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Groupe d'États contre la corruption

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FOURTH EVALUATION ROUND

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

COMPLIANCE REPORT

AUSTRIA

Adopted by GRECO at its 81th Plenary Meeting
(Strasbourg, 3-7 December 2018)

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I. INTRODUCTION

1. The Compliance Report assesses the measures taken by the authorities of Austria to implement the recommendations issued in the Fourth Round Evaluation Report on Austria which was adopted at GRECO's 73rd Plenary Meeting (21 October 2016) and made public on 13 February 2017, following authorisation by Austria ([GrecoEval4\(2016\)1](#)). GRECO's Fourth Evaluation Round deals with "Corruption prevention in respect of members of parliament, judges and prosecutors".
2. As required by GRECO's Rules of Procedure, the authorities of Austria submitted a Situation Report on measures taken to implement the recommendations. This report was received on 2 July and 1 October 2018 and served, together with the information submitted subsequently, as a basis for the Compliance Report. Additional information and comments regarding the situation of parliamentarians were also submitted directly to GRECO by one of the parliamentary groups.
3. GRECO selected the Russian Federation (PA) and Liechtenstein (JUD) to appoint Rapporteurs for the compliance procedure. The Rapporteurs appointed were M Aslan YUSUFOV, on behalf of the Russian Federation and a member of the delegation of Liechtenstein. They were assisted by GRECO's Secretariat in drawing up the Compliance Report.
4. The Compliance Report assesses the implementation of each individual recommendation contained in the Evaluation Report and establishes an overall appraisal of the level of the member's compliance with these recommendations. The implementation of any outstanding recommendation (partially or not implemented) will be assessed on the basis of a further Situation Report to be submitted by the authorities 12 months after the adoption of the present Compliance Report.

II. ANALYSIS

5. GRECO addressed 19 recommendations to Austria in its Evaluation Report. Compliance with these recommendations is dealt with below.

Corruption prevention in respect of members of parliament

Recommendation i.

6. *GRECO recommended to ensure through appropriate, predictable and reliable rules that legislative drafts emanating both from government and from parliament are processed with an adequate level of transparency and consultation including appropriate timelines allowing for the latter to be effective.*
7. The authorities indicate that three major series of measures have been taken in this respect.
8. Firstly, by a resolution 200/E¹ adopted by the National Council on 16 May 2017, the **extended consultation procedure** was introduced with a view to increasing public participation in consultations (and thus the public acceptance of legal norms) as well as to raising the public awareness on the logic and objective of amendments emanating from the executive branch of power. Citizens and institutions can thus submit opinions on all ministerial / governmental proposals published on the Parliament's website. As for bills tabled by parliament members, a public consultation is still subject to committee's decision and thus they can be commented only in case

¹ Committee report AB 1622 d. B., XXV. GP, see: https://www.parlament.gv.at/PAKT/VHG/XXV/I/I_01622/index.shtml

such decision has been taken. Additionally, individual opinions posted on the website can be supported through a declaration of endorsement ("liking"). As a rule, a consultation process on a legislative proposal takes place before the latter is introduced to the National Council. If a proposal has already been introduced, a parliamentary committee can decide to initiate a public consultation on the draft. The following innovations have been introduced:

- a) a brief explanation (one A4 page) is published via a service platform (HELP.gv.at) for each ministerial proposal before it goes to Parliament, and later on also on the Parliament's website (www.parlament.gv.at/PAKT/MESN) on the page dedicated to the proposal;
 - b) easier public access: individuals, organisations and other legal persons who have not been directly invited to participate in the consultation procedure also have the right to submit opinions on a ministerial proposal in the course of the extended consultation procedure or on a parliamentary proposal within the framework of a public consultation initiated by a parliamentary committee. Opinions on a legislative proposal can either be entered directly in a text field on the Parliament's website (max. 2,500 characters) or transmitted by email. In the case of ministerial proposals, opinions are also communicated to the ministry concerned. Provided the author has given his/her consent, the opinion is published on the Parliament's website under the author's name (otherwise, it is published only on the Parliament's intranet);
 - c) suggestions received and incorporated in a governmental draft during the consultation process are to be indicated in the explanatory note. This serves to increase the transparency of changes made to ministerial proposals before they become government bills, and to facilitate the citizens' follow-up on the impact of their opinions.
9. Secondly, the above resolution of May 2017 also established **crowd sourcing as a pilot project**, concerning important future legislative proposals on general issues (drawing inspiration from Finland). Citizens will be invited to make specific suggestions for new laws or amendments even before a legislative draft is developed, by means of a special website / platform intended for interactive communication and information exchange. It was launched on 26 October 2018². On the basis of this pilot project, new forms of debate and citizen participation in parliamentary matters are to be developed.
10. Thirdly, **text comparisons also for private members' bills**: to date, text comparisons showing the version in force and the proposed amendments to a law have only been made available for government bills. To facilitate parliamentary work and the public's understanding also as regards parliamentary proposals, the Parliamentary Administration has been providing since June 2018 comparative documents (within a short time span) on the Parliament's website. The document is subdivided into three columns, showing the current legal text, the proposed amendments and the proposed new text (with insertions and deletions highlighted in colour). The authors of such proposals are not identified, only the sponsors of the motion are. No is there a mention as to whether the text was actually drafted by the sponsors of the motion or if other persons contributed to the draft, in the above table or in accompanying documents, meeting reports etc.
11. **Increase in the number of committee-initiated public consultation procedures**: although as pointed out earlier there is still no legal obligation to subject bills introduced by members of parliament to a consultation procedure after

² www.crowdsourcing.parlament.gv.at

the adoption of resolution 200/E, the authorities indicated that the number of such consultations initiated on the basis of a committee decision has already increased as a result of the above-mentioned new policy: during the present XXVIth legislative period (since 9 November 2017 up until 18 June 2018, three public consultation procedures were conducted (five in total during the entire XXVth legislative period (29 October 2013 - 8 November 2017), for a total of 87 bills presented by private members in that time span.

12. GRECO takes note of the above initiatives. It welcomes the new policy of extended consultation procedures. The increased use of comparative texts is also a positive development as it addresses some of the concerns in the Evaluation Report regarding the occasional unclear logic and objectives of certain amendments which were possibly dictated by hidden interests. However, the reported measures are insufficient to address the various underlying concerns which had led to this recommendation. There is still a need to provide in law or regulations for a proper legislative footprint mechanism applicable to the broadest range of legislative initiatives. This should allow understanding the evolution of texts and the origin of amendments including their authors, irrespective of the latter consenting or not to the publicity of such information. Adequate timeframes for consultation would also need to be provided for and complied with in practice.³
13. Moreover, the new extended consultation procedure which has become mandatory for all governmental initiatives remains only optional for the Parliament, since the latter is to decide ad hoc on its application to a legislative initiative originating from its own members. The number of public consultations decided ad hoc by the parliamentary committees is reportedly increasing but the figures provided by Austria just confirm that so far a vast majority of parliamentary bills still do not involve any public consultations.
14. GRECO notes with interest that one of the political groups, seeking broader compliance with the present recommendation, submitted in the end of June 2018 a motion for a constitutional amendment which would guarantee that both parliamentary and governmental initiatives undergo a public consultation process with adequate timelines⁴. In conclusion, GRECO urges Austria to address this recommendation more explicitly and in its various elements.
15. GRECO concludes that recommendation i has been partly implemented.

Recommendations ii to viii.

16. *GRECO recommended:*
 - *(i) that a code of conduct (or ethics) be developed for members of parliament and communicated to the public; ii) ensuring there is a mechanism both to promote the code and to provide advice and counselling to MPs, but also to enforce such standards where necessary. (recommendation ii)*
 - *(i) to clarify the implications for members of parliament of the current system of declarations of income and side activities when it comes to conflicts of*

³ At the time of the visit, it was a common practice to leave only 10 days for consultations although parliamentary guidelines reportedly provided for a period of six weeks (which can also be too short depending on the substance-matter concerned)

⁴ See [306/A, XXVI. GP](#): "Article 41a – Before its adoption by the National Council, every legislative proposal shall undergo a public review process with adequate timeframes to enable all those entitled to participate according to article 41 para. 2 as well as public bodies concerned and private institutions, for them to provide their views. Where a proposal submitted by the Federal Government has not already undergone such a review process, the process shall be initiated by the National Council. The details of this parliamentary review process shall be determined in the Federal Act on the rules of procedure of the National Council".

interest not necessarily revealed by these declarations; and in that context (ii) to introduce a requirement of ad hoc disclosure when a conflict between specific private interests of individual MPs may emerge in relation to a matter under consideration in parliamentary proceedings – in the plenary or its committees – or in other work related to their mandate. (recommendation iii)

- that internal rules and guidance be provided within parliament on the acceptance, valuation and disclosure of gifts, hospitality and other advantages, including external sources of support provided to parliamentarians, and that compliance by parliamentarians be properly monitored, consistent with the rules on political financing. (recommendation iv)*
- that the legal framework applicable to lobbying be reviewed so as to (i) improve the transparency of such activities (also for the public) and the consistency of requirements including the legal prohibition for parliamentarians themselves to act as lobbyists, and to ensure proper supervision of these declaratory requirements and restrictions (ii) to provide for rules on how members of parliament have contacts with lobbyists and other persons seeking to influence parliamentary work. (recommendation v)*
- (i) that the existing regime of declarations be reviewed in order to include consistent and meaningful information on assets, debts and liabilities, more precise information on income (ii) that consideration be given to widening the scope of the declarations to also include information on spouses and dependent family members (it being understood that such information would not necessarily need to be made public). (recommendation vi)*
- (i) that the future declarations of income, assets and interests be monitored by a body provided with the mandate, the legal and other means, as well as the level of specialisation and independence needed to perform this function in an effective, transparent and proactive manner and (ii) that such a body be able to propose further legislative changes as may be necessary, and to provide guidance in this area. (recommendation vii)*
- that infringements of the main present and future rules in respect of integrity of parliamentarians, including those concerning the declaration system under the Act on incompatibilities and transparency, carry adequate sanctions and that the public be informed about their application. (recommendation viii)*

17. The authorities indicate that some consultations took place between December 2016 and May 2017 on the implementation of the GRECO recommendations but that the call for early elections in the autumn of 2017 and the ensuing electoral campaign have interrupted this early work. After the newly elected National Council met for its constituent sitting in November 2017 in a significantly different political composition, it was subsequently agreed to resume work. A working group comprising members of all parliamentary groups, supported by the Parliamentary Administration was set up specifically to work on the recommendations issued by GRECO. So far, the following can be mentioned:

- the Parliamentary administration has prepared a draft code of conduct, which was amended a few times at the request of the working group and starting in October 2018, it has offered training at two sessions on general compliance and the acceptance of benefits (attended by 20 MPs on a voluntary basis); a compliance counselling desk will be established in the first half of 2019 and the underlying concept has already been accepted – advice will be made available by e-mail or through a personal meeting (rec. ii and iv);

- a draft law dealing with personal concerns of conflicts of interest is being prepared with a view to its future application – once adopted – by the immunity and incompatibility committees (rec iii, second element);
 - discussions are going on as regards the other recommendations.
18. GRECO takes note of the above. The implementation of the recommendations concerning parliamentarians is still on the Parliament's agenda after the last elections held in the autumn of 2017. For the time being, no tangible results have been achieved, with the exception of recommendation ii for which some developments considered together show that it has been partly implemented (introduction of training, decision to establish a function of confidential counselling, elaboration of a code of conduct). The implementation of recommendation iv (in particular as far as guidance through training and counselling is concerned) is also in progress and GRECO is looking forward to receiving more specific information. Overall, GRECO urges Austria to increase its efforts with a view to implementing rapidly all the above recommendations.
19. GRECO concludes that recommendation ii has been partly implemented and that recommendations iii to viii have not been implemented.

Corruption prevention in respect of judges

Recommendation ix.

20. *GRECO recommended that i) adequate legislative, institutional and organisational measures be taken so that the judges of federal and regional administrative courts be subject to appropriate and harmonised safeguards and rules as regards their independence, conditions of service and remuneration, impartiality, conduct (including on conflicts of interest, gifts and post-employment activities), supervision and sanctions; ii) the Länder be invited to support those improvements by making the necessary changes which fall within their competence.*
21. The authorities report that the process of implementation of this recommendation is on-going. As regards specifically the second part of the recommendation, the 4th Round Evaluation Report on Austria including its recommendations and their possible implementation was on the agenda of the meetings of the Coordinating Body for the Fight against Corruption of 2 December 2016, 10 March 2017, 27 November 2017 and 27 June 2018. The Länder are members in the Coordination body, and their representatives were present during each of these meetings. In a separate set of information submitted to GRECO on 1st October last, the Länder and the Conference of the Presidents of the Administrative Courts (which include the Federal Administrative Court as well as the regional administrative courts) take the view that recommendation ix. is already fully implemented with respect to both the federal administrative court and the regional administrative courts. Their long combined statement does not point out any new initiatives, though. The first part of the paper refers to the relevant provisions of the Federal Constitution and to the differences across Austria. The general service regulations for civil servants apply to the administrative judges and only Vienna has adopted specific service legislation for its administrative judges, covering the career, disciplinary aspects and performance appraisals. The paper reiterates the persistent differences in the remunerations of administrative judges across the country and the existing variations regarding the guarantees of independence: the presidents of the federal and local courts may be given instructions by the executive branch of power except in Burgenland, upper Austria, Styria and Vorarlberg.
22. In the second part, the paper refers to the following: 1. employment is always based on (public) service law provisions and there are no contractual employment relations;

2. administrative judges of the Länder benefit from the constitutional guarantees of independence and non-removability; 3. the conditions of service and remuneration are regulated in service rules and the salaries are always adequate even if there are variations across Austria; 4. It reiterates the background condition to become a judge, pointing out that the judges are meant to bring their experience with them and having attended basic training is a prerequisite for being appointed (hence the absence of initial training, but in-service training is provided by the Academy of Administrative Jurisdiction and annual programmes already exist); 5. the conditions for appointments: all posts enjoy life-long tenure and vacancies are advertised but the Conference of the presidents of administrative courts disagrees with the need to involve selection panels more broadly in career decisions with regard to judges, including for the chairs and deputy chairs; 6. career opportunities exist across the country and between the Länder and the federal courts, contrary to the findings of the Evaluation Report; 7. the domestic legal system already contains various rules on the impartiality and conduct (in the Federal Administrative Court Procedure Act, in the General Administrative Procedure Act); post-employment restrictions and rules on accessory activities are provided for in the Länder's respective laws on the administrative courts in combination with their general civil service laws; 8. these laws also regulate already the supervision and disciplinary sanctions; 9. rules of procedure are regulated on the basis of the guidelines of the Federal Constitution – Art. 136, para. 5); 10. hearings, as a rule, are public based i.a. on the direct applicability of article 6 ECHR in combination with the existing provisions of the Federal Act on Administrative Proceedings (see also recommendation xiii).
23. Finally, the existing code of conduct for all public officials (including federal officials as well as Länder officials) "Die VerANTWORTung liegt bei mir" ("The RESPONSibility lies with me") is currently under review by the Coordinating Body for Combating Corruption involving all stakeholders under the leading competency of the Federal Ministry of Public Service and Sports.
24. GRECO takes note of the above information. It appreciates the assurances given that administrative judges are always hired for an indefinite term (and not on a contractual relationship) under the applicable public law rules at the federal and Länder level. It is also pleased to see that the code of conduct for all federal and Länder officials is being reviewed. That said, there seems to be no consolidated position as yet in Austria, regarding the necessity to pursue the reforms with regard to the administrative court judges. Whereas the authorities claim that the implementation of the present recommendation is on-going, the joint position paper submitted by the Länder and the Conference of chairpersons of the administrative courts considers that the objectives of the present recommendation are already met. Overall, GRECO is disappointed that no further measures have been taken to address the specific underlying concerns of this recommendation, presented in paragraph 81 of the Fourth Round Evaluation Report. It had been pointed out that the wide-ranging reform of the administrative courts in 2014 was seen by many as a process which still needed to be pursued. In this respect, GRECO notes that the information submitted by the Länder and the conference of presidents refer to important issues such as the submission of a majority of court presidents to instructions of the executive branch of power (concerning administrative matters). Likewise, unions continue to call for the introduction of more robust rules, career systems, conditions of service and so on, which would be specific to the administrative court judges⁵. In November 2017, the Consultative Council of European Judges (CCJE) in its report on "Judicial independence and impartiality in the Council of Europe member States in

⁵ <https://uvsvereinigung.files.wordpress.com/2017/10/agenda-vg-2022.pdf>
<https://uvsvereinigung.wordpress.com/2017/10/16/agenda-verwaltungsgerichtsbarkeit-2022-1/>
<https://uvsvereinigung.wordpress.com/2017/10/17/agenda-verwaltungsgerichtsbarkeit-2022-2/>

2017” pointed to a series of gaps concerning Austrian administrative judges⁶, echoing also in this the Association of European Administrative Judges⁷.

25. GRECO notes that this has also prompted a political group to submit a parliamentary motion on 26 September 2018, calling upon the government to prepare new legislation, also in the light of recent controversies and GRECO’s recommendations⁸. The risk of political interference remains a reality in Austria, and there have been cases where for instance the head of the local government’s cabinet was reportedly sponsored politically to become the chair of the higher administrative court – the call for applications even set an upper age limit of 40⁹ (appointments are also discussed hereinafter, under other recommendations). GRECO therefore encourages Austria to resume the discussion with a view to fully implement this recommendation. Notwithstanding the above, the second part of the recommendation has been implemented since the Länder were involved in a series of discussions held between December 2016 and June 2018.
26. GRECO concludes that recommendation ix has been partly implemented.

Recommendation x.

27. *GRECO recommended that the recruitment requirements be increased and formalised for judges when they are to become candidate-judges (Richteramtsanwärter) and administrative court judges, and that this includes proper integrity assessments as well as objective and measurable criteria on professional qualifications to be applied by the independent selection panels involved.*
28. The authorities report that the work programme of the current government for 2017 – 2022¹⁰ aims at strengthening transparency and objectivity in the selection of judges, by requiring a modern, transparent and objective procedure based on objective criteria of professional qualification.
29. After the elections of 2017, the Ministry of Justice became the Ministry of Constitution, Reforms, Deregulation and Justice and its portfolio now includes explicitly matters related to the Federal Administrative Court, in addition to those concerning the ordinary courts. The harmonisation of rules (on recruitment) across the various courts has thus been facilitated. A revision of the rules is currently under way in conjunction with the Federal Ministry of Public Service and Sports.
30. Applicants for becoming candidate-judges have to undergo an integrity assessment and only candidates with no criminal record can be appointed judges.
31. GRECO notes with interest that part of the present recommendation is explicitly addressed in the current governmental programme for the years 2017-2022. For the time being, and in the absence of tangible new developments, GRECO cannot conclude that this recommendation has been implemented, even partly.
32. GRECO concludes that recommendation x has not been implemented.

Recommendation xi.

⁶ <https://rm.coe.int/2017-report-situation-of-judges-in-member-states/1680786ae1>

⁷ <http://www.aeaj.org/media/files/2017-09-03-60-Report-CCJE.PDF>

⁸ https://www.parlament.gv.at/PAKT/VHG/XXVI/A/A_00348/index.shtml

⁹ <https://www.bvz.at/burgenland/politik/ausschreibungs-streit-grauszer-gericht-aus-der-partei-politik-raushalten-manfred-grauszer-christoph-wolf-106355581>

<https://uvsvereinigung.wordpress.com/2018/08/10/>

¹⁰ Note by the Secretariat: see pp 41 and 50 of the programme ([link](#))

33. *GRECO recommended that staff panels be involved more broadly in the selection and career evolution of ordinary and administrative court judges, including the presidents and deputy-presidents, and that the proposals of the panels become binding for the executive body making appointments.*
34. The authorities indicate that in 2017 the Federal Ministry of Justice (since 2018 it is the Federal Ministry of Constitutional Affairs, Reforms, Deregulation and Justice) elaborated a comprehensive draft bill for an amendment to the Federal Service Act for Judges and Public Prosecutors dealing with the appointment procedure concerning these two categories of officials. The draft was submitted for comments to the Association of Austrian Judges, the Association of Austrian Prosecutors, the Presidents of the Supreme Court and of the four higher regional courts, the Prosecutor General and the four senior public prosecution offices. At a later stage, the draft will be examined by the Federal Ministry for Public Service and Sports.
35. Moreover, consideration is being given to amending the appointment procedure for the President and the two Vice Presidents of the Supreme Court.
36. The work programme of the current government for 2017-2022 calls for increased reasoning obligations in relation to appointment proposals for the judges and prosecutors, as well as for the mandatory consultation of representatives of other professional groups.
37. GRECO notes that legislation is being prepared by the ministry responsible for justice with a view to addressing the content of this recommendation. However, as no specific information was provided on the content of the draft and as consultations are still on-going on its content, this recommendation cannot be considered to have been implemented, even partly. As indicated under recommendation ix, other bodies also call for improvements as regards the selection/appointment of judges, and certain courts have been a source of controversies.
38. GRECO concludes that recommendation xi has not been implemented.

Recommendation xii.

39. *GRECO recommended that a system of periodic appraisals be introduced for judges, including the presidents of the courts, and that the results of such appraisals be used in particular for decisions on career progression.*
40. The authorities indicate that the draft comprehensive bill mentioned before is also dealing with the appraisal of judges and prosecutors.
41. As far as administrative courts are concerned it should be noted that an appraisal system already exists but the only marks are "negative" or "positive" (there is no further distinction), as the Conference of the Presidents of the Administrative Courts considers this to be a safeguard for the judges' independence.
42. GRECO notes that the draft bill prepared by the Federal Ministry of Constitution, Reforms, Deregulation and Justice is reportedly addressing some of the objectives of the present recommendation. However, because of the early stage of the process, GRECO cannot consider this recommendation as having been implemented, even partly.
43. GRECO concludes that recommendation xii has not been implemented.

Recommendation xiii.

44. *GRECO recommended that the publicity of hearings in administrative matters be clearly guaranteed as a general rule for all administrative courts, with a limited number of exceptions determined by law where hearings can be held behind closed doors.*
45. The authorities recall that section 24 of the Federal Act on the procedure of administrative courts¹¹ states the obligation of the court to hold a public debate at the request of a party to the proceedings, or if the court itself deems it necessary. At the same time, the exceptions to the holding of a debate and those concerning the publicity of such a debate contained in section 24 and section 25 must be interpreted narrowly. In the end, there is no real difference between the above rules applicable to general subject-matters and those of section 44 which impose – as a rule – the holding of a public debate in administrative proceedings involving a penal matter (“The administrative court shall conduct a public debate”). These provisions must be read in conjunction with article 6 of the European Convention on Human Rights, which is directly applicable in Austria and which guarantees the publicity of hearings except for specific (and very restrictive) reasons.
46. GRECO takes note of the above information. It welcomes the assurances provided by the Austrian authorities that section 24 of the Federal Act on the procedure of administrative courts must be interpreted narrowly, especially in the light of article 6 of the European Convention on Human Rights – right to a fair (and public) trial. And that as a result, the principle of public hearings largely prevails in practice. It would therefore appear that this recommendation has lost most of its relevance. GRECO also encourages Austria to avoid in future that further exceptions are provided for in administrative laws other than the Federal Act on the Procedure of Administrative Courts¹².
47. GRECO concludes that recommendation xiii has been dealt with in a satisfactory manner.

Recommendation xiv.

48. *GRECO recommended (i) to ensure that all relevant categories of judges, including lay judges, are bound by a Code of conduct accompanied by, or complemented with appropriate guidance and (ii) that a mechanism is in place to provide confidential counselling and to promote the implementation of the rules of conduct in daily work.*
49. The authorities report that a working group chaired by the head of the Compliance Department of the Federal Ministry of Constitution, Reforms, Deregulation and Justice has elaborated a draft code/guidelines for all justice officials/employees, including judges and prosecutors (the draft currently comprises 32 pages). It deals with gifts, accessory/secondary activities and professional secrecy, among other subject matters. Consultations took place and following comments collected until mid-March 2018, the draft was revised. The above-mentioned Compliance Department has also drafted a booklet (eight pages) containing the basic guidelines for the justice officials’ conduct. It provides a quick outline of the relevant requirements and should be considered as a supplement to the full version of the code/guidelines.
50. Both drafts were forwarded to the members of the working group as well as to the Secretary General of the Federal Ministry of Constitution, Reforms, Deregulation and

¹¹ <https://www.ris.bka.gv.at/GeltendeFassung.wxe?Abfrage=Bundesnormen&Gesetzesnummer=20008255>

¹² An earlier version of the draft act on the development of Austria’s economy, which is currently discussed, contained such an exception; see article 12 para 3 of the text published at: https://www.ris.bka.gv.at/Dokumente/Bequt/BEGUT_COO_2026_100_2_1541450/BEGUT_COO_2026_100_2_1541450.html

Justice for comments in May 2018. After that the drafts shall be sent out to all justice officials for comments.

51. In May 2018 a compliance webpage was created on the intranet, accessible to all justice officials, for the purpose of preparing a dedicated internal communication related to measures for promoting integrity and corruption prevention. Officials may find relevant information (e.g. Code of Conduct for Prison Staff), including the state of current compliance measures, as well as contact persons for compliance questions. These are the head of the Compliance Department (see also rec. xvi hereinafter), who is appointed Chief Compliance Officer (a person with the rank of Chief Prosecutor), assisted by another person (a judge assigned to the ministry). Both have completed a one-week training course organised by the Federal Bureau of Anti-Corruption – BAC¹³) The Department reports directly to the head of the ministry. In addition to the tasks described under rec. xvi, the department offers non-binding advice on all compliance issues. In future, lay judges will also have access to the relevant information and to the advice.
52. GRECO notes that in respect of the first part of the recommendation, a code of conduct and some supporting documentation are being prepared. GRECO is looking forward to the completion of the process and to receiving a copy of the drafts so as to assess the pertinence of their content and whether all relevant categories of judges are concerned, including lay judges. The first part of the recommendation has been partly implemented. As for the second part of the recommendation, GRECO takes note of the designation of two persons who can provide advice and guidance on ways to comply with the content and requirements of the code of conduct. However, since these are the persons in charge of the overall compliance and control function assigned to the Compliance Department discussed under recommendation xvi, GRECO has misgivings about the possibility for practitioners to get support without fear of judgment or penalty. This would need to be clearly addressed and guaranteed in law or regulations.
53. GRECO concludes that recommendation xiv has been partly implemented.

Recommendation xv.

54. *GRECO recommended that a restriction on the simultaneous holding of the office of a judge and that of a member of a federal or local executive or legislative body be laid down in law.*
55. The authorities indicate that in the context of the intended amendments to the Federal Service Act for Judges and Public Prosecutors (see recommendation xi.), it is planned to introduce for (ordinary) judges and prosecutors a restriction on the simultaneous holding of executive or legislative functions along the lines of what section 208 of the Act already provides for in respect of the Federal Administrative Court judges. The draft amendments were submitted to the Public Service Union for comments and they will then be submitted to Parliament.
56. GRECO takes note of the above. New rules for judges and prosecutors on the simultaneous holding of executive or legislative functions were already under discussion when the Evaluation Report was adopted. GRECO is looking forward to the final adoption of the reported intended amendments to the Federal Service Act for Judges and Public Prosecutors. For the time being, these are still at an early stage of adoption and GRECO cannot conclude that there have been tangible, new developments.
57. GRECO concludes that recommendation xv has not been implemented.

¹³ For further information, see <https://integritaet.info/ausbildung>

Recommendation xvi.

58. *GRECO recommended that the persons responsible for the implementation and supervision of the various obligations laid upon judges - notably on professional secrecy, gifts, accessory activities and management of conflicts of interest – be properly identified and known to all, and that they be required to introduce the proper procedures needed for these obligations to become effective.*
59. The authorities report that the following measures are or have been undertaken by the Compliance Department of the Federal Ministry of Constitution, Reforms, Deregulation and Justice:
- Drawing up of a strategy for the implementation of a Compliance Management System for the judiciary (including the formulation of goals, the stipulation of priorities as well as proposing and elaborating concrete measures in working groups).
 - Creation of working groups dealing with guidelines and data security are elaborating measures and/or exploring possible risks, which will serve to propose relevant measures.
 - As indicated earlier, in May 2018 a compliance webpage was created on the intranet, accessible to all justice officials, for the purpose of preparing a dedicated internal communication related to measures for promoting integrity and corruption prevention. Officials may find relevant information (e.g. Code of Conduct for Prison Staff), including the state of current compliance measures, as well as contact persons for compliance questions. It is planned that lay judges too, will benefit from these measures in future
 - In another working group (together with other competent departments of the Federal Ministry for Constitution, Reforms, Deregulation and Justice) preparations for determining reporting procedures and processes related to accessory/secondary employment/activities have been undertaken.
 - In their latest comments, the authorities also explain that one of the tasks of the Compliance Department is to ensure that all necessary steps are taken by the competent departments of the ministry to investigate violations.
60. GRECO welcomes the ambitious plans concerning the introduction of a Compliance Management System such as the one described above. GRECO recalls the specific weaknesses identified in the Evaluation Report (paragraph 130), especially the fact that the concept of “service authority” was never clearly translated into adequate practical arrangements or concrete indications for determining the competent body/person, depending on the subject matter: the administrative service of the court or of the ministry, the president of the court, the immediate supervisor etc. For the time being, concerning the specific underlying concerns of this recommendation, it would appear that the implementing measures are at such an early stage (strategy definition, working group discussions) that this recommendation cannot be considered as implemented, even partly.
61. GRECO concludes that recommendation xvi has not been implemented.
Corruption prevention in respect of prosecutors

Recommendation xvii.

62. *GRECO recommended that the statute of prosecutors be further approximated with the one for judges recommended in the present report, particularly with regard to decisions on appointments and career changes including for the highest functions (the role of the executive should be limited to the formal appointment and should not include the choice of the candidate), as well as with regard to periodic appraisals for*

all prosecutors and the incompatibility of their function with a political function in the executive or legislature.

63. The authorities refer to what has been said earlier in respect of recommendations xi and xv concerning the elaboration of a comprehensive draft bill carrying amendments to the Federal Service Act for Judges and Public Prosecutors (which will reform the career system), the appraisal system and the introduction of a ban on parallel activities in an executive or legislative function etc. The work programme of the current government for 2017 – 2022 calls for eliminating obstacles to career bridges between the professions of judges, prosecutors and (private) lawyers as well as for promoting joint training modules.
64. GRECO takes note of the above information and that the governmental work programme for 2017-2022 is reportedly taking into account the above recommendation. For the time being, the new initiatives which also concern the prosecutors are at an early stage (see recommendations xi and xv) and overall, GRECO cannot conclude that this recommendation has been implemented, even partly.
65. GRECO concludes that recommendation xvii has not been implemented.

Recommendation xviii.

66. *GRECO recommended (i) that all prosecutors are bound by a code of conduct accompanied by, or complemented with appropriate guidance and (ii) that a system be put in place to provide confidential counselling and to support the implementation of the code in daily work.*
67. The authorities refer to the information supplied before, especially in respect of recommendation xiv. A draft code/guidelines for all justice officials/employees, including judges and prosecutors of 32 pages has been prepared and is currently being discussed (it deals with gifts, accessory/secondary activities and professional secrecy, among other subject matters). An accompanying booklet (eight pages) containing the basic guidelines for the justice officials' conduct is also in the drafting stage. The drafts shall be sent out to all justice officials for comments. As indicated earlier, in May 2018, an intranet webpage on compliance matters was also established for all justice officials where they can find information and a list of contact persons for compliance questions, among other information available.
68. GRECO takes note of the above and it welcomes that new rules of conduct and supporting guidelines are being prepared. The creation of a compliance website and the designation of compliance officers who are to elaborate a policy and who can also provide advice are further steps in the right direction. GRECO will need to reassess these reforms in respect of the professional group of prosecutors once the process is more advanced and more specific information is available, including on the content and scope of the rules of conduct and on the functions of the compliance officers.
69. GRECO concludes that recommendation xviii has been partly implemented

Corruption prevention regarding judges and prosecutors

Recommendation xix.

70. *GRECO recommended that an annual programme be put in place for the in-service training of judges and prosecutors, including administrative judges and lay judges, which would include integrity-focused elements concerning the rights and obligations of these professionals.*

71. The authorities refer to the initial training (which is not the purpose of the present recommendation). As regards extra occupational training for judges and prosecutors, they reiterate that this training is voluntary but that there is a general duty for practitioners to attend further education and to acquire additional skills. In recent years the Association of Austrian Judges has organised seminars dealing with such subject matters as a revision of the Wels Declaration, judicial independence and professional self-image. These seminars, which are open to both professional groups (judges and prosecutors), will be continued. The authorities also state that the Federal Ministry of Constitution, Deregulation, Reforms and Justice, as well as the Courts of Appeal, the Senior Public Prosecutor's Offices and the Association of Austrian prosecutors annually organise training events in this field (service law, compliance and judicial independence).
72. As far as the recommendation aims at establishing annual programmes for extra occupational training for administrative courts, it should be noted that this has already been achieved. Moreover, since the Federal Administrative Court has been incorporated into the competences of the Federal Ministry of Constitution, Deregulation, Reforms and Justice, members of this court are also entitled to attend the seminars offered for ordinary judges.
73. GRECO takes note of the above information, which is not specific enough to conclude that measures such as those recommended (annual programme for in-service training) have been taken specifically to promote the integrity-related elements concerning the rights and obligations of the various professionals concerned. It urges the authorities to undertake more determined action. It is also obvious that GRECO will need to re-examine the situation once the new rules have been finally adopted, especially the code of conduct for judges and prosecutors, and measures are taken to promote these in the context of in-service training activities.
74. GRECO concludes that recommendation xix has not been implemented.

III. CONCLUSIONS

75. **In view of the foregoing, GRECO concludes that Austria has implemented satisfactorily or dealt with in a satisfactory manner one of the nineteen recommendations contained in the Fourth Round Evaluation Report.** Of the remaining recommendations, five have been partly implemented and thirteen have not been implemented.
76. More specifically, recommendation xiii was dealt with in a satisfactory manner, recommendations i, ii, ix, xiv and xviii have been partly implemented and recommendations iii to viii, x, xi, xii, xv, xvi, xvii, xix have not been implemented.
77. With respect to members of parliament, the results are clearly disappointing. Some (partial) progress is observed in the legislative consultation processes for the elaboration of governmental and parliamentary drafts, which also entail some new initiatives in favour of increased transparency. Also, rules of conduct are being drafted and confidential councillors are to be established in the near future. The early elections held in the autumn of 2017, which resulted in a significantly different parliamentary composition have, no doubt, delayed the reforms recommended in the Evaluation Report concerning rules of conduct, lobbying, the declaration of interests and assets and supervisory mechanisms, for instance. GRECO encourages the Austrian parliament, and its specially established working group responsible for implementing the recommendations to intensify their efforts.
78. As far as judges and prosecutors are concerned, GRECO is pleased to see that a number of changes are in the process of elaboration. For instance, the work programme of the current government for 2017-2022 aims at strengthening transparency and objectivity in the selection of judges and amendments to the Federal Service Act for Judges and Public Prosecutors have been prepared to this end, and to improve the appraisal system as well as the rules on incompatibilities with functions in the executive and legislative branches of power. A working group chaired by the head of the Compliance Department of the Federal Ministry of Constitution, Reforms, Deregulation and Justice is working on additional rules of conduct and guidelines for all justice officials/employees, including judges and prosecutors. There are also ambitious plans for the introduction of a Compliance Management System. However, no improvements have been finalised up until now and several intended reforms and improvements are still at an early stage. For the time being, the only recommendation fully addressed is the result of assurances provided by Austria concerning the publicity of administrative court hearings.
79. In view of the above, GRECO concludes that the current very low level of compliance with the recommendations is “globally unsatisfactory” in the meaning of Rule 31, paragraph 8.3 of the Rules of Procedure. GRECO therefore decides to apply Rule 32, paragraph 2 (i) concerning members found not to be in compliance with the recommendations contained in the mutual evaluation report, and asks the Head of delegation of Austria to provide a report on the progress in implementing the outstanding recommendations (i.e. recommendations i to xii and xiv to xix as soon as possible, however – at the latest – by 31 December 2019).
80. Finally, GRECO invites the authorities of Austria to authorise, as soon as possible, the publication of the report, to translate it into the national language and to make this translation public.