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**2020 Rule of Law Report  
Country Chapter on the rule of law situation in Austria**

*Accompanying the document*

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

**2020 Rule of Law Report  
The rule of law situation in the European Union**

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## **ABSTRACT**

The level of perception of independence of the Austrian justice system is high. At the same time, concerns have been expressed regarding the procedures for the appointment of administrative court presidents as well as the right of the Minister of Justice to instruct prosecutors in individual cases. The Government has announced a general reflection on the issues of judicial recruitment, including in administrative courts, and on reporting obligations for prosecutors, which could contribute to addressing these concerns. Efforts to further develop the high level of digitalisation of the justice system are ongoing and the resources of the justice system have been increased. This could contribute to addressing certain efficiency challenges which administrative courts are facing.

Austria has the legal and institutional framework broadly in place to prevent and prosecute corruption. Austria has undergone and is still undergoing important legislative anti-corruption reforms, following prominent cases linked to political party financing and subsequent investigation of high-level public officials. However, challenges remain with respect to the integrity framework for members of Parliament. A legal framework on lobbying exists, but its scope and the information made available in the lobbying register to the public are limited. The Central Public Prosecutor's Office for Combating Economic Crimes and Corruption plays a key role in combatting corruption, but it is facing challenges related to comprehensive reporting obligations and limited resources.

The legal framework concerning media pluralism is based on a set of constitutional and legislative safeguards. The foundations of the democratic media system are strong and media authorities function in an independent manner. However, risks to media pluralism have been identified in relation to the lack of a comprehensive and enforceable framework guaranteeing the right of access to information, and the Government is reflecting on a reform for its improvement. Some concerns were raised over regulatory safeguards for media outlets' editorial independence. Media ownership is subject to strict transparency rules, although media proprietors' shareholdings in other companies are not always fully covered. Austria allocates relatively high levels of state advertising to media companies, and concerns were raised over potential political influence over such allocation, in the absence of rules on its fair distribution.

The process for enacting laws usually includes a consultation of stakeholders and general public, although there is no specific legal framework in that respect and consultation sometimes does not take place or with short deadlines. The Constitutional Court and the Ombudsman Board play an important role in the checks and balances, as illustrated in the context of the COVID-19 pandemic. Besides the Ombudsman Board, which functions as the National Human Rights Institution, other independent authorities, such as the Ombudsperson for Equal Treatment, the Disability Ombudsman, and the Ombudsperson for Children and Youth contribute to upholding fundamental rights in their respective areas. The Government has announced measures to further support civil society and has committed to fostering active dialogue and respectful engagement with civil society organisations.

## **I. JUSTICE SYSTEM**

The Austrian justice system has two separate branches. The ordinary jurisdiction consists of 115 district courts, 20 regional courts, four higher regional courts and the Supreme Court. Since 2014, Austria also has a separate administrative court system with eleven first-instance administrative courts (nine regional administrative courts, one federal administrative court and the finance court) and the Supreme Administrative Court.<sup>1</sup> Austria has a Constitutional Court. Judicial appointments are made by the executive based on non-binding proposals by staff panels composed of judges<sup>2</sup> or plenary assemblies of a court, which draw up a ranked list of three candidates for each post.<sup>3</sup> The Prosecution Service is a judicial authority set up in a hierarchical structure under the supervision of the Minister of Justice, who can issue both general instructions and instructions in individual cases.<sup>4</sup> Lawyers are registered in one of the nine local Bar associations, which are public law corporations and autonomous self-governing bodies, organised under the umbrella of the Federal Bar Association.<sup>5</sup>

### **Independence**

**The perceived level of independence of the judiciary is consistently very high.** The independence of courts and judges is perceived as ‘fairly or very good’ by 86% of the general public, a figure which has consistently increased since 2016. Among companies, the level of perceived independence is also high, with 73% considering it to be ‘fairly or very good’, though it was even higher in previous years.<sup>6</sup>

**The procedures for the appointment of administrative court presidents are subject to debates.** Stakeholders and the Council of Europe have repeatedly raised concerns relating to the appointment of administrative court presidents.<sup>7</sup> While there are no concrete reform plans at this stage, the Government is reflecting on aligning recruitment standards for ordinary and administrative courts.<sup>8</sup> Under the current regime, administrative court presidents and vice-presidents (who also adjudicate) do not have to be selected from among appointed administrative judges, although they have to fulfil the general constitutional requirements for

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<sup>1</sup> Several of the district and regional courts are specialised courts. This structure does not necessarily correspond to the appeals instances. See CEPEJ (2020), Study on the functioning of judicial systems in the EU Member States.

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

<sup>3</sup> Before becoming an ordinary court judge, candidates must first apply to a post for a trainee judge and complete a traineeship (usually four years). Trainee judges are appointed by the executive on recommendation of a court president of a higher regional court. After completing the traineeship, they can apply for a vacant post in accordance with the procedure described above. Service Act for Judges and Public Prosecutors, Arts. 1 to 24.

<sup>4</sup> Public Prosecutor Act, Arts. 8, 8a, 29-31.

<sup>5</sup> Lawyers Code, Chapters III and V.

<sup>6</sup> Figures 44 and 46, 2020 EU Justice Scoreboard. The level of perceived judicial independence is categorised as follows: very low (below 30% of respondents perceive judicial independence as fairly good and very good); low (between 30-39%), average (between 40-59%), high (between 60-75%), very high (above 75%).

<sup>7</sup> This includes opinions by the Consultative Council of European judges, GRECO recommendations and national associations of the judiciary, see footnotes 12, 15 and 16.

<sup>8</sup> Government programme 2020-2024, p. 23.

becoming an administrative court judge.<sup>9</sup> Their appointment is regulated by the laws governing the different federal and regional administrative courts. While the law on the federal administrative court foresees the involvement of an independent commission composed of members of the executive and judiciary<sup>10</sup>, this is not the case for all regional administrative courts. Although there are certain regional differences, these appointments generally remain in the prerogative of the executive.<sup>11</sup> In 2019, the Council of Europe pointed to the absence of judicial involvement in the appointment process for administrative court presidents<sup>12</sup>. The Consultative Council of Judges of the Council of Europe adopted an opinion<sup>13</sup> on the appointment and status of the president of the regional administrative court of Vienna, which raised concerns over the compliance with Council of Europe recommendations<sup>14</sup> in view of the difference between the process of appointing the president/vice-president and other judges.<sup>15</sup> These concerns have been echoed by European<sup>16</sup> and national stakeholders<sup>17</sup>, who request that staff panels be involved in all judicial appointments and that their opinions be made binding.<sup>18</sup> GRECO has addressed several recommendations to Austria regarding the administrative court system, including to enhance the role of staff panels in appointments and to align standards for judicial recruitment between ordinary and administrative courts.<sup>19</sup> While the 2020-2024 Government programme announces general intentions to align recruitment standards in this respect, no concrete plans have been announced at this stage.<sup>20</sup>

**The right of the Minister of Justice to instruct prosecutors in individual cases is under discussion.** In 2019, a number of stakeholders have reiterated their calls for a more independent prosecution service.<sup>21</sup> Under the Austrian system, both senior prosecution

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<sup>9</sup> These requirements are to have completed legal studies and five years professional legal experience. While administrative judges are appointed according to the same procedure as ordinary court judges, administrative court presidents and vice-presidents are excluded from these rules; Art. 134, para. 2-4 of the Constitution.

<sup>10</sup> Two representatives of the executive, two representatives from academia and the presidents of the constitutional court, the supreme administrative court and the supreme court. Law on the Federal Administrative Court, Art. 2(2) and (3). See similarly the Law on the Finance Court, Art. 5(5).

<sup>11</sup> See the Laws on the administrative courts of Kärnten Art. 2(2); Niederösterreich Art. 2(3); Salzburg Art. 2(2); Steiermark Art. 3(3); Tirol Art. 2(4); Wien Art. 3(2) and Constitution of Vorarlberg Art. 71a, which do not specify an involvement of the judiciary. The Laws on the administrative courts of Burgenland (Art. 21(3)) and Oberösterreich (Art. 18) foresee the involvement of a commission (these are different from staff panels and not composed by a majority of judges).

<sup>12</sup> Consultative Council of European Judges, CCJE-BU(2019)3, 29 March 2019; GRECO Fourth Evaluation Round – Compliance Report.

<sup>13</sup> Consultative Council of European Judges, CCJE-BU(2019)3, 29 March 2019.

<sup>14</sup> CCJE Opinion No. 19 (2016) on the role of court presidents, para. 38: “*the procedures for the appointment of presidents of courts should follow the same path as that for the selection and appointment of judges*”; Recommendation Rec(2010)12 of the Committee of Ministers of the Council of Europe, para 46.

<sup>15</sup> The CCJE also raised concerns over the president’s broad powers and the possibility for the executive to give instructions to the president regarding certain management functions. Only for two regional administrative courts (Burgenland, Oberösterreich) presidents are dispensed from any instructions.

<sup>16</sup> Contribution from the Association of European Administrative Judges for the 2020 Rule of Law Report, pp. 7-10.

<sup>17</sup> Judges’ Association and Union of Judges and Prosecutors, Resources for the rule of law, pp. 10-11; Association of Administrative Judges, Agenda for the administrative judiciary 2022, pp. 3-5.

<sup>18</sup> Stakeholders have also raised concerns over a specific call for applications for the position of president of the regional administrative Court in Burgenland.

<sup>19</sup> GRECO Fourth Evaluation Round – Compliance Report recommendations ix-xi, pp. 6-9.

<sup>20</sup> The government programme (p. 23) also announces an intention to reform the appointment system of trainee judges (for ordinary courts) and to require a justification in case of deviation of a proposal by a staff panel, which are further points of criticism raised by both GRECO and national stakeholders.

<sup>21</sup> The Judges’ Association, Prosecutors’ Association and Union of Judges and Prosecutors, see footnote 27.

offices<sup>22</sup> and the Minister of Justice can issue instructions in individual cases, including instructions not to prosecute. Instructions by the Minister of Justice must be reasoned, issued in writing and attached to the case file. The Government has also to provide a yearly report to Parliament about all instructions in individual cases, once the respective case has been completed.<sup>23</sup> According to the latest report, 69 instructions were issued between 2011 and 2018.<sup>24</sup> In addition, within the organisational structure of the General Procurator's Office, an independent advisory council for the Minister's Directive ('Council of Directives' / *Weisungsrat*) provides a non-binding opinion on all instructions before they are issued<sup>25</sup>, which is followed in practice.<sup>26</sup> National stakeholders have underlined the need for a more independent prosecution service, with an independent head of the prosecution service in charge of instructions<sup>27</sup>, referring to the risk of an appearance of possible political influence in the public's perception. In addition, stakeholders note that reporting obligations can be time-consuming, disproportionate in relation to the core tasks of the prosecution and lead to delays in investigations. While risks to the autonomy of the prosecution service appear mitigated by the safeguards in place<sup>28</sup>, the power to issue instructions is nevertheless used in practice. In 2019, a study on the situation of the justice system<sup>29</sup> by the then-Minister of Justice included some suggestions to clarify the system of instructions and the Government programme 2020-2024 includes an intention to reduce 'avoidable' reporting obligations.

## Quality

**The resources for the judiciary have been increased.** The 2020 budget for the judiciary includes ten additional posts for judges, 40 for prosecutors and 100 for court staff, which has been welcomed by stakeholders. This increase follows a study published in 2019 by the then-Minister of Justice, which pointed to a number of concerns regarding human resources in the judiciary, in particular as regards significant reductions in posts for administrative staff in courts and prosecution offices as well as challenges to adequately fill existing posts for legal clerks (*Rechtspfleger*). It also stressed the difficulties for the prosecution services and the federal administrative court to cope with increased tasks linked to internal security or asylum

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<sup>22</sup> The Prosecution Service is composed of regional prosecution offices and the Central Public Prosecutor's Office for Combating Economic Crimes and Corruption, supervised by four senior prosecution offices. Lower prosecution offices must submit reports to senior prosecution offices and wait on further instructions for certain type of cases: criminal matters which command special public interest or unresolved legal issues of fundamental significance. Public Prosecutor Act, Art. 8 and 8a.

<sup>23</sup> Public Prosecutor Act, Art. 29a. See also Figure 55, 2020 EU Justice Scoreboard.

<sup>24</sup> 2019 report on instructions (*Weisungsbericht*). The report contains information on the type of instruction (e.g. to start or close proceedings or to indict) and on the individual cases. To be noted that no report on instructions issued in 2019 has been published as of August 2020.

<sup>25</sup> The *Weisungsrat*, established in 2016, is composed of the 'Generalprokurator' and two additional members with substantial expertise in criminal law, who may not be active judges, prosecutors or lawyers. It is also consulted in criminal matters against supreme executive organs and if the Minister of Justice deems it necessary in cases of special public interest. Public Prosecutor Act, Art. 29b-c.

<sup>26</sup> The 2019 *Weisungsbericht* confirms that only in one case the majority opinion of the *Weisungsrat* was not followed.

<sup>27</sup> See e.g. in 2019: Judges Association and Union of Judges and Prosecutors, Resources for the Rule of Law, pp. 10-11; and Prosecutor's Association, Requirements of the Prosecution Service, p. 7. The question of instructions has also been subject of public debate in certain high-profile investigations; see e.g. statement by the Association of Prosecutors on the 'Eurofighter' case, June 2019.

<sup>28</sup> Recommendation Rec(2000)19 of the Committee of Ministers of the Council of Europe, para. 13(d). "where the government has the power to give instructions to prosecute a specific case, such instructions must carry with them adequate guarantees that transparency and equity are respected in accordance with national law". As regards the safeguards, see para. 13 (points d to e).

<sup>29</sup> Ministry of Justice, Measures for a modern and high-quality justice system, p. 5.

cases, respectively.<sup>30</sup> The report recommended the creation of additional posts in all areas concerned. These concerns have been echoed by stakeholders, who have requested the creation of at least 40 additional posts for judges and prosecutors and the halting of the reduction of posts for court staff, highlighting the situation of the finance court and the federal administrative court as particularly concerning.<sup>31</sup>

**A large-scale project to further improve digitalisation of the judiciary is ongoing.** The digitalisation of the justice system is already advanced, in particular as concerns the possibility to submit a case and summons online, which are widely available, although electronic means for the subsequent stages of proceedings online remain limited. Case management systems and systems for court statistics are implemented for all courts.<sup>32</sup> Through a project called ‘Justice 3.0’, the Government initiated the introduction of an electronic case file in all courts. The system has only been introduced in a limited number of courts as of 2020, but is progressively being rolled out further. The Government aims to implement a fully electronic management of cases in all courts by 2022. The Government has also announced further steps for the use of digital tools in courts, including as regards artificial intelligence for instance for publishing court decisions in an anonymised format.<sup>33</sup>

**The court fee regime will be subject to an evaluation.** National stakeholders<sup>34</sup> have repeatedly requested an overhaul of the court fee system, stressing that court fees have an essential impact on access to justice and that, in absence of a cap on court fees, they can be disproportionately high. Under the current regime, court fees in civil proceedings are regulated in the Court Fees Act and depend mostly on the value under dispute, with no upper limit in many cases. While court fees in low-value cases can be relatively low to average<sup>35</sup>, they rise commensurate to the value of a case. Council of Europe studies show that revenues from court fees per inhabitant are particularly high.<sup>36</sup> The Government programme for 2020-2024 has announced the intention to carry out an evaluation of the overall system of court fees.<sup>37</sup>

## Efficiency

**The justice system manages its caseload in an efficient manner, but faces some challenges for administrative cases.** The justice system performs well for civil and commercial litigious cases, with a low estimated average time to resolve such cases, a clearance rate consistently around 100% (100.8% in 2018) and a low number of pending cases. The administrative court system has recently faced challenges, with higher disposition times and a clearance rate of 89.7% in 2018 (although this is an improvement compared to 2017, when it was at 79.5%).<sup>38</sup> According to authorities and stakeholders, this is in particular linked to a high number of incoming asylum cases. The Federal Administrative Court is facing particular challenges, as also raised in the 2019 study by the Ministry of Justice. Most

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<sup>30</sup> Ministry of Justice, Measures for a modern and high-quality justice system, pp. 15-18.

<sup>31</sup> Judges Association and Union of Judges and Prosecutors, Resources for the Rule of Law, pp. 5-7.

<sup>32</sup> Figures 27 and 40, 2020 EU Justice Scoreboard.

<sup>33</sup> Government programme 2020-2024, p. 25. The project was first launched in 2016.

<sup>34</sup> See e.g. contribution from the Federal Bar Association for the 2020 Rule of Law Report, p. 9; Judges Association and Union of Judges and Prosecutors, Resources for the Rule of Law, p. 13.

<sup>35</sup> See also Figures 24 and 25, 2020 EU Justice Scoreboard, for an illustration of this.

<sup>36</sup> CEPEJ (2018), European judicial systems – Efficiency and quality of justice, pp. 65-69. To be noted that courts also charge fees for the services provided by their automated registers (mainly land and business registers).

<sup>37</sup> Government programme 2020-2024, p. 22.

<sup>38</sup> Figures 5-15, 2020 EU Justice Scoreboard.

activity of courts was temporarily suspended from 16 March to 13 April 2020 due to the COVID-19 pandemic, with specific measures adopted to postpone procedural deadlines, which could lead to increased backlogs in the justice system.<sup>39</sup>

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

A National Anticorruption Strategy was adopted in 2018 and is accompanied by an Action Plan adopted in 2019. The competences to prevent, detect and fight corruption in Austria are shared among different authorities. The Federal Bureau of Anti-Corruption (*Bundesamt für Korruptionsprävention und -bekämpfung – BAK*) is tasked with the prevention of and the fight against corruption, including related international cooperation. The prosecution of corruption is the competence of the Central Public Prosecutor's Office for Combating Economic Crimes and Corruption (*Zentrale Staatsanwaltschaft zur Verfolgung von Wirtschaftsstrafsachen und Korruption – WKStA*). Other authorities with anti-corruption competences are the Ministry of Justice, the Ministry of Interior and the Court of Audit. Prevention of corruption is broadly regulated for civil servants, who are subject to rules contained in the Civil Servants Employment Act 1979 and the Act on Contractual Public Employees. Whistle-blower protection has been in place since 2013.

**In the 2019 Corruption Perceptions Index of Transparency International, Austria scores 77/100, and ranks 6<sup>th</sup> in the European Union and 12<sup>th</sup> globally.**<sup>40</sup> Amongst Austrian respondents, 58% perceive corruption as widespread in the country (EU average 71%)<sup>41</sup>, while 22% of people consider that corruption affect their daily lives (EU average 26%). As regards businesses, 57% of companies perceive corruption as widespread (EU average 63%)<sup>42</sup> and 29% companies perceive corruption a problem when doing business (EU average 37%). Finally, 53% of people consider that there are enough successful prosecutions in the country to deter people from corrupt practices and 34% companies perceive that people and businesses caught for bribing a senior official are appropriately punished (EU average 31%).

**The criminal anti-corruption legislative framework is broadly in place.** The legal framework includes relevant provisions in the Criminal Code and the Code of Criminal Procedure and includes specific legislation such as the Federal Act on the Establishment and Organization of the Federal Bureau of Anti-Corruption, the Federal Statute on Responsibility of Entities for Criminal Offences and the Federal Act on Extradition and Mutual Assistance in Criminal Matters.

**Anticorruption policies are set at the federal level.** The National Anticorruption Strategy, which has been adopted in 2018, is mainstreamed throughout the public sectors. The main objective of the National Anti-Corruption Strategy is to increase and ensure integrity and transparency in administration, politics and business. The Action Plan for the implementation of the Strategy has been adopted in 2019.

**The fight against corruption is shared between several authorities with specific competences.** The Federal Bureau of Anti-Corruption (*Bundesamt für Korruptionsprävention und -bekämpfung – BAK*) was established in 2010 and had its remit last extended in 2019. The BAK has jurisdiction in security and criminal police matters concerning certain criminal

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<sup>39</sup> 1. und 2. COVID-Justizbegleitgesetz.

<sup>40</sup> Transparency International (2020), 2019 Corruption Perceptions Index.

<sup>41</sup> Special Eurobarometer 502 (2020).

<sup>42</sup> Flash Eurobarometer 482 (2019).

offences related to corruption, including as regards the misuse of funds and assets to the detriment of the financial interests of the European Union and money laundering crimes.<sup>43</sup> One of the goals of the BAK includes cooperation with the Central Public Prosecutor's Office for Combating Economic Crimes and Corruption.

**The Central Prosecutor's Office for Combating Economic Crimes and Corruption is the main authority competent to fight corruption.** The Public Prosecutor for Economic and Corruption Crimes (*Zentrale Staatsanwaltschaft zur Verfolgung von Wirtschaftsstrafsachen und Korruption – WKStA*) has a special remit for financial, economic and corruption crimes. Following recent high-profile political scandals<sup>44</sup>, the WKStA has intensified its investigations into high-level political corruption, alleged misconduct regarding state-owned enterprises, and illegal party financing. The Federal Bureau of Anti-Corruption carries out police investigations and provides support to the WKStA to investigate criminal offences related to corruption. As other parts of the judiciary, the WKStA is also facing challenges in terms of resources.<sup>45</sup> The WKStA prosecutors have to report to the Senior Public Prosecutor's Office three working days in advance before initiating certain procedural steps, a reinforced obligation that was introduced in 2019. These reporting obligations can, according to stakeholders<sup>46</sup>, be potentially burdensome and lead to delays in investigations, also in view of the power of instruction of the Senior Prosecutor's office and the Minister of Justice (see section I).

**The rules on political party financing, including the role of the Court of Audit, are undergoing reforms.** The Court of Audit has auditing competences and is responsible for monitoring party finances. In 2018, the department of Anti-corruption, Compliance and Risk management was established within the Court of Audit and since then has been driving a multi-faceted initiative against corruption with a special focus on corruption prevention. The Court of Audit has been auditing anti-corruption frameworks at different levels, e.g. for ministries or municipalities, since 2015, in accordance with the 'Guidelines for Auditing Corruption Prevention Systems'. Furthermore, the Court is trying to raise awareness on corruption issues and start training courses for public officials. The role of the Court of Audit has been slightly strengthened in 2019<sup>47</sup>. However, the Court can still only verify the numerical accuracy of the accountability reports of the political parties as such and has no further investigative powers. This limitation in the Court of Audit's powers has been criticised by stakeholders.<sup>48</sup> It is also the subject of long-standing recommendations by GRECO which remain only partly implemented<sup>49</sup>. In September 2019, legislative proposals were submitted in order to introduce criminal offences for false annual reports of the parties and for illegal party financing, which await discussions<sup>50</sup>. The Government programme for

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<sup>43</sup> Input from Austria for the 2020 Rule of Law Report, pp. 25-26.

<sup>44</sup> In particular the so-called *Ibiza affair* triggered the fall of the past government and snap elections in September 2019, which were followed by the undertaking of institutional reforms.

<sup>45</sup> Information received in the context of the country visit and position paper by the Judges' Association and Union of Judges and Prosecutors, Resources for the Rule of Law.

<sup>46</sup> Information received in the context of the country visit and public statements by the WKStA, e.g.: Die Presse, Reporting obligation for corruption investigators is a flagrant contradiction.

<sup>47</sup> Input from Austria for the 2020 Rule of Law Report, pp. 26, 27.

<sup>48</sup> Transparency International Austria statement at the publication of the Corruption Perceptions Index (CPI 2019).

<sup>49</sup> GRECO Third Evaluation Round – Second Compliance Report, recommendations v, ix-xi, pp. 5, 9-12.

<sup>50</sup> Austrian Parliament, *Neu im Verfassungsausschuss*: Proposals by NEOS to amend the party law, to stop trading of political posts **and to recognise badges of honour**.



2020-2024 includes a number of commitments for further strengthening the role of the Court of Audit, including as regards political party financing.<sup>51</sup>

**Gaps remain in the framework ensuring the integrity of members of Parliament.** Only certain aspects of asset disclosure and secondary employment are regulated for members of Parliament. While disclosure of private incomes is regulated under the Federal Act on Transparency and Incompatibilities (*Unvereinbarkeits- und Transparenz-Gesetz*)<sup>52</sup>, there is no obligation to disclose assets, interests, debts and liabilities<sup>53</sup>. There is also no requirement to disclose ad hoc conflicts of interests which may emerge in relation to a matter under consideration in Parliament. Members of Parliament are not prohibited from having secondary employment or on holding managerial/board positions. The regulation of declarations of income and side activities, acceptance of gifts and other advantages and measures to be taken in case of infringements of the mentioned rules, have been the subject of a number of GRECO recommendations<sup>54</sup>.

**A number of measures for preventing corruption for civil servants and top executive functions are in place.** The preventive anti-corruption framework in the public sector integrates rules governing the prevention of conflicts of interest for the highest executive bodies,<sup>55</sup> as foreseen in the Federal Act on Transparency and Incompatibilities.<sup>56</sup> The provisions include rules on the declaration of financial interests and assets every two years, secondary employment (unless specifically authorised) and holding of managerial/board positions. The Court of Audit has also carried out a risk assessment of secondary employment of civil servants and found that the assessment of the admissibility of secondary employment was primarily the responsibility of the staff themselves and that a lack of clarity on what the clear responsibilities would be (criteria by which the secondary employment is assessed as compatible or not with one official's position) could lead to a conflict of interest. According to the Court of Audit, a general obligation to get approval beforehand instead of only declaring secondary employment upfront would be more effective than a requirement to impose disciplinary sanctions ex-post. The Court therefore recommended to the Federal Chancellery to prepare a proposal for legislation that would provide for a requirement of approval from the service authority for the exercise of certain secondary occupations. The Federal Chancellery considered that sufficient training and awareness measures for civil servants on this issue are in place.<sup>57</sup> Prevention of corruption is also broadly regulated for civil servants, who are subject to rules contained in the Civil Servants Employment Act 1979 and the Act on Contractual Public Employees. These legal provisions are complemented by a general code of conduct for civil servants and, where applicable, by standards of conduct,

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<sup>51</sup> Government programme 2020-2024, p. 21.

<sup>52</sup> § 6 (2) *Bundesgesetz über die Transparenz und Unvereinbarkeiten für oberste Organe und sonstige öffentliche Funktionäre (Unvereinbarkeits- und Transparenz-Gesetz (Unv-Transparenz-G))*.

<sup>53</sup> Breitschopf M., *Fünf Jahre „Transparenzpaket - Eine kritische Bilanz aus zivilgesellschaftlicher Perspektive*, (Five years Transparency Package), p. 16f, in: *Meine Abgeordneten*, Forum Informationsfreiheit, Dossier.

<sup>54</sup> GRECO Fourth Evaluation Round – Compliance Report, pp. 4-6.

<sup>55</sup> These include the Federal President, the Federal Ministers, the State Secretaries, members of the state Government, all mayors and their deputies, the members of the city senate, members of the National Council, the Federal Council and State parliaments.

<sup>56</sup> § 6 (2) *Bundesgesetz über die Transparenz und Unvereinbarkeiten für oberste Organe und sonstige öffentliche Funktionäre (Unvereinbarkeits- und Transparenz-Gesetz (Unv-Transparenz-G))*.

<sup>57</sup> Court of Audit, *Bericht des Rechnungshofes. Korruptionspräventionssysteme in ausgewählten Bundesministerien (BKA, BMB, BMI, BMLFUW)*, 2017/8 section 13.2 13.3. To be noted that the Federal Ministry for Arts, Culture, the Civil Service and Sport (BMKÖS) is now competent for this matter.

which may be adopted by specific services (e.g. the compliance guidelines [“*Compliance-Leitlinien*”] of the Federal Ministry of Justice adopted in 2019).<sup>58</sup> In general, civil servants are subject to certain additional duties and rules such as their oath of office, reporting obligations, the respectful treatment of others, conflict-of-interest rules, rules on secondary occupations, the prohibition of the acceptance of gifts as well as, rules on the termination of employment (“post public employment”) and the duty of professional secrecy. Breaches of these and other duties and rules are sanctioned by disciplinary measures or under criminal law provisions.

**Post-employment for members of Government and Parliament is not regulated.** Legislative proposals to introduce a cooling-off period of 18 months were tabled in 2019. According to these proposals, anyone who has worked for or held a position in a government party in the past 5 years could only be appointed to a management or control function in a government-related company after this cooling-off period.<sup>59</sup> The government programme for 2020-24 includes plans to introduce a cooling-off period for members of Government to become members of the Constitutional Court.<sup>60</sup>

**A lobbying register exists, but only limited information is publically available.** The Lobbying and Advocacy Register was created in 2013<sup>61</sup>. However, information concerning concrete lobbying activities (especially lobbying contracts) is available by law only to decision-makers who have been lobbied, not to the public<sup>62</sup>. Only Specialist Lobbying Companies, In-House-Lobbyists, Self-Governing Bodies and interest groups (*‘Interessenverbände’*) have to register and single contacts do not have to be reported<sup>63</sup>. The Act on Incompatibilities and Transparency and the Act on Transparency of Lobbying and Interest Representation contain provisions on lobbying addressed to elected officials and persons entrusted with top executive functions. Section 1(3) of the Lobbying and Advocacy Transparency Act states that it does not apply to political parties. GRECO issued a recommendation on members of Parliament and their contacts with third parties in 2016, since there are no restrictions nor prohibitions for members of Parliament on the manner in which they may have contacts with third parties who may try to influence their decisions. Currently, the only rules in place concern situations where members of Parliament act themselves as lobbyists.<sup>64</sup>

**A framework for whistleblower protection is in place.** A whistle-blower tool was adopted in 2013 and is operated by the Central Public Prosecutor’s Office for Combating Economic Crimes and Corruption (*WKStA*). Within the first four years of operation (20 March 2013 to 31 March 2017) the *WKStA* received almost 5.000 valid reports of suspicious circumstances and potential criminal offences. In 29 cases this led to charges.<sup>65</sup>

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<sup>58</sup> Input from Austria for the 2020 Rule of Law Report, p. 31.

<sup>59</sup> Austrian Parliament, *Postenschacher stoppen* (1000/A(E)).

<sup>60</sup> Government programme 2020-24, p. 11.

<sup>61</sup> Available at <http://www.lobbyreg.justiz.gv.at>.

<sup>62</sup> Ministry of Justice, Important Notices concerning the Lobbying and Advocacy Register.

<sup>63</sup> Lobbying and Interest Representation Transparency Act (*Lobbying- und Interessenvertretungstransparenz-Gesetz*), see also Austrian Court of Audit, *Bericht des Rechnungshofes, Lobbying- und Interessenvertretungs-Register, Reihe BUND 2019/45*

<sup>64</sup> GRECO Fourth Evaluation Round – Compliance Report - recommendations ii to viii.

<sup>65</sup> Austrian Parliament, 12165/AB XXV.GP – *Anfragebeantwortung*, 2 June 2017.

### III. MEDIA PLURALISM

Freedom of expression and the duty, incumbent on state authorities, to grant access information are enshrined in the Constitution. Secondary legislation expressly guarantees the right of journalists to protect the confidentiality of their sources<sup>66</sup> and regulates the obligation to disclose information to the public.<sup>67</sup> The regulators for audiovisual media services, the Austrian Communications Authority (KommAustria) and the Austrian Regulatory Authority for Broadcasting and Telecommunications (RTR), were set up under the KommAustria Act in 2001.<sup>68</sup>

**The media regulatory authorities function in an independent manner.** The regulators for audiovisual media services, the Austrian Communications Authority (KommAustria) and the Austrian Regulatory Authority for Broadcasting and Telecommunications (RTR), are fully independent from the Government. KommAustria is responsible for issuing licenses to private television and radio stations, managing broadcasting frequencies, handling the legal supervision of private broadcasters, as well as preparing and launching digital broadcasting. KommAustria is further in charge of administering the Journalism Subsidies Act (1984), and monitoring compliance with the legal framework of broadcasting regulation encompassing both broadcasts of the Austrian Broadcasting Corporation (ORF) and private broadcasters.<sup>69</sup> As enshrined in the Federal Act on the establishment of an Austrian Communications Authority, its members are independent and not bound by any instructions in exercising their functions.<sup>70</sup> KommAustria's decisions may be challenged before the administrative courts. As regards resources (such as the expenses for salaries, office rent and equipment of KommAustria and the supporting media division of the RTR), KommAustria's annual budget was EUR 4,146 million in 2018, which it deemed to be adequate.<sup>71</sup> The indicator on independence and effectiveness of the media authority is considered as being at very low risk by the Media Pluralism Monitor (MPM) 2020.<sup>72</sup>

**The Austrian Press Council (*Österreichischer Presserat*)<sup>73</sup> operates as a self-regulatory facility for the press.** It strives to ensure editorial quality and to guarantee freedom of the press. The Press Council drew up a Code of Conduct for the Austrian press (principles for journalistic work), which contains rules for good and responsible journalistic activity and is an ethical guideline for media professionals. One of the main tasks of the Press Council is to highlight grievances in the press and to counteract them. The Press Council's sponsors are the most important journalists' and publishers' associations. MPM 2020 refers to the fact that organisations such as the Press Council have, to date, "paid too little attention to the status and independence of freelancers and the growing number of manifold peripheral actors in journalism (such as citizen journalists, bloggers, social media activists, etc.)".<sup>74</sup>

**Media ownership is subject to transparency rules, but information is not always fully available in practice.** Austrian law contains specific provisions requiring the disclosure of

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<sup>66</sup> Federal Act on the Press and other Publication Media (Media Act – MedienG).

<sup>67</sup> Fundamental Act on the duty to grant Information (*Auskunftspflichten-Grundsatzgesetz*).

<sup>68</sup> Austria fell a further two positions in the Reporters Without Borders World Press Freedom Index between 2019 and 2020, now registering at 18<sup>th</sup> place worldwide. Reporters without Borders, Austria.

<sup>69</sup> KommAustria: <https://www.rtr.at/en/rtr/OrganeKommAustria>.

<sup>70</sup> Federal Act on the establishment of an Austrian Communications Authority (KommAustria Act – KOG).

<sup>71</sup> Input from Austria for the 2020 Rule of Law Report.

<sup>72</sup> Media Pluralism Monitor 2020, p. 10

<sup>73</sup> Available at <https://www.presserat.at>.

<sup>74</sup> Media Pluralism Monitor 2020, Report on Austria, p.10.

ownership in the news media sector.<sup>75</sup> The media owner must be specified by name or company name, including the purpose of the company, residential address or registered office (branch office), the names of the executive bodies and officers of the media owner authorized to represent the company and, if there is a supervisory board, its members. In addition, the ownership, shareholding, share and voting rights proportions must be stated with regard to all persons holding a direct or indirect share in the media owner. In the case of direct or indirect shareholdings of foundations, the founder and the relevant beneficiaries of the foundation must be disclosed.<sup>76</sup> MPM 2020 states that that the relevant legal provision does not reveal that the media proprietor is also a shareholder in other companies if they are not exclusively owned by them.<sup>77</sup>

**Austria allocates high levels of state advertising to media companies.** The allocation of state advertising is regulated by the Federal Constitutional Act on Media Cooperation and Media Funding, as well as by the Transparency in Media Cooperation and Funding Act. The name of the recipient of the subsidies and the amount of the subsidies must be disclosed, and the Court of Audit keeps records of it. According to the MPM 2020, the indicator on state regulation of resources and support to the media sector shows a medium risk to media pluralism. The rules for the distribution of direct and indirect subsidies are transparent. However, according to MPM 2020, high-circulation tabloid newspapers seem to benefit disproportionately from the funding. Stakeholders have also raised concerns over potential political influence in the allocation of state advertising.<sup>78</sup> This issue has been the topic of investigative reports by journalists.<sup>79</sup> The 2012 Media Transparency Law ensures that the Government, public bodies and state-owned corporations disclose their relations with the media (such as advertising and other kinds of support); however there are no rules ensuring a fair distribution of state advertising among media outlets. While in 2018 state subsidies for the media amounted to EUR 40 million, nearly EUR 170 million were spent on state advertising.<sup>80</sup>

**The Government is reflecting on a reform to improve access to information.** While a duty to grant information is enshrined in the Constitution and specified in federal law<sup>81</sup> and provincial laws, a general right to access documents by public authorities does not exist in Austria, and the duty of secrecy as established in the Constitution and the Civil Servants Employment Act 1979 limits access to information in practice.<sup>82</sup> Stakeholders have raised concerns over this system and the long time limits for public bodies to formally reply to

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<sup>75</sup> §25 Disclosure, Media Act.

<sup>76</sup> If the media owner is an association or an association holds a direct or indirect share in the media owner, the management board and the purpose of the association must be stated in respect of such association. Persons holding a direct or indirect share, trust makers, founders and beneficiaries of a foundation are obliged, upon request by the media owner, to communicate to the media owner the details required for the media owner to comply with his/her/its disclosure obligation. In this context, the revised AVMSD encourages Member States to adopt legislative measures providing that media service providers under their jurisdiction make accessible information concerning their ownership structure, including the beneficial owners. (Article 5).

<sup>77</sup> Berka, W., Heindl, L., Höhne, T. and Koukal A. (2019). *Mediengesetz Praxiskommentar*. 4th ed. Wien: LexisNexis. Bertelsmann Stiftung (2019). Sustainable Governance Indicators (SGI)—Austria. Gütersloh.

<sup>78</sup> Information received in the context of the country visit.

<sup>79</sup> E.g. reporting by dossier.at.

<sup>80</sup> Media Pluralism Monitor 2020, p. 14. This including spending by numerous decentralised state entities and public enterprises, such as advertising for tourism, traffic security, health campaigns etc.

<sup>81</sup> [Austrian](#) Constitutional Law, art. 20 para. 4 B-VG, in the Fundamental Act on the duty to grant Information (*Auskunftspflicht-Grundsatzgesetz*).

<sup>82</sup> [Austrian](#) Constitutional Law, art. 20 para. 3 B-VG and Sec. 43 *Beamten-Dienstrechtsgesetz*, 1979.

requests (after six months, with an informal reply after eight weeks).<sup>83</sup> The particular importance of the media’s right of access to information as “Public Watchdogs” in relation to the right of public authorities to secrecy is supported in case law of the Supreme Administrative Court<sup>84</sup>. The Government has announced plans to introduce a new right to information, enforceable before courts, through both a constitutional amendment and the adoption of a freedom of access to information act.<sup>85</sup>

**There is no specific framework for journalists’ protection.** The authorities indicate that there is no specific provision in the law concerning the safety of journalists and that journalists are protected as any other citizen under the criminal code. Imprisonment is among the envisaged sanctions for defamation.<sup>86</sup> There have been no cases of attacks on the physical safety of journalists, but offensive and threatening speech – especially against female journalists and journalists working at the Public Service Broadcaster ORF – has been increasing.<sup>87</sup> In 2019 and 2020, the Council of Europe’s Platform to promote the protection of journalism and the safety of journalists published three alerts concerning Austria, one of which has since been resolved.<sup>88</sup>

**Stakeholders raised concerns over safeguards for editorial independence<sup>89</sup>.** The “protection of editorial confidentiality” (*Redaktionsgeheimnis*) is stipulated in section 31 of the Media Act.<sup>90</sup> This provision foresees that journalists have the right to refuse testimony in criminal proceedings on information obtained in their profession. Moreover, the independence of journalists in the public broadcasting service, the ORF, is guaranteed through the Federal Act on the Austrian Broadcasting Corporation<sup>91</sup> and a number of decisions underline the effective remedies to protect the independence of ORF journalists.<sup>92</sup> Nevertheless, MPM 2020 has reported a high risk as regards regulatory safeguards ensuring editorial independence. Whereas TV and radio stations are obliged to have editorial statutes, regulatory safeguards to prevent political influence over the appointments and dismissals of editors-in-chief in news media are not foreseen. The two largest newspapers (“*Kronen Zeitung*” and “*Heute*”) refrain from self-regulatory measures and are not members of the Austrian Press Council.<sup>93</sup>

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<sup>83</sup> E.g. Contribution from the Forum Informationsfreiheit for the 2020 Rule of Law Report.

<sup>84</sup> Decision VwGH Ra 2017/03/0083.

<sup>85</sup> Input from Austria for the 2020 Rule of Law Report; Government programme 2020-2024, p. 49.

<sup>86</sup> Center for Media Pluralism and Media Freedom, Decriminalisation of Defamation.

<sup>87</sup> Index on Censorship. *Demonising the Media: Threats to Journalists in Europe*. In this context, it should also be recalled that, in line with European standards, set out by the Council of Europe Recommendation 2016/4, “Member States should put in place a comprehensive legislative framework that enables journalists and other media actors to contribute to public debate effectively and without fear”.

<sup>88</sup> Council of Europe, Platform to promote the protection of journalism and safety of journalists.

<sup>89</sup> Information received in the context of the country visit.

<sup>90</sup> Media Act (*Mediengesetz*).

<sup>91</sup> Federal Act on the Austrian Broadcasting Corporation (*Bundesgesetz über den Österreichischen Rundfunk, ORF-Gesetz*), Federal Law Gazette No. 379/1984, as amended by: Federal Law Gazette I No. 115/2017, date of the translated version: 1 August 2017.

<sup>92</sup> See for instance, Constitutional Court 14.03.2013, VfSlg. 19742; and Supreme Administrative Court 22.05.2013, 2012/03/0144.

<sup>93</sup> Media Pluralism Monitor 2020, p. 13

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

Austria is a federal state with a bicameral parliamentary system of government, composed of the National Council (*‘Nationalrat’*) and the Federal Council (*‘Bundesrat’*). Legislative proposals can be submitted by the Government, by members of both chambers of parliament or by way of popular initiative.<sup>94</sup> The Constitutional Court carries out an ex-post constitutionality review of laws, which is possible both in concrete cases<sup>95</sup> and as an abstract review of a law, based on appeals by the federal or a regional Government or by a third of the members of either parliamentary chamber. Several different Ombudsman authorities contribute to upholding fundamental rights.

**The process for enacting laws regularly involves the consultation of stakeholders, but there is no formal framework for such consultations.** Austria has put in place an advanced system of regulatory impact assessments, for both ex-ante and ex-post evaluation of legislation.<sup>96</sup> Legislative proposals by the Government are, as a general practice, submitted to a public consultation published on Parliament’s website, in which a number of key stakeholders are explicitly invited to contribute. The National Council has adopted a resolution aiming at making the consultation process more accessible to the general public.<sup>97</sup> However, no specific legal framework requiring a consultation exists and stakeholders report that consultation deadlines are often shorter than the six weeks recommended by the Government, or that the consultation process is sometimes skipped entirely.<sup>98</sup> GRECO has recommended that Austria adopt clear rules for consultations on legislative proposals by both Parliament and the Government, with appropriate timeframes.<sup>99</sup>

**The Constitutional Court is reviewing measures related to the COVID-19 pandemic.** Measures related to the COVID-19 pandemic were adopted in particular through two dedicated laws adopted in an expedited procedure, granting the power to adopt decrees to the Minister of Health.<sup>100</sup> By July 2020, 68 complaints related to these measures had been submitted to the Constitutional Court. In July 2020, the Court ruled that the legal basis for entry prohibitions to businesses, work places and other places was constitutional, but found specific decrees imposing a general entry ban to public places and authorising a partial re-opening of only certain shops to be unlawful.<sup>101</sup> Several other cases have been ruled inadmissible by the Constitutional Court, inter alia on the ground that access to judicial review through the administrative courts is available, with a number of cases still pending.<sup>102</sup>

**Several different Ombudsman authorities contribute to upholding fundamental rights in different areas.** The Ombudsman Board functions as the National Human Rights

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<sup>94</sup> Input from Austria for the 2020 Rule of Law Report, p. 50.

<sup>95</sup> The review can take place ex-officio (*‘amtswegige Prüfung’*) or on submission of another court (*‘Gerichtsantrag’*), an individual (*‘Individualantrag’*) or a party to a case pending before an ordinary court of first instance (*‘Parteienantrag auf Normenkontrolle’*).

<sup>96</sup> OECD (2020), Regulatory Impact Assessment and Regulatory Oversight in Austria.

<sup>97</sup> 2017 Committee report AB 1622 d. B., XXV. GP.

<sup>98</sup> According to the 2019 Annual Report by the Federal Bar Association, the consultation period was shorter than six weeks in 66% of consultations in 2019. Similar concerns are raised in the contribution from Forum Informationsfreiheit for the 2020 Rule of Law Report, p. 13. This concern has been also highlighted in the context of the adoption of legislation related to the COVID-19 pandemic.

<sup>99</sup> GRECO Fourth Evaluation Round – Compliance Report, recommendation i, which is considered to be partially implemented. GRECO stressed a need for broader measures in the Compliance Report (p.4).

<sup>100</sup> First and second COVID-19 law of 15 and 21 March 2020.

<sup>101</sup> Constitutional Court, COVID-19 law is constitutional, several decrees are not.

<sup>102</sup> Constitutional Court, Constitutional Court will convene again mid-July.

Institution and was last re-accredited with B-Status by Global Alliance of National Human Rights Institutions (GANHRI) in 2011. The GANHRI Sub-Committee for Accreditation (SCA) encouraged the Ombudsman Board to seek a broader human rights mandate and to develop regular and systematic working relationships with civil society. Both the SCA and, in 2019, the UN Committee on the elimination of all forms of discrimination against women have underlined the importance of a clear, transparent and participatory selection process.<sup>103</sup> The Ombudsman Board deals with citizens' complaints about inactivity or allegations of gross negligence of administrative bodies. It has also taken on a role in monitoring administrative decisions in the context of the COVID-19 pandemic, having received around 280 complaints as of May 2020.<sup>104</sup> Several other independent authorities, such as the Ombudsperson for Equal Treatment, which is the national equality body, the Disability Ombudsman, and the Ombudsperson for Children and Youth contribute to upholding fundamental rights.

**The Government intends to further develop dialogue with civil society.** The Government programme for 2020-2024 has announced a number of measures to support civil society engagement further<sup>105</sup>. The Government has in particular committed itself to active dialogue and respectful engagement with civil society organisations. As regards the legal framework, tax exempt status for donations does not apply to all civil society actors equally. In particular, a number of NGOs in areas of human rights, civil and political rights, democracy, transparency or adult education do not benefit from it<sup>106</sup>, which has been raised as a concern by stakeholders.<sup>107</sup>

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<sup>103</sup> The three members of the Ombudsman Board are elected for a six-year term by the National Council, with each of the three biggest political parties proposing a candidate, Art. 148 g of the Constitution. See CEDAW, Concluding observations on the ninth periodic report, p. 4.

<sup>104</sup> Fundamental Rights Agency, Coronavirus pandemic in the EU – fundamental rights implications – Bulletin 3 (3 June 2020). Country: Austria, p. 2.

<sup>105</sup> Government programme 2020-2024, p. 15. As regards Austria's rating by CIVICUS, it is currently under review (i.e. process for reappraisal of the rating).

<sup>106</sup> Para. 4a of the Income Tax Law for the list of organisations benefiting from tax exemption.

<sup>107</sup> Contribution by Forum Informationsfreiheit to the stakeholder consultation, p. 15. See also Interessenvertretung gemeinnütziger Vereine (IGO), Civil Society Index 2019, p. 45.

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

\* *The list of contributions received in the context of the consultation for the 2020 Rule of Law report can be found at (COM website).*

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Virtual country visit to Austria in the context of the 2020 Rule of Law Report.

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

The Commission services held virtual meetings in June 2020 with:

- Austrian Association of Administrative Judges
- Austrian Judges' Association
- Austrian Press Council
- Central Prosecutor's Office for Combating Economic Crimes and Corruption
- Court of Audit
- Federal Bureau for the Prevention of and Fight Against Corruption (BKA)
- Federal Chancellery
- Federal Ministry of Justice
- Federal Ministry of the Interior
- Federal Ministry for European and International Affairs
- Forum Informationsfreiheit
- KommAustria (Media Regulator)
- Senior Prosecutor's Office Vienna
- Supreme Administrative Court
- Supreme Court
- Transparency International Austria
- Weisungsrat

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

- Amnesty International
- Civil Liberties Union for Europe
- Civil Society Europe
- Conference of European Churches
- EuroCommerce
- European Center for Not-for-Profit Law
- European Centre for Press and Media Freedom
- European Civic Forum
- Free Press Unlimited
- Front Line Defenders
- ILGA-Europe
- International Commission of Jurists
- International Federation for Human Rights
- International Press Institute
- Lifelong learning Platform
- Open Society Justice Initiative/Open Society European Policy Institute
- Reporters without Borders
- Transparency International EU