the above context whether the general supervision and disciplinary mechanisms of the administration are applicable to judges: the GET was told that disciplinary proceedings are just not regulated as yet (that is, with the exception of two federal courts). This can be a problematic situation from the perspective of the independence of the judiciary. Moreover, according to the above assessment done by a union, most of the local laws reportedly prohibit the courts from introducing specific internal rules that would fill the gaps. It has been alleged that overall, it was as if the local executive power shows distrust vis-a-vis an independent judiciary. Doubts have also been expressed as to whether all administrative courts do now publish their decisions. Another apparent gap is the absence of a code of conduct for members of the administrative courts. The GET understood that in order to trigger improvements to the above situation, the four unions of judges have recently gathered under one umbrella in order to promote a consolidation and unification of the status of judges in Austria. The GET can only concur with this proposal. **GRECO recommends that i) adequate legislative, institutional and organisational measures be taken so that the judges of federal and regional administrative courts be subject to appropriate and harmonised safeguards and rules as regards their independence, conditions of service and remuneration, impartiality, conduct (including on conflicts of interest, gifts and post-employment activities), supervision and sanctions; ii) the *Länder* be invited to support those improvements by making the necessary changes which fall within their competence.**

#### *Consultative and decision-making bodies*

82. Austria has not established one or several special bodies which would be responsible for the various aspects of the career of judges and prosecutors, such as self-governed judicial councils which exist in many other countries. Pursuant to

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<sup>45</sup> In this Land, a staff panel composed of judges must be involved in the proposal of candidates but the legislation foresees that a second list be produced by the government administration, for the executive to make the final choice as regards appointments.

<sup>46</sup> The position was published in successive chapters: <https://uvsvereinigung.wordpress.com/2014/12/30/das-erste-jahr-1-verfahrensrecht/> ; <https://uvsvereinigung.wordpress.com/2014/12/31/das-erste-jahr-2-organisationsrecht/> ; <https://uvsvereinigung.wordpress.com/2015/01/02/das-erste-jahr-3-dienstrecht/> ; <https://uvsvereinigung.wordpress.com/2015/01/05/das-erste-jahr-4-standesvertretung-und-dachverband-und-europa/>



article 87 paragraphs 2 and 3 of the Federal Constitution, specific questions of management and administration concerning the ordinary courts (allocation of cases, appointment and promotion of judges, deployment of support and deputy judges, assessment of judges) are dealt with by judicial **staff panels** (*Personalsenate*) acting as independent judicial bodies. These are situated at all higher levels of the court system: there are staff panels at all 20 Regional Courts, at the four higher regional courts and at the Supreme Court. They comprise the president and the vice-president of the courts and three to five judges elected by their peers every five years within the judicial constituency. These staff panels are involved in the preselection of candidates to vacant posts. Disciplinary matters are decided by **disciplinary courts** (*Disziplinargerichte*) located at the level of each higher regional courts and at the Supreme Court, and composed of (non-elected) judges.

83. For administrative judges, article 134 of the Constitution provides that where pre-selections are needed, these can be carried out either by the staff panels or the plenum of the court. Each regional and federal court may thus appoint a panel consisting of the president and vice-president, and three additional members of the court.

#### Recruitment, career and conditions of service

84. For the ordinary courts, the appointment and promotion of judges (and prosecutors) is the responsibility of the Federal President. This task was delegated to a large extent to the Ministry of Justice and the President retains his/her prerogative in respect of the most senior positions only: members of the higher regional courts and of the Supreme Court, chairs and deputy chairs of the regional courts. It is regulated in detail for the whole country in chapter VII of the Service Act for Judges and Public Prosecutors. For the administrative courts, the responsibility lies fully with the government of the *Länder* (for the regional courts) and with the federal government or the President (for the federal courts), in accordance with article 134 of the Constitution.

#### *Recruitment requirements*

85. As regards **ordinary court judges**, this matter is regulated by the Service Act for Judges and Public Prosecutors. Those who have passed successfully the final university exam in law and obtained the title of *Magister* are entitled to apply for a practical five-month traineeship in case they want to become a barrister, judge, prosecutor or notary or another profession for which this practical experience is a legal pre-condition. Applications are to be sent to the chair of one of the four higher judicial courts. Conditions for applying include the Austrian nationality and the full legal capacity, in addition to the above diploma. Those interested in following the subsequent training stages for judges need to indicate it in their application. During this initial traineeship<sup>47</sup>, the trainee must be involved in the different subject matters handled by first instance courts and attend courses in parallel; the theoretical training and each court period leads to a performance evaluation by the judge designated as tutor.
86. At the end of this preliminary stage, which can be prolonged by a few months as necessary, the candidate must undergo a written, an oral and a psychological test (conducted by psychologists). On the basis of the results and the performance evaluations, the chair of the higher judicial court decides who are the most suitable candidates and proposes a list to the ministry of justice which makes the final decision on appointments of so-called "candidate judges" (*Richteramtsanwärter*). Out of an average of 700 trainees in recent years, about 250 are selected at that

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<sup>47</sup> The duration will be seven months as from 2017 but in the past, it was sometimes longer than that.

stage. The GET has concerns about the guarantees of impartiality and objectivity of this stage of the procedure and a recommendation was made hereinafter to improve the situation.

87. Candidate judges take an oath when entering the second stage which lasts approximately four years. The candidate is a temporary civil servant, and s/he is involved in practical work<sup>48</sup> in different courts, the prosecution services, with a barrister etc. (optionally, other public institutions and financial institutions can be involved in this training), and s/he attends a variety of courses. Appraisals are done at every stage. This period is concluded by written practical tests (on civil and criminal law) and oral tests covering a broad range of subject matters, and which takes into account the appraisals done. The tests are conducted by an examination jury consisting of judges, barristers, academics. The GET was informed that in practice, all candidates pass this examination successfully. Only one additional attempt is permitted and should the candidate fail again, the provisional public employment is terminated.
88. Successful candidates must then file an application with the competent higher judicial court which has advertised a vacancy. Its staff panel examines the applications and establishes a shortlist of candidates by order of merit according to the following legal criteria: "suitability" (*Eignung*), gender balance and seniority. Appointments are made by the Minister of Justice in consideration of the proposal from the panel. The authorities have indicated that a standard assessment form is used in practice for the assessment of new judges, which refers to a variety of broadly worded criteria which are determined in article 54 of the Service Act for Judges and Public Prosecutors. In addition to the suitability, these are: work capacity, perseverance, diligence, reliability, decision-making capacity, social skills, communication skills, general conduct in office and with the colleagues and superiors, conduct outside the office having possible consequences on the office work. The early appraisals are included.
89. As for **administrative court judges**, the basic requirements are established in article 134 of the Constitution. There is no requirement to follow a special preparation and selection. Candidates must have a degree in law and a minimum of five years' experience in a legal area of work. This minimum experience is brought to 10 years for those intending to join the Supreme Administrative Court. There are no further requirements or if there are, they are determined freely by the different courts or government.
90. The GET is concerned about the method for selecting the candidate judges (*Richteramtsanwärter*) as well as administrative court judges. The GET considers that the way ordinary court judges are pre-selected to enter the second phase of the preparatory training and section phase does not offer satisfactory guarantees of objectivity and impartiality. The GET was told that the pre-selection by the chair of the higher judicial court and the subsequent decision by the ministry of justice on the appointment of candidate-judges is largely informal, without the proper involvement of a panel, although it is an essential stage in the process, especially since there appears to be no appeal possibility during the process. Those who do not pass this first and crucial stage may have great difficulties to become a judge or prosecutor and this situation creates risks of political interference and nepotism at that stage of the selection process. As for administrative court judges, the on-site discussions have shown that the requirements are too loose and leave broad discretion to the courts at federal or regional level to select successful candidates. Contrary to members of the ordinary courts, administrative judges are not (as yet) part of a career system and they often enter directly the profession without prior judicial experience. The GET also obtained confirmation that for all categories of

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<sup>48</sup> Preparation of draft decisions, conducting hearings and interviews under the supervision of a tutor etc.

judges, there is not even a clear requirement of a clean justice record. It was indicated that in practice, there are indirect ways to find out whether a person has a problematic record but GRECO would prefer that this is checked systematically in the context of formal screening procedures and not left to the discretion or good will of those dealing with recruitments and appointments. Austria clearly needs to make improvements. **GRECO recommends that the recruitment requirements be increased and formalised for judges when they are to become candidate-judges (*Richteramtsanwärter*) and administrative court judges, and that this includes proper integrity assessments as well as objective and measurable criteria on professional qualifications to be applied by the independent selection panels involved.** The Austrian authorities point out that the requirements and processes for the recruitment of candidate-judges are currently being reviewed with the overall objective of introducing further objective criteria. Consideration is also given to introducing background checks.

#### *Appointment procedure and career advancement*

91. As a general rule, all vacant posts are to be filled by open calls for applications and they are publicised by the higher regional court concerned. For **ordinary court judges**, as mentioned earlier, first appointments are made by the Minister of Justice in consideration of the proposals from the two staff panels (*Innensenat* – at the level of the respective court, *Aussensenat* – at the level of the higher court immediately above). The proposal shall contain twice as many candidates as there are vacant posts. Recruitments are regulated by Sections 31 et seq. of the Service Act for Judges and Public Prosecutors. Applications are examined by staff panels which shall issue a list of candidates. Where the vacancy is for the post of president or vice-president of the regional courts, the responsible panels are the staff panel of the higher regional court (*Innensenat*) and then the staff panel of the Supreme Court (*Aussensenat*). Thus, the supreme court panel deals with the selection of senior positions in the four higher regional courts, and the latter with the selection of senior positions in the 20 first instance courts and in the district courts. The staff panel of the Supreme Court deals with the selection of the president and vice-president of the higher regional courts. The proposal(s) of the panel is (are) then sent to the Minister of Justice. S/he examines the proposals and proceeds with the final appointment. For the senior positions in the various courts, the Federal President is responsible for final appointments. Judges of the Supreme Court are also appointed by the Federal President upon a proposal made by the Minister of Justice based on a – non-binding – proposal from the staff panel of the Supreme Court (who also advertises any vacancies); the Ministry of Justice conducts interviews in that context. For the post of chairperson of the Supreme Court, the procedure is the same but without a preliminary proposal by the staff panel and the vacancy is advertised by the Minister of Justice. Where more than one post is to be filled, the panel concerned shall pre-select at least twice as many candidates as there are vacant posts. The law does not provide for detailed criteria or requirements to fill a vacant post, the general principle is that the panels must check the adequacy (*Eignung*) of the candidates.
92. As regards **administrative court judges**, the system is different, given the overall architecture of the administrative justice system, and regulated by article 134 of the Federal Constitution. In the courts at the level of the *Länder*, appointments are to be made by the local government upon the presentation of a list of three candidates by the panel of the court concerned. These panels consist of the president and vice-president of the court and at least five further members. Alternatively, it is the plenary which fulfils the task of the panel. For vacancies concerning the post of president and vice-president, no panel is involved. For the federal courts, proposals must emanate from the government after the panel of the court concerned has examined and proposed a list of three. No panel is involved for the selection of the senior positions and final appointments are made by the Federal

President. The constitution requires that one quarter or more of the Supreme Administrative Court judges must originate from the administration of the *Länder*.

93. The GET is confident that with the introduction of a periodic appraisal system based on standardised criteria, additional objective assessment elements will become available for the assessment of qualifications of individual judges. It encourages Austria to use these subsequently for decisions on appointments to higher positions, since for the time being, the conditions leave excessive discretion to those making decisions on appointments. A recommendation was made hereinafter to the effect of introducing periodic appraisals for judges. As for the senior positions in the regional and federal administrative courts, it does not involve a pre-selection of candidates by a panel independent from the executive. The selection of judges – especially those of administrative courts – has also regularly triggered public controversies and allegations of political collusion<sup>49</sup>. Even if such panels were to be established, it would not remedy entirely the deficiencies in the way judges are selected and promoted in Austria. Selections made by the panels do not bind the Minister of Justice or the President and as the GET was told, the member of the executive is not required to motivate his/her decision when appointing an alternate candidate – at least this is the situation with ordinary court judges. It is reportedly not a practice for the Ministry to fill vacancies with candidates who were not shortlisted, but it does happen that the Minister follows another order of proposals. The GET also noted that in some cases, where the Supreme Court's second panel (*Aussensenat*) is involved, there can even be diverging proposals: this is not a satisfactory approach. The GET recalls that the process for the appointment of judges must not only be free from political influence but that it must also be perceived as such by the public. Several interlocutors concurred with the GET that improvements are desirable in that area. In the absence of an independent Judicial Council that would be responsible for all appointments of judges, and any other matter relating to the status, rights and obligations of the judges (and possibly the prosecutors), there is a need for effective arrangements to ensure the independence of the judiciary. **GRECO recommends that staff panels be involved more broadly in the selection and career evolution of ordinary and administrative court judges, including the presidents and deputy-presidents, and that the proposals of the panels become binding for the executive body making appointments.**

#### *Evaluation of a judge's performance*

94. As indicated in paragraph 88, the appointment of new judges and prosecutors involves an evaluation process done by the candidates' training supervisors, based on the candidates' personal qualities and the capacities and skills demonstrated during his/her test period. Judges newly appointed to a post must also undergo an appraisal two years after their appointment (the same applies in case the judge takes up new duties subsequently, on another part). Other than that, there is no periodic appraisal during the career of judges and prosecutors. The GET was told that after the initial recruitment period, a judge could well do his/her entire career without undergoing an appraisal and that the introduction of a systematic and periodic appraisal system for all judges is still under discussion in Austria. The GET recalls that such a system can offer many benefits in terms of an on-going and constructive dialogue with the court management. It makes also available additional objective information which can then support decisions on career progression, in line with a policy based on fairness and merit. This is particularly

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<sup>49</sup> See for instance:

<http://derstandard.at/1373513711670/Richterbestellungen-Die-Auswahl-passt---die-Optik-nicht;>  
<http://www.news.at/a/verwaltungsgerichte-politische-postenbesetzungen-kritik;>  
<http://derstandard.at/2000016769975/Wiener-Verwaltungsgericht-Wirbel-um-Richter-Bestellung;>  
<https://uvsvereinigung.wordpress.com/2013/07/24/verwaltungsrichtergerichte-vorwurf-der-politischen-bestellungen-schadet-richtern-und-gerichten/>

important in Austria since the concept of “adequacy” (*Eignung*) of candidates, which is one of the core criteria to be assessed for candidates to vacant posts is not defined more precisely. The principle of periodic appraisals is also a best practice recognised at the international level. **GRECO recommends that a system of periodic appraisals be introduced for judges, including the presidents of the courts, and that the results of such appraisals be used in particular for decisions on career progression.**

#### *Transfer of a judge; Termination of service and dismissal from office*

95. As it was mentioned earlier, judges are preserved from rotation and protected against risks of abusive transfers by the fundamental principle of non-removability of judges (article 88 of the federal constitution), which applies to members of the ordinary courts and of the administrative courts alike. The only exception is for support judges (*Sprengelrichter*) and for substitute judges (*Ersatzrichter*), who are not assigned full-time to a specific court or post. Judges may also be transferred as a result of restructuring measures decided by law. Otherwise, a judge can be transferred to another post or judicial body, the Ministry of Justice or the prosecution service etc. with his/her approval only.
96. Judges (and prosecutors) enjoy life-long tenure until they retire at the age provided in the applicable law regulating their court, in general 65. Otherwise, the service can be terminated for the reasons provided in the applicable law, generally following a voluntary resignation, as a result of a disciplinary decision for a serious breach of disciplinary rules or following a criminal conviction in case the sanction pronounced exceeds six months or one year imprisonment (depending on the case) or where the act involved an element of misuse of authority. Further reasons include situations of incompatibility of functions or where the judge does not fulfil any further the basic conditions for being a judge.
97. Judges of administrative courts in the *Länder* are subject to the local general civil service or contractual regulations. The Land of Vienna is a notable exception as it has adopted a statute for administrative judges. A recommendation was made (see paragraph 81) to the effect of improving the situation.

#### *Salaries and benefits*

98. According to the salary scale established in Section 66 of the Service Act for Judges and Public Prosecutors, the monthly gross salary of a judge varies between 3 700 euros for a junior judge and 10 300 euros for a judge in the highest courts. Candidate judges who are in a temporary employment relationship earn approximately 2 500 euros per month. The most senior positions are subject to a specific remuneration which varies between 10 300 euros for the chairperson of the federal administrative courts and 12 500 for the chairperson of the Supreme Court. A few judges entrusted with additional professional constraints are entitled to additional compensation. According to the authorities, judges do not receive additional benefits, whether financial or in-kind. The salaries for administrative judges can vary to a large extent, since this matter is also regulated in provincial legislation. The GET could not determine whether all members of the administrative courts in Austria benefit from adequate salaries and benefits which would be an additional safeguard against risks that a judge seeks additional benefits or income in a questionable or criminal matter. A recommendation was issued earlier with a view to harmonise the conditions of service of administrative judges.

#### *Lay judges*

99. Lay judges are present in a variety of ordinary courts and in the administrative courts. Those dealing with commercial, labour and social affairs are designated by their peers within the chambers of commerce or by the respective unions of employers and employees. Those of the administrative courts are designated by the self-administering public bodies, professional organisations or the interest groups concerned<sup>50</sup>. The GET was assured that lay judges always sit on panels together with career judges and that it is a general principle that they must comply with the general impartiality and integrity obligations of the career judges. There were diverging views as to whether they are sufficiently prepared and informed about these requirements and the GET noted that they are not concerned by the rules of conduct adopted up to now for the judges as they consider that these are specific to career judges. Recommendations have been made hereinafter that would address also this particular situation of lay judges.

### Case management and court procedure

#### *Assignment of cases*

100. Within the ordinary courts, cases are distributed primarily according to the respective competence of the chambers responsible for civil, penal, commercial, labour and social matters. Where different chambers share the same material competence, and within a given chamber, cases are distributed annually under the responsibility of a panel of judges by means of alphabetical and random allocation involving a computerised calculation to ensure a fair sharing of work. Austrian practitioners were confident that this system made it impossible for a party to choose a judge. Where a given judge would hereby accumulate an unfortunate high number of complex cases, s/he would receive the support of support judges to discharge him/her from other work. The authorities indicated that within the administrative courts, specific bodies (commissions) are in place to design the rules for the allocation of cases, according to legal requirements. These rules are public. The allocation of cases depends basically on the legal field concerned. An overview of the arrangements actually in place is not available. The GET recalls the importance for cases to be allocated in a way that offers all guarantees of impartiality and that a party cannot influence the process and ensure that his/her case will be heard by a particular judge or group of judges.

#### *The principle of hearing cases without undue delay*

101. In the last two to three years, the administration of justice has put in place a series of statistical tools for all levels of the judiciary and the various subject matters handled by the courts. These tools are used in the management of case load and the monitoring of processing time. Reports are prepared in each court and for each of its section. In case of backlogs, additional means can be allocated temporarily by deploying support judges and substitute judges. For the administrative courts, there is a general duty for all courts under the Federal Act on the procedure in administrative courts (Section 34) to reach a decision "without undue delay, in any case within six months after receipt of the request or complaint". If necessary, a party can apply to the Supreme Administrative Court for it to order the court concerned to issue its decision within a specific deadline (up to three months). The GET welcomes the existence of such arrangements for the administrative courts, which seem to be completely absent for the ordinary courts, even when it comes to a deadline for rendering a verdict after the completion of hearings. Such rules exist in other countries. The GET took from the on-site discussions that genuine efforts are being done in Austria to ensure that court proceedings take place within a

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<sup>50</sup> Moreover, in certain matters concerning civil servants (decisions on a transfer or pension), the Federal Administrative Court decides in panels that include representatives of the employer and employees as lay judges.

reasonable time and practitioners often emphasised the particular attention paid to case-load management. Austria may nonetheless wish to look further into the above matter.

### *The principle of public hearing*

102. As regards administrative courts, according to the information supplied by the Austrian authorities, the subject of public hearings is regulated in different ways by the respective laws applicable. For administrative courts in general, according to section 24 and 25 of the federal Act on the procedure of administrative courts, hearings are only public if this is requested (by a party) or if the court deems it necessary. Further rules provide for the possibility not to hold a hearing at all, for instance if holding a hearing would not clarify any further the merits of the case under consideration. The court can also decide so for the usual reasons (e.g. safeguarding public morality, national security and public order). For procedures which deal with administrative infringements and sanctions, the principle of public oral hearings is guaranteed by article 44 paragraph 1 of the above Act, with some exceptions which allow the court to derogate from that principle, e.g. in case the complaint only claims an incorrect legal assessment or where the fine is below 500 euros, but also where the complaint is challenging an administrative decision against procedural requirements and no party has requested the publicity of the hearing. As for cases heard by the Supreme Administrative Court, the information provided by Austria suggests that hearings are not public either, unless this is requested by a party (sections 39 and 40 of the Act on the Supreme Administrative Court). Without going into further details of the remaining legislation regulating administrative court hearings, the GET is concerned by the above situation. It recalls that the publicity of court hearings is a fundamental principle in a democracy and an important guarantee for the transparency of justice, including in administrative matters, whether or not the proceedings concern administrative offences. It is also an important safeguard against risks of arbitrary decisions and partiality from a judge, and thus an essential component of integrity policies in the judiciary. It would appear that in Austria, the publicity of hearings is mostly regulated and contemplated as an exception. **GRECO recommends that the publicity of hearings in administrative matters be clearly guaranteed as a general rule for all administrative courts, with a limited number of exceptions determined by law where hearings can be held behind closed doors.**

### Ethical principles and rules of conduct

103. Concerning the ordinary courts, the Service Act for Judges and Public Prosecutors (Section 57) establishes certain fundamental obligations pertaining to the conduct of judges as well as prosecutors. They shall comply with the duty of loyalty to the country, they shall exert their profession with dedication and improve their skills through on-going training, they shall be effective in their work, they shall comply with the instructions of the supervisor outside the context of the service and safeguard the interests of the service, they shall behave both in-service and in private life in a manner which does not jeopardise the image of the judiciary and the reputation of the profession (including after they retire). In 2008, one of the professional associations, the Association of Austrian Judges, adopted a declaration of principles known as the "Wels Declaration of Ethics"<sup>51</sup> (named after the place where it was adopted), which was subsequently updated in 2012. The declaration, which is about one and a half page long, comprises ten headings dealing with a) the preservation of fundamental rights and the rule of law; b) the preservation of independence including against attempts to influence the judge's freedom of decision; c) self-control, maintaining good organisational work and relations with

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<sup>51</sup> <https://richtervereinigung.at/ueber-uns/ethikerklaerung/>

colleagues; d) commitment to self-education; e) the good administration of justice; f) fairness and impartiality; g) quality of decision-making; h) comprehensibility of decisions for the public; i) behaviour in private including the self-awareness that political involvement can be detrimental to the credibility of the institution including when it comes to the independence vis a vis lobbies and interest groups; j) awareness of social consequences of the judges' work.

104. The Austrian authorities also refer to the Code of conduct adopted in 2008 (and updated in 2012) by the Federal Chancellery for civil servants<sup>52</sup>. As it was already indicated in the compliance procedure to the joint first and second evaluation round, this code – which has a large focus on corruption-related matters - is meant to apply to the whole country including the local level administration and to members of the judiciary.
105. The GET is pleased to see that codes of conducts have been adopted. That said, the fact that two distinct codes are reportedly applicable to members of the judiciary, which have been adopted and updated with the same timing, one by a professional organisation, one by a State body, raises some interrogations as to whether all standards are equally applicable. The ordinary court judges met during the on-site visit referred exclusively to the Wels declaration as the standards applicable to judges (including for those who are not a member of the union which adopted it). This appears in contradiction with the objectives of the code for civil servants of the federal chancellery and the assurances reiterated by the Austrian authorities after the visit that this code applies also to judges and prosecutors. At the same time, lay judges met by the GET were mostly unaware of the Wels declaration and they considered that it was applicable only to career judges: this appears to be in contradiction with the principle that they are equated as much as possible with career judges. The administrative judges see themselves as a professional group of its own; in particular, they consider that there is no code of conduct for them. A particular weakness of the current arrangements is that although the Wels declaration has a declaratory nature – it is not meant to be an enforceable set of standards - it does not contain any practical guidance nor concrete examples that could assist practitioners in daily life. As things stand, it adds limited value to the Service Act for Judges and Public Prosecutors. Moreover, there are no arrangements in place to advise judges (including the more junior judges) in matters related to the conduct. One of the professional associations of judges is currently examining the possibility to establish a committee outside the judicial system to work out further guidance and a system of contact person for advice. This kind of initiatives obviously deserves support. **GRECO recommends i) to ensure that all relevant categories of judges, including lay judges, are bound by a Code of conduct accompanied by, or complemented with appropriate guidance and ii) that a mechanism is in place to provide confidential counselling and to promote the implementation of the rules of conduct in daily work.** As regards administrative court judges, a general recommendation was issued earlier to the effect that their rights and obligations be harmonised and that Austria fills any existing gaps, including with the introduction of a specific code of conduct for administrative judges.

#### Conflicts of interest

106. In addition to the rules described below on recusal and withdrawal for ordinary court judges, the authorities refer to the Court Organisation Act (article 22), which requires any judge and support staff who becomes aware of a relationship, which, by law, precludes him/her from exercising his/her judicial activities in a particular case, or a specific mandate in a civil case, to inform immediately the head of the court or the highest ranking official of the prosecutor's office. The court shall make

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<sup>52</sup> [Link to the text](#) in English



a decision on the existence of a bias and the judge or person concerned is discharged from the matter.

107. The Austrian authorities pointed to the following provisions concerning administrative judges. The federal Act on the procedure of administrative courts (Section 6) establishes the principle that in case of a conflict of interests, members of an administrative court shall notify the president and withdraw from the exercise of their function. Another text, the Act on the procedure of administrative courts (Section 7) lists a series of reasons for administrative officers to abstain from exercising their office and for seeking replacement by a substitute in case where: they are themselves involved, directly or through a relative; it concerns a matter where they were themselves a representative of a party; where there are other reasons which could lead to a perception of bias; where it concerns a matter for which they were already involved in proceedings. In case of imminent danger, they may nonetheless perform the act.
108. The GET noted that the rules applicable to administrative judges could be usefully complemented especially by spelling out more clearly how the concept of conflict of interest is to be understood and by giving guidance on dealing with such situations. A recommendation was made earlier to the effect of harmonising and improving the rules applicable to administrative judges and the above comments could be taken into account in that context.

#### Prohibition or restriction of certain activities

##### *Incompatibilities and accessory activities*

109. The subject of incompatibilities is regulated in different provisions. According to the Federal Constitution, members of the National Council or the Federal Council may not be President of the Supreme Court (article 92), of the Constitutional Court, (article 147(4) and (5)), of an administrative court of the *Länder* or a member of one of the three federal administrative courts (article 134(5), which also establishes the incompatibility between the function as a judge in one of these administrative courts and that of a member of government). Moreover, in accordance with article 208 of the Service Act for Judges and Public Prosecutors, members of government and parliament (at federal or provincial level) or of the European Parliament cannot become members of the Federal Administrative Court or the Federal Fiscal Court. Some of the above prohibitions apply also for five years after the end the mandate in such a way that they may not be appointed President or Vice-President of the courts concerned. For ordinary court judges, there appear to be no general incompatibilities with executive or legislative functions<sup>53</sup>. Such cases would be dealt with under the rules on accessory activities described below. One case was mentioned to the GET where a judge who became an MP was suspended from his/her judicial functions and s/he resumed these after the termination of the political mandate. The GET is concerned by the lack of a consistent approach as regards incompatibilities as this is treated in different ways for the different categories of courts and judicial functions. Sometimes, there are strict incompatibilities, and in other instances, these are completely missing – especially for ordinary court judges. The GET recalls that judges can freely join a political party but that the Wels declaration for ordinary court judges also contains a warning message against getting involved into political activities. The GET stresses that the current lack of a legal prohibition to exert another function in the

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<sup>53</sup> At the time of adoption of the present report, the authorities indicated that the Service Act for Judges and Public Prosecutors addresses to some extent such kind of incompatibilities. For ordinary judges, section 79 refers to sections 17 to 19 of the Civil Service Employment Act. These provisions have to be read together with section 6 para 2 of the Act of Incompatibilities and Transparency (AIT): according to these provisions, judges and public prosecutors must generally not exert simultaneously their occupation when they are members of government and parliament (at federal and provincial level).

executive or legislature also raises questions from the point of view of separation of powers and regarding the necessary independence and impartiality of the judiciary. This matter is also important enough to warrant a clear separation of functions instead of being sometimes left to a body deciding *ad hoc* on accessory activities. Even though there has reportedly been only one such case to date – and the judge was on leave from his/her judicial office – it cannot be excluded that such cases may occur again in the future. **GRECO recommends that a restriction on the simultaneous holding of the office of a judge and that of a member of a federal or local executive or legislative body be laid down in law.** The Austrian authorities indicate that the introduction of a clear ban for ordinary court judges to hold a simultaneous executive or legislative function, under the article 208 mentioned above – is currently being discussed.

110. As for accessory activities, the Service Act for Judges and Public Prosecutors (articles 63 and 63a) makes a distinction between two categories of restrictions specifically for judges (of the ordinary courts and of the Federal Administrative Court). **Side-occupations** are the activities un-related to the official functions: these can only be exerted where they are not in contradiction with the reputation and the proper accomplishment of the official functions and under the condition that the judge does not refer to his official capacity (except for academic work), or in case it could raise doubts about the impartiality of the judge. In any event, a judge may not participate in any governing body of a profit-making entity. In case the judge is involved in the governing body of another type of legal entity, the participation may not be remunerated. Also, judges who occupy a post which is part of the budgeted service structure may not be included on the list of experts appointed to a court. Nor can they provide arbitration services as defined in the rules on civil proceedings. The judge shall inform the “service authority” when s/he engages into, or is giving-up any profit-generating side-occupation, and the “service authority” shall prohibit immediately in writing the activity in question for the reasons mentioned above. **Additional tasks** are those which are performed for the federation, including where the quality as a judge is a precondition, but which are not directly related to the judge’s function. These can lead to additional remuneration. Unless these tasks are performed at the request of the “service authority”, the latter shall approve it or not (in case “certain interests” would be jeopardised). In principle, these rules apply also to members of the Supreme Administrative Court since they are equated with the judges of the Supreme Court.
111. During the on-site visit, it was confirmed that apart from the above restrictions, judges are free to exert any remunerated or non-remunerated activities (deriving or not from financial interests held in legal entities) and to participate in political and other organisations. It was pointed out that the Wels declaration on integrity standards for ordinary court judges (see paragraph 103) calls for prudence in respect of their getting involved in political and lobbying activities.
112. The GET notes that for the vast majority of administrative judges (those of the Federal Administrative Court are a notable exception), rules on accessory activities appear to be completely missing. The existing rules on accessory activities are also drafted in a way which could be detrimental to their effectiveness and during the on-site interviews, it was pointed out that accessory activities remain a particular problem especially due to the lack of transparency and supervision. It was also pointed out that in practice, a large number of public institutions in Austria make use of judges sitting on various panels and commissions, in accordance with the above rules on “additional tasks”. These generate not only an extra-income for the judges concerned, as it was reported, but also additional challenges for the proper management of conflicts of interest. The present report contains recommendations with a view to improving the statute of administrative judges and the above concerns would normally be addressed in that context. As for the effectiveness of the provisions on accessory activities, this matter is dealt with hereinafter, where a

recommendation was issued to improve the supervisory arrangements in respect of judges.

### *Recusal and routine withdrawal*

113. Rules on the recusal of a judge by a party and on self-withdrawal at the judge's own initiative are provided for in various sets of rules especially the Code of civil procedure, the Court jurisdiction act, the Court Organisation Act, the Rules of procedure for the courts of first and second instance, the Code of procedure in labour and social matters and the Code of criminal procedure. The reasons include: family and other ties with one of the parties, previous or parallel involvement in dealings with one of the parties, participation in a previous decision rendered in the case and so on. This is an open ended list and court practice refers to any circumstance which could raise doubts about the neutrality or impartiality of a judge. The principle is that the objecting party must file a recusal in due time orally or in writing but it remains a possible cause of nullity of the decision / verdict even after the termination of proceedings. The judge him/herself is required to inform immediately the chairperson of the court where s/he considers that a situation could objectively raise doubts about his/her neutrality. The consequence is the replacement of the judge where the recusal or withdrawal is accepted.
114. As for administrative judges, the Austrian authorities refer to the provisions mentioned earlier under the heading on conflicts of interest. As it has been pointed out, these rules appear inadequate to deal with recusals and withdrawals. The concept of conflict of interest including the situations contemplated and the consequences thereof are not determined precisely enough. The GET doubts that the general arrangements contained in the Act on the procedure of administrative courts are still applicable to proceedings before a court. A recommendation was made earlier to the effect of harmonising and improving the rules applicable to administrative judges. The Austrian authorities could address in this context the above concerns and introduce proper rules to deal with self-withdrawals but also recusal by a party to proceedings, when it comes to the activity of administrative judges.

### *Gifts*

115. Article 59 of the Service Act for Judges and Public Prosecutors regulates the subject of gifts and other advantages including honorary gifts. This provision is specific to judges (it does not concern the prosecutors).

**Service Act for Judges and Public Prosecutors  
Article 59 – Prohibition of taking gifts**

- (1) It is prohibited for the judge to accept gifts or other advantages which are offered directly or indirectly to him/her or to a relative in connection with the fulfilment of duties. Likewise, it is prohibited to obtain, or to let someone else promise gifts or other advantages in connection with the fulfilment of duties.
- (2) Tokens of courtesy which reflect a local or regional custom and which have a low value are not considered gifts in terms of para. 1.
- (3) Honorary gifts are items which are offered to the judge by a State, a public corporate entity or a traditional institution, for reasons of merits or out of courtesy.
- (4) The judge may accept honorary gifts. He/she shall inform the service authority promptly thereof. The latter shall take over the honorary gift into federal property. Honorary gifts which have been accepted are to be disclosed. The income generated by their sale shall be used for the common good of the employees of for other charitable purposes. The matter shall be regulated in further details by an order adopted within each judicial district.
- (5) Honorary gifts of a low value or which are purely symbolic may be left for personal use with the judge.

116. The above provision establishes a general prohibition, with certain exceptions for courtesy gifts of a minor value and for honorary gifts which can be kept under certain circumstances, but the "service authority" must be informed. The Ministry of

justice has adopted and disseminated a ruling in May 2010, with a reminder dated 21 July 2015 concerning gifts and the declaration of invitations, which concerns all ordinary courts in Austria.

117. The GET noted that no information is available as to whether – and to what extent – the courts have put in place further routines for the disclosure and approval of honorary gifts, as provided for under the above article 59 paragraph 4, or possibly as a result of the above ministerial ruling. In any event, this matter is still overshadowed by the broader issue of the determination of the so-called “service authority”, which needs clarification as the on-discussions have clearly shown. A recommendation was made to this effect in the chapter hereinafter on supervision. As for the situation regarding administrative judges, the Austrian authorities did not refer to further arrangements on gifts for the members of administrative courts. The GET itself could not determine with certainty, on the basis of the legal texts, the extent to which the above provision is applicable to them. In principle it also concerns members of the Supreme Administrative Court since they are equated with the judges of the Supreme Court. In principle, for the purposes of the Service Act for Judges and Public Prosecutors, judges are those who serve in the bodies mentioned in article 86(1) of the federal Constitution but there is no further clear indication in there. Moreover, as it was pointed out earlier, the administrative judges see themselves as a professional category of its own. The end result is that Austria needs to clearly regulate gifts also in respect of most administrative judges (bearing in mind that members of the Federal Administrative already fall under Section 63 and 63a of the Service Act for Judges and Public Prosecutors). A recommendation was made earlier to the effect of harmonising and improving the rules applicable to administrative judges. The Austrian authorities could address in this context the above concerns.
118. Most of those met during the on-site visit considered that the situation had improved a lot in practice in recent years and that members of the judiciary had discussed comprehensively the risks connected with gifts. Several practitioners referred to a zero-tolerance in their environment for any form of gifts and benefits. The GET was also given the example of a chairwoman of a commercial court who had written to a large number of lawyers asking them to stop certain practices involving hospitality and gifts.

#### *Post-employment restrictions*

119. The occupation of a judge after his/her public employment has been terminated is subject to the following restrictions according to the Judges and Public Prosecutors Service Act. In accordance with Section 100 paragraph 4, for a period of six months, a judge may not work for any legal entity which is not subject to auditing by the Federal Court of Audit, a regional court of audit or a comparable international or foreign inspection body, and which has benefited from decisions rendered by the judge in a period of twelve months preceding the termination of functions. This applies only if performing such an activity may compromise public trust in the institution and the law foresees a series of further exceptions. Violating such a prohibition entails the payment to the Federal Government of a penalty amounting to three times the monthly wage of the last period of employment. The same provision also appears in section 57 of the same act and is applicable both to judges and to prosecutors.
120. The GET welcomes the existence of a cooling-off period. But six months is very short and likely to guard insufficiently against risks of corruption and conflicts of interest where practitioners are offered employment perspectives during their term of service. The GET also notes that the two above provisions establish exactly the same post-employment restriction, but that they diverge strongly in respect of the exceptions to its application. Austria may wish to review the consistency of these

rules to avoid unnecessary questions which could undermine the effectiveness of those regulations. Also, the above subject-matter is a further example where rules for ordinary court judges and rules for administrative judges diverge strongly. The recommendation made earlier as regards improvements to the rights and obligations of administrative judges could be used to ensure that post-employment restrictions are also introduced, as necessary, for administrative judges.

#### *Third party contacts, confidential information*

121. Ordinary court judges are sworn to confidentiality. Detailed provisions are contained in Section 58 of the Judges and Public Prosecutors Service Act, which regulate *inter alia* situations where a judge must him/herself testify in court. The duty of confidentiality applies also off-duty and after the termination of functions.
122. Each court has a public-relations and press speaker who is normally responsible for contacts with the public and supplying "official" information on the court's work. The GET noted that the quality of contacts and information to the public is something which has been largely discussed in Austria, especially to prevent the leaking out of information which is not (yet) meant to be public. An association of judges has thus advocated in favour of measures including: guidelines on professional and private life relations between judges and the media, adequate resourcing of media units and media speakers (of the judiciary), a more active information of the public through press briefings, especially in larger cases which receive public attention.

#### Declaration of assets, income, liabilities and interests

123. There are no specific requirements, duties or regulations in place for judges and their relatives to submit declarations of assets, interests and other similar information on a periodical basis, other than the disclosure obligations concerning accessory activities examined before.

#### Supervision

124. The Ministry of Justice has overall political responsibility for the proper functioning of the judiciary, including the prosecution service. It is also responsible for the overall management of personal files. It may conduct audits (*Revision*) of a general nature but it may not look into a particular situation involving an individual judge or prosecutor, as it was indicated to the GET during the on-site visit. Annual reports on the results of audits are produced. This audit activity is not documented in public reports.
125. The supervision of the courts and individual judges is primarily the responsibility of the president and the deputy president of each court, of the different panels responsible for staff, disciplinary and other matters, as well as of the plenary for certain specific subject-matters. For instance, as regards the ordinary courts, these senior functions are clearly entrusted by the Service Act for Judges and Public Prosecutors with both managerial and supervisory duties including staff management, workload supervision, compliance with the judge's rights and obligations and so on. The heads of the courts have no disciplinary power of their own.
126. At the level of each higher regional court, there is also an ombudsperson responsible for receiving and treating complaints against a court or a judge and this task is entrusted to a judge. For instance in case a party is dissatisfied with the decision or does not understand it, the ombudsperson would provide explanation. The ombudsperson may also enquire about alleged malfunctioning and the applicant must be informed of the outcome.

127. Formal disciplinary action can be brought upon a complaint from a party to proceedings, or at the request of the management of the court or of the Ministry of Justice after receiving a complaint or upon its own initiative. Cases are heard by disciplinary panels. In accordance with section 111 of the Judges and Public Prosecutors Service Act, each of the four Higher Regional Courts (Vienna, Graz, Linz and Innsbruck) also functions as a Disciplinary Court for the judges and public prosecutors appointed within the realm of one of the other Higher Regional Courts. The Supreme Court is in charge of its judges, the presidents and vice-presidents of the Higher Regional Courts, the members of the Procurator General's Office and the Senior Public Prosecutors of the four Public Prosecutor's Offices (Vienna, Graz, Linz and Innsbruck). These courts must appoint a "disciplinary court" consisting of five members: the president, the vice-president and three judges elected by the court for a period of five years. Disciplinary cases are heard by a panel of three of these members (all five members at the level of the Supreme Court). Each disciplinary court designates one of its members to act as investigating judge and who will conduct the necessary enquiries. Cases are brought by a disciplinary prosecutor. This function is carried out at the level of the Higher Regional Court by the head prosecutor of the office to that court, and at the level of the Supreme Court by the Procurator General.
128. The following deviating provisions apply to disciplinary proceedings concerning judges of the Federal Administrative Court and the Federal Financial Court, according to Section 209 paragraph 5 of the above Act, the Federal Administrative Court acts as the Disciplinary Tribunal for judges of the Federal Financial Court. Reversely, the Federal Financial Court acts as Disciplinary Tribunal for judges of the Federal Administrative Court. The Disciplinary Tribunal holds proceedings and decides in a disciplinary panel, which is elected by the Plenary Assembly from among its members. The Disciplinary Prosecutor for judges of the Federal Administrative Court is to be appointed by its President from among the judges of the Federal Administrative Court. The President of the Federal Financial Court has to appoint the Disciplinary Prosecutor for the judges of the Federal Financial Court from among them.
129. Appeals against a disciplinary sanction can be lodged with the Supreme Court by ordinary court judges or with the Federal Administrative Court or Constitutional Court by federal administrative court judges, respectively.
130. There are a number of reasons which would plead for the introduction in Austria of a council of magistracy, in particular to ensure across the country utmost consistency of recruitments and appointments to higher posts, and of disciplinary action and case-law. This would also enable the profession to play a more active role in the training policy, particularly for in-service training. But the existing arrangements concerning the service and disciplinary supervision were not a source of major controversies during the on-site discussions when it comes to the subject of judicial independence. The supervision in daily work seems to be a particular issue at the moment, especially since the legal arrangements are not always clear enough on the respective responsibilities. The Service Act for Judges and Public Prosecutors refers to several obligations which require the registration, approval, intervention or supervision of the so-called "service authority"<sup>54</sup>. Interlocutors confirmed that there should be more concrete indications where it is the competent administrative service of the court or of the ministry which is concerned, or the president of the court or immediate supervisor (chair of the senate etc.). It is clear

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<sup>54</sup> Section 58 on professional secrecy, Section 59 on gifts, Sections 63 and 63a on accessory occupations, Section 64 on the management of incidents and changes to the personal situation of the judge, Section 70a on modifications to the accommodation provided by the service, Section 75b on special leave, Section 79g on certain health issues, Sections 123/130/143 concerning the information on disciplinary proceedings and compensation to be paid to the State budget, Section 179 on the filing of applications for a job.

that the law does not always refer to the same person or body. As things stand, some of the mechanisms are allegedly ineffective because no one is taking responsibility for the proper implementation of the reporting and authorisation machinery foreseen, for instance on the management of accessory activities and conflicts of interest, or gifts. Austria needs to address this important matter and to ensure that the mechanisms are clarified, where needed, also for the administrative court's current arrangements and those to be introduced as a result of the present report. All the practical consequences would need to be drawn from this, especially the introduction of clear reporting and acceptance routines, the keeping of internal lists to be used by those making decisions and so on. **GRECO recommends that the persons responsible for the implementation and supervision of the various obligations laid upon judges - notably on professional secrecy, gifts, accessory activities and management of conflicts of interest - be properly identified and known to all, and that they be required to introduce the proper procedures needed for these obligations to become effective.** The Austrian authorities could also ensure, on this occasion, that the respective responsibilities are also clearly established for the supervision of the general services of the courts and of the activity of various categories of persons who provide services to the courts or who act on behalf of the court for the management of private interests and the issuance of official documents. The study of January 2011 on the extent and forms of corruption in Austria, commissioned by the Ministry of Justice, has pointed to important risks and it remains unclear whether measures were taken as a result of the special anti-corruption audit which was conducted in the same period by the Ministry.

#### Enforcement measures and immunity

131. In accordance with Section 101 of the Judges and Public Prosecutors Service Act, a penalty is to be imposed on the judge who has breached his professional or official duties, if, considering the nature or seriousness of the offence, repeated occurrences or other aggravating circumstances, the breach of duty constitutes misconduct in public office. When determining the disciplinary penalty, the seriousness of the misconduct and the disadvantages arising from it, the degree of responsibility and the overall past conduct of the judge must be taken into account. The disciplinary tribunal may allow for a fine to be paid in a maximum of 36 monthly instalments. The ruling to impose a disciplinary penalty can be eschewed if this is possible without damaging official interests and if it is reasonable to assume, based on the individual circumstances of the case and the judge's personality that a conviction alone will suffice to keep the judge from committing any further offences. If the judge is found guilty of further misconduct in office before three years have passed since the entry of this ruling into legal force, the previous conviction must be taken into account when deciding on the penalty if the misconduct in public office is based on the same harmful inclination.
132. Section 104 of the above Act provides for the following disciplinary measures: a) a reprimand; b) a fine amounting to the equivalent of up to five months' earnings; c) transfer to another place of employment without entitlement to relocation fees; d) removal from office. Any disciplinary penalty must be entered into the official professional record. The authorities point out that non-compliance with a particular general or specific duty (including declaratory obligations for gifts and accessory activities) can lead to disciplinary sanctions.
133. There are no consolidated statistics on disciplinary measures kept on an on-going basis in Austria. The GET requested a typology of cases and the Federal Ministry of Justice made available sometime after the on-site visit a synthetic overview of information which was compiled for this occasion. It concerns disciplinary cases for ordinary court judges for the period 2013-2015, with the indication of the competent disciplinary court.



Disciplinary cases raised in relation to judges (2013-2015)	
<b>Vienna</b>	21
<b>Graz</b>	61
<b>Linz</b>	27
<b>Innsbruck</b>	29
<b>Total</b>	<b>138</b>

Grounds for bringing cases (2013-2015) – in percentage of cases					
	Delaying proceedings tasks	of and	Inappropriate conduct of proceedings / wrong decision	Conduct affecting the image of the institution (without criminal offence)	Criminal offences (Section 302 of the criminal code – abuse of powers)
<b>Vienna</b>	0%		71%	24%	19%
<b>Graz</b>	2		66	26	16
<b>Linz</b>	37		56	33	48
<b>Innsbruck</b>	14		86	3	21
<b>Average</b>	11%		69%	22%	24%

Sentences following formal proceedings: total 17							
	Not guilty	Guilty without sanction	Referral to other action	Disciplinary fine	Transfer	Release from service	Reduction of salary
<b>Vienna</b>	0	0	1	1	0	0	0
<b>Graz</b>	1	0	0	4	0	0	1
<b>Linz</b>	0	2	0	1	0	0	1
<b>Innsbruck</b>	0	0	2	3	0	0	0
<b>Total</b>	1	2	3	9	0	0	2

Cases closed without formal proceedings: total 121							
	No action on basis of Section 78 of the Act on the organisation of the courts	Termination based on analogous application of Section 190 Crim. Proc. Code	Interruption based on analogous application of Section 197 Crim. Proc. Code	Refusal to initiate proceedings (Section 123 Service Act)	Termination	Termination with referral to other legal action	Termination with analogous application of Section 143 Service Act
<b>Vienna</b>	0	11	0	4	0	0	0
<b>Graz</b>	1	1	1	49	0	0	0
<b>Linz</b>	0	4	0	9	2	0	2
<b>Innsbruck</b>	20	1	0	3	1	0	0
<b>Total</b>	21	17	1	65	3	0	2

134. Judges do not benefit from immunities. Their actions may attract liability under the general legal provisions, including criminal law in case they commit a bribery offence, or more generally, when their conduct amounts to an abuse of official authority under section 302 of the Criminal Code:

#### Article 302 Criminal Code

(1) An official who knowingly abuses his authority to carry out official matters executing the laws in the name of the federal government, a land, a local government, a municipality or another person under public law with the intent to harm the right of another shall be punished by prison sentence from six months to five years.

(2) If the offender commits the offence carrying out official matters with a foreign power or a multilateral or bilateral institution, he/she shall be punished by prison sentence from one year to ten years. The same sanction applies if the offender causes damage exceeding 50.000 Euro.

135. The GET noted that there are sometimes strong variations on the number of complaints brought in the disciplinary districts, which could be indicative of certain

local problems. There are also significant variations in the way the complaints are subsequently processed and closed. It remains unclear whether warnings are issued in practice or captured by the existing statistics.

## **V. CORRUPTION PREVENTION IN RESPECT OF PROSECUTORS**

### Overview of the prosecution service

136. In 2008, the inclusion of a new article 90a in the Constitution has consecrated the position of the prosecutors as a component of the judicial branch of power. Prosecution offices are thus judicial authorities. Their organisation is determined by the Public Prosecutor's Office Act – hereinafter the PPO Act<sup>55</sup>, which mirrors that of the court organisation shown in paragraph 70. There are thus public prosecution offices attached to the first instance courts of law (17 offices in total), one senior public prosecution office at the level of the four higher regional court (Vienna, Graz, Linz, Innsbruck) and the office of the Procurator General (PG) at the level of the Supreme Court. The 17 public prosecution offices are also responsible for the minor cases (liable to one year imprisonment at most) which are heard by local district courts. The investigation and other procedural steps as well as the representation of the accusation before these district courts can be – and is, as a rule – delegated to so-called district prosecutors (see below). As in the case of the courts, the prosecution services also make use of circuit prosecutors who can be used as temporary support in different sections of a given circuit. Their number may not exceed 5% of the total staff (Section 175 of the Service Act for Judges and Public Prosecutors).
137. The PPO Act (article 2a) and the Criminal Procedure Code (article 20a) also provide specifically, since September 2011, for the existence of a central prosecution office, established at the senior prosecution office of Vienna, with country-wide jurisdiction for the prosecution of Economic Crimes and Corruption, especially where the amounts involved exceed certain thresholds. At the time of the on-site visit, its staff included 31 prosecutors and 11 advisers with specific expertise. The court dealing with such cases in first instance is the Vienna regional Court where specialised sections have been created, mirroring the degree of specialisation of the central office.
138. Contrary to the courts, the prosecution services are not independent but organised along the principle of hierarchical authority and control, with the Federal Minister of Justice at the top (cf. *infra*, paragraphs 149 et seq. for further details).
139. The GET considers that Austria has not yet drawn all the consequences from the prosecutor's office becoming in 2008 an integral part of the judiciary. As such, prosecutors should benefit from a statute which should be approximated as much as possible with the one applicable to judges. As mentioned in paragraph 143, the executive retains discretion in the selection and appointment of prosecutors, including the most senior functions; it is not legally bound by the panels' proposals both as regards the ranking and the list of successful applicants. There is also no periodic appraisal system which would *inter alia* provide for objective criteria for career evolution. As in the case of judges, incompatibilities need to be spelled out clearly, especially with regard to a political mandate – which is currently not the case (see paragraphs 109 and 163 et seq.). **GRECO recommends that the statute of prosecutors be further approximated with the one for judges recommended in the present report, particularly with regard to decisions on appointments and career changes including for the highest functions**

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<sup>55</sup> Text in German <https://www.ris.bka.gv.at/GeltendeFassung.wxe?Abfrage=Bundesnormen&Gesetzesnummer=10000842>

**(the role of the executive should be limited to the formal appointment and should not include the choice of the candidate), as well as with regard to periodic appraisals for all prosecutors and the incompatibility of their function with a political function in the executive or legislature.** The GET noted that all panel members are independent and sit in their individual capacity. Nevertheless, in order to increase further the objective impartiality (as perceived by the public) of decisions taken by the staff panel of the Ministry of Justice, which has responsibility for the most senior positions, Austria may wish to also attribute the automatic presidency of the panel to a career prosecutor, instead of a member of the Ministry as is currently the case for this panel in particular.

#### Recruitment, career and conditions of service

140. The number of prosecutors has evolved over the last decade, from about 210 in 2005 to approximately 300 in 2016. As it is the case for judges, a majority of prosecutors – about 51% - are women; the situation is improving in recent years as regards the share of those holding senior positions. The so-called district prosecutors, who present indictments at district court level and who act under the responsibility and supervision of the prosecutors, they are civil servants organised as a self-standing profession. There is no requirement for them to have a university background but they receive special training, which is regulated by an ordinance of 2011<sup>56</sup>. For the purposes of criminal proceedings they remain under the direction and supervision of the regular prosecutors from the territorially competent offices (article 4 PPO Act).
141. The conditions of service of prosecutors are regulated both by the Service Act for Judges and Public Prosecutors, presented in the previous chapter on judges, and by the Public Service Employment Act<sup>57</sup>.

#### *Recruitment requirements*

142. As mentioned in the chapter on judges, prosecutors and judges form one single body of professionals who are regulated by the Service Act for Judges and Public Prosecutors. They can move during their career from one profession to the other. In practice, these career bridges mostly involve the criminal court judges since prosecutors have little contacts with judges dealing with other subject matters. The recruitment is the same for both and those interested in becoming a prosecutor after graduating in a law faculty, would need to pass the tests to become a judge. After that, the successful candidate must acquire at least one year experience as a judge before being entitled to apply for a vacancy in the prosecutorial service but there can be exceptions to this necessary in-service experience (section 174 the Service Act for Judges and Public Prosecutors).

#### *Appointment procedure and promotion to a higher rank*

143. There are 11 service categories of prosecutors, from the lowest level (circuit prosecutor) to the highest level (the Procurator General). According to the Service Act for Judges and Public Prosecutors (Section 177) all these posts must be filled by an open tender procedure announced on various websites and public channels. Applications are examined by the competent staff commission. There is one such commission at the federal Ministry of Justice (established for five years), responsible for the selection and proposals for the post of Director of the four senior prosecution offices and that of the Director of the Procurator General's Office (the Procurator General). There is also a commission at the Procurator General's Office and one at each of the four senior prosecution offices (these are permanent

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<sup>56</sup> <https://www.ris.bka.gv.at/GeltendeFassung.wxe?Abfrage=Bundesnormen&Gesetzesnummer=20007518>

<sup>57</sup> <https://www.ris.bka.gv.at/GeltendeFassung.wxe?Abfrage=Bundesnormen&Gesetzesnummer=10008470>

bodies), which are responsible for the selection regarding the other functions. All commissions must be filled with persons who meet the conditions to be a prosecutor. They consist of six members which combine, depending on the case, employees of the ministry of justice and senior prosecutors (they chair the respective commissions), one prosecutor delegated by a union, one employee of the Ministry's personnel department, and two members from representational bodies of the prosecution offices. Commission members sit in their individual capacity and they are independent. After a review of applications (the interview is optional), the commission proposes the three best candidates for the vacant post (or twice as many names as there are posts to be filled) to the Minister of Justice. The proposals are posted on the Ministry's website, subsequently accompanied by the name of the candidate(s) selected by the Ministry and subsequently appointed by the Ministry or the President for the most senior functions. As it was indicated in the chapter on judges, the executive is not legally bound to follow the panels' proposals both as regards the ranking and the list of successful applicants.

144. There is no promotion system as such. Prosecutor interested in a higher position must apply for a vacant position and follow the above procedure.

#### *Evaluation of a prosecutor's performance*

145. As it is the case for judges, prosecutors are not subject to any periodic appraisal. The GET was however assured that because of the way the prosecution services work, with close interactions between colleagues and with the supervisors, the performance is evaluated on a continuous basis, both qualitatively and quantitatively.

#### *Transfer of a prosecutor*

146. Contrary to the judges who benefit from the principle of non-removability, prosecutors can be transferred to another post or functions, for instance in the interest of the service, in case of organisational changes, when a vacancy is to be filled but there is no suitable candidate, if a disciplinary measure was imposed and so on. The matter is regulated by the general rules of the civil service, section 38 of the Civil Service Employment Act. With his/her assent, a prosecutor may also be assigned to the Ministry of Justice, to another office or another judicial body to perform administrative tasks, in accordance with the further provisions of the above Act and section 206 of the Service Act for Judges and Public Prosecutors.

#### *Termination of service and dismissal from office*

147. Like the judges, prosecutors enjoy life-long tenure until they retire. Otherwise, the service can be terminated for the reasons provided in the above laws, generally following a voluntary resignation, in case of health (early retirement), as a result of a disciplinary decision for a serious breach of disciplinary rules or following a criminal conviction in case the sanction pronounced exceeds six months or one year imprisonment (depending on the case) or where the act involved an element of misuse of authority.

#### *Salaries and benefits*

148. Prosecutors, since they are treated as judges who have moved to the prosecution service, continue to receive the same income and to benefit from the same seniority-based income progression. The salary scale is adapted to the distribution of functions and responsibilities in the prosecution service and in practice, junior prosecutors earn slightly more than junior judges. The Head of the Procurator General's Office is entitled to a special (fixed) monthly gross wage of 11 250 euros.

Contrary to judges, prosecutors receive some additional benefits in accordance with the Civil Service Employment Act (clothing and equipment in particular).

#### Case management and procedure

149. Contrary to the courts, the prosecution services are organised as a hierarchical and unified body. Decisions on a case are taken collectively in accord with the management. Prosecutors are interchangeable in that context. Austria has the principle of mandatory prosecution. Circumstances where a prosecutor can disregard the legal consequences of an act are enumerated in law and concern cases where the low gravity of the act does not warrant the cost of a public action, where a minor prejudice caused to a victim has been compensated and so on. Pursuant to section 2 of the Act on the Public Prosecutor's Offices, the director of a Public Prosecutor's Office, a Senior Public Prosecutor's Office and the Procurator General's Office can take over tasks of all subordinate officials in individual cases or can entrust another than the competent official with the execution of duties of a prosecutor because of serious reasons.
150. As for guarantees against undue delays, in principle the duration of the investigation proceedings until the introduction of the indictment or the termination of the investigation shall not exceed three years (article 108a of the Criminal Procedure code). If the proceedings cannot be completed within this time frame, the office of public prosecution has to report this to the court and to provide explanations. The court then examines whether there is a ground for terminating the proceeding and it may extend the maximum duration of the investigation by two years. It also determines whether the prosecution violated the requirement of speedy proceedings (article 9), having due regard to the factor of the case (conduct of the accused, complexity of the case, number of parties to the proceedings). Further possibilities of action are open to a suspect under article 108 of the above Code/ S/he can ask the court, through the public prosecutor's office, that the investigation proceedings be stayed if: a) on the basis of the report to the police or the results obtained from the investigation it has been established that the offence cannot be sanctioned by the court; b) the further prosecution of the accused is inadmissible for other legal reasons; c) on account of the urgency and weight of the existing suspicion of an offence, as well as with a view to the duration and scope of the investigation proceedings so far, a continuation of the investigation is not justified, and an intensification of the suspicion is not to be expected from a further clarification of the facts. An application to stay proceedings may be filed three months after the beginning of the criminal proceedings at the earliest; however, if the accused is charged with a crime which is sanctioned with three or more years of imprisonment, six months have to have passed since the criminal proceedings begun. If the office of public prosecution does not stay the proceedings, it has to submit the application to the court which then decides on it.
151. Pursuant to Article 2 paragraph 1 of the Public Prosecutor's Office Act, the Public Prosecutors are responsible to the Senior Public Prosecutor's Offices, which – like the PG's Office – are directly responsible, in turn, to the Federal Ministry for Justice. Thus, the PG's office does not have the role attributed in other countries to an office of the general prosecutor as it is not part of the hierarchy of control and the law does not provide for the PG or his/her office<sup>58</sup> to exercise control over the Senior Public Prosecutor's Offices or the Public Prosecutor's Offices; nor does s/he have any power of supervision or devolution as against these authorities (unlike the Senior Public Prosecutor with respect to the Public Prosecutors). The role of the PG is limited to that of a legal representative of the state as custodian of the law, i.a.

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<sup>58</sup> It is composed of three sections, comprising heads of section known as First Solicitors General and twelve deputies of the Procurator General known as Solicitors General.

by filing appeals against court decisions<sup>59</sup>, by issuing positions (so-called "croquis") on cases handled by the prosecution services and to some extent by ensuring the proper allocation of cases: the PG can thus transfer a case from one prosecution office to another in case of risks of partiality or where jurisdiction issues arise (article 28 of the Criminal procedure Code). The PG's office participates in the hearings before the Supreme Court, but is by no means required to adopt the prosecution's point of view. Moreover, the Procurator General has no jurisdiction to accept complaints pertaining to one of the prosecution authorities; instead, any such submissions should be addressed to the Senior Public Prosecutor with jurisdiction or to the Federal Ministry of Justice.

152. The PPO Act (articles 8 to 31) describes in detail the channels of information and modalities of instructions in individual cases which are inherent to the hierarchical organisation of the prosecution services. In particular, the lower prosecution offices must inform the senior public prosecution office of any criminal matter which can be of particular public importance for reasons pertaining to the subject-matter (including fundamental questions) or to the position of the suspect in the public opinion, including the intended course of action if it has already been determined. This reporting duty does not prevent the taking of immediate preventive action dictated by the urgency of the situation. The competent senior prosecution office reviews the case and forwards the information – together with their own opinion – to the Federal Minister of Justice where there is more than just a mere local interest at stake and where a course of action can already be proposed. Instructions on the course of action from the senior prosecution offices to the subordinated offices, as well as those addressed by the Minister of Justice to the senior prosecution offices must be issued in writing and must contain explanations. Face to face discussions can also be organised between the senior prosecution offices and the subordinated offices, and between the former and the Ministry; they must be subsequently documented in the protocols. Oral contacts in case of urgency (where enforcement or protective measures need to be applied) must be confirmed subsequently in writing by the issuer. The law provides for three categories of situations where the Minister is required to issue an instruction: where the report received shows that there are insufficiencies, inconsistencies, or a possible misinterpretation of the law in the way the prosecution authority is handling the case.
153. Within the prosecution services, where a prosecutor has concerns about the legality of the instruction, s/he shall raise his/her concerns with the office from which it emanates, s/he may ask that the instruction be issued in writing or that it be reiterated (otherwise it shall be considered void), and lastly that s/he be discharged from the case if the respective views continue to diverge (Article 30 PPO Act). Instructions aiming at the termination or continuation/initiation of a judicial action are confidential until the formal decision on proceedings by the prosecution service, or concerning the court case, as the case may be. The PPO Act states nonetheless that after that stage, disclosing the identity of the authority which has issued the instruction or revealing the purpose of the instruction does not constitute a breach of professional confidentiality.

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<sup>59</sup> As pointed out on the website [www.Generalprokuratur.gov.at](http://www.Generalprokuratur.gov.at), the main purpose of this appeal – provided by Section 23 of the Code of Criminal Procedure, which can only be lodged by the Procurator General and is not subject to any time limit, irrespective of whether the decision has become final - is to ensure uniformity and correctness of the application of the law (the aim being to prevent the same kind of infringements of the law in future). At the same time, however, it also serves to re-establish justice in an individual case for the benefit of someone wrongly condemned, an accused wrongly disadvantaged by the criminal court in any other manner or for the benefit of a party to the proceedings in a comparable situation (this appeal can lead to a finding that there has been an unlawful acquittal or another unlawful act that benefits such a person, but this does not lead to the reversal of the decision). An unlawful measure by a criminal court can also include an unlawful failure by the court to act or, under certain circumstances, a mere delay. Even unlawful grounds in support of a judgement that have no decisive effect on the decision can be made the subject-matter of a nullity appeal to preserve the integrity of the law.

154. The current arrangements are the result of a legislative review which was initiated in 2014 and finalised in 2015; it entered into force on 1<sup>st</sup> January 2016. The review was triggered by a series of factors. First, there has been an on-going discussion in recent years about the possible creation of an independent prosecution service and on the need to better guarantee the appearance of impartiality. A consensus could not be reached in 2015 to transfer the responsibility for public criminal action from the government to an independent prosecution service headed by a general prosecutor; instead, there was a preference for some technical improvements. Furthermore, the appointment of the current Minister of Justice did trigger public controversies concerning possible conflicts of interest due to his earlier functions as a legal advisor in high-profile criminal cases which were still going on after he was appointed in government<sup>60</sup>. There was also a desire to simplify and mainstream the flow of bottom-up information and top-down instructions especially in order to reduce unnecessary delays in criminal proceedings. Last but not least, the reform gave a specific legal basis to an advisory body to the Minister of Justice, a so-called "Council of wise persons" in 2014<sup>61</sup> which was renamed in January 2016 as "Council on Instructions". The organisation, responsibilities and involvement modalities of this body are detailed in articles 29b and 29c of the PPO Act, as amended:

**Art. 29b PPO Act (excerpts)**

**Advisory Council for ministerial instructions ("Council on Instructions" ["Weisungsrat"])**

(1) An advisory council for ministerial instructions ("Weisungsrat") is established at the General Procurator's Office. Members include the Procurator General as chairman and two other members. If they are unable to attend, the Procurator General is represented by the First Solicitors General according to the ranking (Art. 182 para. 3 RStDG), the other two members are represented by substitute members.

(2) The other two members and two substitute members are appointed by the Federal President for a period of seven years on a proposal from the Federal Government which is based on a pre-selection by the [independent] Legal Protection Commissioner ["Rechtsschutzbeauftragter"] of justice (Art. 47a of the Criminal Procedure Code) after consultation with the President of the Constitutional Court, the Administrative Court and the Supreme Court. Reappointments are not allowed. The proposal has to contain at least twice as many names as persons are to be appointed as members. In case of premature withdrawal of a member or substitute member, a successor shall be appointed for the remainder of the term.

(...)

**Art. 29c PPO Act - Tasks of the Council on Instructions**

(1) The Federal Minister of Justice has to submit the report of the public prosecution office on the intended approach according to Art. 8 para. 1 PPO Act, the opinion of the senior public prosecutor's office and a well-grounded draft decision to the Council on Instructions (Art. 29b PPO Act) for its advice in the following cases:

1. If an instruction shall be given regarding the handling of a particular case (Art. 29a para. 1 PPO Act);
2. in criminal matters involving the highest executive authorities (Article 19 of the Federal Constitution)<sup>[62]</sup>, members of the Constitutional Court, the Administrative Court and the Supreme Court and the General Procurator's Office;
3. if the Federal Minister of Justice considers it necessary because of the extraordinary public interest in the criminal case, in particular because of repeated and supra-regional media coverage or repeated public criticism of the approach of the office of the public prosecution and the criminal investigation department, or for reasons of bias.

(2) where the Federal Minister of Justice submits a draft decision according to para. 1 to the Council, the chairman shall convene a meeting of the Council as soon as possible. Individual parts of the files or the entire investigation file are to be sent to him/her upon request.

(3) In adherence to the requirement of swift proceedings (Art. 9 Criminal Procedure Code), the Council issues at the earliest a written statement regarding the draft decision of the Federal Minister of Justice. If subsequently the Minister of Justice deviates from the position expressed by the Council, the said statement including an indication of the grounds why it was not taken into account has to be published in the report to the National Council and the Federal Council according to Art. 29a para. 3 PPO Act.

<sup>60</sup> See <http://derstandard.at/1392686815703/Causa-Alijew-Brandstetter-holt-die-Vergangenheit-ein>

<sup>61</sup> At the time, it was established by virtue of general legal provisions concerning the creation of advisory bodies at the level of the federal ministries.

<sup>62</sup> These are the Federal President, the Federal Ministers and the state secretaries, and the members of the Land Governments. For the full text of the Constitution, see footnote 13.



(4) If pursuant to para. 1 the Council was consulted and subsequently an instruction to close the investigation proceedings is issued, the office of public prosecution has to notify the Legal Protection Commissioner according to Art. 194 para. 3 Criminal procedure Code with the consequences of Art. 195 para. 2a Criminal Procedure Code.

(5) In matters of international criminal cooperation of judicial authorities and in other cases which do not permit any delay, particularly regarding custodial matters and the decision whether to declare a waiver to file an appeal and execution of appeals, it is sufficient to consult the Council on Directives afterwards.

155. The Council on Instructions is established at the General Procurator's Office and composed of the Procurator him/herself acting as chairman and two other members appointed for a non-renewable term of 7 years. These and their substitutes are appointed by the President of Austria upon a proposal from the Government (with an opinion of the chairpersons of the three highest courts), following a pre-selection of candidates by the Legal Protection Commissioner [*Rechtsschutzbeauftragter*] of justice: s/he shall shortlist twice as many candidates as the number of members and substitutes to be appointed. As indicated in the general overview of the judiciary in the previous Chapter (see paragraph 75), the Legal Protection Commissioner is a person appointed by the Minister of Justice.
156. Once the Federal Ministry of Justice has examined an individual case forwarded by a senior prosecution service on the grounds mentioned earlier, it must seek the position of the Council on Instructions when it intends to issue an instruction on the way to proceed with an individual case or in case of criminal matters involving "the highest executive authorities (article 19 of the Federal Constitution), members of the Constitutional Court, the Administrative Court and the Supreme Court and the General Procurator's Office". At the discretion of the Minister, advice may also be sought "because of the extraordinary public interest in the criminal case, in particular in cases of repeated and supra-regional media coverage or repeated public criticism of the approach of the office of the public prosecution and the criminal investigation department, or for reasons of bias". The PPO Act specifies that where the instruction is to terminate the investigation, and in case the Council on Instructions was consulted, the office of public prosecution has to notify the Legal Protection Commissioner [*Rechtsschutzbeauftragter*] for justice affairs in accordance with article 194 paragraph 3 of the Criminal Procedure Code (CPC) with the consequences of article 195 paragraph 2a. S/he can then file with the court a request to order to the prosecution service to resume proceedings.
157. It is stated in parliamentary documentation that the number of instructions emanating from the Ministry of Justice has decreased in recent years<sup>63</sup>:

Ministerial instructions based on article 29a paragraph 1 of the PPO Act (situation as of 16 June 2016)									
	2013		2014		2015		2016		
<b>Total number, of which the number of those triggering particular public attention</b>	43	13	38	9	24	8	6	3	

158. Some statistics were provided about the outcome of cases involving the Council on Instructions and its predecessor, the Council of wise persons. Thus, since the appointment of the current Federal Minister of Justice on 16 December 2013 and until 11 April 2016, 66 ministerial instructions have been issued. Following Council recommendations, the Ministry of Justice refrained from issuing instructions in five cases and revised the instructions in three cases. In two cases in which the Ministry of Justice had informed the Council for other reasons (without suggesting an instruction) about the intended approach, the Ministry subsequently followed the

<sup>63</sup> Source: annex to the parliamentary document 8962/AB of 18/07/2016



recommendation of the advisory body to issue an instruction (these two cases are included in the total of 66 instructions).

159. The GET was informed that the above arrangements are the result of a compromise. Certain unions of judicial professionals would have preferred the model of a prosecution service fully independent from the Minister, with the Procurator General vested with the overall authority. It has been objected that this would require a constitutional amendment since the government is normally responsible for the prosecutorial action and that there was no political consensus to pass such a reform. Currently, there are diverging views about the actual benefits of the creation of a Council on Instructions. Although it is acknowledged that it had introduced some additional safeguards against political interference and improved the perception of independence of prosecutorial action, there is still room for improvement. The Council is still chaired and its work prepared by prosecutors who are still subjected to the ministerial authority and the functioning of the Council is largely determined in rules which are not public. The GET was particularly concerned by the fact that all members are selected by the executive and in this context, the recruitment of the Council members in the end of 2015 turned out to be a difficult exercise as the number of applicants was insufficient: the Federal President – who chooses the Council members from a list comprising twice as many candidates proposed by the Government – had no choice but to appoint those proposed. The fact that the General Procurator, who is now chairing the Council, could him/herself be in a questionable position if s/he is to decide on cases which he has dealt with in earlier prosecutorial proceedings has also been raised. The GET was also concerned by the fact that the Minister of Justice retains the ability to terminate criminal proceedings for corruption-related cases even if the Council advises not to do so. On the other side, the authorities of Austria stressed that the Minister of Justice must inform the parliament about all such occurrences and that the Legal Protection Commissioner may still, in any event, order the continuation of proceedings in such cases. The GET appreciates that Austria is taking steps to secure the perception of impartiality of the justice system. Further improvements could be considered in future, when information becomes available over a longer time-span on the actual contribution of the Council of instructions, for instance consider making the opinions of the Council binding on the Minister.
160. The GET is also concerned by the potential of abusive practice with the arrangements provided for under article 108 of the Criminal Procedure Code. The GET fully shares the concerns of Austria about the need for speedy criminal proceedings but the way the above mechanism is designed can become a powerful tool in the hands of white-collar suspects when they start using all procedural possibilities to block the investigative or prosecutorial action, when they try to discredit individual prosecutors and so on. For instance, the fact that a request for staying the procedure may be filed just three or six months after the beginning of the criminal proceedings is clearly incompatible with a complex investigation which would involve some financial enquiries or investigation and assistance from abroad; according to international experience, it is not uncommon that information is sent by requested countries only after one year. Practitioners met during the visit, when describing the difficulties of dealing with high profile cases confirmed some of the above fears of the GET. Austria may wish to have a study done on the use in practice of the above article 108, and to adjust its wording so that this procedure cannot be used abusively in cases involving corruption-related and other complex forms of crime.

#### Ethical principles and rules of conduct

161. As indicated in the chapter on judges, Section 57 of the Service Act for Judges and Public Prosecutors establishes certain fundamental obligations pertaining to the conduct of judges and prosecutors including loyalty to the country, professional

dedication, commitment to self-improvement, effectiveness at work, not jeopardising in professional or private life the image of the judiciary and the reputation of the profession. The Association of Austrian prosecutors adopted shortly after the Wels Declaration for judges, a Professional Codex<sup>64</sup> comprising nine articles which use a wording similar to that of the Declaration (see paragraph 103). This text has a declaratory nature and was adopted by a professional organisation presumably for its members and not necessarily for all Austrian prosecutors<sup>65</sup>. It cannot lead to enforcement measures. Prosecutors indicated during the visit, as did judges, that they are not concerned either by the specific anticorruption Code of conduct of the federal chancellery. This is quite surprising given the national general coverage of that Code to the whole of the public sector, and that they are otherwise subjected to the general federal civil service rules concerning a number of obligations; after the visit, the authorities reiterated that the above Code of the federal chancellery does apply to all judges and prosecutors. At the same time, the GET only found out about the existence of the Professional Codex during on-site discussions, which raises questions about the awareness and effectiveness of this text. As in the case of the Wels Declaration, it is clear that the Codex would need to be complemented with additional concrete information and examples in order to better assist prosecutors in daily life. **GRECO recommends i) that all prosecutors are bound by a code of conduct accompanied by, or complemented with appropriate guidance and ii) that a system be put in place to provide confidential counselling and to support the implementation of the code in daily work.**

#### Conflicts of interest

162. The Austrian authorities consider that the above section 57 of the Service Act for Judges and Public Prosecutors constitutes the legal framework to deal with conflicts of interest, combined with the provisions below of section 56 and 37 of the Civil Service Employment Act concerning the conditions for the exercise of side occupations. There is no definition or typology of conflicts of interest.

#### Prohibition or restriction of certain activities

##### *Incompatibilities and accessory activities*

163. Prosecutors are basically subject to similar rules as the judges when it comes to accessory activities and as it was pointed out in paragraph 109, incompatibilities with a legislative or executive function are not clearly established (it is currently being discussed to fill this gap, though). The Civil Service Employment Act (sections 56 and 37), similarly to the Service Act for Judges and Public Prosecutors (the relevant provisions are specific to judges) makes also a distinction between **side-occupations** which are unrelated to the official functions, and **additional tasks** which are connected to the status of prosecutor. Thus, of the public prosecutors may not engage in any side-occupation which is incompatible with the dignity of their office or hinders the public prosecutor to devote all her/his time, powers, abilities and efforts to the interests of Public Service, or which might give rise to a suspicion of bias. They must notify the "service authority" about the beginning and ending, the type of occupation and its extent. The concept of service authority means the Head of their prosecution office. Likewise, a prosecutor must report any involvement in a governing body of a profit-oriented legal entity governed by private law. A hierarchical prohibition must be issued in writing. The Minister may decide by decree further side-occupations which may not be exerted in any case but the authorities confirmed that up until now, no such decree has been adopted

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<sup>64</sup> Text in German available at <http://www.staatsanwaelte.at/node/201>

<sup>65</sup> The authorities point out that there is only one professional organisation of prosecutors, which gathers more than 90% of them, country-wide.

for judges and prosecutors. Additional tasks can be assigned by the federation to prosecutors, including in bodies of legal entities governed by private law, which are wholly or partly owned by the State. Performing such activities must be authorised by the Head and can be exerted, provided the working time has been adapted in consequence.

164. Prosecutors may also produce expert opinions on matters associated with their official duties, provided this is approved; it shall be refused if the interests of the service would be compromised.

#### *Recusal and routine withdrawal*

#### *Gifts*

165. The rules on gifts for prosecutors are the same as those for judges, except that they are not provided by section 59 of the Service Act for Judges and Public Prosecutors (this provision is specific to judges) but by Section 59 of the Public Service Employment Act. There is thus a general prohibition to take gifts, except small courtesy gifts, and honorific gifts in principle become State property. Prosecutors violating this duty may face disciplinary or criminal sanctions, including for bribery. As mentioned already in respect of the judges, the situation has reportedly improved a lot in recent years and there seems to be a low tolerance in practice for any form of gifts and benefits.

#### *Post-employment restrictions*

166. Activities after employment as a public prosecutor are subject to restrictions in accordance with the provisions of the Civil Service Employment Act (section 20). The rules are similar to those provided under the Service Act for Judges and Public Prosecutors, which actually concern both judges and prosecutors. Prosecutors may not take up functions with certain entities for a period of six months after leaving their office. As the GET has pointed out, a six-month term is too short and it does not constitute a satisfactory safeguard against corruption in the form of employment opportunities. The GET is also concerned about the multiplicity of rules applicable to prosecutors, and the unnecessary problems this may generate in practice. Austria may wish to look into this matter.

#### *Third party contacts, confidential information*

167. In accordance with section 46 of the Civil Service Employment Act, prosecutors are – like any civil servant – sworn to confidentiality in duty about facts they have gained knowledge of through their official function. This duty remains applicable after the termination of functions. The text of this section is strongly inspired from section 58 of the Judges and Public Prosecutors Service Act, which applies only to judges.

#### Declaration of assets, income, liabilities and interests

168. Prosecutors are not subject to a system of declaration of assets, income, liabilities and interests, other than the disclosure obligations concerning accessory activities mentioned before.

#### Supervision

169. Due to the hierarchical organisation of the prosecution service, there is a direct pyramidal supervision over the subordinate offices and individual prosecutors. At the top, the supervision is exerted both by the Ministry of justice and by the

Procurator General's office (see the detailed information contained in paragraphs 136 et seq.).

170. As it was indicated in the chapter on judges, section 111 of the Service Act for Judges and Public Prosecutors determines the relevant authorities with regard to disciplinary measures: each of the four higher regional courts (Vienna, Graz, Linz and Innsbruck) also functions as a Disciplinary Court for the public prosecutors appointed within the realm of one of the other higher regional courts. The Supreme Court is in charge of the members of the Procurator General's Office and the Senior Public Prosecutors of the four Public Prosecutor's Offices (Vienna, Graz, Linz and Innsbruck). The disciplinary panels consist of senior judges and judges of the Court of Appeal. Furthermore a disciplinary investigator has to be appointed among the judges of the higher regional courts. The GET refers back to the general description in the chapter on judges.

171. The GET took from the on-site discussions that senior prosecutors appear well aware of their responsibilities.

#### Enforcement measures and immunity

172. Just like judges, prosecutors do not benefit from immunities in Austria. Their acts attract liability under the general legal provisions, including for instance criminal law in case they commit a bribery offence or misuse their official function. Section 104 of the Service Act for Judges and Public Prosecutors provides for the following disciplinary measures: a) a reprimand; b) a fine amounting to the equivalent of up to five months' earnings; c) transfer to another place of employment without entitlement to relocation fees; d) removal from office. Any disciplinary penalty must be entered into the official professional record. As indicated in the chapter on judges, non-compliance with a particular general or specific duty (including declaratory obligations for gifts and accessory activities) can lead to disciplinary sanctions. The following data on the number and outcome of complaints and proceedings against prosecutors (in the period 2013-2015) was made available after the visit:

Disciplinary cases raised in relation to prosecutors (2013-2015)	
<b>Vienna</b>	2
<b>Graz</b>	13
<b>Linz</b>	Not available (N/A)
<b>Innsbruck</b>	3
<b>Total</b>	<b>18</b>

Grounds for bringing cases (2013-2015) – in percentage of cases					
	Delaying proceedings tasks	of and	Inappropriate conduct proceedings of / wrong decision	Conduct affecting the image of the institution (without criminal offence)	Criminal offences (Section 302 of the criminal code – abuse of powers)
<b>Vienna</b>	100%		0%	0%	0%
<b>Graz</b>	15		54	23	23
<b>Linz</b>	(N/A)		(N/A)	(N/A)	(N/A)
<b>Innsbruck</b>	33		0	67	67
<b>Average</b>	28%		39%	28%	28%

Sentences following formal proceedings: total 4							
	Not guilty	Guilty without sanction	Referral to other action	Disciplinary fine	Transfer	Release from service	Reduction of salary
<b>Vienna</b>	0	0	1	0	0	0	0

<b>Graz</b>	0	0	1	1	0	0	1
<b>Linz</b>	(N/A)	(N/A)	(N/A)	(N/A)	(N/A)	(N/A)	(N/A)
<b>Innsbruck</b>	0	0	0	0	0	0	0
<b>Total</b>	0	0	2	1	0	0	1
<b>Cases closed without formal proceedings: total 11</b>							
	No action on basis of Section 78 of the Act on the organisation of the courts	Termination based on analogous application of Section 190 Crim. Proc. Code	Interruption based on analogous application of Section 197 Crim. Proc. Code	Refusal to initiate proceedings (Section 123 Service Act)	Termination	Termination with referral to other legal action	Termination with analogous application of Section 143 Service Act
<b>Vienna</b>	0	0	0	0	0	0	0
<b>Graz</b>	0	0	0	7	1	0	0
<b>Linz</b>	(N/A)	(N/A)	(N/A)	(N/A)	(N/A)	(N/A)	(N/A)
<b>Innsbruck</b>	0	0	0	0	3	0	0
<b>Total</b>	0	0	0	7	4	0	0

## **VI. CORRUPTION PREVENTION IN RESPECT OF JUDGES AND PROSECUTORS**

### Training and awareness

173. During the initial preparation of ordinary court judges and prosecutors, they follow courses and spend a significant time on practical training as it was indicated in the section on the recruitment of judges. During this initial training, ethics and the professional conduct expected from judges and prosecutors is part of the courses. Rules on the professional conduct are also subject of the judges' examination and there is an additional offer for young judges to attend the four-day seminar "start into judgeship"; it is meant to fill the last gaps in the education. It addresses the personal challenges and attitude, among other subjects. The in-service training for judges and prosecutors is optional, but self-improvement and acquiring additional skills is one of their duties. The Austrian association of judges organised a two-day seminar in the end of 2012 to present the revised version of the Wels Declaration and to raise awareness about its new content. A module of the 4th curriculum for juvenile magistrates and prosecutors in 2014 (3 days) addressed the topic "occupational profile – self-image" and stood under the slogan "aspects of judicial independence". A further opportunity to become more familiar with aspects of self-image was a three-day seminar „future justice – a seminar for pioneers, thinker and unconventional thinkers" (2014).
174. As indicated earlier, for administrative judges there is no specific training curriculum; they are recruited on the basis of their experience with administrative and legal matters. Most of them previously took the "service exam" for the general administrative service. Hence, the judges are familiar with anti-corruption measures. Additionally, these topics are usually discussed in the regular trainings on conducting trials and preventing de-escalation for judges. In the beginning of 2016, a series of lectures on the public service legislation was being elaborated; it was planned to include anti-corruption policies.
175. In principle, judges and prosecutors can turn to the president of the court or to their supervisor to obtain guidance and advice.
176. The GET considers that the training efforts are globally insufficient, except for the initial training of junior judges. The punctual events which are organised every now and then by different actors cannot compensate for the absence of a programme of in-service training courses which would be available for ordinary court judges and prosecutors, and for administrative judges. As regards the latter, there is no clear view as to whether the federal chancellery, which is normally organising a regular programme of advanced and in-service training opportunities for the federal civil

servants, is also responsible for arranging training for (administrative) judges. In any event, that programme does not contain elements on integrity standards for professionals, as the GET found out. This is a major gap given the recruitment background of these judges. Austria needs to take more determined action in this regard, since self-improvement is a duty for judges and prosecutors (at least those of ordinary courts). As it was also pointed out before in respect of lay judges (see paragraph 105), the on-site discussions also showed that lay judges are not necessarily familiar with the applicable integrity standards and it would certainly support their awareness if they too, benefited from additional awareness-raising and training efforts. **GRECO recommends that an annual programme be put in place for the in-service training of judges and prosecutors, including administrative judges and lay judges, which would include integrity-focused elements concerning the rights and obligations of these professionals.**

#### Other aspects

177. Austria is currently in the process of adopting a law on access to information which would in future generate a larger volume of information available to the public. This would be timely, given the concerns expressed by GRECO in the joint first and second evaluation round report on Austria, and the fact that by the end of the compliance procedure, the country had not taken any action to implement the recommendation on facilitating access to information held by public authorities.
178. There was often a strong confidence among certain groups of judicial practitioners that the Austrian judiciary performs well, especially in regards of international polls on the level of satisfaction of the population with the judiciary. However, this view was not necessarily shared by all groups of practitioners and non-governmental interlocutors met on-site. The GET found that a more concerted approach with regard to information held by different agencies and judicial bodies would contribute to provide a more accurate and reliable picture of possible problematic areas which could bear higher risks for the integrity of judges and prosecutors. In addition to increasing the transparency of the overall functioning of the Austrian judiciary, it would provide a reliable basis for policy discussions on the judiciary, including the level of progress and completion of the reform of the administrative justice. The GET was told that multiple actors are involved in compiling statistical data and producing assessments (the Ministry of Justice, the courts and prosecution offices, professional organisations and so on) but there is no consolidated overview. As regards the supervision of the courts and prosecution services in general, it would appear that the activity of the federal ministry of justice is not systematically accounted for in official documents (for instance as regards the general audits conducted and their conclusions or follow-up action). On individual supervision and disciplinary cases, no statistics are kept on-going in a synthetic manner nor published anywhere. The only information available are the (few) existing disciplinary decisions published on the country's legal on-line information system; and these give only a very partial overview including of possible integrity issues in the judiciary. The GET was told that it would not be too difficult in future for the Ministry of Justice to compile data systematically, possibly accompanied by analyses. The GET took from the statistics made available that there are strong imbalances between different judicial regions of Austria; this suggests that internal control policies are implemented in excessively diverging manners in practice and it would appear that certain cases are not pursued by not using the appropriate legal basis.
179. The situation in the prosecution services is another example of areas warranting further thoughts. The GET heard repeatedly that criminal proceedings concerning economic and white-collar crimes are abnormally lengthy and can last up to eight years or more; but it would appear that this is not necessarily documented in

official reports<sup>66</sup>. At the same time, it was reported that despite certain efforts made in recent years to improve the situation, the profession of prosecutors had become unattractive and that certain prosecution offices are confronted with significant staffing issues. This includes the Senior Public Prosecution Office of Vienna – which treats in principle the bulk of major crime cases given the importance of Vienna as the economic, business and political centre. This office is reportedly confronted with an excessive turnover of staff. It was pointed out that many practitioners tend to favour less challenging regions or judicial occupations. In the GET's view, there is a risk that over-burdened or demotivated practitioners neglect the complex cases and focus on those which can be closed rapidly in order to comply with statistical objectives. As GRECO has already pointed out, this could be detrimental to the anti-corruption efforts since these cases usually involve highly secretive and complex dealings. The Court of Accounts of Austria has published in recent years reports which address certain aspects of the functioning of the judiciary or of a sector thereof. These contained findings which go beyond the management of public funds<sup>67</sup>. To the GET, it makes no doubt that Austria would benefit a lot from the existence of a more systematic analysis of the functioning of its justice system. This would provide objective elements to assess whether courts and the prosecution services have the necessary human and other resources to deal with disciplinary cases and to assess whether those related to serious crimes, such as corruption, are properly and effectively dealt with.

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<sup>66</sup> A statistical report of 2015 on the duration of proceedings in criminal matters for the period 2010-2015 (similar reports are done for instance for civil cases) was provided to the GET. It contains no distinctions or comparisons for different categories of crimes. Document entitled: "Verfahrensdauer Straf 2015 – Zeitreihen 2010-2015"; Bundesministerium für Justiz.

<sup>67</sup> *Positionen für eine nachhaltige Entwicklung Oesterreichs* (Positionen 2016/2) and *Staatsanwaltschaftliches Ermittlungsverfahren* (Band 2014/5)

## **VII. RECOMMENDATIONS AND FOLLOW-UP**

180. In view of the findings of the present report, GRECO addresses the following recommendations to Austria:

*Regarding members of parliament*

- i. to ensure through appropriate, predictable and reliable rules that legislative drafts emanating both from government and from parliament are processed with an adequate level of transparency and consultation including appropriate timelines allowing for the latter to be effective (paragraph 19);**
- ii. i) that a code of conduct (or ethics) be developed for members of parliament and communicated to the public; ii) ensuring there is a mechanism both to promote the code and to provide advice and counselling to MPs, but also to enforce such standards where necessary (paragraph 26);**
- iii. i) to clarify the implications for members of parliament of the current system of declarations of income and side activities when it comes to conflicts of interest not necessarily revealed by these declarations; and in that context ii) to introduce a requirement of ad hoc disclosure when a conflict between specific private interests of individual MPs may emerge in relation to a matter under consideration in parliamentary proceedings – in the plenary or its committees – or in other work related to their mandate (paragraph 27);**
- iv. that internal rules and guidance be provided within parliament on the acceptance, valuation and disclosure of gifts, hospitality and other advantages, including external sources of support provided to parliamentarians, and that compliance by parliamentarians be properly monitored, consistent with the rules on political financing (paragraph 33);**
- v. that the legal framework applicable to lobbying be reviewed so as to i) improve the transparency of such activities (also for the public) and the consistency of requirements including the legal prohibition for parliamentarians themselves to act as lobbyists, and to ensure proper supervision of these declaratory requirements and restrictions ii) to provide for rules on how members of parliament have contacts with lobbyists and other persons seeking to influence parliamentary work (paragraph 44);**
- vi. (i) that the existing regime of declarations be reviewed in order to include consistent and meaningful information on assets, debts and liabilities, more precise information on income (ii) that consideration be given to widening the scope of the declarations to also include information on spouses and dependent family members (it being understood that such information would not necessarily need to be made public) (paragraph 55);**
- vii. i) that the future declarations of income, assets and interests be monitored by a body provided with the mandate, the legal and other means, as well as the level of specialisation and independence needed to perform this function in an effective, transparent and proactive manner and ii) that such a body be able to propose further legislative changes as may be necessary, and to provide guidance in this area (paragraph 62);**



- viii. **that infringements of the main present and future rules in respect of integrity of parliamentarians, including those concerning the declaration system under the Act on incompatibilities and transparency, carry adequate sanctions and that the public be informed about their application (paragraph 63);**

*Regarding judges*

- ix. **that i) adequate legislative, institutional and organisational measures be taken so that the judges of federal and regional administrative courts be subject to appropriate and harmonised safeguards and rules as regards their independence, conditions of service and remuneration, impartiality, conduct (including on conflicts of interest, gifts and post-employment activities), supervision and sanctions; ii) the *Länder* be invited to support those improvements by making the necessary changes which fall within their competence (paragraph 81);**
- x. **that the recruitment requirements be increased and formalised for judges when they are to become candidate-judges (*Richteramtsanwärter*) and administrative court judges, and that this includes proper integrity assessments as well as objective and measurable criteria on professional qualifications to be applied by the independent selection panels involved (paragraph 90);**
- xi. **that staff panels be involved more broadly in the selection and career evolution of ordinary and administrative court judges, including the presidents and deputy-presidents, and that the proposals of the panels become binding for the executive body making appointments (paragraph 93);**
- xii. **that a system of periodic appraisals be introduced for judges, including the presidents of the courts, and that the results of such appraisals be used in particular for decisions on career progression (paragraph 94);**
- xiii. **that the publicity of hearings in administrative matters be clearly guaranteed as a general rule for all administrative courts, with a limited number of exceptions determined by law where hearings can be held behind closed doors (paragraph 102);**
- xiv. **i) to ensure that all relevant categories of judges, including lay judges, are bound by a Code of conduct accompanied by, or complemented with appropriate guidance and ii) that a mechanism is in place to provide confidential counselling and to promote the implementation of the rules of conduct in daily work (paragraph 105);**
- xv. **that a restriction on the simultaneous holding of the office of a judge and that of a member of a federal or local executive or legislative body be laid down in law (paragraph 109);**
- xvi. **that the persons responsible for the implementation and supervision of the various obligations laid upon judges - notably on professional secrecy, gifts, accessory activities and management of conflicts of interest - be properly identified and known to all, and that they be required to introduce the proper procedures needed for these obligations to become effective (paragraph 130);**

*Regarding prosecutors*

- xvii. that the statute of prosecutors be further approximated with the one for judges recommended in the present report, particularly with regard to decisions on appointments and career changes including for the highest functions (the role of the executive should be limited to the formal appointment and should not include the choice of the candidate), as well as with regard to periodic appraisals for all prosecutors and the incompatibility of their function with a political function in the executive or legislature (paragraph 139);**
- xviii. i) that all prosecutors are bound by a code of conduct accompanied by, or complemented with appropriate guidance and ii) that a system be put in place to provide confidential counselling and to support the implementation of the code in daily work (paragraph 161);**

*Regarding judges and prosecutors*

- xix. that an annual programme be put in place for the in-service training of judges and prosecutors, including administrative judges and lay judges, which would include integrity-focused elements concerning the rights and obligations of these professionals (paragraph 176).**
181. Pursuant to Rule 30.2 of the Rules of Procedure, GRECO invites the authorities of Austria to submit a report on the measures taken to implement the above-mentioned recommendations by 30 April 2018. These measures will be assessed by GRECO through its specific compliance procedure.
182. GRECO invites the authorities of Austria to authorise, at their earliest convenience, the publication of this report, to translate the report into the national language and to make the translation publicly available.

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### About GRECO

The Group of States against Corruption (GRECO) monitors the compliance of its 49 member states with the Council of Europe’s anticorruption instruments. GRECO’s monitoring comprises an “evaluation procedure” which is based on Austria specific responses to a questionnaire and on-site visits, and which is followed up by an impact assessment (“compliance procedure”) which examines the measures taken to implement the recommendations emanating from the Austria evaluations. A dynamic process of mutual evaluation and peer pressure is applied, combining the expertise of practitioners acting as evaluators and state representatives sitting in plenary.

The work carried out by GRECO has led to the adoption of a considerable number of reports that contain a wealth of factual information on European anticorruption policies and practices. The reports identify achievements and shortcomings in national legislation, regulations, policies and institutional set-ups, and include recommendations intended to improve the capacity of states to fight corruption and to promote integrity.

Membership in GRECO is open, on an equal footing, to Council of Europe member states and non-member states. The evaluation and compliance reports adopted by GRECO, as well as other information on GRECO, are available at [www.coe.int/greco](http://www.coe.int/greco).

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