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## **COMMISSION STAFF WORKING DOCUMENT**

### **2022 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**

#### **2022 Rule of Law Report The rule of law situation in the European Union**

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## **ABSTRACT**

The efficiency of the Austrian justice system has continued to improve, particularly for administrative cases, and the level of perceived judicial independence continues to be very high. A number of important reform efforts related to judicial independence are ongoing. Preparations for the creation of an independent prosecution service continue through an expert working group. In a positive step, reporting obligations for the prosecution have been reduced, though amendments to further limit reporting related to certain procedural steps in an investigation are still pending. While a reform of the appointment procedure for the Supreme Court vice-president and president has been announced after the lack of judicial involvement in their appointment has come under scrutiny, concerns remain regarding the appointment of presidents and vice-presidents at administrative courts. Another reform under preparation envisages further judicial involvement in the appointment of candidate judges. Resources for the judiciary have been further increased and digitalisation is advancing well. However, despite certain improvements, the level of court fees remains high.

The evaluation of the implementation of the action plan linked to the National Anti-Corruption Strategy was finalised in 2022. Investigations into high-level political corruption continue and remain subject to close scrutiny, including through a parliamentary investigative committee set up to look into allegations of corruption alongside ongoing criminal investigations. Negative public narratives targeting investigators in these cases still continued in the second half of 2021, but abated by early 2022. Efforts to effectively address risks of conflict of interest for members of Parliament, who are not obliged to disclose assets, interests, debts and liabilities, remain limited; but guidelines for them on existing legal obligations regarding gifts were published in 2022. The introduction of rules on ‘revolving doors’ and post-employment provisions for members of Government or Parliament has not advanced. Discussions on reforming the limited framework on lobbying continued but no concrete proposals have been presented so far due to a lack of agreement on the most essential issues. An extensive overhaul of political party financing rules, including clear auditing powers for the Court of Audit, is in the process of being adopted by Parliament.

The legal framework and enabling environment for media continue to be strong and media authorities continue to function in an independent manner. While the independence of the public service media is ensured by legal and structural safeguards, there are challenges regarding possible political interference related to appointments to management and board positions. Work continues to address persisting challenges relating to the lack of a comprehensive and enforceable legal framework for access to documents as the proposed draft legislation has not progressed. The Government has announced a reflection process given concerns regarding high spending on state advertising, the fairness and transparency of its allocation and political influence in the process. While standards of the journalistic profession remain good, journalists have faced threats and harassment, in particular during protests.

A system allowing for systematic consultation on draft laws under discussion in Parliament is now in place, though challenges remain with the involvement of stakeholders at earlier stages. Parliament and the courts have continued to exercise scrutiny over restrictions in the context of the COVID-19 pandemic. The National Human Rights Institution has been re-accredited and now obtained A-Status. While civil society has benefitted from further financial support related to the COVID-19 pandemic and dialogue with the Government is being strengthened, civil society has raised some concerns over possible impacts of new anti-terrorism legislation on freedom of association, which could restrict its operating space.

## **RECOMMENDATIONS**

It is recommended to Austria to:

- Continue the reform to establish an independent Federal Prosecution Office, taking into account European standards on the independence and autonomy of the prosecution, including to ensure the independent operation of the specialised anti-corruption prosecution.
- Address the need for involvement of the judiciary in the procedures for appointment of the president and vice-president of the Supreme Court and for court presidents of administrative courts, taking into account European standards on judicial appointments and the selection of court presidents.
- Finalise the legislative revision of the political party financing rules including to empower the Court of Audit to audit political party finances.
- Introduce effective rules on assets and interests' declaration for Members of Parliament, including effective monitoring and sanctioning mechanisms.
- Reform the framework for the allocation of state advertising by public authorities at all levels, in particular to improve the fairness and transparency of its distribution.
- Advance with the reform on access to official information taking into account the European standards on access to official documents.

## **I. JUSTICE SYSTEM**

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

### **Independence**

**The level of perceived judicial independence in Austria continues to be very high both among the general public and companies.** Overall, 83% of the general population and 77% of companies perceived the level of independence of courts and judges to be 'fairly or very good' in 2022<sup>7</sup>. According to data in the 2022 EU Justice Scoreboard, the level remains consistently high for both the general public and companies since 2016. Both figures have slightly decreased in comparison to 2021 (84% for the general public and 78% for companies), but have increased in comparison with 2016 (77% for the general public and 66% for companies).

**The lack of judicial involvement in appointments to the position of Supreme Court president and vice-president has come under scrutiny.** Following information released in January 2022 about secret political side-agreements regarding appointments to top-level positions in the judiciary<sup>8</sup>, the Minister of Justice has announced plans to reform the

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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 (2021), Study on the functioning of judicial systems in the EU Member States.

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

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

<sup>4</sup> Before becoming an ordinary court judge, candidates must first apply to a post for a candidate judge and complete a traineeship (usually four years). Candidate judges are appointed by the executive on recommendation of a court president of a higher regional court. After completing the traineeship, they can apply for a vacant post in accordance with the procedure described above. Service Act for Judges and Public Prosecutors, §§ 1 to 24.

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

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

<sup>7</sup> Figures 50 and 52, 2022 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>8</sup> The revelations related to so called 'side-letters' in which the parties of the Government coalition had agreed on top-level positions in various fields, including the judiciary, to be divided between the different parties,

appointment procedure for the vice-president and president of the Supreme Court<sup>9</sup>. Currently for these posts, unlike for other positions in the ordinary judiciary, no judicial involvement through a proposal by a staff panel<sup>10</sup> is envisaged. This situation, which was already noted in the 2021 Rule of Law Report<sup>11</sup>, has been subject to criticism by judicial associations<sup>12</sup> as well as the Supreme Court itself<sup>13</sup>. A roundtable with representatives of the Supreme Court and higher regional courts was organised by the Minister of Justice in February 2022 to discuss this issue<sup>14</sup> as well as a second roundtable with representatives of judicial associations. In this context, and while the Minister of Justice has announced plans to provide for the involvement of a body representing the judiciary in the appointment process, the precise composition of such a body remains to be decided<sup>15</sup>. Involving the existing staff panel at the Supreme Court or an equivalent body would be in line with Council of Europe recommendations that the procedures for the appointment of presidents of courts should follow the same path as that for the selection and appointment of judges<sup>16</sup>.

**Concerns remain regarding the lack of judicial involvement for appointments to high-level positions at the administrative courts.** Several top positions at administrative courts were concerned by the same type of information released in early 2022, which has led stakeholders to reiterate their request to ensure judicial involvement in the appointment process of administrative court presidents and vice-presidents<sup>17</sup>. As noted in previous editions of the Rule of Law Report<sup>18</sup>, appointments to these positions at the administrative courts generally remain a prerogative of the executive, without systematic involvement of the judiciary<sup>19</sup>. This situation, combined with the broad powers and duties of the presidents and the fact that they do not have to be selected from among already appointed judges<sup>20</sup>, raises concerns with regard to the compliance with European standards<sup>21</sup>. GRECO has also addressed several

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both for the previous and current Government. See e.g. the position paper of the Judges' Association on this matter, in which they stress that even the appearance of political influence can harm the perception of judicial independence: Austrian Association of Judges (2022), Position Paper on current discussions regarding judicial appointments.

<sup>9</sup> Ministry of Justice (2022), Roundtable on appointments in the judiciary.

<sup>10</sup> Staff panels include the president, vice-president and three to five other members of a court, which are elected by their peers. See also FN 2. Currently, the appointments for these positions are made by the President on proposal of the Minister of Justice, without any judicial involvement.

<sup>11</sup> 2021 Rule of Law Report, Country Chapter on the rule of law situation in Austria, p. 4.

<sup>12</sup> Contribution from the Austrian Association of Judges for 2022 Rule of Law Report, p. 10; Austrian Association of Judges and the Austrian Union of Judges and Prosecutors (2022), Open letter on judicial appointments.

<sup>13</sup> Contribution from the Austrian Supreme Court for the 2022 Rule of Law Report.

<sup>14</sup> Ministry of Justice (2022), Roundtable on appointments in the judiciary.

<sup>15</sup> Ibid. Stakeholders have proposed that the existing staff panel at the Supreme Court should make the proposal for appointment. Contribution from the Austrian Supreme Court for the 2022 Rule of Law Report.

<sup>16</sup> CCJE Opinion No. 19 (2016) on the role of court presidents, para. 38, in conjunction with Recommendation CM/Rec(2010)12 of the Committee of Ministers of the Council of Europe to member states on judges: independence, efficiency and responsibilities, para. 47.

<sup>17</sup> Association of Austrian Administrative Judges (2022), Position paper on sideletters.

<sup>18</sup> 2020 Rule of Law Report, Country Chapter on the rule of law situation in Austria, pp. 2-3 and 2021 Rule of Law Report, Country Chapter on the rule of law situation in Austria, pp. 4-5.

<sup>19</sup> Contribution from the Association of European Administrative Judges for the 2022 Rule of Law Report. This has also been raised again in the context of the current discussion by the Austrian Association of Judges in a position paper on judicial appointments (2022).

<sup>20</sup> 2020 Rule of Law Report, Country Chapter on the rule of law situation in Austria, pp. 2-3.

<sup>21</sup> CCJE Opinion No. 19 (2016) on the role of court presidents, para. 38, and Recommendation CM/Rec(2010)12 of the Committee of Ministers of the Council of Europe to member states on judges: independence, efficiency and responsibilities, para. 47.

recommendations to Austria on this issue<sup>22</sup>. While the Association of Judges has also raised this question in the context of the ongoing discussions on/about appointments at the Supreme Court (see above)<sup>23</sup>, currently no reforms on this matter are planned. According to Council of Europe recommendations, if the executive takes decisions regarding the selection of judges, an independent and competent authority drawn in substantial part from the judiciary should be authorised to make recommendations or express opinions that the executive follows in practice<sup>24</sup>.

**Preparatory work continues for a reform of the prosecution service, with the aim to strengthen its independence.** The experts working group<sup>25</sup> set up in spring 2021 to propose a model for an independent prosecution service, headed by a Prosecutor General<sup>26</sup>, has continued to meet on a regular basis<sup>27</sup>. In November 2021, it presented a confidential interim report to Parliament, which covers inter alia the questions of independence, reporting system, instructions, tasks of an independent Prosecutor General and the constitutional set-up of the new structure. Other questions, such as the appointment and dismissal of the Prosecutor General and the issue of parliamentary accountability and oversight have been dealt with in a second confidential interim report which has been submitted to Parliament by the working group in June 2022<sup>28</sup>. The prosecutors' association has repeatedly stressed the importance of avoiding parliamentary scrutiny of ongoing proceedings under the future model<sup>29</sup>. The working group has also conducted a comparison with models in other EU Member States. In addition to the working group, the Minister of Justice has set up a separate advisory group to provide advice on the political decision-making for this reform<sup>30</sup>. It should be noted that in the context of these discussions, stakeholders have also requested to ensure the involvement of a panel composed in majority of the judiciary in the appointment of prosecutors<sup>31</sup>. The final result of the working group is expected to be publicly presented by the end of summer of 2022. It is important that the reform takes into account European standards regarding the independence and accountability of the prosecution service<sup>32</sup>.

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<sup>22</sup> GRECO Fourth Evaluation Round – Interim Compliance Report, recommendations x and xi, paras. 27-37; GRECO Fourth Evaluation Round – Second Interim Compliance Report, para. 50-66.

<sup>23</sup> Austrian Association of Judges (2022), Position paper on judicial appointments.

<sup>24</sup> Recommendation CM/Rec(2010)12 of the Committee of Ministers of the Council of Europe to member states on judges: independence, efficiency and responsibilities, para. 47.

<sup>25</sup> The group has 27 members, which include academic experts on criminal and constitutional law, representatives of different Ministries, of professional associations of the judiciary as well as of all four Chief Senior Public Prosecutors, the Supreme Court, and the heads of the Central Public Prosecutor's Office for the Prosecution of Economic Crimes and Corruption (WKStA) and the Vienna Public Prosecutor's Office. Input from Austria for the 2022 Rule of Law Report, p. 4.

<sup>26</sup> 2021 Rule of Law Report, Country Chapter on the rule of law situation in Austria, pp. 2-3.

<sup>27</sup> As of 17 June 2022, ten meetings had taken place. Input from Austria for the 2022 Rule of Law Report, p. 4.

<sup>28</sup> Information received from the Ministry of Justice in the context of the country visit to Austria.

<sup>29</sup> Prosecutors' Association (2021), Prosecutor General only with respect of the separation of powers.

<sup>30</sup> Information received from the Ministry of Justice in the context of the country visit to Austria.

<sup>31</sup> Currently, proposals for appointments of prosecutors are made by a commission composed of two members representing the Ministry of Justice and two representatives of the profession. Prosecutors' Association (2022), Position paper on the appointment process for prosecutors. See Service Act for Judges and Prosecutors, §§ 180-182.

<sup>32</sup> See in particular Recommendation CM/Rec(2000)19 of the Committee of Ministers of the Council of Europe on the Role of Public Prosecution in the Criminal Justice System and Venice Commission (CDL-AD(2010)040-e), Report on European Standards as regards the Independence of the Judicial System: Part II - the Prosecution Service.

**Further legislative changes are being prepared to reduce reporting obligations for prosecutors to the Ministry of Justice.** A Ministerial decree entered into force on 1 August 2021 which limits in particular ‘group reporting’ obligations related to specific types of crimes and ‘information reporting’ obligations<sup>33</sup>. This follows a number of steps already taken earlier in 2021 to reduce reporting obligations on prosecutors as noted in the 2021 Rule of Law Report<sup>34</sup>. In addition, draft amendments to the Public Prosecutors Act are currently under preparation which would also remove so-called ‘information reporting’ obligations in advance of major procedural steps, which prosecution services consider to be particularly burdensome<sup>35</sup>. Overall, the aim of these steps is to reduce unnecessary and disproportionate reporting burdens on prosecutors. The Minister of Justice issued 20 instructions in individual cases in 2021<sup>36</sup>, following in all cases the non-binding opinion of the consultative Council of Directives<sup>37</sup>. The annual ‘Report on instructions’ delivered by the Government to Parliament was published in October 2021 and reports on 52 instructions by the Minister of Justice in individual cases between 2014 and 2020 (covering only closed cases), including three instructions not to prosecute<sup>38</sup>.

**The appointment process for candidate judges at the ordinary courts is being reformed to improve the involvement of the judiciary in their selection.** Draft amendments to the service act for judges and prosecutors to transfer the power to make proposals for the appointment of candidate judges to the External Senates of the higher regional courts were submitted to public consultation between 27 April and 16 May 2022<sup>39</sup>. External Senates are established at all four higher regional courts and are composed of the president and vice-president of the court as well as three judges elected by their peers<sup>40</sup>. Currently, presidents of the higher regional courts directly propose the candidate judges for appointment by the executive<sup>41</sup>. The lack of involvement of judges elected by their peers has been subject to a

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<sup>33</sup> Decree of 12 June 2021 on the new regulation of reporting obligations for prosecutors (*Erlass vom 12. Juni 2021 über die Neuregelung der staatsanwaltschaftlichen Berichtspflichten (Berichtspflichtenerlass 2021)*; Input from Austria for the 2022 Rule of Law Report, p. 5.

<sup>34</sup> 2021 Rule of Law Report, Country Chapter on the rule of law situation in Austria, pp. 3-4.

<sup>35</sup> Input from Austria for the 2022 Rule of Law Report, p. 5; Information received from the Ministry of Justice and the Prosecution Service in the context of the country visit to Austria.

<sup>36</sup> 11 of these concerned instructions in individual cases and 9 ‘mixed cases’ of instructions in individual cases with a special public interest dimension. This is a similar number to 2020, when 22 instructions in individual cases were issued; 2021 Rule of Law Report, Country Chapter on the rule of law situation in Austria, pp. 3-4.

<sup>37</sup> Information received from the Council of Directives in the context of the country visit to Austria. The Council of Directives is an independent advisory council for the Minister’s Directive tasked with providing a non-binding opinion on all instructions in individual cases (as well as certain other types of instructions) before they are issued. Law on Prosecutors, § 29 b-c. See also 2020 Rule of Law Report, Country Chapter on the rule of law situation in Austria, p. 4 for further details on the Council of Directives.

<sup>38</sup> Ministry of Justice (2021), Report on instructions 2020.

<sup>39</sup> They are part of the Service Law Amendment 2022. See also input from Austria for the 2022 Rule of Law Report, p. 2.

<sup>40</sup> The members and their substitutes are elected by the elected members of the staff panels at all first instance courts within the district of the Higher Regional Court from among all eligible judges within the Higher Regional Court’s district. An External Senate is also established at the Supreme Court, with two ex-officio members (president and vice-president) and five judges elected by their peers, who are elected by the elected members of the staff panels at the Upper Regional Courts and the Supreme Court from among all eligible judges at the Upper Regional Courts and the Supreme Court. § 36a, Service Act for Judges and Prosecutors.

<sup>41</sup> Service Act for Judges and Prosecutors, § 3.

GRECO recommendation<sup>42</sup> and is also a long-standing criticism from stakeholders<sup>43</sup>, who have welcomed the reform<sup>44</sup>. The amendments, if adopted, would be in line with European standards for the selection and appointment of judges according to which, when the Government or the legislative power take decisions concerning the selection of judges, an independent and competent authority drawn in substantial part from the judiciary should be authorised to make recommendations or express opinions which the relevant appointing authority follows in practice<sup>45</sup>. There is currently no possibility for judicial review for the appointment of candidate judges (as for all judicial appointments) and no plan for it to be introduced<sup>46</sup>.

**Discussions around a potential reform of the system of evaluation of judges are ongoing.**

The Ministry of Justice and stakeholders have been discussing the possible introduction of a system of periodic evaluation of judges<sup>47</sup>, as has also been recommended by GRECO<sup>48</sup>. Currently, judges newly appointed to a post must undergo an appraisal two years after their appointment and subsequently if they take up a different position<sup>49</sup> or in case of an appraisal below a specific threshold<sup>50</sup>. Any evaluation can be challenged at the staff panel of the superior court<sup>51</sup>. Following criticism to a first internal draft proposal, the Ministry of Justice is currently rolling out a pilot project in selected courts, where judges, with their consent, will be subject to a new evaluation procedure within the first quarter of 2022, in parallel to the regular evaluation. This will in particular entail a more feedback-based process, with a stronger involvement of the judge, as the evaluation is viewed more as a ‘formality’ without an opportunity of genuine feedback<sup>52</sup>. Based on results of the pilot project, the Ministry will consider the possible next steps as to whether take forward a reform of the evaluation system. In the context of the discussions around a reform of the evaluation system, stakeholders have also criticised<sup>53</sup> an existing rule that foresees that two ‘not satisfactory’ evaluations in consecutive calendar years can lead to the automatic dismissal of the judge<sup>54</sup> in view of the

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<sup>42</sup> GRECO Fourth Evaluation Round – Interim Compliance Report, recommendation x, paras. 27-32.

<sup>43</sup> Austrian Association of Judges and Austrian Union of Judges and Prosecutors, Resources for the Rule of Law, pp. 10-11; Association of Austrian Administrative Judges (2017), Agenda for the administrative judiciary 2022, pp. 3-5.

<sup>44</sup> Contribution from the European Association of Judges for the 2022 Rule of Law Report, p. 3; Contribution from the Austrian Association of Judges for the 2022 Rule of Law Report, p. 10.

<sup>45</sup> Recommendation CM/Rec(2010)12 of the Committee of Ministers of the Council of Europe to member states on judges: independence, efficiency and responsibilities, para. 47.

<sup>46</sup> Input from Austria for the 2022 Rule of Law Report, p. 3.

<sup>47</sup> Contribution from the European Association of Judges for the 2022 Rule of Law Report, p. 8 and written information received from the Ministry of Justice in the context of the country visit to Austria.

<sup>48</sup> GRECO Fourth Evaluation Round – Interim Compliance Report, recommendation xii. GRECO has also recommended that such periodic appraisals should be used to inform subsequent decisions for appointments to higher posts.

<sup>49</sup> Service Act on Judges and prosecutors, § 51. See also GRECO Fourth Evaluation Round – Evaluation Report, para 94.

<sup>50</sup> If the overall evaluation is not at least ‘very good’ (second grade on a five step scale), an evaluation has to be foreseen in the next year as well. Service act on judges and prosecutors, § 51.

<sup>51</sup> Service Act on Judges and Prosecutors, § 55(3).

<sup>52</sup> Information received from the Ministry of Justice and the Association of Judges in the context of the country visit to Austria.

<sup>53</sup> Contribution from the Association of European Administration of Judges for the 2022 Rule of Law Report, pp. 12-13.

<sup>54</sup> This evaluation (*nicht entsprechend*) is the lowest grade on the five grade scale. As mentioned above, evaluations in consecutive years only take place if there is an evaluation below ‘very good’. Service Act on Judges and Prosecutors, § 88. If the judge does not comply with a request for this automatic retirement, the relevant service court will be seized on the matter, see Service Act on Judges and Prosecutors, § 92.



limited possibilities for appeal, particularly for administrative court judges<sup>55</sup>. As regard the overall integrity system for judges, further steps have been made to roll-out the compliance management system referred to in the 2021 Rule of Law Report<sup>56</sup>, with a network of 57 compliance officers (who function as single points of contact for compliance issues raised by all judicial employees) now established throughout the justice and correction system, which met for the first time in November 2021<sup>57</sup>.

## Quality

**The overall resources of the judiciary have continued to increase, while challenges remain at the Federal Finance Court.** Following the budgetary increases in 2020 and 2021<sup>58</sup>, further resources have been allocated to the judiciary in 2022, with an increase of approximately EUR 76 million (4.25% increase compared to 2021). Further positions for court staff have also been created<sup>59</sup>. However, at the Federal Finance Court, where specific challenges have already been noted in the 2021 Rule of Law Report<sup>60</sup>, 29 out of 224 positions for judges remained vacant as of January 2022<sup>61</sup>. In addition, the number of court staff remains overall low compared to the number of judges, which has been raised as a challenge by stakeholders and the Court of Audit, also in view of the existing backlog of cases<sup>62</sup>.

**Further progress has been made regarding digitalisation of justice.** Comprehensive procedural rules for use of digital tools are in place in Austria and use of digital tools by courts and prosecution services and electronic communication between courts and court users is widespread<sup>63</sup>. Furthermore, the implementation of the '*Justiz 3.0*' project for the roll-out of the electronic file is progressing. As of June 2022, proceedings at 111 courts and prosecution offices were completely digitalised within the project, over 470 000 files were processed exclusively digitally and more than 140 000 hearings conducted digitally<sup>64</sup>. Amendments to the Civil Procedural Code were adopted on 7 April 2022 aim to further improve the framework for the fully electronic handling of court proceedings<sup>65</sup>. The question of a further development of the use of videoconferences in court hearings is currently discussed in a separate working group. However, administrative courts do not participate in the *Justiz 3.0* project and stakeholders consider that the lack of a uniform e-filing system, including for documents received by administrative authorities, can be a challenge<sup>66</sup>.

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<sup>55</sup> Contribution from the Association of European Administrative Judges for the 2022 Rule of Law Report.

<sup>56</sup> 2021 Rule of Law Report, Country Chapter on the rule of law situation in Austria, p. 5.

<sup>57</sup> Input from Austria for the 2022 Rule of Law Report, pp. 10-11.

<sup>58</sup> 2020 Rule of Law Report, Country Chapter on the rule of law situation in Austria, p. 4-5 and 2021 Rule of Law Report, Country Chapter on the rule of law situation in Austria, pp. 5-6.

<sup>59</sup> This increase in resources aims to among other cover higher personnel costs due to wage increases. Input from Austria for the 2022 Rule of Law Report, pp. 5-6.

<sup>60</sup> 2021 Rule of Law Report, Country Chapter on the rule of law situation in Austria, p. 6.

<sup>61</sup> While 12 new judges are set to take up their duties in April 2021, 13 judges are also expected to retire in 2022. Written contribution received from the Austrian Ministry of Justice in the context of the country visit.

<sup>62</sup> Contribution from the European Association of Judges for the 2022 Rule of Law Report, p. 14-15.

<sup>63</sup> Figures 42-45, 2022 EU Justice Scoreboard.

<sup>64</sup> Input from Austria for the 2022 Rule of Law Report, p. 7.

<sup>65</sup> Amendment of the civil procedural code 2021.

<sup>66</sup> Contribution from the Association of European Administrative Judges for the 2022 Rule of Law Report, p. 15 and information received from the Association of Judges and Association of Austrian Administrative Judges in the context of the country visit.

**Recently adopted changes to the Civil Procedural Code aim to reduce certain court fees, which remain high overall.** In the context of amendments to the Civil Procedural Code adopted by Parliament in April 2022<sup>67</sup>, a number of court fees are set to be reduced<sup>68</sup> and the Ministry of Justice also considers to postpone the annual inflation adjustment from 2022 and 2023, in view of currently very high inflation rates<sup>69</sup>. However, as stakeholders note, the overall level of court fees remains very high, which can constitute a barrier for access to justice<sup>70</sup>, and income from court fees still corresponds to over 100% of the judiciary's budget<sup>71</sup>. While the introduction of a cap on court fees<sup>72</sup>, which has repeatedly been requested by stakeholders<sup>73</sup> as noted in the 2021 Rule of Law Report<sup>74</sup>, has been assessed within the Ministry of Justice, no further steps have been taken in this respect<sup>75</sup>.

## **Efficiency**

**The performance of the justice system remains overall efficient and shows further improvements for administrative cases.** As regards litigious civil and commercial cases, the average time to resolve them has slightly increased, but remains still very low (157 days in 2020 compared to 137 days in 2019)<sup>76</sup>, with a stable clearance rate at 99.8% (100.4% in 2019)<sup>77</sup>. The number of pending litigious civil and commercial cases remains low (0.4 cases per 100 inhabitants<sup>78</sup>), showing that the justice system overall handles its caseload efficiently. Regarding administrative cases, efficiency indicators show further improvements following the trend already identified in the 2021 Rule of Law Report<sup>79</sup>, with a further increase in the clearance rate (126% in 2020 compared to 110.7% in 2019<sup>80</sup>) and progress in the reduction of pending cases (0.7 per 100 inhabitants in 2020 compared to 0.8 in 2019<sup>81</sup>). While the overall time to resolve administrative cases remains long, it should be noted that it has further decreased over the reporting period (388 days in 2020 compared to 440 days in 2019<sup>82</sup>).

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

Austria has a National Anti-Corruption Strategy in place and the implementation of the accompanying Action Plan 2019-2020 was evaluated. The relevant authorities involved in the prevention of and the fight against corruption include the Federal Ministry of Justice and its Coordinating Body for the Fight against Corruption, the Central Public Prosecutor's Office for Combating Economic Crimes and Corruption (WKStA), the Federal Ministry of the Interior and its Federal Bureau of Anti-Corruption (BAK) and the Criminal Intelligence Service (BK)

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<sup>67</sup> Amendment of the civil procedure 2021.

<sup>68</sup> Input from Austria for the 2021 Rule of Law Report, p. 6.

<sup>69</sup> Information received from the Ministry of Justice in the context of the country visit to Austria.

<sup>70</sup> Contribution from the Austrian Bar Association for the 2022 Rule of Law Report, pp. 11-12.

<sup>71</sup> CEPEJ (2020), Evaluation Report on European judicial systems, p. 33.

<sup>72</sup> Court fees are calculated as a percentage of the value of the case and, in the absence of a cap on fees, can, therefore, be very high in high-value cases.

<sup>73</sup> Contribution from the Council of Bars and Law Societies (CCBE) for the 2022 Rule of Law Report.

<sup>74</sup> 2021 Rule of Law Report, Country Chapter on the rule of law situation in Austria, pp. 6-7.

<sup>75</sup> Information received from the Ministry of Justice in the context of the country visit to Austria.

<sup>76</sup> Figure 7, 2022 EU Justice Scoreboard.

<sup>77</sup> Figure 12, 2022 EU Justice Scoreboard.

<sup>78</sup> Figure 15, 2022 EU Justice Scoreboard.

<sup>79</sup> 2021 Rule of Law Report, Country Chapter on the rule of law situation in Austria, p. 8.

<sup>80</sup> Figure 13, 2022 EU Justice Scoreboard.

<sup>81</sup> Figure 16, 2022 EU Justice Scoreboard.

<sup>82</sup> Figure 9, 2022 EU Justice Scoreboard.

as well as the Court of Audit. The legal framework includes relevant provisions in the Criminal Code and the Code of Criminal Procedure as well as specific legislation in the fight against corruption<sup>83</sup>.

**The perception of public sector corruption among experts and business executives is that the level of corruption in the public sector remains relatively low.** In the 2021 Corruption Perceptions Index by Transparency International, Austria scores 74/100 and ranks 6<sup>th</sup> in the European Union and 13<sup>th</sup> globally<sup>84</sup>. This perception has been relatively stable<sup>85</sup> over the past five years. The 2022 Special Eurobarometer on Corruption shows that 57% of respondents consider corruption widespread in their country (EU average 68%) and 20% of respondents feel personally affected by corruption in their daily lives (EU average 24%)<sup>86</sup>. As regards businesses, 56% of companies consider that corruption is widespread (EU average 63%) and 24% consider that that corruption is a problem when doing business (EU average 34%)<sup>87</sup>. Furthermore, 47% of respondents find that there are enough successful prosecutions to deter people from corrupt practices (EU average 34%)<sup>88</sup>, while 42% of companies believe that people and businesses caught for bribing a senior official are appropriately punished (EU average 29%)<sup>89</sup>.

**The evaluation of the 2019-2020 Action Plan accompanying the National Anti-Corruption Strategy has been completed, and a further reform of the anti-corruption legislation is being considered.** The evaluation of the Action Plan, which was delayed due to the COVID-19 pandemic, started in July 2021 and was set to be completed in spring 2022. A decision by the Coordinating Body for the Fight against Corruption is now expected on next steps<sup>90</sup>. The Network for Integrity Officers, set up in the framework of the Action Plan<sup>91</sup>, continued to operate in 2021 providing support to inquiries of integrity officers, although no training activities were carried out<sup>92</sup>. Furthermore, a reform of the anti-corruption legislation, which

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<sup>83</sup> Relevant legislation includes: the Federal Act on the Establishment and Organisation of the Federal Bureau of Anti-Corruption, the Federal Statute on Responsibility of Entities for Criminal Offences and the Federal Act on Extradition and Mutual Assistance in Criminal Matters. See 2020 Rule of Law Report, Country Chapter on the rule of law situation in Austria, p. 6 and 2021 Rule of Law Report, Country Chapter on the rule of law situation in Austria, p. 8-9.

<sup>84</sup> Transparency International (2022), Corruption Perceptions Index 2021, pp. 2-3. The level of perceived corruption is categorised as follows: low (the perception among experts and business executives of public sector corruption scores above 79); relatively low (scores between 79-60), relatively high (scores between 59-50), high (scores below 50).

<sup>85</sup> In 2017 the score was 75, while, in 2021, the score is 74. The score significantly increases/decreases when it changes more than five points; improves/deteriorates (changes between 4-5 points); is relatively stable (changes from 1-3 points) in the last five years.

<sup>86</sup> Special Eurobarometer 523 on Corruption (2022). The Eurobarometer data on citizens' corruption perception and experience is updated every second year. The previous data set is the Special Eurobarometer 502 on Corruption (2020).

<sup>87</sup> Flash Eurobarometer 507 on Businesses' attitudes towards corruption in the EU (2022). The Eurobarometer data on business attitudes towards corruption as is updated every second year. The previous data set is the Flash Eurobarometer 482 (2019).

<sup>88</sup> Special Eurobarometer 523 on Corruption (2022).

<sup>89</sup> Flash Eurobarometer 507 on Businesses' attitudes towards corruption in the EU (2022).

<sup>90</sup> Information received from the Ministry of Justice and the Coordinating Body for the Fight against Corruption in the context of the country visit to Austria.

<sup>91</sup> 2021 Rule of Law Report, Country Chapter on the rule of law situation in Austria, p. 8.

<sup>92</sup> Input from Austria for the 2022 Rule of Law Report, p. 11 and written contribution from Austria. See also the website of the Network at [www.integritaet.info](http://www.integritaet.info).

would include the criminalisation of bribery of political candidates and the purchases of mandates, is currently being negotiated<sup>93</sup>.

**A number of high-level corruption investigations are proceeding and, in this context, public prosecutors continue to face scrutiny and at times political attacks.** These investigations are generally led by the WKStA. A number of high-profile corruption cases have led to a change in the Government as well as arrests of a number of high-level officials<sup>94</sup>. Negative public narratives targeting the investigators in these high-level corruption cases, as reported in the 2021 Rule of Law report<sup>95</sup>, initially continued during the reporting period. According to stakeholders, such statements eventually abated by early 2022<sup>96</sup>. Nevertheless, prosecutors and judges indicate that vigilance remains necessary, particularly in relation to renewed scrutiny in the context of the parliamentary investigative committee (see below)<sup>97</sup>. Due to allegations of conflicts of interest, the WKStA's supervision over one high-level corruption case has been moved from the Vienna's Senior Public Prosecutor's Office to a prosecutor from another Senior Prosecutor's Office<sup>98</sup>. Moreover, the independent legal protection officer faced some scrutiny following allegations of conflicts of interest. In this context, stakeholders have noted that, while the independence of the function is paramount, no disciplinary process against the legal protection officer is legally possible<sup>99</sup>. The Federal Anti-Corruption Bureau (BAK) detected 82 potential cases of corruption in 2021<sup>100</sup> in addition to 688 potential cases of abuse of authority<sup>101</sup>.

**In parallel to the ongoing criminal investigations, the Parliament has set-up an investigative committee into alleged corruption concerning a political party.** The committee was set-up in December 2021<sup>102</sup>. All institutions concerned have already submitted

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<sup>93</sup> Anti-Corruption Referendum (2022), Anti-corruption referendum: Reform of criminal law on corruption an important step.

<sup>94</sup> Press Statement from the WKStA on the house searches of 6 October 2021 and Press Statement from the WKStA on the arrest of 2 March 2022.

<sup>95</sup> 2021 Rule of Law Report, Country Chapter on the rule of law situation in Austria, p. 9.

<sup>96</sup> Contribution from the Austrian Bar Association for the 2022 Rule of Law Report, p. 11 and Contribution from the Austrian Association of Judges for the 2022 Rule of Law Report, p. 11; Austrian Association of Prosecutors (2021), Prosecutors react to press conference alleging 'leftist cells' in the WkStA.

<sup>97</sup> In particular, the President of the Association of Prosecutors expressed concerns about the politicisation of certain criminal investigations in the context of the parliamentary investigative committee. Wiener Zeitung (2022), Interview with Cornelia Koller, President of the Association of Prosecutors: 'Angezeigt ist gleich angepatzt'.

<sup>98</sup> The prosecutor is detached to the Vienna Prosecutor's Office. Ministry of Justice (2022), Answers to the written question 9096/J-NR/2021 from Representative W. Gerstl to the Minister of Justice, p. 2.

<sup>99</sup> According to the Austrian Criminal Procedure Code, article 47a, the Legal Protection Officer cannot be recalled. Information received in the context of the country visit to Austria and Wiener Zeitung (2021), Legal Protection Officer cannot be recalled. To note that the legal protection officer has since resigned on her own accord.

<sup>100</sup> 11 cases of corruptibility (art. 304 of the Criminal Code), 11 cases of acceptance of an advantage (art. 305), 5 cases of acceptance of an advantage for the purpose of exerting influence (art. 306) and 4 cases of bribery (art. 307), 2 cases of offering an advantage (art. 307a), 8 cases of acceptance of gifts and bribery of employees or agents (art. 309) and 30 cases of breaches of official secrecy (art. 310). One case of breach of trust due to abuse of an official function or due to involvement of an office holder (art. 313 in conjunction with art. 153). Compared to 32 cases in 2020 – see 2021 Rule of Law Report, Country Chapter on the rule of law situation in Austria, p. 9 and statistical update provided by the Austrian authorities.

<sup>101</sup> Input from Austria for the 2022 Rule of Law Report, p. 17 and statistical update provided by the Austrian authorities.

<sup>102</sup> Austrian Parliament (2021), Demand for the establishment of a committee of inquiry: ÖVP corruption investigation committee, and Austrian Parliament (2021), ÖVP corruption investigation committee.

relevant information, and the first hearings in front of the committee commenced in March 2022<sup>103</sup>. Stakeholders have expressed concerns that the parliamentary investigation could potentially lead to inadvertent disclosure of sensitive material used in the ongoing criminal proceedings, although a consultation mechanism is in place between the Parliament and the Minister of Justice to mitigate such risks<sup>104</sup>. Current rules of procedure stipulate that the President of the National Council chairs such investigative committees. In response to the concern raised by some opposition parties over a possible conflict of interest, the President of the National Council has indicated he would relinquish his chairmanship on a case-by-case basis, depending on the witnesses interviewed<sup>105</sup>.

**The prosecution services appear to have adequate capacity for anti-corruption prosecutions, although some challenges remain as regards staffing and specialisation.**

Overall, anti-corruption prosecutors consider they can adequately carry out their tasks<sup>106</sup>. However, the WKStA has called for additional ten posts (in addition to the 42 it currently has)<sup>107</sup> as well as identified a need for additional specialised staff, including staff specialised in investigating white collar crime and staff with more technical and IT knowledge<sup>108</sup>. The BAK has 103 posts and its budget has increased over the last years<sup>109</sup>. However, civil society has criticised the fact that the BAK currently only has an interim head, and that the vacancy for this position has not been advertised for the past two years<sup>110</sup>.

**The ability of the prosecution, including the WKStA, to search the premises of public authorities has been safeguarded.**

A legislative proposal that would limit searches of the premises of public authorities was withdrawn following widespread opposition, including by civil society and the prosecution services<sup>111</sup>. The proposal would have introduced the requirement to request ‘administrative cooperation’ from concerned institutions before the prosecution service, including the WKStA, could conduct on-the-spot searches<sup>112</sup>. A more limited change, regulating only the seizure of documents containing secret information, was

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<sup>103</sup> Austrian Parliament (2021), ÖVP corruption investigation committee.

<sup>104</sup> Austrian Parliament (2019), Handbook on the Law of Committees of Inquiry in the National Council, p. 223-228. The Federal Minister of Justice can initiate the consultation should he or she be of the opinion that requests by the investigative committee touch upon ongoing criminal investigations. The Chairperson of the investigative committee is obliged to consult the Minister without delay. In case there is no agreement, the Constitutional Court can decide on disputes. Information received in the context of the country visit to Austria. See also Wiener Zeitung (2022), Interview with Cornelia Koller, President of the Association of Prosecutors: ‘Angezeigt ist gleich angepatzt’.

<sup>105</sup> Der Standard (2022), Sobotka wants to relinquish chairmanship of ÖVP corruption committee on a case-by-case basis.

<sup>106</sup> Information received from the Central Public Prosecutor’s Office for Combating Economic Crimes and Corruption and the Senior Public Prosecutor’s Office Vienna in the context of the country visit to Austria.

<sup>107</sup> Information received from the Central Public Prosecutor’s Office for Combating Economic Crimes and Corruption in the context of the country visit to Austria and Central Public Prosecutor’s Office for Combating Economic Crimes and Corruption (2022), Business allocation overview.

<sup>108</sup> Der Standard (2021), Trend reversal in the judiciary budget continues and information received from the Central Public Prosecutor’s Office for Combating Economic Crimes and Corruption in the context of the country visit.

<sup>109</sup> Ministry of Finance (2022), Federal Budget 2022 - Subdivision 11 Interior, p. 96-100.

<sup>110</sup> Anti-corruption Referendum (2022), ‘Unglorious anniversary’: Head of the Federal Anti-Corruption Office has not been filled for two years.

<sup>111</sup> 2021 Rule of Law Report, Country Chapter on the rule of law situation in Austria, pp. 9-10.

<sup>112</sup> 2021 Rule of Law Report, Country Chapter on the rule of law situation in Austria, pp. 9-10.

enacted instead<sup>113</sup>. A ministerial decree which entered into force on 21 April 2022 has clarified that investigations of accomplices to persons enjoying immunity from prosecution and are likewise suspected of crimes, are legal<sup>114</sup>.

**Burdensome reporting obligations for the public prosecution office, including the WKStA, have been relaxed.** A ministerial decree relaxed the previously reported reporting obligations<sup>115</sup>. Following these changes (see Section 1), anti-corruption prosecutors already signal a decrease in reporting obligations, including in corruption-related cases<sup>116</sup>.

**Efforts to effectively reduce the risks of conflicts of interest for members of Parliament remain limited.** As noted in the 2021 Rule of Law Report, members of Parliament are not obliged to publicly declare their assets, interests, debts, liabilities or any other economic interests, including company investments<sup>117</sup>, although there are certain exceptions<sup>118</sup>. This lack of declaration obligations is the subject of several GRECO recommendations<sup>119</sup>. The existing Code of Conduct for Members of the National Council and Members of the Federal Council mainly reiterates existing legal provisions<sup>120</sup>. Moreover, there are no monitoring and sanction mechanisms to control the accuracy of declarations when published voluntarily<sup>121</sup>. While the compliance unit of the Parliamentary Administration offers voluntary and confidential counselling to Members of Parliament in relation to integrity and conflict of interest matters, the unit does not have the mandate to verify or investigate whether the Members of Parliament act in line with the law and whether the compliance unit's advice was followed. Between April 2019 and May 2022, the compliance unit was asked for such counselling by 43 members of Parliament<sup>122</sup>. There is no overview of which (or how many) members of Parliament voluntarily declare their assets and interests<sup>123</sup>. Internal guidelines providing guidance to members of Parliament on the existing legal provisions in relation to gifts and other advantages were published in early 2022<sup>124</sup>.

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<sup>113</sup> Amendment of the Police State Protection Act, the Security Police Act, the Penal Code, the Code of Criminal Procedure 1975 and the Repayment Act 1972.

<sup>114</sup> Input from Austria for the 2022 Rule of Law Report, p. 18. Evidence on the immune person could be gathered, as long as the investigation does not violate the immunity of the immune person.

<sup>115</sup> See Section I. See also 2020 Rule of Law Report, Country Chapter on the rule of law situation in Austria, p. 4 and 7 and 2021 Rule of Law Report, Country Chapter on the rule of law situation in Austria, p. 3.

<sup>116</sup> Information received from prosecutors in the context of the country visit to Austria.

<sup>117</sup> 2021 Rule of Law Report, Country Chapter on the rule of law situation in Austria, p. 11.

<sup>118</sup> According to the Incompatibility and Transparency Act, Members of Parliament have to report certain activities (e.g. executive positions held by them in stock corporations or other kinds of employment) as well as the average monthly gross emoluments earned in a calendar year in respect of these activities to the president of the respective representative body.

<sup>119</sup> GRECO Fourth Evaluation Round – Interim Compliance Report, recommendations iii – viii and GRECO Fourth Evaluation Round – Second Interim Compliance Report, recommendations iii-viii.

<sup>120</sup> Austrian Parliament (2021), Code of Conduct for Members of the National Council and Members of the Federal Council.

<sup>121</sup> 2020 Rule of Law Report, Country Chapter on the rule of law situation in Austria, p. 9 and 2021 Rule of Law Report, Country Chapter on the rule of law situation in Austria, p. 11.

<sup>122</sup> Fourteen in 2019, eight in 2020, nine in 2021 and (so far) twelve in 2022.

<sup>123</sup> Written contribution and information received from the Parliamentary Administration in the context of the country visit to Austria.

<sup>124</sup> Austrian Parliament (2022), Guidelines for Members of Parliament on how to Deal with Gifts and other Advantages.

**The Code of Conduct for preventing corruption in the civil service, adopted in 2020, is applied**<sup>125</sup>. Certain departments or local authorities also have their own codes of conduct in addition<sup>126</sup>. The Federal Disciplinary Authority, established in October 2020 to issue disciplinary findings for federal civil servants, took over 313 cases from the previous 26 separate Disciplinary Commissions, and initiated 66 new cases in the first three months of its functioning – although it is unclear how many of these cases concern corruption or abuse of office<sup>127</sup>. Likewise, in 2021, 502 cases were initiated, with 56 leading to a court decision<sup>128</sup>. No disciplinary cases have been initiated so far against civil servants within the Parliamentary Administration since the separate Disciplinary Commission was set up there in October 2020<sup>129</sup>.

**Discussions to strengthen legislation on lobbying are ongoing.** The working group of the Federal Ministry of Justice, set up in 2020<sup>130</sup> to examine possible improvements of the legal framework on lobbying, completed its work and issued an interim report. No agreement has so far been reached in this working group on essential issues of a potential reform, such as introducing a cooling-off period, a legislative footprint, and a monitoring and sanctioning mechanism, which have been recommended by GRECO<sup>131</sup> and stakeholders<sup>132</sup>. It remains up to the political level to consider further steps.

**The introduction of rules to address ‘revolving doors’ and of post-employment provisions for members of Government or Parliament has not advanced**<sup>133</sup>. The legislative proposal introducing a three year cooling-off period for members of Government who aim to become members or alternate members of the Constitutional Court for three years has not advanced, as it is part of the currently stalled legislative package on access to information (see Section 3)<sup>134</sup>. No other reforms in relation to members of Government or Parliament are ongoing. Existing post-employment rules for all federal civil servants remain in effect (cooling-off period of six months) although they apply only in a limited number of strictly defined cases<sup>135</sup>.

**A reform of the political party financing framework is in the process of being adopted by Parliament.** The Government proposed the reform at the end of February 2022, as announced in its Government Programme<sup>136</sup>. The reform would address a number of issues regarding the current system that had been noted in the 2020 and 2021 Rule of Law Reports<sup>137</sup>. Most significantly, the reform would introduce clear inspection powers for the Court of Audit,

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<sup>125</sup> 2021 Rule of Law Report, Country Chapter on the rule of law situation in Austria, p. 11.

<sup>126</sup> Written contribution from the Ministry of Justice in the context of the country visit to Austria.

<sup>127</sup> Federal Disciplinary Authority (2020), Annual Report 2020, pp. 1-3.

<sup>128</sup> Federal Disciplinary Authority (2021), Annual Report 2021, pp. 1-3.

<sup>129</sup> Information received from the Parliamentary Administration in the context of the country visit to Austria.

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

<sup>131</sup> GRECO Fourth Evaluation Round – Interim Compliance Report, recommendations ii, paras. 13-17 and GRECO Fourth Evaluation Round – Second Interim Compliance Report, recommendations ii, paras. 13-17.

<sup>132</sup> Information received from Antikorruptionsbegehren and Transparency International Austria in the context of the country visit to Austria.

<sup>133</sup> 2020 Rule of Law Report, Country Chapter on the rule of law situation in Austria, pp. 8-9.

<sup>134</sup> 2021 Rule of Law Report, Country Chapter on the rule of law situation in Austria, p.11 and information received from the Federal Chancellery in the context of the country visit to Austria.

<sup>135</sup> 2020 Rule of Law Report, Country Chapter on the rule of law situation in Austria, pp. 8-9 and written contribution from the Ministry of Justice in the context of the country visit to Austria. See also article 20 and 61 of the Civil Service Law and article 30a of the Act on Contractual Public Employees.

<sup>136</sup> 2021 Rule of Law Report, Country Chapter on the rule of law situation in Austria, p. 10.

<sup>137</sup> Ibid and 2020 Rule of Law Report, Country Chapter on the rule of law situation in Austria, p. 7.

strengthen reporting obligations and the rules for donations to political parties and increase the sanctions for breaking the rules. The proposal was widely welcomed, including by the Court of Audit and civil society<sup>138</sup>. Following initial discussions with opposition as well as the Court of Audit, the text was introduced in Parliament and adopted by the National Council in July 2022 with the required two-thirds majority<sup>139</sup>.

**While the whistleblower protection framework is being reformed, an existing reporting system assists prosecutors in the fight against corruption.** A reform of the whistleblower protection framework is ongoing, with the aim to transpose into national law the Whistleblowers Directive<sup>140</sup>. A draft law was published for public consultation and will then proceed to the government and parliamentary proceedings<sup>141</sup>. The online whistleblower reporting tool under the WKStA is working well and attracting more and more reports. This brings useful additional information in existing cases as well as leading to a number of new cases<sup>142</sup>.

**Civil society has introduced a request for a popular initiative on the topic of corruption.** The initiative includes measures relating to the judiciary as well as transparency and integrity of top-level functions. The initiative was opened up for signatures of the wider population in May 2022, following a registration phase. The proposal will need to be discussed in Parliament upon receiving 100 000 signatures from voters<sup>143</sup>. At the end of 2021, around 90% of Austrians indicated corruption in politics is a ‘large or very large’ issue in one survey<sup>144</sup>.

**Risks of corruption in relation to the COVID-19 pandemic are being investigated by auditors.** Law enforcement authorities confirm a number of COVID-19 related corruption cases mostly in the public procurement field (such as relabelling of equipment) as well as fraud and bribery related to vaccination and/or related documentation<sup>145</sup>. The Court of Audit has carried out a number of audits into measures linked to the pandemic. Risks of potential misuse were identified with regards to the short-term unemployment insurance scheme developed by

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<sup>138</sup> Transparency International Austria (2022), Austria, Political parties’ law – Important first step! and ORF (2022), Political Party Finances – Court of Audit will get insight: ‘Court of Audit President Margit Kraker welcomed the reform proposed by the coalition parties. She spoke of an ‘important step for more transparency and control.’ The Court of Audit had publicly introduced its own proposal for a reform in October 2021, in order to put pressure on the Government. This proposal had foreseen additional provisions in terms of the control by the Court of Audit, while in the Government proposal, the Court of Audit would still need a reasonable suspicion before it can initiate an audit. See Court of Audit (2021), Draft for a Political Party Law and Court of Audit (2022), Position Paper on amendment to the Political Party law of 2012

<sup>139</sup> Amendment on the financing of political parties (Political Party Law), the media law and the law on the Constitutional Court, 2487/A.

<sup>140</sup> Directive (EU) 2019/1937 on the protection of persons who report breaches of Union law

<sup>141</sup> Austrian Parliament (2022), Ministerial draft law regarding federal law, with which a federal law on the procedure and protection in the event of indications of violations of rights in certain legal areas (Whistleblower Protection Act - HSchG) is enacted

<sup>142</sup> Input from Austria for the 2022 Rule of Law Report, p. 14 and information received from the Central Public Prosecutor’s Office for Combating Economic Crimes and Corruption in the context of the country visit to Austria.

<sup>143</sup> Anti-Corruption Referendum (2022), Content; Austrian Government, General information on Referendums; Austrian Government, Current popular initiatives - registration week 2 to 9 May 2022.

<sup>144</sup> SORA Institute for Social Research and Consulting (2021), Austrian Democracy Monitor, p. 10.

<sup>145</sup> Information received from the Senior Public Prosecutor’s Office Vienna in the context of the country visit to Austria.



the Government<sup>146</sup>. The Standing Sub-Committee of the Court of Audit Committee of the National Council has also carried out an evaluation of the Government's public procurement processes during the pandemic, including purchasing of masks, protective equipment and vaccines<sup>147</sup>.

### **III. MEDIA PLURALISM AND MEDIA FREEDOM**

The right to freedom of expression and the duty, incumbent on state authorities, to grant access to information, are enshrined in the Constitution. Secondary legislation guarantees the right of journalists to protect the confidentiality of their sources<sup>148</sup> and regulates the authorities' obligation to disclose information to the public<sup>149</sup>. However, a general right to access documents does not exist in Austria. The regulators for audiovisual media services, the Austrian Communications Authority (*KommAustria*), and the administrative body, the Austrian Regulatory Authority for Broadcasting and Telecommunications (RTR)<sup>150</sup> were set up under the *KommAustria* Act in 2001<sup>151</sup>.

**The two media regulatory authorities continue to function independently.** There have been no significant changes in the legal framework concerning the media regulatory authorities since the 2021 Rule of Law Report and the regulators are fully independent from the Government. The resources attributed to the media authorities are assessed as appropriate<sup>152</sup>. The 2022 Media Pluralism Monitor (MPM) reports a very low risk with regard to the independence and effectiveness of the Austrian media authorities<sup>153</sup>.

**The Austrian Press Council operates as a self-regulatory facility for the press, however not all main media actors participate in the system.** Public awareness concerning the importance of journalistic ethical standards has increased in the last year, according to stakeholders<sup>154</sup>. This has contributed to new organisations joining the self-regulatory system<sup>155</sup>, though not all Austrian newspapers are members of the Austrian Press Council and several do not follow the system<sup>156</sup>.

**There have been no changes in the legal framework concerning transparency of media ownership, and media concentration remains high.** Secondary legislation provides for

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<sup>146</sup> Court of Audit (2022), COVID-19 short-time unemployment insurance: Concept for the targeted detection of abuse was missing.

<sup>147</sup> Austrian Parliament (2021), Audit of the management of the federal procurement GmbH, which is owned by the federal government, with regard to procurement processes and contract awards in connection with the COVID-19 pandemic from March 2020 to date.

<sup>148</sup> Media Act, Federal Law Gazette No. 314/1981, as amended by: Federal Law Gazette I No. 101/2015.

<sup>149</sup> Fundamental Act on the duty to grant information.

<sup>150</sup> The RTR is a nonprofit state-owned company, which among other things operationally supports *KommAustria*.

<sup>151</sup> Austria ranks 31<sup>st</sup> in the 2022 Reporters without Borders World Press Freedom Index compared to 17<sup>th</sup> in the previous year.

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

<sup>153</sup> 2022 Media Pluralism Monitor, country report for Austria p. 11.

<sup>154</sup> Following in particular the terrorist attack that happened in Vienna in 2020 and some newspapers reports and publications. Information received from Verband Österreichischer Zeitungen (Publishers' Association) in the context of the country visit to Austria.

<sup>155</sup> This includes the daily newspaper 'Heute'. Information received from the Austrian Press Council in the context of the country visit to Austria.

<sup>156</sup> Contribution from CIVICUS for the 2022 Rule of Law Report, Media Landscapes – country profile Austria and information received in the context of the country visit to Austria.

detailed provisions requiring the disclosure of ownership in the news media sector<sup>157</sup> and no particular instances of difficulties in identifying media ownership have been reported this year. However, the 2022 MPM continues to report a medium risk to the transparency of media ownership indicator due to the fact that information on the ultimate ownership structures of media companies is not generally available. Media concentration in Austria is mainly regulated by competition law rules<sup>158</sup>. Some specific requirements apply only for the audiovisual and radio sectors<sup>159</sup>. The Austrian media landscape is characterised by a few dominant players<sup>160</sup>, strong media concentration present at local level and some instances of cross-media concentration as reported by stakeholders<sup>161</sup>. The MPM 2022 reports a high risk for news media concentration mainly due to shortcomings of the existing legislation<sup>162</sup>.

**The Government has announced plans to address the persisting concerns with regard to the high amounts of state advertising and the transparency and fairness of its allocation.**

High amounts of state advertising continue to be allocated to media in Austria. The figures seem to continue increasing, with EUR 225 million having been spent by the public authorities in 2021<sup>163</sup>. Of this 225 million, EUR 45.3 million have been spent by the national Government in 2021, compared to EUR 46.8 million in 2020. Approximately EUR 44 million were allocated to regular subsidies for the media<sup>164</sup>. The MPM 2022 assessed a medium risk for the state regulation of resources and support to the media sector<sup>165</sup>. As already noted in the 2020 and 2021 Rule of Law Reports<sup>166</sup>, several stakeholders and a study have raised concerns about the lack of transparency and fairness in the process of allocation of state advertising<sup>167</sup>. Concerns have also been raised in the fall of 2021 regarding alleged attempts by members of Government to interfere with the media, including through the provision of state advertising<sup>168</sup>, which are subject to ongoing investigations<sup>169</sup>. In January 2022, the Government entrusted the

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<sup>157</sup> Media Act (*Mediengesetz*), Federal Law Gazette No. 314/1981, as amended by: Federal Law Gazette I No. 101/2015.

<sup>158</sup> Federal Act against Cartels and Other Restraints of Competition (Cartel Act 2005 – KartG 2005), 2005/2019, Sections 8-9 and 13.

<sup>159</sup> These are provisions to prevent cross-media and horizontal concentration. The only existing media-specific merger control provisions are found in cartel law, 2022 Media Pluralism Monitor, country report for Austria, p. 12.

<sup>160</sup> Contribution from European Federation of Journalists for the 2022 Rule of Law Report and Media Landscapes, Country Profile Austria.

<sup>161</sup> Information received from the Journalists' Union and Press Club Concordia in the context of the country visit to Austria; 2022 Media Pluralism Monitor, country report for Austria, p.12.

<sup>162</sup> 2022 Media Pluralism Monitor, country report for Austria, p. 12.

<sup>163</sup> Public authorities include the national government, federal states, local communities, cities and public companies. In 2020, in Austria EUR 223 million were spent on state advertising, while regular state subsidies for the media amounted to around EUR 49 million, in addition to extraordinary subsidies due to the COVID-19 pandemic of about EUR 35 million, 2021 Rule of Law Report, Country Chapter on the rule of law situation in Austria, p. 14.

<sup>164</sup> Der Standard (2022), Advertising by public bodies in 2021 at a new high: EUR 225 million and 2022 Media Pluralism Monitor, country report for Austria, pp. 9 and 16.

<sup>165</sup> 2022 Media Pluralism Monitor, country report for Austria, p. 16.

<sup>166</sup> 2020 Rule of Law Report, Country Chapter on the rule of law situation in Austria, p. 11 and 2021 Rule of Law Report, Country Chapter on the rule of law situation in Austria, p. 14.

<sup>167</sup> Medienhaus Wien (2021), Seemingly transparent II – Study of state advertising and media support in 2022; Presse Club Concordia (2021), Proposals on journalism support, and information received in the context of the country visit to Austria.

<sup>168</sup> See e.g. Der Standard (2021), Interview with Presse Club Concordia Director Kraus on advertising, which calls for transparent criteria for government advertising and a reform of press funding; 2022 Media Pluralism Monitor, country report for Austria, p. 9.

<sup>169</sup> Press Statement from the WKStA on the house searches of 6 October 2021.

competent Minister for media with the preparation of a set of measures geared at a reorganisation of the Austrian media funding system in general, including the allocation of state advertising<sup>170</sup>. A number of roundtables with stakeholders have started to be organised in early 2022 with the purpose of gathering their input. While a robust framework is in place to ensure editorial independence<sup>171</sup>, there have been reported attempts of interference by politicians and heads of influential companies<sup>172</sup>. As noted by the 2022 Media Pluralism Monitor, these strong legal safeguards contribute to keep the indicator on the political independence of media at medium risk<sup>173</sup>.

**Risks related to potential political interference are mitigated by structural and legal safeguards that ensure the independence of Austrian public service media and its journalists.** The governing bodies of the Austrian Broadcasting Corporation (ORF) are the Director General, the Foundation Council and the Audience Council. The management of ORF rests with the Director General whose post is subject to certain specific qualifications and incompatibility rules<sup>174</sup>. The Foundation Council may dismiss the Director General by a two-thirds majority vote without the need to provide any specific reasons. Several stakeholders have pointed to attempts by political authorities to influence the appointment and dismissal of management and board positions at the ORF<sup>175</sup>. In particular, concerns have been expressed on the appointment procedures of the Foundation Council of the Broadcasting Corporation; the Foundation Council appoints all high officials, approves the budget and monitors financial conduct<sup>176</sup>. It consists of 35 members appointed by the federal Government, the Government of each Federal province, the Audience Council and the Central Staff Council. 15 of these members are appointed by the federal Government, taking into consideration the relative strength of the political parties represented in Parliament. Therefore, MPM 2022 reports a high risk for the indicator on independence of public service media governance and funding<sup>177</sup>. Despite these challenges stemming from possible political interference, safeguards ensuring editorial independence of journalists<sup>178</sup> have allowed them to publicly speak out against

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<sup>170</sup> Input from Austria for the 2022 Rule of Law Report, p. 20.

<sup>171</sup> The ‘protection of editorial confidentiality’ is stipulated in section 31 of the Media Act. 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 and a number of decisions underline the effective remedies to protect the independence of ORF journalists. Rule of Law Report 2020, Country Chapter on the rule of law situation in Austria, p. 12 and 2022 Media Pluralism Monitor, country report for Austria, pp. 14 and 15.

<sup>172</sup> Contribution from the European Federation of Journalists for the 2022 Rule of Law Report and information received in the context of the country visit to Austria.

<sup>173</sup> 2022 Media Pluralism Monitor, country report for Austria, p. 15.

<sup>174</sup> The legal basis for the ORF is Section 22 et seq. of the Federal Act on the Austrian Broadcasting Corporation (ORF Act – ORF-G).

<sup>175</sup> Information received in the context of the country visit to Austria; contribution from the European Federation of Journalists for the 2022 Rule of Law Report; Presse Club Concordia, position paper on ORF governing bodies; 2022 Media Pluralism Monitor, country report for Austria p. 17; Media Freedom Rapid Response, Austria: Election of new ORF head shines spotlight on selection process; Anti-corruption Referendum (2021), anti-corruption referendum strongly criticises modalities of ORF election.

<sup>176</sup> The appointment procedures of the two bodies are established in the Federal Act on the Austrian Broadcasting Corporation, 1984/2021, Section 20 et seq.

<sup>177</sup> 2022 Media Pluralism Monitor, country report for Austria, p. 16.

<sup>178</sup> The Federal Constitutional Act on ‘Guaranteeing the independence of broadcasting’ together with the Federal Act on the Austrian Broadcasting Corporation provides the editorial independence of ORF. Furthermore, ORF Act, section 32 guarantees the independence of the programming staff as well as journalistic staff of the ORF

possible interferences<sup>179</sup>. Concerning licensing for operation, as regards ORF, its right to broadcast derives from the ORF Act. Not all broadcasting services in Austria require an operating licence<sup>180</sup>. For those services requiring a licence<sup>181</sup>, this is granted for ten years and following a public tender. Among other requirements, the diversity of opinion and the independence of the program are taken into consideration.

**The lack of a legal framework concerning access to documents remains a challenge and the draft law on access to information has not advanced.** As reported in the 2021 Rule of Law Report<sup>182</sup>, the Government has proposed a freedom of information law, which faced some criticisms during the public consultation<sup>183</sup> and has not progressed further<sup>184</sup>. The draft law is still under negotiation and there is no concrete indication of date for presenting the proposal to Parliament<sup>185</sup>. Currently, a duty to grant information is enshrined in the Constitution and specified in federal law and provincial laws; however, a general right to access documents does not exist in Austria<sup>186</sup>. Further limitations to access information in practice stem from the Constitution due to the duty of secrecy<sup>187</sup>. The 2022 MPM reports a medium risk on the indicator concerning the protection of the right to information<sup>188</sup>.

**While the general standards of journalistic profession remain good, journalists continue to face threats and harassment.** As reported in the 2020 and 2021 Rule of Law Reports<sup>189</sup>, there is no specific provision in the Austrian law concerning the safety of journalists. Since July 2021, there have been six alerts to the Council of Europe Platform to promote the protection of journalism and safety of journalists, which concern attacks against journalists during protests and intimidation of the Austrian Public Broadcaster's staff. The Government has replied to all the alerts and one alert has been resolved<sup>190</sup>. Seven alerts have been published

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and it furthermore provides for the possibility of issuing a complaint by employees in the event of a violation of those provisions.

<sup>179</sup> See for example a statement by the ORF Editor's Council from 31 January 2022 on political side-agreements on appointments at the ORF, calling to depoliticise the appointment system at the ORF, Austrian Press Agency (2022), "Free ORF from political pressure".

<sup>180</sup> The Austrian Constitution prohibits the introduction of a state licensing requirement for the press, basic law on the General Rights of Nationals, article 13. For certain television services and certain audio-visual media services, there is a mere notification requirement, Private Radio Broadcasting Act, Section 6a, Federal Act on Audiovisual Media Services, section 9.

<sup>181</sup> Television services by means of terrestrial transmission, via satellite as well as the provision of radio channels requires a license, Private Radio Broadcasting Act, section 3 et sub., Federal Act on Audiovisual Media Services, sections 4 et sub.

<sup>182</sup> 2021 Rule of Law Report, Country Chapter on the rule of law situation in Austria, p. 11.

<sup>183</sup> Positions submitted during the public consultation: Access Info Europe (2021), legal analysis of the Austrian Freedom of Information Act; Forum Informationsfreiheit (2021), Opinion on the draft Freedom of Information Act.

<sup>184</sup> Information received from the Federal Chancellery in the context of the country visit to Austria.

<sup>185</sup> Austrian Parliament (2022), 'Federal Minister Edtstadler: ongoing talks related to the Freedom of Information Act'.

<sup>186</sup> According to Articles III and VI of the Recommendation Rec(2002)2 of the Committee of Ministers of the Council of Europe to member states on access to official documents, Member States should guarantee the right of everyone to have access, on request, to official documents held by public authorities and such requests should be dealt promptly.

<sup>187</sup> 2021 Rule of Law Report, Country Chapter on the rule of law situation in Austria, p. 11.

<sup>188</sup> 2022 Media Pluralism Monitor, country report for Austria, p. 10.

<sup>189</sup> 2020 Rule of Law Report, Country Chapter on the rule of law situation in Austria, p. 12 and 2021 Rule of Law Report, Country Chapter on the rule of law situation in Austria, p. 15.

<sup>190</sup> Council of Europe, Platform to promote the protection of journalism and safety of journalists.

on the Mapping Media Freedom platform<sup>191</sup>. As reported by MPM 2022, the indicator on journalistic profession, standards and protection is no longer classified as low risk and it has increased to a medium risk<sup>192</sup>. As noted by the MPM 2022 and stakeholders<sup>193</sup>, while the general standards of journalistic profession remain good, the safety of journalists is increasingly threatened, in particular by online harassment and intimidation. There have been several reports of journalists receiving threats and being harassed during protests against COVID-19 measures<sup>194</sup>; public service media journalists appeared to have been particularly targeted<sup>195</sup>. Stakeholders pointed to a growing use of legal threats to journalists, and to the recurring trend of journalists being personally insulted and discredited<sup>196</sup>.

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

Austria is a federal republic with a bicameral parliament, composed of the National Council (*Nationalrat*) and the Federal Council (*Bundesrat*). Legislative proposals can be submitted by the Government, by members of both chambers of parliament or by way of popular initiative<sup>197</sup>. The Constitutional Court carries out an ex-post constitutionality review of laws, which is possible both in concrete cases<sup>198</sup> and as an abstract review of a law, based on appeals by the federal or a regional Government or by a third of the members of either parliamentary chamber. Several different Ombudspersons contribute to upholding fundamental rights in different areas<sup>199</sup>.

**Stakeholders are now consulted on all draft laws under discussion in Parliament, but pre-parliamentary consultation processes still present challenges in practice.** As of 1 August 2021, the ‘parliamentary consultation procedure’ entered into force, which, as already noted in the 2021 Rule of Law Report<sup>200</sup>, allows stakeholders and citizens to submit comments on all legislative proposals regardless of their origin, as long as the parliamentary legislative process is ongoing<sup>201</sup>. All responses are accessible to the public on the Parliament’s website (in case of responses from individuals, only with their consent). The Parliament reports that the tool is

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<sup>191</sup> Mapping Media Freedom, country profile Austria.

<sup>192</sup> 2022 Media Pluralism Monitor, country report for Austria, p. 11.

<sup>193</sup> Contribution from CIVICUS for the 2022 Rule of Law Report; Contribution from the European Federation of Journalists for the 2022 Rule of Law Report; 2022 Media Pluralism Monitor, country report for Austria, pp. 11 and 22.

<sup>194</sup> Last year, following complaints over the attacks against journalists during ‘anti-corona’ demonstrations have led to the creation of a specific police “media contact” point for the protection of journalists during protests, Ministry of the Interior (2021), “Police implement media contact officer”.

<sup>195</sup> Contribution from CIVICUS for the 2022 Rule of Law Report.

<sup>196</sup> Contribution from CIVICUS for the 2022 Rule of Law Report; information received from Presse Club Concordia in the context of the country visit to Austria; 2022 Media Pluralism Monitor; country report for Austria, p. 11.

<sup>197</sup> This requires signatures by 100 000 voters or by one sixth each of the voters in three provinces. Input from Austria for the 2020 Rule of Law Report, p. 50.

<sup>198</sup> The review can take place ex-officio or on application by another court, an individual or a party to a case pending before an ordinary court of first instance.

<sup>199</sup> This includes the Ombudsperson Board, the Federal Disability Ombudsperson, the Ombudsperson for Equal Treatment and the Ombudsperson for Children and Youth.

<sup>200</sup> 2021 Rule of Law Report, Country Chapter on the rule of law situation in Austria, p. 16.

<sup>201</sup> Input from Austria for the 2022 Rule of Law Report, p. 26; Amendment to the Act on the National Council’s Rules of Procedure, Federal Law Gazette I No. 63/2021.

actively used<sup>202</sup> and the procedure has been welcomed by stakeholders as a positive step<sup>203</sup>. However, while a decree of the Federal Chancellery determines that consultation periods for draft laws in the pre-parliamentary process should be at least six weeks<sup>204</sup>, stakeholders expressed concern that consultation periods are often much shorter in practice and stakeholder involvement is sometimes purely formalistic<sup>205</sup>. The lack of comprehensive legislation on access to information also remains an impediment to transparency of the legislative process (see Section 3). In the meantime, the work on developing a strategic approach for public participation in the digital age<sup>206</sup> is continuing, with a number of workshops having been organised in March 2022 in view of the publication of a handbook on participation in the digital age in the third quarter of 2022<sup>207</sup>.

**Oversight of measures related to the COVID-19 pandemic, in particular by the Parliament and the Constitutional Court, has continued.** As noted in the 2021 Rule of Law Report<sup>208</sup>, restrictive measures in the context of the COVID-19 pandemic are subject to parliamentary validation by the Main Committee of the National Council, which met 22 times in 2021 for this purpose<sup>209</sup>. The Constitutional Court has also continued to exercise its oversight. As of February 2022, it has received around 700 complaints related to the COVID-19 pandemic measures, of which 500 have already been decided<sup>210</sup>, while administrative courts have also ruled on numerous COVID-19 related cases<sup>211</sup>. In most cases, the Constitutional Court found the measures to be constitutional and lawful<sup>212</sup>, with some exceptions (for example in two rulings of 15 December 2021 concerning *inter alia* restrictions for the hospitality sector, which were considered not to be sufficiently reasoned)<sup>213</sup>.

**On 1 January 2022, Austria had 6 leading judgments of the European Court of Human Rights pending implementation<sup>214</sup>.** While at that time Austria's rate of leading judgments from the past 10 years that remained pending was at 26%, the average time that the judgments

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<sup>202</sup> According to the Parliamentary Administration, between August 2021 and 15 June 2022, over 377 000 comments had been submitted through the platform.

<sup>203</sup> Franet (2022), Country research - Legal environment and space of civil society organisations in supporting fundamental rights – Austria, p. 3; Information received from Interessensvertretung gemeinnütziger Organisationen (IGO) in the context of the country visit to Austria.

<sup>204</sup> Decree of the Federal Chancellor on the principles for impact assessments for legislative and other initiatives, §9 (3), Federal Law Gazette I No. 489/2012.

<sup>205</sup> Contribution from the Supreme Court for the 2022 Rule of Law Report; Contribution from the Bar Association for the 2022 Rule of Law Report and information received from the Bar Association, the Supreme Court, IGO, Transparency International Austria, Forum Informationsfreiheit and Dokustelle Austria in the context of the country visit to Austria.

<sup>206</sup> 2021 Rule of Law Report, Country Chapter on the rule of law situation in Austria, pp. 16-17.

<sup>207</sup> Written information received from the Ministry of Arts, Culture, Civil Service and Sport in the context of the country visit to Austria.

<sup>208</sup> 2021 Rule of Law Report, Country Chapter on the rule of law situation in Austria, p. 16.

<sup>209</sup> Input from Austria for the 2022 Rule of Law Report, p. 29.

<sup>210</sup> Constitutional Court (2022), Constitutional Court will hear around 400 cases as of 28 February.

<sup>211</sup> Input from Austria for the 2022 Rule of Law Report, p. 29.

<sup>212</sup> See input from Austria for the 2022 Rule of Law Report, p. 27 et seq. for an overview of key rulings.

<sup>213</sup> Judgments of the Constitutional Court of 15 December 2021, V 229/2021, ECLI:AT:VFGH:2021:V229.2021 and V 560/2020, ECLI:AT:VFGH:2021:V560.2020.

<sup>214</sup> The adoption of necessary execution measures for a judgment by the European Court of Human Rights is supervised by the Committee of Ministers of the Council of Europe. It is the Committee's practice to group cases against a State requiring similar execution measures, particularly general measures, and examine them jointly. The first case in the group is designated as the leading case as regards the supervision of the general measures and repetitive cases within the group can be closed when it is assessed that all possible individual measures needed to provide redress to the applicant have been taken.

had been pending implementation was 4 years and 7 months<sup>215</sup>. This figure is influenced by 2 cases related to the breach of the right to a fair trial which had been pending for over 10 years, but have since been implemented<sup>216</sup>. On 1 July 2022, the number of leading judgments pending implementation remains 6<sup>217</sup>.

**The Ombudsperson Board has been re-accredited and has now obtained A-Status.** The Ombudsperson Board, functioning as the National Human Rights Institution (NHRI), previously accredited with B-Status, underwent re-accreditation by the sub-committee for accreditation of the Global Alliance of National Human Rights Institutions (GANHRI) in March 2022<sup>218</sup> and has now obtained A-Status<sup>219</sup>. In its decision<sup>220</sup>, the Sub-Committee on Accreditation of the Global Alliance of National Human Rights Institutions noted the amendments to the Ombudsperson Board's enabling laws since its last review in 2011. It further recommended to the Ombudsperson Board to advocate for a number of amendments to the appointment procedure of its leadership, emphasised the importance of ensuring pluralism in diversity in its membership and staff composition and encouraged it to enhance and formalise its working relationships with civil society organisations (CSOs) and human rights defenders. CSOs noted similar points in their submission for the re-accreditation process from October 2021<sup>221</sup>. The Ombudsperson Board has also continued to take an active role in the oversight of measures related to the COVID-19 pandemic and in its annual Report published on 4 May 2022 noted an increase of 32% in complaints in 2021 compared to 2020, mainly related to the COVID-19 pandemic<sup>222</sup>. A common challenge that the Board has seen emerging in this context is the lack of transparency and predictability of COVID-19 pandemic-related measures taken by the Government<sup>223</sup>.

**Civil society has continued to benefit from specific funding in the context of the COVID-19 pandemic and an overall strengthened dialogue with the Government.** Civic space in Austria continues to be considered as 'open'<sup>224</sup>. The specific funding for non-profit organisations in the context of the COVID-19 pandemic, which had been set up with a strong involvement of stakeholders<sup>225</sup>, has been prolonged several times, most recently until the first

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<sup>215</sup> All figures are calculated by the European Implementation Network and are based on the number of cases that are considered pending at the annual cut-off date of 1 January 2022. See the Contribution from the European Implementation Network for the 2022 Rule of Law Report, p. 26.

<sup>216</sup> Judgments of the European Court of Human Rights of 9 November 2006, *Stojakovic v. Austria*, 30003/02, had been pending since 2007 and has been implemented as of 8 March 2022; of 15 July 2010, *Mladoschovitz v. Austria*, 38663/06, had been pending since 2010 and has been implemented as of 8 March 2022.

<sup>217</sup> Data according to the online database of the Council of Europe (HUDOC).

<sup>218</sup> Contribution from the Austrian Ombudsperson Board for the 2022 Rule of Law Report.

<sup>219</sup> Report and Recommendations of the Virtual Session of the Sub-Committee on Accreditation (SCA), 14-25 March 2022,

<sup>220</sup> Report and Recommendations of the Virtual Session of the Sub-Committee on Accreditation (SCA), 14-25 March 2022, pp. 12-14.

<sup>221</sup> Notably, they recommend extending the scope of the human rights mandate of the Ombudsperson Board to economic, social and cultural rights; strengthening its role as a human rights coordinating body; introducing provisions and procedures aimed at safeguarding its pluralism and independence regarding the appointment procedure; and maintaining a regular exchange with civil society and stakeholders, Amnesty International Austria (2021), Joint civil society information to the GANHRI sub-committee on accreditation concerning the review of the Austrian Ombudsperson Board.

<sup>222</sup> Austrian Ombudsperson Board (2022), Annual Report 2021, Control of the Public Administration, p. 13.

<sup>223</sup> Information received from the Austrian Ombudsperson Board in the context of the country visit to Austria.

<sup>224</sup> Rating given by CIVICUS. Ratings are on a five-category scale defined as: open, narrowed, obstructed, repressed and closed.

<sup>225</sup> 2021 Rule of Law Report, Country Chapter on the rule of law situation in Austria, p. 18.

quarter of 2022<sup>226</sup>. Until March 2022, over EUR 700 million had been distributed in around 47 000 disbursements<sup>227</sup>. Furthermore, civil society reports on positive initiatives taken by the Government to ensure civil society involvement in policy-making procedures, although this is not always consistent across policy areas<sup>228</sup>. Following up on a commitment in the coalition agreement<sup>229</sup>, in spring 2022, the Government re-activated an advisory working group on donations for civil society organisations which had not met since 2017. Stakeholders consider in particular that the scope of organisations covered by the tax exemptions should be extended to CSOs in the areas of human rights, civil and political rights, democracy, transparency and adult education<sup>230</sup>.

**Concerns have been raised over the impact of recently adopted legislation on the operating space for civil society organisations.** As noted in the 2021 Rule of Law Report<sup>231</sup>, stakeholders have raised concerns over the impact of a package of anti-terrorism laws as well as amendments to legislation on legal personality of religious associations and the so-called Islam Law<sup>232</sup> on freedom of association and the operating space for civil society, specifically for Muslim organisations<sup>233</sup>. Through a letter from August 2021, several UN Special Rapporteurs on Human Rights<sup>234</sup> entered into a dialogue with Austria, raising concerns over the legislation's impact on freedom of association, in particular regarding the introduction of the notion of 'religiously motivated extremist association' as a basis for criminalisation, including in view of the vagueness of the terms used<sup>235</sup>. A stakeholder has also reported that the application of such legislation in practice,<sup>236</sup> can be burdensome on and, together with other measures affecting specifically Muslim associations, could affect the active engagement of such organisations.<sup>237</sup> In January 2022, Austria submitted a number of comments in reply to the letter by the UN Special Rapporteurs, stressing that it considers that the legislation is proportionate and in line with Austria's human rights obligations and that it does not discriminate on the basis of religion. As regards the criticism of the vagueness of the terms used, Austria provides a number of clarification on their interpretation, which are also set out in the explanatory memorandum of the law<sup>238</sup>.

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<sup>226</sup> IGO (2022), NGO support fund: Applications for Q4 2021 possible as of 21 February 2022.

<sup>227</sup> Updated data available on the website of the non-profit-organisation support fund: <https://npo-fonds.at>.

<sup>228</sup> Franet (2022), Country research - Legal environment and space of civil society organisations in supporting fundamental rights – Austria, p. 5; Contribution from CIVICUS for the 2022 Rule of Law Report, p. 19.

<sup>229</sup> Government programme 2020-2024, p. 15.

<sup>230</sup> See § 4a of the Income Tax Law for the list of organisations benefiting from tax exemption. See contributions from Forum Informationsfreiheit for the 2020 and 2021 Rule of Law Reports.

<sup>231</sup> 2021 Rule of Law Report, Country Chapter on the rule of law situation in Austria, p. 18.

<sup>232</sup> Anti-terrorism law (*Terror-Bekämpfungsgesetz*) and Revision of the Federal law on the legal personality of religious associations and of the Islam Law 2015.

<sup>233</sup> Amnesty International Austria (2021), Position Paper on the draft anti-terrorism law. European Centre for Non-Profit Law (2021), Comments on the Draft Federal Anti-Terrorism Act in Austria.

<sup>234</sup> The Special rapporteurs on the promotion and protection of human rights and fundamental freedoms while countering terrorism; on the promotion and protection of the right to freedom of opinion and expression; on the rights to freedom of peaceful assembly and of association; on minority issues on freedom of religion.

<sup>235</sup> Note verbale OL AUT 2/2021 of the mandates of the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism; the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression; the Special Rapporteur on the rights to freedom of peaceful assembly and of association; the Special Rapporteur on minority issues and the Special Rapporteur on freedom of religion or belief (24 August 2021).

<sup>236</sup> Including the requirements for religious organisations under the Austrian 'Islam Act' (*Islamgesetz*).

<sup>237</sup> Contribution from Dokustelle Austria for the 2022 Rule of Law Report.

<sup>238</sup> Austrian Permanent Mission to the UN, Reply of the Government of Austria to Note Verbale OL AUT 2/2021 (4 January 2022).



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

\* *The list of contributions received in the context of the consultation for the 2022 Rule of Law report can be found at [https://ec.europa.eu/info/publications/2022-rule-law-report-targeted-stakeholder-consultation\\_en](https://ec.europa.eu/info/publications/2022-rule-law-report-targeted-stakeholder-consultation_en).*

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

The Commission services held virtual meetings in February and March 2022 with:

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

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

- Amnesty International
- Article 19
- Civil Liberties Union for Europe
- Civil Society Europe
- European Centre for Press and Media Freedom
- European Civic Forum
- European Federation of Journalists
- European Partnership for Democracy
- European Youth Forum
- Free Press Unlimited
- Human Rights Watch
- ILGA Europe
- International Federation for Human Rights (FIDH)



- International Press Institute
- Open Society European Policy Institute (OSEPI)
- Osservatorio Balcani e Caucaso Transeuropa
- Philea
- Reporters Without Borders
- Transparency International Europe