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FIFTH EVALUATION ROUND

Preventing corruption and promoting integrity in central governments (top executive functions) and law enforcement agencies

EVALUATION REPORT

AUSTRIA

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GRECO
Group of States against Corruption
Groupe d'États contre la corruption

COUNCIL OF EUROPE
CONSEIL DE L'EUROPE

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I. EXECUTIVE SUMMARY

1. This report evaluates the effectiveness of the framework in place in Austria to prevent corruption amongst persons with top executive functions (PTEF) and law enforcement officials (LEO). It aims at supporting the country in strengthening transparency, integrity, and accountability in public life, in line with GRECO standards.

2. Austria traditionally scores high in perception surveys on the fight against corruption. However, some very recent scandals affecting the highest ranks of the executive have critically eroded public confidence in political officials. Five governments have fallen in the last six years amid corruption claims. Further, an ongoing corruption investigation involving the former Chancellor of Austria, has casted doubt on press freedom in the country as it has exposed questionable ties between politicians, polling companies and the media.

3. A National Anti-Corruption Strategy (NACS) has been in place since 2018. It is coupled with a biennial Action Plan, which would reportedly soon be updated on the basis of the findings of the present report. Delays in implementation have occurred during the covid-19 pandemic. At present, numerous key reforms (e.g. transparency act, criminal legislation reform, lobbying act, etc.) are awaiting further development. A civil society initiative for a Rule of Law and Anti-Corruption Referendum is pending in Parliament; it comprises no less than 72 proposals for targeted, and tangible, long awaited improvements. The prevention and management of conflicts of interest is a heightened challenge in Austria deserving particular attention.

4. The Federal President has a mostly ceremonial and representative function. The Government is the actual holder of executive authority in Austria. For the purpose of the report, the notion of PTEFs covers members of government (Chancellor, Vice-Chancellor and ministers), state secretaries, secretaries general and ministerial advisors. There is no system for analysing major corruption risk factors, facing PTEFs, in a strategic manner at central governmental level. Given the low records of public confidence in the political class and the recent scandals that have tainted the reputation of the executive, the time is ripe to take targeted action in this domain. For PTEF to be supported when confronted with corruption and unethical behaviour within its ranks, an ethics infrastructure must be developed and better adjusted to the nature of their functions and the challenges that emanate in their respect.

5. There are certain requirements for ministers and state secretaries on outside activities, financial interests and disclosure requirements under the Incompatibility and Transparency Act. However, there is broad margin for improvement in this domain, including regarding revolving-door standards, a critically topical issue in Austria. The supervisory, advisory and enforcement system need to be significantly stepped up. Moreover, it is also imperative that there is greater transparency surrounding the engagement of secretaries general and ministerial advisors, their operation, and the applicable corruption prevention framework, which in any event, must require from them the highest standards of integrity. More can also be done regarding access to information and public consultation. The adoption of a dedicated access to information law remains an outstanding matter. Legislative footprint and openness of contacts of PTEF with lobbyists and other third parties are issues where further improvements also appear necessary.

6. With particular reference to criminal responsibility, PTEFs do not enjoy immunity. The Central Public Prosecutor's Office for Combating Economic Crime and Corruption (WKStA) is subject to reporting requirements in the event of high profile public interest cases. While reporting obligations have been gradually relaxed in recent years, they still take up a considerable time of prosecutors. Moreover, reporting in the framework of high-level corruption cases poses additional risks for the confidentiality, effectiveness, and independence of prosecution.

7. Law enforcement in Austria consists of the prosecution authority (including the WKStA) and the criminal investigation authority. Since corruption prevention in respect of prosecutors was subject to GRECO's review in its Fourth Evaluation Round, this report focuses on the criminal investigation authority, and more particularly in the Police and the Austrian Federal Bureau of Anti-Corruption (BAK).

8. Several mechanisms have been developed to prevent corruption and enhance integrity in service, including through the establishment of corruption prevention, compliance, and integrity officers. However, the introduction of efficient risk management and risk analysis systems is yet to take place. It is pivotal that when further developing integrity and corruption prevention in law enforcement, senior officials are specifically targeted, as it seems that, at present, most measures are aimed at low and mid-level officials. Petty corruption does not appear to be an issue within the police in Austria. It is however, repeatedly noted that there are serious concerns in respect of politicisation in the police (particularly at recruitment to senior level posts). It is necessary to increase transparency and avoid undue influence in the relevant selection and appointment processes for senior executive positions in law enforcement. Improvement of the appointment system also refers to the direction of the BAK, which has experienced, for a period of over two years and until very recently, blocked decision-making procedures and leadership void[1].

9. A Code of Conduct for the staff of the Ministry of the Interior was first developed in 2010 and is updated on a regular basis; its most recent version dates from 2021. It has a very practical and instructive approach as being coupled with advisory and awareness-raising channels. Nevertheless, additional action would be useful regarding potential conflicts of interest of police personnel, including by developing efficient mechanisms for proper application and monitoring of the relevant rules, as well as by considerably enhancing the awareness-raising initiatives in this domain. Additional measures relating to sponsoring of the police in order to increase transparency, control, and raise awareness in this area also appear crucial. A Decree on Sponsoring was issued by the Ministry of the Interior, but the practical application and awareness of the rules are at variance, particularly at regional level.

10. Breaches of conduct-related provisions may entail administrative/criminal responsibility, under the relevant disciplinary/penal legislation. A Federal Disciplinary Authority was established in 2021 to ensure homogeneity of disciplinary action across the board. No separate statistics are kept regarding corruption-related criminal or disciplinary proceedings involving law enforcement officials; further transparency is desirable in this respect. More efforts are also necessary regarding whistleblower protection: while there is an

[1] The authorities indicate that, pursuant to Section 5(3) of the Law on Advertisement of Civil Service Positions, a position must be advertised no later than one month after it has become vacant. Since the position of BAK Director became vacant as of 3 March 2022, the advertisement was issued on 11 March 2022, within the period prescribed by law.

obligation to report corruption, reporting channels, protection measures, follow-up and awareness-raising activities must be substantially stepped up. Austria is currently drafting dedicated whistleblower protection legislation to transpose the EU Directive 2019/1937 on Whistleblowing; this is a matter of priority which calls for immediate action.

II. INTRODUCTION AND METHODOLOGY

11. Austria joined GRECO in 2006. Since its accession, the country has been subject to evaluation in the framework of GRECO's Joint First and Second (in June 2008), Third (in December 2011) and Fourth (in October 2016) Evaluation Rounds. The relevant Evaluation Reports, as well as the subsequent Compliance Reports, are available on GRECO's homepage (www.coe.int/greco). This Fifth Evaluation Round was launched on 1 January 2017[2].

12. The objective of this report is to evaluate the effectiveness of the measures adopted by the authorities of Austria to prevent corruption and promote integrity in central governments (top executive functions) and law enforcement agencies. The report contains a critical analysis of the situation, reflecting on the efforts made by the actors concerned and the results achieved. It identifies possible shortcomings and makes recommendations for improvement. In keeping with the practice of GRECO, the recommendations are addressed, via the Head of delegation in GRECO, to the authorities of Austria, which determine the national institutions/bodies that are to be responsible for taking the requisite action. Within 18 months following the adoption of this report, Austria shall report back on the action taken in response to GRECO's recommendations.

13. To prepare this report, a GRECO evaluation team (hereafter referred to as the "GET"), carried out an on-site visit to Austria from 20 to 24 June 2022, and reference was made to the responses by Austria to the Evaluation Questionnaire, as well as other information received, including from civil society. The GET was composed of Mr Aleksandar BOZALO, Investigator / Senior inspector, State Investigation and Protection Agency, Criminal Investigation Department, Section for Prevention and Detection of Financial Crime and Corruption (Bosnia and Herzegovina), Mr Gianluca GARDINI, Full Professor of Administrative Law, University of Ferrara (Italy), Ms Anca JURMA, Prosecutor, Counsellor of the Chief Prosecutor of the National Anticorruption Directorate, Prosecutors' Office attached to the High Court of Cassation and Justice (Romania) and Ms Elena KONCEVICIUTE, Senior Anti-Corruption Adviser of the European Union Anti-Corruption, Initiative in Ukraine, former International Relations Officer of the Special Investigations Service (Lithuania). The GET was supported by Ms Laura SANZ-LEVIA from GRECO's Secretariat.

14. The GET held talks with the Federal Chancellery, the Federal Ministry of Justice, the Federal Ministry of the Interior, the Federal Ministry for Arts, Culture, the Civil Service and Sport, the Federal Ministry of Labour, the Federal Ministry for Digital and Economic Affairs, the Federal Bureau of Anti-Corruption (BAK), the Central Public Prosecutor's Office for Combatting Economic Crime and Corruption (WKStA), the Austrian Court of Audit, the Parliamentary Administration. Finally, the GET also met with representatives of civil society, academics, and media.

[2] More information on the methodology is contained in the Evaluation Questionnaire which is available on GRECO's website.

III. CONTEXT

15. Austria has been a member of GRECO since 2006. Since then, it has been subject to four evaluation rounds focusing on different topics linked to the prevention of and fight against corruption[3]. In summary, 67% of recommendations were implemented in the Joint First and Second Evaluation Round and 76% of recommendations were implemented in the Third Evaluation Round. In respect of GRECO's Fourth Evaluation Round, 16% of recommendations have been fully implemented, 47% partly implemented and 37% not implemented so far; the compliance procedure is, however, still on-going[4].

16. Austria traditionally scores high in perception surveys on the fight against corruption. According to the Corruption Perceptions Index published by Transparency International (CPI) in 2021, Austria occupied the 13th rank out of 180 countries and had a score of 74 (out of a total score of 100 – where 0 corresponds to countries where there is a high level of perception that corruption occurs and 100 to countries with a low level of such perception). This score has remained fairly stable in the last five years.

17. Over half of the respondents of the latest 2022 Special Eurobarometer on Corruption (57%) express the view that corruption is widespread in Austria (EU average: 68%) and 20% say they have been personally affected by it (EU average: 24%). The giving and taking of bribes and the abuse of power for personal gain are reported to be prevalent in political parties (54%), politicians at national, regional or local level (52%), officials awarding public tenders (35%), and private companies (27%). Europeans remain pessimistic about national efforts to combat corruption, since 2019, the view that the national government's efforts to combat corruption are effective has become more widespread in Europe (EU average: 31%). This has not been the case in Austria where respondents have been less positive than in previous years (40%, -10 points since 2019). By contrast, Austria scores relatively high (47%) in terms of public trust in the prosecution system and its capacity to deter people from corrupt practices (EU average: 34%). The police is the most trusted institution to deal with a case of corruption at 54% (EU Average: 63%).

18. According to a recent study on democracy in Austria, almost six out of ten people (58%) considered the Austrian political system ineffective and almost two thirds (64%) demanded more transparency in government action. About 60% of the public does not think Austrian democracy is functioning properly and 90% say the political system is corrupt. The study further concluded that the public's satisfaction in current politics is at a low point in the context of corruption and the covid-19 pandemic. Concerns were also raised as to large expenditure under emergency procurement procedures, with limited transparency requirements; the Court of Audit has carried out several audits in this respect (e.g. COVID-19

[3] Evaluation round I: Independence, specialisation and means available to national bodies engaged in the prevention and fight against corruption / Extent and scope of immunities; Evaluation round II: Identification, seizure and confiscation of corruption proceeds / Public administration and corruption / Prevention of legal persons being used as shields for corruption / Tax and financial legislation to counter corruption / Links between corruption, organised crime and money laundering; Evaluation round III: Criminalisation of corruption / Transparency of party funding; Evaluation round IV: Prevention of corruption in respect of members of parliament, judges and prosecutors.

[4] These figures provide a snapshot of the situation regarding the implementation of GRECO's recommendations at the time of formal closure of the compliance procedures. The country may therefore have implemented the remaining recommendations after the formal closure of the compliance procedure. For updates, please check the GRECO website: https://www.coe.int/en/web/greco/evaluations/austria.

– Structure and Scope of the Financial Aid Measures), and the Austrian Parliament has also carried out an evaluation of the government's public procurement processes during the pandemic.[5]

19. The Federal Bureau of Anti-Corruption (BAK) provides in its annual report statistics of corruption cases. For the last five years the following figures have been recorded[6]:

BAK statistics on corruption cases (2007-November 2021)

Type of offence	No. cases
Abuse of official authority (Section 302, Criminal Code)	3133
Corruption (Section 304, Criminal Code)	48
Acceptance of an undue advantage (Section 305, Criminal Code)	29
Acceptance of an advantage for the purpose of interference (Section 306, Criminal Code)	28
Bribery (Section 307, Criminal Code)	31
Giving an undue advantage (Section 307a, Criminal Code)	5
Giving an undue advantage for the purpose of interference (Section 307b, Criminal Code)	2
Unlawful intervention (Section 308, Criminal Code)	1
Acceptance of gifts and bribery of employees or representatives (Section 309, Criminal Code)	18
violation of the duty to keep official secret (Section 310, Criminal Code)	191
Breach of trust due to abuse of an official function or due to involvement of an office holder (Section 153(3), Section 313, or in conjunction with Section 74(1)4a, Criminal Code)	39

20. Over the past few years, Austria has seen a sudden increase in corruption cases. This is partly due to the latest surge in the number of high-profile political scandals involving former ministers, a Vice-Chancellor and a Chancellor (for further details see under paragraph 136). Some scandals have also shaken Austria's intelligence apparatus in recent years.

21. An ongoing corruption investigation involving the former Chancellor of Austria, has casted doubt on press freedom in the country as it has exposed questionable ties between politicians, polling companies and the media, notably, by purchasing favourable news coverage during the 2017 elections. The GET was told that there is a legally implemented scheme of direct press subsidy for daily and weekly newspapers distributing around 9 million EUR annually; however, another 200 million EUR are allocated every year by public institutions to media advertising. This amount was said to be spent by ministries, municipalities and state-run corporations for public relations and image campaigns without proper control or monitoring, thereby casting doubt on the transparency, fairness, and alleged political influence in the process of allocation of state advertising.

22. A petition for a Rule of Law and Anti-Corruption Referendum was initiated, tabled, and successfully put on "vote" for the Austrian populace by 12 highly renowned/reputed

[5] See 2021 EU Rule of Law Report on Austria, as well as 2022 EU Rule of Law Report on Austria.

[6] It should be noted that the statistical data are statistics on reported cases. Not the suspects per offence are recorded, but only the principal offence of the individual case (the criminal act determining the level of penalty). The statistics of the BAK are not dealing with final judgments. Therefore, the presumption of innocence applies to all suspects covered by the Bureau's statistics. The present statistics are based on a complete survey, i.e. the corpus of data consists of all reports, allegations, etc. received by the BAK/SPOC (Single Point of Contact) during the reporting year. Cases from previous reporting years, where investigation has not been completed, are not included in the statistics of the new reporting year. The survey period ends on 31 January of the year following the reporting year.

(Austrian) personalities. It is now undergoing consultation in the National Council[7]. It comprises no less than 72 proposals on several fronts, many of which touch upon the matters covered under GRECO's Fifth Evaluation Round (e.g. integrity issues in politics, selection of high-ranking personnel, legislative proposals to address shortcomings – including on access to information, freedom of press, etc.).

[7] The public referendum successfully passed the (minimum) threshold of 100 000 votes and was supported by (in total) 307 629 votes, which enabled its inclusion in the parliamentary agenda. Accordingly, the popular initiative was submitted to the National Council on 29 June 2022. A first reading in the plenary of the National Council took place on 21 September 2022. It has been referred to the Justice Committee of the National Council for preliminary deliberation; the Committee is to start such deliberation by 21 October 2022 and report to the National Council by 21 February 2023. Information available at https://www.parlament.gv.at/PAKT/VHG/XXVII/I/I_01626/index.shtml#tab-ParlamentarischesVerfahren.

IV. CORRUPTION PREVENTION IN CENTRAL GOVERNMENTS (TOP EXECUTIVE FUNCTIONS)

System of government and top executive functions

System of government and status of persons with top executive functions

23. The Republic of Austria as a representative democracy and federalist state with a clear division of powers. The form of government is laid down in the Constitution (Sections 60 to 78).

The President

24. The Federal President is elected for a six-year term by a direct popular vote and formally sworn into office before the Federal Assembly. His/her mandate is limited to two consecutive terms. The President's constitutional powers are mainly representative in nature. They include representing Austria abroad, concluding treaties and signing federal laws[8]. In general, the President may exercise these powers on the basis of proposals by the Federal Government (Section 67, Constitution). S/he has the power to appoint and dismiss the Federal Government and to dissolve the National Council (Section 70 and Section 29 Constitution, respectively), although these powers are constrained by parliamentary procedure[9]. S/he is vested with extraordinary powers in times of national crisis only, i.e. the issuing of emergency ordinances (Section 18(3), Constitution). In addition, s/he serves as commander in chief of the Federal Army (Section 80, Constitution)[10].

25. GRECO agreed that a head of State would be covered by the 5th evaluation round under the "central government (top executive functions)" topic where that individual actively participates on a regular basis in the development and/or the execution of governmental functions or advises the government on such functions. These may include determining and implementing policies, enforcing laws, proposing and/or implementing legislation, adopting and implementing by-laws/normative decrees, taking decisions on government expenditure and taking decisions on the appointment of individuals to top executive functions.

26. The GET notes that the functions of the Head of State in Austria are mostly of a formal or ceremonial nature. S/he does not actively and regularly participate in governmental functions. More particularly, while the President has some governmental functions in addition to ceremonial duties, his/her powers are strictly restricted (and are generally subject to the

[8] The President represents Austria in international relations. S/he accredits foreign ambassadors and symbolically acts as the host for state visits to Austria. Actual foreign policy is, however, a cabinet matter. Generally, the President has no power to veto or refuse to sign bills. However, under specific circumstances, the President is obliged to refuse to sign laws within his/her competence to authenticate the constitutional enactment of federal laws (Section 47(1), Constitution).

[9] The President appoints the Chancellor and upon the advice of the Chancellor, the President appoints the cabinet. However, the Chancellor is chosen by the President, but determined by the coalition parties forming a parliamentary majority. The president can dismiss individual cabinet officials, but only on the recommendation of the chancellor. As to the power of the President to dissolve the National Council, s/he does so on the proposal of the Federal Government. To date, the National Council has only once been dissolved by the Federal President: this was in 1930, when Federal President at the time complied with the request of the Federal Government to obviate a vote of no confidence that was threatening the minority government he had previously appointed.

[10] The President is the commander in chief, but this too is largely nominal, his/her decisions have to be taken jointly with the Minister of Defence.

requirement of countersignature), and s/he is excluded from direct and active involvement in policy-making. It therefore follows that the functions of the President of Austria do not fall within the category of "persons entrusted with top executive functions" (PTEF) as spelt out above.

Members of government

27. The Federal Government consists of the Federal Chancellor, the Vice-Chancellor and the Federal Ministers, who are entrusted with the direction of the Federal Ministries. As already indicated, the Federal Chancellor and the other members of the cabinet, chosen upon his/her advice, are appointed or removed from office by the Federal President. Neither the appointment of the Chancellor nor the appointment of the members of the cabinet needs to be confirmed by parliament. However, parliament can pass a vote of no confidence against individual members of the cabinet or the entire administration. In such a case, the Federal President is required to remove the cabinet or the respective minister from office.

28. The Federal Chancellor is the Chairman of the Federal Government. As "primus inter pares" (first among equals), s/he chairs the meetings of the Federal Government, but has no legal competence to issue instructions to the other members of the Federal Government. Resolutions of the Federal Government require a unanimous vote.

29. The Vice-Chancellor acts as a deputy to the Chancellor in all his/her spheres of responsibilities. Should the Federal Chancellor and the Vice-Chancellor be simultaneously prevented from the discharge of their responsibilities, the most senior – in the case of equal seniority, the eldest – member of the Federal Government, who is not prevented from the discharge of his/her duties, shall deputise for the Federal Chancellor (Section 69(2), Constitution).

30. The number of Federal Ministers and their specific areas of responsibility are subject to federal law (1986 Federal Ministries Act, as amended). For the current legislative period that started in 2019, there are 13 ministries[11]. The incumbent Federal Chancellor is a man and there are 8 male and 5 female ministers, respectively. Accordingly, in the current government, female representation is at 36%. In this connection, the GET calls the attention of the Austrian authorities to Recommendation Rec(2003)3 of the Committee of Ministers of the Council of Europe to members states on balanced participation of women and men, which outlines that the representation of either women or men in any decision-making body in political or public life should not fall below 40%.

31. Both the Chancellor and the ministers may hold parliamentary mandates. In practice, however, all members of parliament resign their mandate when they assume government office. Nevertheless, a possible return after serving in the government is possible. At present, there is no dual mandate.

[11] Federal Ministry for Arts, Culture, the Civil Service and Sport; Federal Ministry for Finance; Federal Ministry for the EU and Constitution at the Federal Chancellery; Federal Ministry for Climate Action, Environment, Energy, Mobility, Innovation and Technology; Federal Ministry for the Interior; Federal Ministry for Labour and Economy; Federal Ministry for Education, Science and Research; Federal Ministry for Women, Family, Integration and Media at the Federal Chancellery; Federal Ministry for Social Affairs, Health, Care and Consumer Protection; Federal Ministry for European and International Affairs; Federal Ministry for Defence; Federal Ministry for Agriculture, Forestry, Regions and Water Management; and, Federal Ministry for Justice.

Politically appointed personnel

32. State Secretaries are nominated or dismissed by the Federal President upon the proposal of the Federal Chancellor. They are not part of the federal government but act as aides to the federal ministers, assisting them in their everyday conduct of business, and representing them in parliament as needed (Section 78(2), Constitution). They are bound by the instructions of the respective member of the government. They participate in the cabinet's meetings but with no right to vote. The number of these positions is not fixed and their establishment, as well as the corresponding designated tasks, depends on the government in office. In the case of a coalition government, the state secretary often comes from a different party than the minister thus ensuring the inter-coalition balance. To the extent that a federal minister has delegated certain business to be dealt with by a state secretary, the latter one is authorised to give instructions to civil servants (Section 11, 1986 Federal Ministries Act, as amended). At present, there are four state secretaries (three women and one man).

33. Secretaries General are optional posts, which were sparsely used in Austrian public administration and originally had merely coordination functions; however, its number has been increasing in the last two decades and their functions broadened beyond coordination (some interlocutors referred to secretaries general as "shadow ministers" and it is possible that one person is secretary general and head of cabinet at the same time – although in principle, these are two different functions). They can be recruited from outside the public service (contractual staff) or they can come from within civil service. Secretaries general have the authority to issue instructions to civil servants[12].

34. Ministerial advisors provide advice on political matters, pressing current issues, and above all, on strategic matters related to policy design and implementation. They also handle external relations with parliament, interest groups and international organisations. Moreover, a particular profile of advisor that has acquired increasing significance over time is that in charge of media assistance, press and public relations. Advisors may be recruited from either the public service or the private sector (in certain cases, they can be on secondment, e.g. from the Chamber of Commerce or the Chamber of Employees). They are generally paid, but the GET heard that they could also be unpaid. Formally speaking, they cannot issue instructions (*weisung*) to civil servants; however, the GET heard that they could convey the "wish" of the minister to them and that in practice such a wish is followed.

35. Both secretaries general and ministerial advisors fall under civil service rules regarding their rights and duties. As to their recruitment and dismissal, if they are recruited from outside public service, they are employed under special service contracts. The terms of such contracts have to be approved by the department III/2 (Competencecenter A) and the department III/3 (Competencecenter B), respectively, of the Federal Ministry for Arts, Culture, the Civil Service and Sport, which may reject them if they provide for a salary in excess of a certain limit[13]. The relevant terms of office are limited to the duration of the minister's mandate. As such, these

[12] While civil servants have to follow these instructions, a note in the file may be recorded by including the written instruction and the disclaimer of the civil servant involved. In any event, the civil servant can refuse compliance with an instruction which would infringe the criminal code (Section 20, Constitution). The Anti-Corruption Code of Conduct, under its heading on objectivity and fair treatment, also includes a provision on the requirement to only give permissible instructions.

[13] The amount of the salaries is based on the salary scheme laid by law increased by about 25% plus compensation for overtime.

persons are answerable to the minister who appoints them and may dismiss them on a discretionary basis. If they are recruited from the public service, they may return to it when their appointment comes to an end. The actual determination of their responsibilities is laid out by each individual federal minister internally. The number of these positions is not fixed, and no cap is established on their appointment, which falls at the discretion of the relevant minister.

36. The proliferation of secretaries general and ministerial advisors has been in the public eye and subjected to frequent parliamentary enquiries. A recent report of the Court of Audit has highlighted the need to streamline resources at cabinet and secretariat general level in federal ministries. In order to do so, it was recommended that a cabinet resolution should define the framework conditions for the personnel resources allocated to such entities in a way that the objective of austerity in public administration is met.

37. Because of the political strategic importance of their role and work, as they either participate directly in decision-making regarding public policies or have a decisive influence in their development given the position they hold, and in accordance with GRECO's standing practice, secretaries general and ministerial advisors are also considered PTEF in the sense of this report. Therefore, to recap, the following persons are covered under the notion of PTEF: members of government (Chancellor, Vice-Chancellor and ministers), state secretaries, secretaries general and ministerial advisors. Hence, the recommendations that follow later in this report, which are addressed to all persons entrusted with top executive functions, also comprise the aforementioned categories of political appointees, as appropriate.

38. Ministers can also set up commissions to give advice in a certain subject area from a technical point of view (e.g. by producing studies, reports, etc.). In accordance with GRECO's previous jurisprudence, the members of these commissions are not considered to be PTEFs (by virtue of their membership of a commission) for the purpose of this report.

39. The GET finds broad room for improvement in the integrity framework for secretaries general and ministerial advisors. A thorough reflection to this end is both pertinent and timely. Regarding secretaries general, this position has acquired increased political importance for the government. They represent the transmission channel between the Federal Chancellor/Federal Ministers and the ministerial apparatus; they are often requested to "steer" the ministry in which they are appointed, to safeguard the political and legal responsibilities of the ministry. As such, they are *de facto* and *de jure* hierarchically superiors to the directors general (heads of sections) of the ministries and have the authority to give them instructions.

40. On the other hand, the legal status of secretaries general, their tasks and responsibilities are a grey area, not clearly provided by the law, nor by internal regulations. Some of them come from the civil service, but they are increasingly coming from the private sector (the GET was told that, nowadays, up to 95% of political appointees were coming from the private sector). Their appointment process, as persons of trust, falls under the discretion of the relevant minister (with a certain overseeing role of the responsible human resources department). While the GET fully understands the need and right of the ministers to employ persons of their confidence, capable of implementing their political agenda, it regrets that the legislation does not provide for measures of ensuring the transparency of the appointment procedure, that could showcase the quality and integrity of the persons appointed.

41. In terms of conduct and ethics, secretaries general fall under civil service rules (obligation to disclose secondary employment, as well as any position in the governing bodies of companies acting in key sectors of the economy, incompatibilities, and post-employment restrictions). Since these officials either participate directly in decision-making regarding public policies or have a decisive influence in their development (also considering that they are appointed and revoked by political leaders *intuitu personae)*, it would be reasonable if they were subject to equivalent requirements as those applicable to ministers and state secretaries with reference to the rules of financial disclosure, incompatibility, ineligibility, and more generally, conflicts of interest. In this connection, the management of conflicts of interest can prove particularly critical for political appointees who come from the private sector.

42. Some recent corruption cases have exposed flagrant misconduct of political appointees, evidencing the weaknesses of the legal framework concerning their status and functions. Examples have been given to the GET concerning the misuse by certain secretaries general of their key influence in the recruiting commissions for CEOs or members of the supervisory boards of some important SOEs, the result being that not the most qualified person was appointed. The lack of transparency of the process driven by the ministers for the appointment of the members of supervisory boards of SOEs, as well as the absence of documentary evidence has been also noted by the Court of Audit (ACA) in one of its reports (Supervisory Boards: Selection of candidates in ministries).

43. Further, several interlocutors referred to the growing practice of political appointees staying in the public sector, including by occupying senior positions (particularly in state-run corporations) through the so-called "fast track" appointment procedure. Indeed, the GET was told that, in recent years, cabinets were the entrance gate for politics in public administration. The problem is that this fast-track recruitment procedure lacks genuine transparency and integrity safeguards, offers fewer guarantees of an impartial and merit-based selection (as compared to the regular recruitment process for civil service which is laid out in Section 78 of the Law on Advertisement of Civil Service Positions), and was said to constitute a mere formality. The procedure requires only the opinion of an appointment commission formed at the level of the human resources department of the ministry, with a parity composition (two members from the workers council and two representatives of the minister). The common perception is that the wish of the minister always prevails. One of the GET's interlocutors voiced that perception, saying that "loyal political staff are rewarded with an executive position in the state bodies".

44. Ministerial advisors, as political appointees, have to abide by the same integrity rules prescribed by the Civil Service Employment Act, as described above for secretaries general, and thus, the same flaws apply. Their role in the ministries is sensitive, as they are contributing to the implementation of the minister's political mandate and, at the same time, have access to strategic and confidential documents of the ministry. Their number in Austria has significantly increased in recent years; some ministries, allegedly, having up to 30 advisors in the ministerial cabinet. This situation has prompted intense debates and concern in the public opinion not only as regards the use of public resources, but also in terms of integrity and transparency issues. One of the problems lays with the insufficient transparency of the tasks and responsibilities of ministerial advisors. Some ministries publish on their websites the names and domains of competence of their ministerial advisors, but such a practice is not consistent practice across the board.

45. Further, a better delimitation of functions appears necessary between those performed by ministerial advisors and civil servants. ACA has been critical in this respect, particularly regarding their respective roles in the bureau of secretaries general. Another debated issue relates to the possibility of ministerial advisors to give instructions to the administrative apparatus of the ministries. According to the law they do not have such right. However, in practice, they act in the name of the minister and often convey the "message of the minister" down the hierarchy. This practice is problematic for the civil servants, their position is weakened since they cannot have the certainty that the order comes from the minister indeed. In this context, the ACA highlighted the risk of duplication and lack of coordination and recommended a clear description and delimitation of tasks between secretaries general and cabinets. As already highlighted, the practice of ministerial advisors of using the fast-track recruitment process for entering civil service once the mandate of the minister ends and the public concerns related to it is the same as for secretaries general.

46. Finally, the GET was informed that, in some cases, ad hoc, temporary, unpaid advisors are appointed for specific tasks or projects in the ministries. These advisors (experts) do not sign a special contract as do the regular paid advisors, and no confidentiality statement. Further, the integrity requirements applicable to civil servants do not apply to them. These persons could be at the same time consultants for various clients, as nobody checks it. An example was given during the onsite visit of an ad hoc/special advisor, who worked for a long time on an honorary basis for the previous government and headed "ThinkAustria", the Strategic and Planning Unit of the Chancellery. Also, interested parties, such as the Chamber of Commerce, may send seconded advisors, unpaid, who go back to their previous job after the end of the ministerial mandate.

47. In light of the foregoing considerations in respect of political appointees, **GRECO recommends that (i) the legal status, recruitment, responsibilities and obligations of secretaries general and ministerial advisors (including ad hoc temporary advisors) be regulated (also in relation to instructions they are entitled to make to civil servants and contractual employees); (ii) their numbers, names, functions and pay bands, as well as information on ancillary activities are made public; and (iii) they are subjected to the highest standards of conduct through appropriate rules on conflicts of interest, financial disclosure and the use of confidential information.**

Non-politically appointed personnel: high civil servants

48. Heads of section are the highest civil servants at ministry level. It is recalled that civil servants have already been evaluated within the framework of GRECO's Second Evaluation Round.

Remuneration and other advantages

49. The level of remuneration of supreme officeholders is governed by federal law, as follows (the average gross monthly wage in Austria amounts to approximately 2 454 €/month)[14].

[14] According to the 2020 General Income Report of the Court of Auditors, the average gross annual salary in Austria in 2019 amounted to 29 458 €.

Remuneration of persons entrusted with top executive functions

Post	Salary
Chancellor	22 640 €/month
Vice-Chancellor	19 923 €/month
Minister	18 112 €/month
State Secretary	16 300 €/month
Secretary General	11 699 €/month
Ministerial advisor	6 500 – 9 000 €/month

50. In addition to the aforementioned compensation, for the Chancellor, Vice-Chancellor, ministers and state secretaries, 10% of this amount is paid monthly into a private pensions fund (Section 1(1), Pension Fund Provision Act – PKVG, BGBI. I Nr. 64/1997).

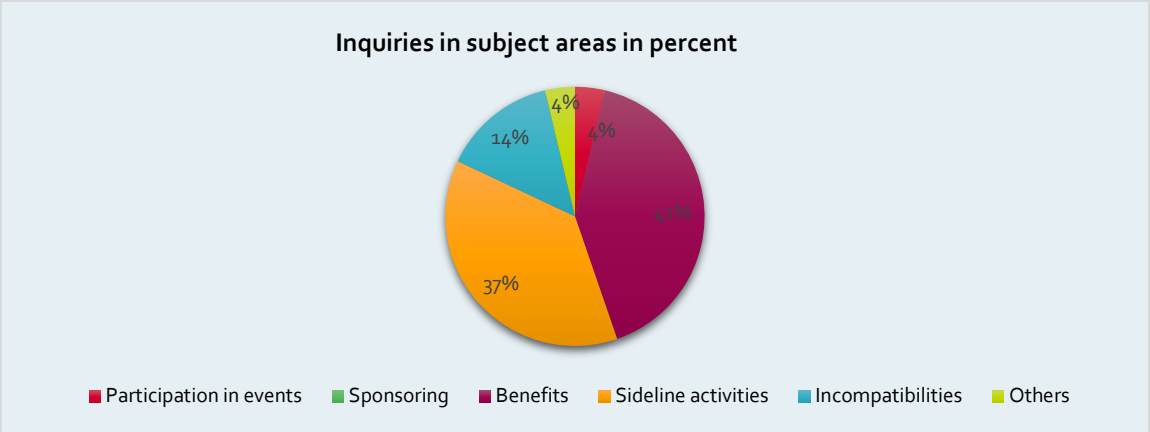
51. The Federal President, the members of the Federal Government, the Presidents of the National Council, the President of the Federal Council, the President of the Board of Audit, the Land Governors and the State Secretaries are entitled to an official car. The official car may be used for private purposes, if the entitled person pays a gross minimum (which is currently fixed at 645,96 €) from his/her emoluments.

52. The Federal ministers have an additional monthly allowance of 770,33 € for minor expenditures (e.g. flower gifts, tips, etc. – so-called official expense allowance). Receipts have to be collected and an expenditure overview has to be kept for revision. The costs incurred in general representation for meetings, events, etc. are financed within the general budget of the federal ministry (so-called representation expenditure).

Anticorruption and integrity policy

53. A National Anticorruption Strategy (NACS) was adopted in 2018. The Strategy is a programmatic document comprising both preventive and repressive measures. A Co-ordinating Body on Combatting Corruption (KzK) has been established under the leadership of the Federal Ministry of Justice. The Federal Bureau of Anti-Corruption (BAK) and the Central Public Prosecutor's Office for Combating Economic Crime and Corruption (WKStA) are responsible for all matters concerning enforcement and prosecution of corruption. The BAK also has nationwide jurisdiction in the prevention of corruption. The Strategy is coupled with a biannual Action Plan. The evaluation of the implementation of the Action Plan 2019-2020 has suffered some delay due to the covid-19 pandemic and was finalised in 2022. The final evaluation report was published in the October 2022 meeting of the KzK. The authorities indicated that the KzK is to decide on how to proceed with the NACS and a new action plan.

54. Part of the NACS and its Action Plan was the development, in each ministry, of a compliance management system with designated compliance managers, as well as the establishment of integrity and corruption prevention officers. The way each ministry has developed such systems differs in practice. An example was provided by the Federal Chancellery concerning its compliance management system and the inquiries in risk areas.



55. The National Anti-Corruption Strategy does not include corruption prevention measures specifically targeting PTEF. Further, integrity checks are not performed upon appointment of PTEF. The GET believes that, preferably, it would not be left to media alone to examine the background of members of the government and other political appointees (in particular for persons who are less in the public eye). Thus, integrity checks would serve to address issues which could be seen by the public as compromising their capacity to perform public service in an impartial manner.

56. The initiative of BAK to develop a system of compliance management and compliance officers in each ministry is to be commended. The compliance officers' role is reportedly to provide advice and counselling to the public officials, to organise anti-corruption training, to draft guidelines and promote compliance with the integrity rules. According to the interlocutors met on-site, the compliance officers are sometimes consulted by the ministers and the political advisors in relation to integrity dilemmas such as reactions to certain type of gifts, invitations, etc. Nevertheless, they do not have a control role, they have no monitoring role in relation with the reporting obligations of the PTEFs. The GET was also told that, usually, the compliance officer is also the responsible person for risk assessment.

57. The GET was informed that the risks related to public procurement and subsidies are among the most often included in the risks' registers. However, there are other areas sensitive to corruption which raised concern in the public opinion that are not covered by the risks' management, especially with regard to the political appointees, such as the conflict of interest that could occur in the setting up and decision making of the recruitment commissions for high executive positions of SOEs or post-employment restrictions. While the Austrian authorities provided statistical information on the number and type of inquiries in integrity areas made by the public employees and addressed by the compliance officers, no data was provided on the number and types of risks identified and addressed by them[15].

58. Another initiative of BAK that was well appreciated by the authorities met by the GET was the establishment of a network of integrity officers within ministries and other public authorities. The network is used as an opportunity to exchange best practice in compliance with integrity rules and corruption prevention. However, it was not clear to the GET what was the role of the integrity officers and if they have different functions than compliance officers

[15] The Austrian authorities reported after the on-site visit that the risk analysis has now been completed in substance and could now be finalised technically and translated.

or corruption prevention officers (some interlocutors described them as an interface between the public employee and the compliance officer, others considered that integrity officers and compliance officers are the same), nor if they are actually used by all the public authorities to perform tasks related to corruption prevention or they are, in some cases, only a (well trained) resource. Finally, corruption prevention officers undertake education activities, generally at local level and under the guidance and coordination of the BAK.

59. The authorities sent, after the on-site visit, a schema differentiating the tasks of chief compliance officers, compliance officers, corruption prevention officers and integrity officers; this however appears to be an internal document of the Ministry of the Interior which has not been published. In the GET's view and having in mind the insufficient clarity among the staff of the public authorities with regard to each officers' roles, there needs to be greater formalisation of these profiles and to avoid duplication of tasks, in order for the key elements of the corruption prevention – ensuring compliance with integrity-related rules, providing advice and undertaking awareness-raising initiatives – to be effectively covered. Likewise, a coherent approach should be taken for all ministries.

60. Given the low records of public confidence in political officials and the recent scandals that have further tainted the reputation of the executive, the GET considers that the time is right to assess the effectiveness and strengthen the available "ethics infrastructure" for PTEFs. This would constitute a step up front of the highest ranks of the executive to state their unequivocal commitment to promote integrity, condemn corruption, and thereby lead by example. The GET trusts that the recommendations included in this report further contribute to the identification of areas that need additional development. **GRECO recommends that (i) the new action plan of the National Anti-Corruption Strategy comprises measures to prevent corruption and increase integrity with respect to persons entrusted with top executive functions, including the performance of integrity checks as part of their appointment; (ii) the compliance management departments of the Federal Chancellery and the ministries as a rule perform corruption risk management in relation to persons entrusted with top executive functions; and (iii) the system of officers performing tasks related to corruption prevention be formalised and further developed with a view to ensure its efficiency and consistency in all ministries.**

Code of ethics

61. The Civil Service Employment Act, the Act on Contractual Public Employees, and the Anti-Corruption Code of Conduct on the Prevention of Corruption in the Public Service - "*The Responsibility Lies with Me – A Question of Ethics*" (hereinafter: Anti-Corruption Code of Conduct) constitute the ethics framework in public service.

62. The Anti-Corruption Code of Conduct in Public Service was issued in 2020 as an update to the 2008 Code. It is the result of a joint effort from several central/regional/local authorities as well as other non-governmental bodies, including professional unions and Transparency International. The Code develops existing normative requirements by providing further guidance and illustrative examples. It sets out the basic guiding principles for public administration – i.e. rule of law and loyalty, transparency, objectivity and fairness, responsibility and integrity – and secondly, it focuses on the core areas of potential conflicts of interest, i.e. acceptance of gifts, outside employment, objectivity and bias, transparency and official secret. It addresses all levels of staff (employees, line managers, senior civil

servants) and also deals with the responsibility the organisation of public administration has in the field of preventing corruption and conflicts of interest. The Code is complemented with an e-learning tool. Furthermore, certain departments/local authorities have also developed codes of conduct of their own.

63. The Code applies to all public sector employees (civil servants and contractual employees). It thus covers secretaries general and ministerial advisors. However, the GET notes that the explanations and guidance provided by the Code do not include instances of conflict of interest specific to the political appointees, that are not identified as yet in the risk assessments of the ministries, but are instead identified by the ACA and perceived as such by the members of the civil society (such as, for instance, conflicts of interest arising in the composition and decision making of the recruitment commissions for appointing the executive positions in SOEs or in the fast-track recruitment of the political advisors in the civil service).

64. Ministers and state secretaries are not covered by the Code. The authorities nevertheless underscore that the highest executive organs of the State, as listed in Section 19(1) of the Constitution, i.e. the Federal President, the ministers and state secretaries and members of land governments, are subject to the provisions of the 1983 Incompatibility and Transparency Act (as amended) regarding financial declaration obligations, employment bans and restrictions to entrepreneurial activities (the relevant requirements are described later in this report).

65. The Code itself does not contain any provision with regard to its monitoring and enforcement; although breaches of the rules explained in the Code may entail violation of other legislation and can therefore lead to disciplinary or criminal actions, as applicable. are sanctioned according to the Civil Service Employment Act or the Criminal Code with a disciplinary or, if the case may be, criminal sanction following the procedures described in the above-mentioned laws. No track records are being kept on ethical breaches by PTEF.

66. The GET notes that the Anti-Corruption Code of Conduct in Public Service is not a document containing a list of ethical rules, nor does it create new standards, but it refers to (some of) the relevant standards already regulated by the Civil Service Employment Act and the Criminal Code. Instead, the Code provides for explanations of these standards, concrete illustrations, and guidance on their practical implementation. From this perspective, it is a very valuable instrument that can be used by every ministry and public authority for training and awareness purposes and by the public officials, individually, as a support in ethical dilemmas.

67. The GET is of the firm view that elected officials and persons appointed on a political basis who perform top executive functions should be required to comply with the highest standards of integrity. Ministers and state secretaries are not covered by the provisions of the Anti-Corruption Code of Conduct in Public Service, nor are ad-hoc temporary ministerial advisors or experts. While ministerial advisors and secretaries general fall, in principle, under the general civil service regime and its applicable rules, they may face similar challenges and ethical dilemmas as those of ministers in their daily routines because of the type of top management/decision-making work they perform. The GET was told that, as a way to reinforce ethics in public administration, sectorial codes were being developed, with a view to better tailoring them to the day-to-day challenges of each individual institution. This is certainly a valuable approach. The GET, thus, also sees merit in developing a dedicated code

for persons entrusted with top executive functions. Putting their integrity standards in one public document and having leaders publicly hold themselves out as being accountable to it should help with creating and maintaining joint expectations between the public and the government at a time when recasting public trust is much needed. **GRECO recommends that a code of conduct for ministers and other persons entrusted with top executive functions be adopted, published, and complemented by a system for providing guidance and confidential counselling regarding conflicts of interest and other integrity related matters (gifts, outside activities, third party contacts and the handling of confidential information), and coupled with a credible and effective mechanism of supervision and enforcement.**

Advice, training and awareness on integrity

68. PTEF can turn to the compliance/integrity officers in their relevant ministry. Moreover, in case of ethical dilemmas, officials may always turn to their superior. They can also address the relevant and legally competent Directorate General III/1 – General Civil Service Employment Law and Payment Law and the Coordination of Civil Service Employment Law of the Federal Ministry for Arts, Culture, the Civil Service and Sport. The BAK has carried out multiple anti-corruption training courses; to this effect, corruption prevention officers have been appointed to help with training events at sub-national level. The GET was told that the covid-19 pandemics has slowed down training initiatives and in-person meetings which were a main channel for the network of integrity/compliance/corruption prevention officers to exchange experience and further grow. The records kept on the training events held so far do not differentiate among categories of officials attending them; therefore, it is not possible to know how many PTEF have followed targeted anti-corruption training. A recommendation on training for PTEF follows later in this report.

Transparency and oversight of executive activities of central government

Access to information

69. The duty, incumbent on state authorities, to grant access to information, is enshrined in the Constitution. According to Section 20(4) of the Constitution, all administrative authorities are constitutionally obligated to provide information, insofar as a statutory duty of secrecy is not opposed thereto. Secondary legislation in both federal law and provincial laws specifies the authorities' obligation to disclose information to the public. Under these laws both natural and legal persons are entitled to submit a request for information. Moreover, requests for information are not bound to any particular form. They may be submitted in writing, orally or by telephone, and under some provincial laws also by telegraph or telefax.

70. Information shall be given without undue delay, at the latest however, within 8 weeks after receipt of the request for information; if for special reasons such a term cannot be complied with, the applicant shall be informed accordingly in writing. If information is not granted, a ruling (*Bescheid*) shall be issued at the request of the applicant. Against this ruling, the applicant can lodge a complaint to the Federal Administrative Court. The time limit for filing the complaint is four weeks from the date of delivery of the written ruling. The submission fee for the complaint is 30 €.

71. The scope of the constitutional duty is – in general – to provide information, which

does not include the obligation to make certain documents accessible. However, following the case law of the ECtHR, the Constitutional Court (VfGH 4.3.2021, E 4037/2020) and the Supreme Administrative Court (VwGH 29.5.2018, Ra 2017/03/0083; VwGH 24.5.2018, Ra 2017/07/0026) have established, in accordance with Section 10 ECHR which has constitutional status in Austria, that in certain cases access to specific documents has to be granted. This applies in particular to cases where information of general interest is requested by specific individuals, such as journalists or NGOs for the purpose of promoting public debate. According to this case law, mere access to information cannot be sufficient in specific cases and rather access to documents may be required.

72. The Government programme 2020-2024: Out of a sense of responsibility includes as one of its goals the development of an action plan to increase administrative transparency, including by abolishing official secrecy and introducing freedom of information as an enforceable right, ensuring open data and expanding digital administration. The GET was told that a draft law on access to information has been on the agenda for almost a decade now but has experienced repeated delay and reluctance from public authorities, particularly, at regional and local level[16]. A public consultation took place in February 2021[17] and further legislative development awaits by government before it is actually tabled before Parliament. As regards the substance of the legislative proposal, a new constitutional, fundamental right to information (on demand) is to be granted to everybody. Moreover, public institutions would be required to actively make information of general interest accessible for everyone on the internet in a central information register. The new obligation to provide information would not only apply to public administration but also to the judicial and the legislative branches. Even private enterprises that are subject to review by the Austrian Court of Audit would be required to provide information on demand.

73. In the Joint First and Second Evaluation Round Report on Austria, GRECO already expressed its concerns regarding the domestic situation on access to information. Accordingly, a recommendation followed, which however has not been complied with to date. The adoption of a dedicated access to information law remains an outstanding matter. A draft is in the making. A public consultation process took place in 2021, in which the proposed draft faced some criticism from civil society. The GET was also told that there is certain reluctance to the adoption of the law from the regional and local levels.

74. When revisiting the situation with the interlocutors met on-site, the GET found that this continues to be a challenging matter. Several interlocutors complained that public authorities understand official secrecy and confidentiality in quite broad terms; non-transparency was said to be the rule rather than the exception. Additionally, the statutory deadline for providing information is too long. While there may be cumbersome/complex requests that could justify an extension of a deadline, this should be the exception rather than the rule, and thus, timeframes for responding should be substantially shortened. Access to information must be timely; this is particularly true for corruption prevention purposes. When

[16] There is a heightened legislative adoption procedure for access to information legislation, which requires a qualified majority of 2/3 in Parliament, but also concertation with regional authorities.

[17] On 22 February 2021, after having heard a number of experts, concerned institutions, media representatives, members of the Austrian Parliament and non-governmental organisations, the Ministry for EU and Constitution submitted a proposal to the consultation procedure during which a number of institutions commented on the draft law on access to information. The responses to the public consultation are available at: (www.parlament.gv.at/PAKT/VHG/XXVII/ME/ME_00095/index.shtml#tab-Uebersicht).

the information comes late, it may serve little purpose. Non-governmental representatives, with whom the GET met, also confirmed that they often had to turn to court to satisfy their claims in this domain; this consumes additional time and resources. The GET heard that it may take up to eight years to receive the information requested (after going through all court instances). Still, even with a court decision, the public authority may not provide access to information since it cannot be compelled to act by the court. The GET also has concerns regarding the submission fee for complaints.

75. Further, as Austria develops dedicated legislation in this domain, it would be important to ensure that the two aspects of access to information (i) the obligation for public authorities to collect, update and publish information (active information), and (ii) the obligation on public authorities to respond to public requests for information (passive information) are covered, and that there are adequate mechanisms for enforcement and monitoring of the law. Likewise, procedures will need to be articulated regarding the recording, handling and efficient archiving of new forms of documentation (e.g. emails, calendars, etc.). The GET points at relevant practice of other member States, which could be useful for Austria in order to design an effective implementation plan further facilitating access to information, e.g. appointment of information officers, development of clear guidelines, internal system for recording requests, establishment of a specialised body to oversee implementation, further assistance to those exercising the right of information, sanctions and disincentives for inaction, effectiveness of appeal mechanisms, etc. The authorities are encouraged to take these valuable experiences on board.

76. In the light of the persisting legislative and implementation flaws, the GET can only reiterate GRECO's concern, as expressed in the Joint First and Second Evaluation Report, that the situation is not satisfactory from the point of view of transparency of State authorities. This situation makes it difficult for citizens and the media to monitor the administration, which is an important tool in democracies for preventing and discovering corruption. Finally, the GET notes that Austria has not acceded to the Council of Europe Convention on Access to Official Documents (CETS 205) and encourages the authorities to do so in due time, as this could further pave the way for advancing implementation of freedom of information. **GRECO recommends (i) adopting freedom of information legislation which enshrines the principle of transparency held by public authorities and guarantees the general right to access documents, in line with the standards of the Council of Europe Convention on Access to Official Documents (CETS 205); (ii) that information of public interest is published *ex officio* on the websites of the government and ministries; and (iii) that effective oversight and enforcement mechanisms are established to ensure proper implementation of the law.**

Transparency of the law-making process

77. In view of a GRECO recommendation in the Fourth Evaluation Round, the Rules of Procedure of the National Council were amended in 2021 to include a provision establishing a parliamentary consultation procedure (Section 23b). As of 1 August 2021, all bills introduced in the National Council (i.e. not only government bills, but also motions by MPs and committees proposing the adoption of laws, bills introduced by the Federal Council, as well as petitions and popular initiatives) must be open to public consultation via the website of Parliament. Opinions can be submitted from the time a legislative proposal enters the National Council until the end of the legislative process in the Federal Council. Opinions received are to be published, except those from private individuals who are to consent to their

publication.

78. As for public consultations before the proposal is considered by Parliament, various federal laws stipulate that draft legislation must be submitted to certain institutions and interest groups for public consultation before being submitted to the National Council. The authorities indicated that, in practice, numerous other institutions – far beyond the legal obligation – are invited to participate in a pre-parliamentary review. Moreover, institutions or persons who are not the direct recipients of an invitation to review drafts may also submit comments on proposed legislation, which is made publicly available on the website of the Parliament[18]. As a rule, the period of public consultation is at least six weeks. This procedure, however, only applies to bills by the Federal Government. Ordinances, by contrast, are not accessible to the public until the date of their publication.

79. Furthermore, a procedure of extended consultation was introduced in 2017 (Resolution 200/E) 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[19]. Citizens and institutions can thus submit opinions on all ministerial proposals, i.e. proposals at a draft stage before they are submitted as bills to Parliament. The following innovations have been introduced in this respect:

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 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. Opinions entered directly in the text field on the Parliament's website may not exceed a total of 10 000 characters. Alternatively, the upload of up to three documents with a file size of 10 MB each is possible. Opinions are 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.

80. The above mentioned Resolution also established crowdsourcing as a pilot project, concerning important future legislative proposals on general issues (drawing inspiration from Finland). Citizens should 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.

[18] A listing of currently ongoing evaluations is available at: https://www.parlament.gv.at/PAKT/BEST/ME/index.shtml.
[19] Committee report AB 1622 d. B., XXV. GP.

81. In the Fourth Evaluation Round Report on Austria, GRECO was concerned that public consultations and appropriate timelines for such purposes were not clearly guaranteed, and that theory and practice diverged. The GET found that, in respect of legislative acts emanating from the government, although practice has now improved, due to the introduction of the extended consultation procedure, the fact remains that this is just a possibility which is not required by law. Adequate timeframes for consultation would also need to be provided for in legislation and complied with in practice. There is still a need to provide in law or regulations for a proper legislative footprint mechanism to allow for public transparency of the evolution of texts. **GRECO recommends that the transparency of laws emanating from the government is further enhanced (i) by requiring extended consultation procedure for draft laws as a main rule; (ii) by establishing adequate statutory timelines for consultations; and (iii) by publicly providing the legislative footprint tracking all external interventions from the beginning of the drafting process, including details on the initiator of the proposal.**

Third parties and lobbyists

82. Lobbying is regulated in the 2013 Act on Transparency of Lobbying and Interest Representation (hereinafter: Lobbying Act). The legislation establishes a mandatory register and a formal set of rules including registration requirements, some spending disclosure requirements, and sanctions for non-compliance. Different types of lobbyists are affected by the legislation, namely lobbying consultancies, corporate groups, professional groups, and public groups. All interest representatives hired by these actors are subject to the established rules when trying to influence public officeholders.

83. The legislation sets out different types of rules for different interest groups. Among these, the strictest conditions apply to lobbying consultancies, which have to register before establishing contacts with public officeholders, adopt an internal code of conduct, declare the turnover of the previous business year, disclose the number of lobbying contracts accepted and, in some instances, disclose their lobbying contracts. Some of the information is publicly disclosed and accessible via an online- register and the Minister of Justice can grant access to non-disclosed information upon permission. In order to secure observance of the rules of conduct and registration obligations, the Lobbying Act establishes sanctions for non-compliance: they include administrative penalties, deletion from the lobbyist register and nullity of contracts.

84. The Anti-Corruption Code of Conduct includes some guidance on relations with lobbyists in the meaning of the Lobbying Act; notably, it refers to the need to ask for the identity, client and mandate or to check whether the lobbyist is registered (if a first-time contact). In case of doubt, the manager is to be consulted before further discussions and the conversation is to be documented.

85. While Austria was one of the first European countries to introduce a law on lobbying in 2013, its practical impact for transparency purposes has been very limited. Most interlocutors interviewed conceded that the law was more of a bureaucratic exercise than a meaningful transparency tool. The ACA conducted an audit on lobbying in 2019 which identified some key flaws of the system (e.g. limited range of information disclosed in registry – for example, contracts with lobbyists are excluded from publicity requirements and only accessible to senior level officials, lack of supervision and enforcement, need to undertake awareness-raising measures regarding the applicable lobbying rules, etc.). A working group

was set up in June 2020 with the aim of upgrading the law.

86. The Lobbying Act was already analysed in the Fourth Round Evaluation Report on Austria; no amendments have been introduced since then. In the light of the shortcomings identified, GRECO addressed a recommendation to Austria calling *inter alia* for a review of lobbying legislation with a view to improving the transparency in this area. GRECO's recommendation has not been implemented so far. In connection with PTEFs, the GET has very similar remarks to those which were already made in respect of parliamentarians in the Fourth Evaluation Round, i.e. to enhance the overall transparency of lobbying and to provide for rules/guidance for the officials having such contacts.

87. Since the lobbying register only makes public a list of entities and individuals, the public has no access to information concerning the full range of third parties seeking to influence policy making who lobby PTEF, when and how. Moreover, PTEFs are not required to report which lobbyists they consulted, or the topic of their discussions. This in turn acquires particular significance when establishing legislative footprint: suggestions received and incorporated in a governmental draft during the consultation process are to be indicated in the explanatory note; however, if an individual was involved in the original draft or provided input during a personal discussion, there is no detailed documentation available, unless voluntarily provided by the respective officials. **GRECO recommends (i) that detailed rules be introduced on the way in which persons with top executive functions interact with lobbyists and other third parties seeking to influence the government's legislative and other activities; (ii) that sufficient details on these meetings and consultations be disclosed (such as the identity of the person(s) with whom (and on whose behalf) the meeting(s) took place and the specific subject matter(s) of the discussion), including by making the agendas of persons entrusted with top executive functions easily accessible to the public.**

Control mechanisms

88. Within the framework of the Austrian Constitution, actions of state bodies are controlled by legal, economic and political mechanisms.

89. With regard to legal control, the Administrative Court and the Constitutional Court review the actions of administrative bodies for lawfulness. In addition, there remains the special legal responsibility of the highest governing bodies to the Constitutional Court (see paragraph 133). Finally, the legality of legislation is subject to the review of the Constitutional Court.

90. Economic and fiscal control is primarily exercised by the Austrian Court of Audit (ACA). The ACA is a Supreme Audit Institution. It supports the Parliament in holding government to account and improves public services through high-quality audits. For the exercise of its competences, the Constitution grants the ACA complete independence. More particularly, the ACA is responsible for auditing the financial management of the federal government, the provinces and the municipalities (with 10 000 inhabitants and above), municipal associations and other legal entities as foreseen by law (e.g. public bodies, funds, foundations and businesses in which the state holds at least 50 % of shares or over which the state exerts others forms of financial, commercial or organizational control). Hence, the scope of ACA's control activities extends to the whole country. In its audit work the Court assesses the economy, efficiency and effectiveness with which government has spent public money. At the

same time, it also examines the correctness of the figures and the compliance with existing regulations.

91. The ACA currently has around 310 staff members; 76 % of whom are public auditors. All audit reports are published on ACA's website; in 2021, roughly one third of its audits dealt with corruption prevention, legal and general compliance. Each year, the ACA produces a report on the annual accounts of government departments, and it has to report to Parliament on its activities[20]. Besides, the ACA has a number of special tasks (e.g. in relation to media transparency, financial disclosure, party financing, etc.). The Court also helps the National Parliament in scrutinising the implementation of government policy in relation to special inquiries[21]. The ACA thus play a pivotal role as independent external auditor and, over the 2022 summer, the Parliament agreed on an even stronger mandate of the ACA, with a consequent increase of resources[22].

92. The GET had the opportunity to discuss at length the content of targeted audits which had been carried out on anti-corruption related matters by the ACA along the years, e.g. corruption prevention systems in ministries (2017) and its follow-up (2021), lobbyists register (2019), disciplinary system (2019), corruption prevention systems in the cities of Graz, Innsbruck and Salzburg (2020), secretaries general (2021), sponsoring (2021), supervisory bodies (2022). The GET was positively impressed by the work and proactivity of the aforementioned Department of the ACA; many of its findings have fed into the recommendations included in the present report. The ACA further confirmed its commitment with regard to anti-corruption, compliance and risk management systems, and transparency of public funding/expenditure. Currently, it is undertaking a number of audits in this context, both at federal and regional level.

93. The political aspect of control is the most far-reaching form of control and linked to the Federal Government's accountability to the National Council. The subject of political control can be questions of political expediency, political decency, or the personal integrity of a public official. In order to exercise these control rights, the National Council is vested with the vote of no confidence; for such a vote, a simple majority is sufficient (Section 74, Constitution).

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[20] The ACA reports to the National Council. A dedicated parliamentary committee, i.e. the Court of Audit Committee, discusses the Court's special reports, as well as the annual report and the general income report.

[21] Since November 2020, the Parliament has set up two committees for inquiries dealing with the political responsibility of the work of former governments - in particular, in terms of the award of public contracts and advertising and managing vacancies. The ACA has been consistently asked for undertaking special evaluations. Amongst others, the Court had to collect budgetary accounting data from the federal ministries. It was also requested to examine all its reports with relevance to the subject how ministries with leaders of the conservative party handled their work during the time in office between 2017 and 2021. So far, the Court has submitted around 35 special reports on performed audit tasks to the said committee. As of 1 January 2023, based on the currently existing five parliamentary groups, up to five (instead of three) requests for investigations can be taken to the Court of Audit. In addition, group-spanning requests (theoretically up to nine) are possible.

[22] Parliament agreed on an even stronger mandate of the ACA regarding three matters: (i) a new legislation of the political parties' act which the National Council agreed upon in July 2022. It is built on a proposal submitted by the ACA in October 2021, in which it called for genuine audit rights at the premises of political parties. This in order to increase the transparency of political party financing; (ii) the right of a certain number of MPs to request special audits. From 2023 onwards they will be able to address more audit requests to the ACA, effectively five instead of three audits; and (iii) further independence of the ACA by strengthening the appointment and dismissal system of his/her President through the requirement of qualified majority (instead of simple majority which was previously the case). As for the increase of the budget of the ACA, the National Council is to reach a decision on this before the end of 2022.

94. In addition, the National Council has the right to interrogate the members of the Federal Government about all subjects of the administration, to adopt resolutions (Section 52, Constitution) and to set up committees of inquiry (Section 53, Constitution). The latter in particular proves to be especially significant in political practice considering the large number of them - 11 since the year 2005, and their effect (six out of the 11 committees dealt fully with corruption related issues and four partly involved corruption instances). A parliamentary committee of inquiry was established in December 2021 to investigate allegations of corruption against members of the government of the ruling Austrian's People Party (ÖVP) during the period December 2017 to October 2021; its work is ongoing.

95. In recent years, there have been instances when allegations of corruption of PTEFs have made the object of parallel investigations by the law enforcement and by the National Council inquiry committee. By law, the inquiry committee has the right to ask public institutions for files and documents to the extent to which these relate to the subject matter of the investigation and the institutions are obliged to provide it. This requirement is equally valid for the prosecution office, which can as well be requested by the inquiry committee, via the Minister of Justice, to provide documents from the ongoing criminal investigation. In case of disagreement, the Constitutional Court decides.

96. During the onsite visit, the GET explored whether in practice the parallel investigation at the political level, seeking for a political response, could hamper the chances of the criminal investigation to be carried out independently and efficiently. The GET was told on-site that the parliamentary inquiry takes precedence over the criminal one. However, the authorities explained after the on-site visit that, from a legal point of view, this is not correct. The Constitutional Court has ruled that interests of criminal prosecution do not have precedence over the tasks of an efficient political control through a parliamentary investigation committee. At the same time, the Constitutional Court has highlighted the importance of the interests of criminal prosecution and referred to the consultation mechanism. Therefore, there is no such thing as a general precedence of one over the other, but the considerations have to be explored on a case by case basis through the consultation procedure. The official representatives met by the GET on-site stated indeed that, in practice, a process of consultation between the Minister of Justice and chairperson of the committee of inquiry takes place when providing the requested documents risks jeopardising the judicial procedure. The committee could agree not to publicly use the documents provided by the Ministry of Justice or to grant a delay in the provision of documents until a later phase of the criminal investigation. Allegedly, the prosecutor's opinion is usually respected by the Ministry of Justice.

97. The parliamentary role to clarify suspicions of wrongdoing and integrity issues of the members of the executive cannot be denied and the Austrian civil society is keen to see the Parliament react on these issues. However, the Austrian authorities might wish to monitor the smooth functioning of the consultation and decision mechanism of the parallel investigations, so that in the end the judiciary could, independently and thoroughly, establish the criminal responsibilities (or lack of) in relation to high-level corruption cases. It is also crucial to ensure that the parliamentary investigation does not leak sensitive material used in ongoing criminal proceedings.

Conflicts of interest

98. There is no specific definition of conflict of interest in Austrian legislation. The prevention of conflicts of interest is mainly dealt with through rules on disqualification, as well as rules on secondary activities. More particularly, the provisions the General Administrative Procedure Act and those of the Civil Service Employment Act on secondary employment provide for measures applicable in general. They are complemented by the specific provisions of the Incompatibility and Transparency Act which covers, *inter alia*, members of the executive, including as regards financial declaration obligations, employment bans and restrictions to entrepreneurial activities for ministers and state secretaries.

99. The rules on disqualification, laid down in Section 7 of the General Administrative Procedure Act, establish that public employees are required to abstain from any decision and to refer the matter to another colleague if the decision concerned involves e.g. personal interests or those of relatives, political relationships, or where there are other important reasons to suspect a risk of bias. The assessment of whether disqualification applies is up to the official to judge. In cases of doubt, the existence of bias should be presumed in order to ensure the objectivity of the procedure. The most important criterion when conducting the aforementioned discretionary assessment is whether there are certain circumstances which could impair confidence in impartiality. Where bias is presumed, public officials must abstain from any official action and arrange their representation. (Section 47, Civil Service Employment Act). Only in the event of "imminent danger" they must, if representation by another official is not immediately possible, take the necessary measures to prevent such a danger.

100. The absence of a legal definition for the conflict of interests and the reference made only to the possible "bias" might be a reason for the apparent low level of understanding of the concept of conflict of interest among the public officials, including the PTEFs. Neither the law, nor the Anti-Corruption Code of Conduct in Public Service, describe the different typologies of conflicts of interest: real, potential, and perceived and no rules are established, other than the self-recusal of the public official when he/she believes there are reasons to doubt his/her impartiality and the subsequent obligation of the public administration to replace the self-recused official, if so requested. However, a conflict of interest should be identified and prevented by the administration even from its potential phase, when bias does not yet come to question.

101. The GET discussed with the authorities various situations of conflict of interests regarding PTEFs that may occur, *inter alia*, concerning membership and decision making of recruitment commissions. According to the authorities, most of the cases of self-recusal for reasons of bias took place in the field of public procurement. The non-observance of the obligation of the public official to self-recuse in case of bias is a disciplinary offence. However, no information, or statistics were provided to the GET showing the recording of possible conflicts of interest, complaints against such behaviour, disciplinary investigations opened, or sanctions applied, in order to assess the situation in this respect[23].

102. In view of the above, **GRECO recommends strengthening the conflict of interests' prevention policy (i) by providing a clear definition of (real, potential, and perceived)**

[23] The Austrian authorities indicated that the Code of Conduct includes a section on conflicts of interest. They further reported, after the on-site visit, that the Federal Chancellery intends to conduct training on this issue.

conflicts of interest in public service; (ii) by raising the awareness on the practical management of such situations notably by ensuring that persons with top executive functions receive training on how to identify and prevent conflicts of interest and related integrity matters when they take up their duties and at regular intervals; and (iii) by collecting statistics on conflicts of interest situations and measures taken.

Prohibition or restriction of certain activities

Incompatibilities and outside activities

103. Ministers and state secretaries may not exercise any secondary-occupation from which they intend to receive earnings without the approval of the Incompatibility Committee of the National Council. Approval to the exercise of such an occupation may only be given if the exercise of the public office will remain objective and not subject to undue influence. The Committee may, *inter alia*, request members of government and State secretaries to submit further information or evidence concerning their professional practice, their ownership or shareholdings in a company, their executive positions, or their employment relationships with a territorial authority. The management of a personal portfolio and the exercise of duties within a political party, within a legal body representing certain interests or a voluntary professional association, is not considered to be the exercise of an occupation. The discussions and decisions of the Incompatibility Committee are not public.

104. Regarding secretaries general and ministerial advisors, they are subject to the provisions on secondary activities laid down in Section 56 of the Civil Service Employment Act. Accordingly, they may not exercise any secondary occupation outside their public service, which a) prevents them from performing their public duties; b) gives rise to the suspicion of bias (the simple suspicion suffices, evidence is not required) or c) prejudices other fundamental interests associated with their public duties.

105. The official himself/herself is required to undertake this examination of admissibility. If none of these risks are at hand, then s/he may exercise the secondary occupation. If, however, the secondary occupation would lead to a sizeable additional income, then it must be declared to the authority for examination whether the secondary occupation is admissible or not. Any activity carried out as a board member of a profit-making entity, even if not remunerated, needs also to be declared. Some additional outside employment bans may apply to secretaries general, as provided by specific legislation (e.g. Act on Public Broadcasting).

106. In the GET's view, incompatibilities and prohibitions/restrictions of certain secondary occupation are useful instruments to prevent typical conflicts of interests that can arise in the public service. When it comes to the members of governments and members of their cabinets, it is important to make sure that the political decisions they have to make (or to prepare, in the case of the cabinets) is not influenced or perceived of being influenced by some personal interest especially resulting from secondary occupations or financial interests in the economic sectors they are called to oversee.

107. The GET notes that the obligations incumbent to ministers and state secretaries to report to the Incompatibility Committee of the National Council and/or ask permission for gainful secondary occupations, for assuming an executive position in corporations functioning

in sensitive sectors and for ownership or financial interests in companies are valuable tools for preventing conflicts of interest. However, the GET considers that the current system would benefit from further improvement by extending the obligation of the ministers and state secretaries to report ownership or shares in private companies in order to cover non-marital spouses and the position of beneficial owner. The authorities are encouraged to think expansively in this respect. As for ministerial advisors and secretaries general, they only have the obligations listed for the civil servants restricting the possibility to perform secondary occupations and to report them to their service authority in case it leads to sizeable additional income, as well as to report positions of board member of profit-making entities.

108. The main concern of the GET in this area relates to the monitoring and verification of the applicable conflict of interest disclosure obligations. In this connection, the GET was informed that, in practice, not many ministers declare secondary occupations, they provide a "blank page". Nor do they ask for exceptions regarding the fulfilling of executive positions in pertinent corporations. On the other hand, declaring shares in private companies and, thus, getting bans from the Incompatibility Committee for these companies to be awarded public contracts are rather common. Further, while conflict of interest disclosures of ministers and state secretaries have to be filed and recorded, they are not made public. As mentioned in paragraph 114, the Federal Chancellor must publish the contract award prohibitions that have been decided by the Incompatibility Committee.

109. As a rule, the declarations have to be formally checked by the parliamentary administration, which provides support to the Incompatibility Committee. Follow-up questions may be asked, according to the authorities. Nevertheless, no such cases have been seen. No information showing that the declarations by ministers are systematically checked was provided to the GET. The GET has concerns on the institutional set-up of the monitoring system, given the political composition of the supervisory body and the lack of transparency of its operation and the decisions it adopts. This could well lead to a public perception that the parliamentary committee is concerned more with protecting the respective party members than with enforcing integrity standards. More can be done to strengthen transparency, scrutiny and accountability of the system.

110. The declarations of secretaries general and ministerial advisors should be presented to the responsible HR department of the ministry. Some ministries encountered by the GET (e.g. Ministry of the Interior) indicated that the filing of the declarations required from the public officials by the Civil Service Employment Act is checked by the internal audit departments. However, the GET understood that, in practice, the declarations of political appointees are not being checked. Moreover, the internal audit departments of a ministry do not have a special monitoring task with regard to these declarations. For that reason, the ACA has recommended to the audited ministries to implement a procedure that would include a minimum verification of the declaration concerning the secondary occupations.

111. The GET wishes to stress that a proper system for detecting conflicts of interest in respect of PTEF is crucial. The lack of a genuine scrutiny in this respect is a critical loophole and may well undermine the integrity of the institutions and their decisions and lead to undue interests permeating policy making. Consequently, **GRECO recommends that (i) a proper mechanism of verification of the various disclosure obligations of persons entrusted with top executive functions regarding restricted or prohibited activities be introduced; and (ii) disqualification decisions are made publicly available.**

Financial interests

112. Ministers and state secretaries must not assume an executive position in a stock corporation, in a company with limited liability engaged in the banking, trading, manufacturing or transportation industries or in a savings bank. In particular they must not be a member of the management board or of the supervisory board of a stock corporation, managing director or member of the supervisory board of a company with limited liability of the categories as specified, nor members of the management board of the savings bank board of a savings bank (with the exception of municipal savings banks), nor in mutual insurance institutions. The exception to the aforementioned rule is if the Federal Republic holds shares in such company and the Federal Government states that it is in the interest of the Federal Republic that the person engages in the management of the company. Any activity in this area is subject to follow-up approval of the National Council and can only be carried out on an unpaid basis. No such a thing has occurred in the last six years.

Contracts with state authorities

113. If a minister or state secretary is the owner of a company or holds a financial interest in an undertaking, then s/he must notify this fact to the Incompatibility Committee when s/he takes office. If a financial interest, including that of the spouse of the person concerned, exceeds 25%, certain restrictions apply. In particular, such companies may not be directly or indirectly awarded contracts by the Federal authorities or by undertakings which fall within the auspices of the Federal Audit Board. This also applies in the event of the award of contracts to ministers and state secretaries who work on a freelance basis, and persons working on a freelance basis who work with them.

114. The Incompatibility Committee may allow exceptions, provided appropriate precautions are taken to ensure the unreserved conduct of official functions. The Incompatibility Committee is required to notify to the Federal Chancellor those undertakings and freelance individuals to whom no contracts may be granted. The Federal Chancellor must publish this notification in the Official Journal (*Amtsblatt*) attached to the Wiener Zeitung. There have been three of such announcements since 2017.

Gifts

115. Civil servants are not allowed to demand, accept, or cause someone to promise gifts, pecuniary, or other advantages, for themselves or for a third party because of their official position. Only gifts of low value which are customary in the place or region (e.g. calendars, pens, promotional items, etc.) are permitted. Both criteria must be examined separately. For example, if a low-value gift is not customary at the place where it was given it may constitute an improper advantage; vice versa, a customary gift may not be exempted if its value is too high. Academics and courts consider a value of up to approximately 100 € as low.

116. If officials receive gifts in the form of honorific distinctions or awards, they have to notify their authority. Officials can accept benefits granted to them in the course of official events under specified circumstances, e.g. if these benefits are generally granted to all

participants in the respective event, are of a standard that is customary at comparable events, etc. (Section 59, Civil Service Employment Act).

117. More particularly, attendance at events related to the discharge of representational duties or, in general, to fulfilment of official duties do not constitute improper advantages. If there is an adequate consideration (lectures, etc.), the attendance constitutes no advantage as defined in these provisions. Leisure programmes, which might be seen as personal advantages (i.e. which are not open to all participants/attendees) and are unrelated to the event constitute no such exemption (such as private extensions of stays at favourable rates, including for relatives). The criteria are area of responsibility of the office, topic and objective of the event and specific function of the public official. Events of a typical leisure character are usually not exempted. Advantages for relatives are typically not included.

118. The receipt of undue advantages is punishable under criminal law (Sections 304-306, Criminal Code). Section 305 of the Criminal Code defines which advantages are not considered improper, as described above.

Misuse of public resources

119. The misuse of public resources may constitute a criminal offence pursuant to the provisions of Section 153 of the Criminal Code. Notably, anyone who knowingly misuses his/her power to dispose of another's property or to oblige another, thereby damaging the other's property, may be punished by imprisonment for a term of up to six months or by a fine of up to 360 daily rates. Anyone who violates in an unjustifiable manner such rules designed to protect the assets of the beneficial owner abused his/her powers. Anyone who causes damage in excess of 5 000 € may be liable to imprisonment for up to three years, and anyone who causes damage in excess of 300 000 € may be liable to imprisonment for up to ten years.

Misuse of confidential information

120. Civil servants shall keep secret from anyone, save those to whom they are required to officially report to, all facts of which they have obtained knowledge exclusively from their official activity and which are to be kept confidential in the interest of maintaining public peace, order and security, comprehensive national defence, external relations, in the economic interest of a corporate body under public law, for the preparation of a ruling, or in the preponderant interest of the parties involved. The duty to maintain confidentiality continues to apply after termination of office (Section 46, Civil Service Employment Act).

121. The obligation of the official secrecy obligation is punishable with a term of imprisonment of up to three years (Section 310, Criminal Code). In addition, claims for damages under civil law may be introduced by the interested party.

Revolving doors

122. By specific provisions of constitutional law, former members of government are excluded from certain positions for five years, such as in the Supreme Court, the Administrative Courts, the Supreme Administrative Court as well as the Constitutional Court. Other than this, there is no post-employment restriction for ministers and state secretaries.

123. Secretaries general and ministerial advisors are subject to the rule of the Civil Service Employment Act. Notably, for a period of six months, they may not work for any legal entity which is not subject to auditing by the Federal Court of Audit, a regional court of audit or a comparable international or foreign inspection body, and which has benefited from decisions rendered by the official in a period of twelve months preceding the termination of functions. This applies only if performing such an activity may compromise public trust in the institution and, since these restrictions constitute a constraint of the fundamental right to choose any occupation desired (as guaranteed by the Constitution). The law foresees a series of further exceptions: if their application may result in an inequitable obstacle for the professional career of the former official; if the last monthly salary has not exceeded a certain amount (linked to social security contributions – the applicable amount for the year 2022 is 3 780 €); or if the federation in its capacity as an employer is responsible for the resignation of the former official. Violating such a prohibition entails the payment of a fine amounting to three times the monthly wage of the last period of employment.

124. The GET notes that the six-month cooling off period for civil servants does not apply to ministers and state secretaries. The GET further has misgivings as to the application of the civil service post-employment restriction to other PTEF, i.e. secretaries general and ministerial advisors. It is certainly not tailored to this category of persons given their decision-making exposure. In addition, six months is very short as a cooling-off period and likely to guard insufficiently against risks of corruption and conflicts of interest where PTEF are offered employment perspectives during their tenure. In this connection, most GRECO members reviewed to date in the Fifth Evaluation Round establish longer cool-off periods for PTEF - the most common timeframe generally stands at two years.

125. As for the practice of monitoring the observance of the cooling-off period, the interlocutors met on-site by the GET indicated that this is a problematic issue and that it is the role of the HR departments of the ministries to supervise it. Some of the HR departments have employees specially checking the post-employment prohibition, but not all of them. Apparently, there is a practice at the level of some ministries of having specific talks with the public official leaving office with regard to his/her post-employment obligations. This topic is included in the training programs of the Administrative Academy. However, there are no statistics on how many secretaries general and ministerial advisors have been trained. There are also no statistics on whether sanctions have been applied and how many of them for non-observance of this rule.

126. The GET notes that the issue of revolving doors is a sensitive problem in Austria. Scandals have emerged in relation to allegations of some PTEFs arranging for themselves, by misusing their public position, well paid post-ministerial jobs. **GRECO recommends (i) that post-employment rules/restrictions be laid down for ministers and state secretaries and further strengthened for all other persons entrusted with top executive functions, including by providing pertinent cooling off periods; and (ii) that an effective supervision mechanism regarding these rules be established.**

Declaration of assets, income, liabilities and interests

127. Ministers and state secretaries have to disclose their financial situation (real estate, capital assets, companies and share in companies and liabilities) to the president of the Court of Audit within three months after taking office, every second year and when leaving office.

In case of extraordinary growth of their assets, the president of the Court of Audit must report to the President of the National Council. Since the assessment can only be based on a comparison of the information provided by the reporting persons, and without content-related audit rights of the Court of Audit in this area, an assessment of completeness and correctness of asset declarations is not possible.

128. Secretaries general and ministerial advisors are not subject to the aforementioned declaration requirements. They only have to meet the declaration requirements of other federal civil servants on secondary occupations. Such declarations are to be handed in to the human resources department of the relevant ministry when the secretary general/ministerial advisor takes up his/her duties and in the event of significant changes thereafter. The relevant human resources department may conduct verifications of the reported information. Failure to file a disclosure is a breach of duty which may entail disciplinary measures.

129. The GET considers that the current financial disclosure system in Austria is weak and must be further developed in order to become a useful instrument to prevent and detect illicit enrichment and conflicts of interests in the government. Also, the level of transparency needs to be increased in this respect. Several shortcomings have been identified. At present, the items that need to be declared are very limited. The list could be further expanded to comprise most types of income received, including gifts or gratuities over a certain value. Loans given or received, luxury goods or other movable property over a certain value should also be included. Furthermore, the declaration system concerns consolidated amounts; there is no itemisation of its contents. The GET notes that good practice in this respect calls for sufficient disaggregation of detailed figures by source, type, and value. Further, there is no requirement of electronic filing. The GET considers that as the control system of financial declarations is stepped up (see recommendation that follows later in this respect), e-filing allows for better opportunities in terms of data processing and monitoring. Another critical flaw of the current system refers to the lack of an obligation to publish financial declarations.

130. Moreover, secretaries general and ministerial advisors are not subject to the obligation to file financial declarations. Having in mind their important role in conveying the political views of the ministers to the public administration and their closeness to both governmental decisions and the private sector, the GET believes that they should be covered by the same integrity-related measures provided for the members of the government, including by the obligation to file assets declarations. Last, but not least, the forms that currently have to be filed by the ministers and state secretaries do not include financial information of their spouses (marital or not) and dependent family members. **GRECO recommends further developing the existing financial declaration system for all persons entrusted with top executive functions (also including secretaries general and ministerial advisors) by (i) expanding the categories of assets to be disclosed and providing for greater itemisation; (ii) requiring e-filing; (iii) publishing financial declarations; and (iv) considering including financial information on partners and dependent family members in such declarations (it being understood that the latter information would not necessarily need to be made public).**

131. Additionally, the control mechanisms are insufficient. The fact that these declarations are only presented to the President of the ACA and not made public in any form was criticised by the interlocutors of the GET. Monitoring of the filing of assets declarations and verification of their accuracy is inexistent. The law provides for the possibility of the President of ACA to notify the National Council, but only if a substantial increase of the assets is observed or

reported. However, the law does not provide for a verification procedure. There is no obligation to check whether every minister and state secretary has provided such a declaration, nor an obligation to audit the content of these declarations, and there is no sanction for not filing the declarations. **GRECO recommends (i) ensuring substantive verifications of financial declarations of persons entrusted with top executive functions; and (ii) that appropriate resources, auditing capabilities and enforcement measures be provided for this purpose.**

Accountability and enforcement mechanisms

Non-criminal accountability mechanisms

132. Breaches of the decisions made by the Incompatibility Committee, as well as abuse of position for profit purposes, can entail termination of office, as decided by the Constitutional Court (Sections 9 and 10, 1983 Incompatibility and Transparency Act, as amended).

133. Pursuant to Section 142 of the Constitution, complaints against supreme authorities, for legislative infringements culpably ensuing from their official activities, can be brought to the Constitutional Court by vote of the Federal Assembly (in case of a suit against the Federal President) or the National Council (in case of a suit against a member of the Federal Government). The procedure to be followed is governed by the procedural rules of the Constitutional Court, as well as criminal law provisions if linked to a criminal action. Such proceedings may result in the loss of office and, under aggravating circumstances, in the loss of political rights. In certain cases, however, the Constitutional Court may merely establish the fact of an infringement without taking any further measures. The authorities explain that this theoretical power of the Constitutional Court is of hardly any practical significance. Since 1920, there have only been three proceedings of this type, two in the era of the First Republic and one in 1985. The GET understood that for the most part parliamentary oversight is relied upon to hold ministers and state secretaries to account, the extreme option being attempting to topple the entire government through a vote of no confidence. GRECO has recommended that a future code of conduct be accompanied by credible enforcement (see paragraph 67).

134. Secretaries general and ministerial advisors fall under the disciplinary regime which is applicable to civil servants. The applicable disciplinary measures and proceedings depend on the seriousness of the infringement. For civil servants, sanctions consist of reprimands and warnings, fines, temporary suspension, or dismissal. Contractual staff are subject to transfer to a different department, termination of employment and/or dismissal.

Criminal proceedings and immunities

135. Members of the government have no immunities linked to their function, other than those provided to them as members of parliament (in addition to freedom of speech, Section 57 of the Constitution provides that the arrest of a member of parliament on the ground of a criminal offence is not possible without the consent of the National Council unless if caught in *flagrante delicto*; domiciliary searches are only possible with the consent of the National Council; and any other action taken against a parliamentarian on the ground of a criminal offence is possible without the consent of the National Council only if it is manifestly

not connected with the performance of the official duty[24]. Parliamentary immunity ends upon expiration of the mandate)[25]. State secretaries, secretaries general and ministerial advisors do not enjoy immunity.

136. In 2020 and 2021, respectively, two members of the Federal Government (a former Finance Minister and a former Vice-Chancellor and Minister of Public Service and Sport), were convicted for corruption-related charges to 8 years' unconditional imprisonment (acceptance of gifts and disclosure of confidential information in a bidding process in return for a proportional share of commission payments; non-final conviction) and 15 months' conditional imprisonment (passive bribery – receiving party donations to change the law in favour of the donor; the conviction was quashed by the Court of Appeal and remitted to the first instance for retrial), respectively (non-final convictions). In 2021, investigations were launched in respect of the former Chancellor for dishonesty and bribery (so-called Advertisement Affair: purchase of faked polls and favourable media coverage with financial means of the Ministry of Finance), as well as a former Minister of Finance for bribery (support of a large Austrian enterprise regarding tax case claim abroad in exchange of a party donation).

137. The prosecution of high-level corruption offences involving government officials falls under the jurisdiction of the Central Public Prosecutor's Office for Combating Economic Crime and Corruption – WKStA. In recent years, the WKStA has been very active in directing the investigations and prosecuting several prominent corruption cases concerning PTEFs. As a general rule, the WKStA prosecutors rely in their investigations on BAK, but the GET was told that in some cases the Ministry of the Interior may decide to entrust other police units with investigation. The GET heard of at least one important and complex corruption case which followed such a procedure. Prosecutors cannot decide with which police unit they are to work, as the police is independent from the prosecution service. According to the interlocutors met on-site, the resources of the WKStA to manage complex and sensitive high-level corruption investigations are insufficient. The prosecutors expressed the need to have at least a few liaison police officers in their teams in order to secure operativity and confidentiality of the sensitive investigations concerning high governmental officials.

138. The GET further heard concerns as to the ability to perform searches in the premises of public authorities. Following critical opposition from civil society, but also the prosecution services, a legislative proposal that would limit searches of the premises of public authorities, (notably, by requiring to request administrative cooperation from concerned institutions prior to conducting searches) was withdrawn. The GET welcomes that such a limitation is now out of the question, as it would have severely compromised corruption-related investigations.

139. Another issue that was repeatedly raised during the on-site discussions was the reporting obligations for prosecutors to the Ministry of Justice. Until recently the reporting obligations were even harsher, including the duty for the prosecutors to notify major procedural steps three days before their execution. However, in March 2021 this latter

[24] Concerning the members of the second chamber of Parliament, the Federal Council, immunity-related consents have to be provided by the designating federal parliaments (*Landtage*).

[25] See for further details in this respect the Fourth Round Evaluation Report on Austria, paragraph 65. See also remarks of the 2022 EU Rule of Law Report on Austria welcoming the adoption of a ministerial decree, which entered into force on 21 April 2022, which clarifies that investigations of accomplices to persons enjoying immunity from prosecution and are likewise suspected of crimes, are legal as long as there are no violations of the existing immunity regulations. More particularly, evidence on the immune person could be gathered as long as the investigation does not violate the immunity of the immune person.

obligation was revoked, and the authorities underscored that the reporting system has been substantially relaxed thereupon. At present, reports on the intended further steps are, in principle, only obligatory at the end of the investigation when the decision has to be made whether to drop the case, continue the investigation or file a charge. Usually, the only exception to such principle, refers to interim reports that need to be filed enforcing coercive measures, such as the request of pre-trial detention or other orders that interfere with fundamental rights of comparable gravity. Even so, to fulfil these reporting duties it is sufficient to submit the court-granted order and additional information required for the overall understanding described in keywords to the competent higher authority. In urgent cases submission via e-mail without further formalities is possible. The authorities also indicated that, in order to further relieve public prosecutor's offices of these interim reporting obligations the Federal Ministry of Justice has already prepared corresponding amendments to the Public Prosecutors' Act (Staatsanwaltschaftsgesetz, StAG). The start of the parliamentary debate about this legislative project is, however, awaiting. The GET can only welcome that further legislative changes are being prepared to reduce reporting obligations for prosecutors to the Ministry of Justice, all the more, because it heard outstanding concerns from prosecutors, during the evaluation visit, regarding this very same matter.

140. The GET was further made aware of burdensome reporting obligations of the prosecutors during the investigations of high-level corruption cases, when there is a special public interest concerning the criminal offence because of its significance or the role of the suspected official in public life (and in the latter case, in so long the suspicion is directly linked to the function of the suspected/defendant in public), triggering a reporting obligation. More particularly, prosecutors are obliged to inform the Senior Prosecutor's Office (the WKStA prosecutors inform the Senior Prosecutor's Office of Vienna), who further informs the Supervisory Authority functioning within the *aegis* of the Ministry of Justice about any case of public interest. For the GET, when the person under investigations is a member of the government, reporting to a political authority might prove to be very detrimental to the confidentiality of the investigation and to the independence of the prosecutor. Irrespective of the system chosen by one State on the organisation of the prosecution office, whether the prosecutors are functionally independent or hierarchically subordinated to the executive power, the long-standing viewpoint of GRECO, based on international standards, is to insist that safeguards should be taken for corruption investigations to be carried out without any political or other undue influence[26]. Therefore, **GRECO recommends ensuring that criminal investigations of persons entrusted with top executive functions suspected of having committed corruption related offences is not hampered by undue interference, by providing for sufficient resources and a legal framework that would secure the operational independence of the Central Public Prosecutor's Office for Combating Economic Crime and Corruption (WKStA), including by revising the use of regular reporting to the Ministry of Justice.**

[26] Austria is currently considering its prosecutorial system. Since mid-September 2022, the final report of the working group to set up an independent (and instruction-free) Federal Prosecution Service is available and the issue has now become the subject of political negotiations.

V. CORRUPTION PREVENTION IN LAW ENFORCEMENT AGENCIES

Organisation and accountability of law enforcement/police authorities

Overview of various law enforcement authorities

141. Law enforcement authorities in Austria are the prosecution authority (including the Central Public Prosecutor's Office for Combating Economic Crime and Corruption – WKStA) and the criminal investigation authority[27]. Since corruption prevention in respect of prosecutors was subject to GRECO's review in its Fourth Evaluation Round[28], this report focuses on the criminal investigation authority, and more particularly, on the Police and the Austrian Federal Bureau of Anti-Corruption (BAK).

142. The functions of the criminal investigation authority reside with national security authorities, as establishedby the Constitution. The provisions of the Security Police Act (*Sicherheitspolizeigesetz –SPG*) governs, *inter alia*, the organisation of security administration (security authorities, police commands), the powers and duties of law enforcement authorities (hereinafter: LEA) and law enforcement officials (hereinafter: LEO), etc. The Code of Criminal Procedure also governs (some) key tasks of the criminal investigation authorities, notably, regarding the activity of the BAK. Austria has approximately 31 979 LEO, about 21.5% of whom are female.

143. The Federal Police is in charge of ensuring public order and security, preventing and combating crime, and assisting civil society. The Federal Gendarmerie, the Federal Police, the Criminal Investigation Department (CID), and parts of the former customs service, are since 2005 part of the Austrian Federal Police. Consequently, there is a single law enforcement authority in Austria. It has nine Regional Police Directorates (the one in Vienna differing in size and scope of responsibilities). On the next level, there are district police commands (*Bezirkskommanden*) and municipal police commands (*Stadt polizeikommanden*). At local level there are police stations (*Polizei inspektionen*) and specialised units (e.g. Border Police Stations, Police Dog Units, River and Lake Police Units, Police Detention Centres, etc.).

144. The Austrian Federal Bureau of Anti-Corruption (BAK) was established on 1 January 2010 and is based in Vienna. It has nationwide jurisdiction in the prevention of and fight against corruption. The BAK operates in close cooperation with the Central Public Prosecutor's Office for Combating Economic Crimes and Corruption (*Zentrale Staatsanwaltschaft zur Verfolgung von Wirtschaftsstrafsachen und Korruption*, WKStA), and is also in charge of all matters concerning security police and criminal police cooperation with foreign and international anti-corruption institutions.

145. The aforementioned LEA are civil organisations. They are part of the Federal Ministry of the Interior (MoI); the latter thus being the highest LEA. The BAK is established outside the Directorate-General of Public Security, but within Directorate-General III (Law). Instructions to the BAK regarding the investigation of a specific case have to be given in writing and have

[27] The relevant criminal investigations authorities are the Criminal Intelligence Service (*Bundeskriminalamt*, BK), the Directorate State Protection and Intelligence Service (*Direktion Staatsschutz und Nachrichtendienst*, DSN), the Austrian Federal Bureau of Anti-Corruption (BAK), and the Federal Police (*Bundespolizei*) with its nine Regional Police Directorates (*Landespolizeidirektionen*, LPDs).

[28] See Fourth Round Evaluation Report on Austria, section V.

to be substantiated. An oral instruction given for special reasons, in particular due to danger in delay, must be submitted in writing as soon as possible thereafter (this is regulated by the Federal Act on the Establishment and Organization of the Federal Bureau of Anti-Corruption, BAK-G).

Access to information

146. LEA fall under the access to public information rules that apply to any other public authority. The GET refers to its remarks in this respect in the first part of this report. Additionally, the Security Police Act establishes that requests for information, as well as information, applications and administrative decisions referring to matters of the security administration are exempted from stamp duties and federal administrative fees.

147. LEA use various means to inform the citizens: through their websites and those of the MoI, by means of press releases, annual reports and through social media updates. The BAK releases statistics on corruption related offences on its website.

Public trust in law enforcement authorities

148. The level of trust in the police is usually higher than in other public and political institutions in Austria. National surveys point at a relatively constant 83% trust rate in the police[29]. The 2022 Eurobarometer on Corruption shows that 54% would turn to the police to complain about a corruption case (EU average: 63%) and 29% would turn to the to the specialised anti-corruption agency (EU average: 12%). The Eurobarometer also shows that a small proportion of Austrian citizens (15% vs EU average of 28%) believes that bribery and the abuse of power is widespread in police and customs.

149. In 2015-2016, the BAK conducted its first research study on "Attitudes to corruption in the Austrian police" in cooperation with the Hanover University of Applied Sciences and Arts and the Münster University of Applied Sciences. On the basis of experience gained during the first study, a follow-up study was issued in 2018[30]. In the context of this second study, around 1 400 entrants to the Austrian police were surveyed on their attitudes to corruption. It turned out that the average attitude to corruption held by Austrian police trainees is comparable to that of the general Austrian population. There is a slight tendency for police trainees to disapprove of corruption more readily than the general population. Moreover, as the age of respondents increases, they tend to have a more adverse attitude to corruption. No differences in attitudes to corruption can be found with regard to gender.

150. On-site, the GET was told by the authorities that, according to domestic polls, the trust in the police is generally very high and therefore not a matter of concern. Likewise, the specialised anti-corruption agency has higher degree of trust when it comes to reporting than in the EU average. That said, in relation to dealing with high-level corruption some other interlocutors were worried, in particular with reference to BAK, that it was not as proactive as, for instance, the special prosecutor's office (WKStA), showing much less initiative than in previous years, less known and appreciated by the general public. The authorities argued that

[29] Surveys conducted by Demox-Research Institute in 2014, 2016 and 2018.

[30] An Austrian version of the Hanover Corruption Scale (HKS 38) was designed, taking into account Austria's linguistic characteristics. This "HKS 38 Ö" was used for the first time in the follow-up study "Attitudes to corruption", which was initiated by the BAK in 2018.

this may be merely a perception, which is not backed by solid facts, and which may be conditioned by other factors, such as the current set-up of the system where ex-officio investigations are conducted under the "guidance" of a prosecutor, or the fact that the WKStA is regularly solely responsible for media work, especially in high-level corruption proceedings. The authorities further noted that the fact that the public is less aware of the BAK compared to the WKStA could turn into an advantage, as the BAK and its investigators are exposed to less pressure and hostility (than the prosecutors in the WKStA).

151. The GET is aware that the fight against corruption and top-level corruption in particular is not for law enforcement only to deal with. Yet the steps taken in this regard by Austria, in particular since 2010 when specialised anti-corruption bodies were set up, need to be further enhanced and supported. Institutions must be, but also seen to be, effective. The GET therefore encourages law enforcement authorities, in particular BAK as a specialised anti-corruption body responsible for the prevention and fight against corruption in the country, to stay vigilant about these perceptions.

Trade unions and professional organisations

152. In Austria, social partnership and employee co-determination are core components of the public administration system; the role of the labour unions ranges from salary negotiations to employment conditions or the review of organisational/structural reforms. The representation of LEO is divided into the area of staff representation on the one side, i.e. representation within the Ministry of the Interior, and the Police Union within the Union of Public Services on the other side; the police union represents the police officers outside of the Ministry. In accordance with the Austrian legal provisions, the staff committee and the Police Union have the task of protecting, supporting and maintaining the professional, economic, social, cultural and health interests of police officers. In fulfilling these duties, it must be ensured that all relevant laws, regulations, contracts, instructions, decrees and directives are observed. In case of an incident, legal assistance will be given. Representation under the Staff Representation Act covers the entire staff of the Ministry of the Interior.

Anticorruption and integrity policy

Policy, planning and risk management measures for corruption prone areas

153. The mission and vision of the current strategy of the MoI, as enshrined in the policy document entitled *Vision 2030: Together for a free and safe Austria*, is to actively protect and help people when it matters; always on the cutting edge, ensuring a free and safe Austria. There is no dedicated anti-corruption strategy specifically for LEA, but the National Anti-Corruption Strategy, which was developed under the direction of the MoI and in broad consultation with public administration, civil society and business, and more particularly, its Action Plan, includes a chapter on law enforcement.

154. The MoI has a Compliance Management System which promotes a compliance culture through different measures and structures, including by communicating standards and raising awareness on integrity matters, as well as setting the right tone at the top. As regards structures, compliance managers and integrity officers have been appointed within each Directorate General as contact points for integrity promotion and corruption prevention issues. In addition, corruption prevention officers (CPOs) are police officers who assist with

training activities at sub-national level.

155. Risk management as a structured and institutionalised process is being implemented, but some delay has occurred because of the covid-19 pandemic. More particularly, since 2020 the Directorate-General of the federal police forces started to implement risk management in all entities of the organisation. Risk identification and analysis of risk-prone services and risk-prone situations as one of the main elements of the risk management processes has reportedly started. Senior managers of the directorates are responsible for this identification process, and it is foreseen that, once this phase is completed, they will be supported by risk managers. It is also planned that a separate special unit of the MoI will assess the effectiveness of risk management tools. The most common corruption-prone categories are as follows (criminological categories defined by the BAK): supervision/control, improper agreements, collusion (cartels, non-competition between competitors), general complaints, procurement/tendering procedures, consultation and transfer of data, improper budgeting or budget management (financial management), immigration and asylum, money laundering, permits, expert opinions, certificates, sponsoring, punishable acts in connection with the abuse of an official function, punishable acts committed by law enforcement officers (in their free time), human resources, initiation of a proceeding, procedural flaws, allegations of abuse, elections.

156. The BAK applies standardised risk management measures. Risks are evaluated once a year and updated if necessary. The identification of new risks is also part of the annual procedure. Apart from the specification of risks, the associated measures to avoid these risks are also evaluated and updated once a year. Moreover, operational decisions usually require a six-eye principle. As of December 2020, the BAK‘s risk management system covers 68 risks, which are divided into the following seven categories: security, budget, misconduct, communication, operational, personnel and legal. Around 200 measures are currently in place to mitigate and/or control the risks. Every two years, a BAK‘s Compliance Report is published, providing an insight into the BAK‘s compliance and risk management system. In particular, it describes how this system is developing, how it meets the goals and tasks of such a system, and which compliance measures have been implemented or are planned for the near future. The report was last published in November 2020 and is available on the BAK’s website.

157. In addition to the abovementioned assessments of the risks of corruption, which are carried out according to the specifications of the MoI, there are more general risk analyses carried out by the Austrian Court of Audit (ACA), looking at a wider variety of risk categories, i.e. the risk of deviating from standards. The work of the Department of Internal Audit is also key in relation to risk management (see also paragraphs 226 and 227 on internal audit and paragraph 229 on external audit, respectively).

158. The GET notes that Austria has developed several important tools to prevent and enhance integrity in public service generally and in law enforcement in particular. First and foremost, as it has been described before, it has a National Anti-Corruption Strategy, adopted in January 2018, which is coupled with an Action Plan adopted in 2019 (currently being revised). Austria has also promoted, under the initiative of the Ministry of the Interior and BAK in particular, the establishment of corruption prevention, compliance and integrity officers. A special section of the National Anti-Corruption Strategy is dedicated to the rule of law and efficient prosecution, paying attention to the importance of ensuring proper resources and infrastructure for tackling complex and extensive corruption crimes. The Strategy also refers

to the reduction of the risks of the so-called 'structural corruption'. BAK has put in place an overall risk management system, with 68 risks and 200 measures to tackle them that are revised annually. Since 2020, the Directorate-General of the Federal Police started following a similar path. However, the GET learned on-site that only a fraction of the risks concern corruption and almost none conflicts of interest. Moreover, it was unclear if the risk management translates into the biannual anti-corruption action plan, how the risks are prioritised and if compliance officers are contributing to the mitigation/dealing with risks. Moreover, in the GET's view, the major risks of political interference into top level corruption investigations, so-called 'politically'-coloured promotion and appointment in the police, issues of sponsoring of the police, in particular at the regional level, and conflicts of interest, merit a much closer look and should be mitigated. **GRECO recommends (i) enhancing the system of risk management in law enforcement, paying special attention to the assessment of political interference in investigations, promotion, appointment to higher posts, conflicts of interest and transparency in police sponsoring; (ii) putting in place a regular assessment mechanism with compliance officers contributing to the process; and (iii) translating the key risks identified into the national biannual anti-corruption action plan.**

Handling undercover operations and contacts with informants and witnesses

159. The conduct of undercover operations, as well as the use of covert human intelligence sources (CHIS), are regulated by the Basic Decree on Undercover Investigations and CHIS Handling, which includes all procedures and decision-making levels regarding practical implementation. The Basic Decree is in line with the relevant legal framework, and the specific provisions, set out in the Security Police Act (Sections 54, 54a and 54b), the Act on Police Protection of the State (Section 11) and the Code of Criminal Procedure (Sections 130 and 131, CCP).

160. The authorities specify that observation and undercover investigation apply to all criminal acts or, if they meet certain qualifying conditions, to all criminal acts carrying a sentence of more than one year's imprisonment; fictitious transaction is applicable to all crimes carrying a sentence of more than three years' imprisonment – therefore including the most serious corruption offences.

161. The use of an "agent provocateur" is also regulated by law in Austria (Section 5(3), CCP). In such cases, the public prosecutor's office must refrain from prosecuting the accused for the criminal offence s/he was induced to commit by a forbidden provocation (Section 133(5), CCP).

162. In 2020, the BAK carried out a consulting service on confidential informants and informers[31]. It comprised the following elements: increased implementation of risk analyses in the confidential informants' system to prevent corruption and abuse of official authority; development of tailor-made prevention measures; systematic exchange of best practices and new approaches in corruption prevention and integrity promotion; synergetic use of resources of all involved areas and project partners. The project, which finalised in summer 2020 with a final report, formed the basis for the Criminal Intelligence Service Austria to

[31] The consulting was based on the results of the original prevention project "Guidance for confidential informants and informers", as well as on a 2018 report of the Internal Audit Department of the MoI and its corresponding recommendations. A master's thesis on "Covert investigations in Austria" was also used to analyse the problem areas identified and the consequent need for action.

announce a new implementing decree for undercover investigators and confidential informants for the test phase starting on 1 October 2020. The decree is to contribute to the implementation of the terms and processes developed in the project, as well as of a strict separation of work processes and structures regarding the areas of work and tasks in operations involving undercover investigators and confidential informants.

Code of ethics, advice, training and awareness on integrity

163. The Code of Conduct of the MoI entitled "Our Values – Our Approach" applies to all LEO. It was first published in 2010 and subsequently revised in 2012. In 2016, the BAK and the MoI Compliance Officer evaluated the Code. Questionnaires, containing open response options, were emailed to approximately 40 staff members (including corruption prevention and integrity officers). The staff surveyed expressed their preference for an abbreviated, poignant version of the Code, containing concrete instructions on how to act with case examples; they also called for a shorter, more user friendly version, in folder format. They also pointed at emerging areas needing additional development (e.g. use of social media). An update of the Code was thus subsequently released in 2017. The most recent edition of the Code of Conduct dates from 2021.

164. The Code is based on three central values: the rule of law (ensuring service exclusively on the basis of the law), loyalty (mutual appreciation, respect, support, reliability and regard) and quality (providing quality work; transparency, credibility and reliability). In addition to this tailored-made Code for staff of the MoI, the provisions of the Anti-Corruption Code of Conduct in Public Service are also applicable (see also under first part of this report). Breaches of conduct-related provisions may entail administrative/criminal responsibility, under the relevant disciplinary/penal legislation.

165. The Code of Conduct, complemented by an internal e-learning module, a short information note, and a compact "to go" version (core elements of the Code with targeted appeals and brief messages), is available for all staff via the MoI's intranet, as well as in paper form. It is also available to the public on the MoI's website. The BAK provides training on corruption prevention and integrity matters to all public officials, including LEO. The BAK's activities in the field of education are supported in each regional police directorate by CPOs. In coordination with the BAK, the CPOs give lectures and carry out advanced training courses in their respective region on issues related to corruption prevention.

166. The BAK Annual Reports include detailed information on the type of training offered and the number of attendees, both inception (in cooperation with the SIAK) and in-service modules are regularly offered. For example, since 2018, an e-learning module has been offered, which includes information on the rule of law, gifts, official secrecy, ethics, social media, bias, secondary employment, as well as the correct handling of mistakes and principles for dealing with each other. It takes about 20 minutes, and with a mix of theory and case examples, this e-learning tool enables users to quickly refresh their knowledge of the Code of Conduct.

167. Further, in 2018, the BAK developed a special edition of the non-electronic game entitled "Ft4compliance – Find your VALUES"[32], which specifically targets police trainees. The dilemma situations for this edition originate from police practice and were designed by police students of the training centre of the SIAK.

168. At the end of December 2020, the new e-learning module on the "Code of Conduct to Prevent Corruption in the Civil Service" was integrated into the e-campus of SIAK and thereby made available to the staff of the MoI. This online training was created with the participation of the BAK in the context of the preparation of the new code of conduct for the civil service. The module familiarises staff with the importance of a code of conduct for their work in the civil service. It raises awareness of the consequences of breaching the rules of conduct, as well as of possible sanctions under civil service law and criminal law.

169. Regarding advisory channels, LEO can turn to integrity officers or compliance officers in case of ethical dilemmas. Moreover, officials may always turn to their superior. They can also address the relevant and legally competent Directorate General III/1 – General Civil Service Employment Law and Payment Law and the Coordination of Civil Service Employment Law of the Federal Ministry for Arts, Culture, the Civil Service and Sport.

170. The GET welcomes the very practical approach followed in the development and further refinement of ethics standards for the personnel of the MoI, including through an assessment of the Code and a consultation exercise with a target group, ensuring that Code stays relevant and is a living instrument. The GET also welcomes the hands-on nature of the Code, with illustrative examples, true to life and easy to grasp day-to-day dilemmas which LEO may face (some examples of such a pragmatic approach follow later in this report, e.g. on gifts). The GET is also pleased to note the role of SIAK in the development of targeted training, including on corruption-related matters. The establishment of advisory mechanisms (corruption prevention, integrity and compliance officers) is also to be welcomed – some improvement as to their role and the delimitation of their functions was recommended in the first section of this report (see paragraph 60). Further, the GET believes that additional efforts must be made regarding conflict of interest prevention, a recommendation in this regard follows later (see paragraph 191).

Recruitment, career and conditions of service

Recruitment requirements and appointment procedure

171. Career-related rules for LEO are those that apply across the board for all public officials, according to the relevant provisions of the Law on Advertisement of Civil Service Positions. In this context, the responsibility lies with the personnel departments of the regional police directorates (*Landespolizeidirektionen*, LPD) or, in individual cases, with the ministry's headquarters (recruitment, some disciplinary proceedings).

172. At entry level, it is mandatory to publicly advertise jobs; the advertisement shall state all requirements stipulated by the applicable rules on job classification for the vacant position.

[32] The "ft4compliance – Find your VALUES" non-electronic game targets different groups. It is about finding solutions for certain dilemma situations taken from everyday life. In addition to the creative argumentation of proposed solutions for dilemma situations, another focus of the game is to think about and discuss values.

There is aptitude testing for all candidates, which is provided by the Federal Ministry for Arts, Culture, the Civil Service and Sport. Such testing is based on the job description and comprises performance tests (verbal and numerical reasoning, logical thinking and problem solving, text comprehension, foreign language skills, etc.), computer-based tests, psychological evaluation, medical examination, sports test.

173. General requirements for recruitment consist of suitability in terms of skills, personality and health and integrity. Additional requirements apply to higher/executive posts, e.g. special knowledge and skills, possible restriction to Austrian citizens, incentives for women's applications[33], etc.

174. At entry level, recruitees must follow a 24-month training programme before they become officers. This initial training consists of 12 months training in theory, three months "on the job" training at a police station, five months main training at the Training Centres; and three months "on the job" at a police station. All the details are publicly accessible online at Polizeikarriere. Basic training concludes with a final exam. In-service training is subsequently provided, throughout career-life, according to the needs and requirements of the service, and the concrete demand of specialisation (e.g. criminal investigation officers). The Austrian Security Academy (SIAK) holds prime responsibility for providing basic as well as continuing education and training, as supplemented by other institutions (e.g. BAK on anti-corruption and integrity related training, as described earlier in this report).

175. For senior executive posts, a Board of Review performs the following phases of the selection process: (i) assesses applications: carries out of hearings/assessment centres, reviewing personal file, interviews with superiors and co-workers, etc.; (ii) assesses aptitude of applicants: e.g. professional experience, leadership qualities, organisational skills and merit; (iii) provides an expert opinion; (iv) specifies, which applicants are to be considered as unsuitable or suitable (indication: suitable to a very high / high / lesser extent). The Board of Review is composed of four members, two are representative of the employer (two civil servants who are appointed by the Minister) and two are representatives of the employees (one comes from the police union and the other from the worker's council). The proposal for appointment made by the Board is transferred to the Minister, who has free right to appoint the candidate.

176. Criminal records are routinely screened before recruitment. Enhanced vetting procedures apply for executive positions or/and positions handling sensitive information (confidential, secret, or top secret): checking personal relations (relations to persons/organisations prepared to use violence, relations to intelligence services), financial situation, verification of reference persons (living in the same household and of a certain age). Security vetting takes place on the basis of a security declaration. In order to verify whether the information contained in the security declarations is correct, internal databases can be consulted and requests to other competent authorities can be made. The declarations are checked for completeness. By signing the security declaration, the individual concerned confirms that the information provided is correct and complete.

[33] If the proportion of women in a particular position is below 50%, it shall be pointed out in the advertisement that applications from women for the position to be filled are particularly desirable.

Performance evaluation and promotion to a higher rank, transfers and termination of service

177. A performance evaluation is only permissible under certain circumstances (e.g. if it may have an influence on the civil servant's remuneration or position under service and salary law at the civil servant's place of work), as provided by law, and is not carried out automatically/periodically for each staff member. When it is performed, the reference period is the previous calendar year. It assesses whether the official has either significantly exceeded the expected work performance through particular achievements, or, despite two demonstrable admonitions, s/he has not displayed the expected work performance. The relevant rules for LEO in this domain are those that apply across the board for all public officials (Sections 81 and 83, Civil Service Employment Act).

178. In principle, allocations, i.e. short-term assignments to other departments, are permitted under certain conditions, e.g. training purposes, secondment, etc. (Section 39, Civil Service Employment Act). In addition, there are assignments to special units with an absolute time limit (no transfer takes place), e.g. Special Intervention Unit "Cobra". A transfer can only take place without the official's consent if the service cannot be maintained in any other way, or if it is made for the purpose of training.

179. The GET considers that the recruitment requirements for entry-level police officers are clear, transparent and follow an incremental career advancement path. Suitable candidates must undergo inception training that consists of theoretical and practical parts, taking a final exam. At entry level, it is also mandatory to advertise vacancies. With regard to the promotion of lower and mid-level police officers, there are also clear advancement rules, yet a few interlocutors mentioned the issue of political preferences. In Austria, any public servant, including the police, are allowed to be members of political parties and being politically active is encouraged as a constitutional right[34]. On numerous occasions the GET heard that political party affiliation may have an impact - positive or negative - in respect of promotion. In looking at available statistics, it emerges that the issue of ideology is indeed one of the recurrent causes brought before the Federal Equal Treatment Commission; in 2021, up to 50% discrimination reports concerned ideology of the complainant.

180. With regard to appointment into senior executive posts, political party affiliation (party 'colouring', as the GET heard onsite) becomes even more important, outweighing the merits of the candidates. Formally, the proposal for appointment is made by a four-member Board, two representatives of the employer and two representatives of employees. Yet the final decision lies with the minister who may disregard the proposal or interfere in the work of the Board. A few interlocutors mentioned concerns regarding the composition and professionalism of the Board itself. There was also perception of politicisation of the process. More recently the press disclosed allegations regarding the former Minister of Interior interfering with allocation of high posts in the police[35].

181. This perception of politicisation was already present in 2008 when GRECO first evaluated Austria in the framework of its Joint First and Second Round Evaluation. At the time, GRECO noted that the police (and prosecutorial bodies) were perceived as not being independent enough and/or strongly politicised…. political support could contribute to swifter

[34] Article 7(4) of the Austrian Constitution says that: Public employees, including members of the Federal Army, are guaranteed the unrestricted exercise of their political rights.
[35] https://www.eurotopics.net/en/276080/austria-s-conservatives-mired-in-phone-chat-scandal.

career progression for a prosecutor or a police officer (or a judge, to a lesser extent) to the detriment of a more committed and well-performing colleague who is not of the "right political colour" (paragraph 49, Joint First and Second Evaluation Report on Austria). Now, fourteen years later, in the framework of the current Fifth Evaluation Round, the GET was told again that political networks remain crucial for appointment at executive level. This calls for resolute remedial action.

182. The GET noticed that there are no regular annual performance evaluations of police officers (similarly to other public sector employees) except in exceptional circumstances and in the context of a warning. Regular performance checks, when done genuinely and professionally, could contribute to staff motivation and overall operational performance. They also provide early warning signs of fatigue, lack of proactivity, underperformance, and other difficulties.

183. In view of all the above, **GRECO recommends that (i) safeguards are put in place for promotion in the police to be free from any bias and discrimination of any kind, including political affiliation or other conflicts of interest; (ii) the selection process into senior executive posts in law enforcement is competitive, transparent, and merit-based, free from undue political interference and subject to appeal; and (iii) a system of periodic appraisals is introduced and that their results are used for decisions on career progression.**

Salaries and benefits

184. The remuneration system of LEO consists of transparent salaries and allowances determined by law; details are publicly accessible online at www.ris.bka.gv.at and at Polizeikarriere. The remuneration of police trainees (VB/S) is based on the guidelines of the Federal Chancellery of 10 November 2017 concerning the conclusion of special contracts for civil service employees of the Federal Ministry of the Interior undergoing basic training for police officers. The 1st year of training: training contribution in the amount of the salary of civil servants of the police force of the job category E2c (see 11.1), salary level 1, in accordance with section 72 of the 1956 Payment Act (1 820 €). The 2nd year of training: Training contribution as in the 1st year of training. During his/her two-year basic training for police officers, a VB/S receives a total gross salary (training contribution including special payments and additional fees) of up to 25 650€).

185. In accordance with section 72 of the Payment Act (*Gehaltsgesetz*, *GehG*), the salary after the training phase depends on the particular job category and salary level, and span between 1 930 to 3 900 €. Civil servants can achieve a higher salary through regular salary increments or transfer (i.e. appointment to a different grade or job category). For the relevant legal provisions and scales, reference may also be made to the publicly accessible legal information system of the Republic of Austria (*Rechtsinformationssystem des Bundes*, RIS).

186. The Payment Act (*Gehaltsgesetz*, *GehG)* provides for two types of additional payments: salary supplements (e.g. for higher positions, for temporary higher level work, for guard duties, etc.) and allowances (e.g. hardship, overtime, expenses, extra work, etc.). Salary supplements are part of the salary and, like the salary, are paid 14 times a year (Section 3(2), *GehG*). Entitlement to allowances only exists for periods with an entitlement to salary; allowances are generally paid 12 times a year (Section 15, *GehG*). When leaving the police force, the police force-specific salary supplements and allowances also cease to apply.

Conflicts of interest, prohibitions and restrictions

187. The provisions the General Administrative Procedure Act (Section 7 on disqualification), together with the Civil Service Employment Act (Section 43 on impartiality, Section 47 on recusal), constitute the legal framework to deal with conflicts of interest. They are complemented by the Anti-Corruption Code of Conduct in Public Service, the Code of Conduct of the MoI, as well as the Secondary Employment Ordinance of the MoI. Breaches of these duties entail disciplinary, and sometimes even criminal, responsibility.

188. The authorities submit that LEO must abstain from any decision/action if a reason for bias exists. Private interests, and those of third parties should not play any role in the exercise of public office. Reasons for partiality may not only arise while in service, but also in other contexts (e.g. close relationship to persons with whom the official has contact in the course of an official act or subsequently). In the event of a risk of bias, recusal applies (the superior arranges for a substitute to be appointed). Even in cases of doubt, the existence of doubt should be presumed. The values that must be protected at all times are those of public confidence, objectivity, and impartiality. The Code of Conduct of the MoI includes several additional key references to the issue of conflicts of interest, including practical examples in different circumstances that may arise while in service. This issue is also addressed in training seminars.

189. As has already been noted in this report, there is neither a clear definition of 'conflicts of interest' nor clear rules regarding what it constitutes. In different pieces of legislation there is a reference to 'impartiality', 'disqualification', 'recusal' or 'bias'; however, they do not cover all the aspects of conflicts of interest. A recommendation has been issued earlier in this report regarding the need to introduce a uniform definition of conflicts of interest in public service (see paragraph 102).

190. The GET had also an impression that not all the interlocutors are familiar with the difference between actual, potential and perceived conflicts of interest, the different level of risks that they pose and how they should be managed and addressed properly. This applies not only to the lower- level police force staff, but also the top executives and those interfering in their work. The different compliance and integrity officers operating in law enforcement were also not dedicating sufficient attention to this issue.

191. It is also striking that police officers (as any other public official) do not declare their income, assets and interests, unless they have gainful outside employment or occupy any position on management, supervisory or administrative boards. With regard to secondary employment, they themselves decide regarding its admissibility and have to report to the superior if it is *gainful*. The lack of awareness of what conflicts of interest constitute, the risks they create and the ways in which they can either be prevented or mitigated is regarded by the GET as an area that merits proper attention. Being a closed organisation, the police also needs to be proactive in dealing with its own conflicts of interests. Therefore, **GRECO recommends (i) conducting trainings for all level law enforcement officials, including at senior level, regarding conflicts of interest and the ways in which they can be prevented, addressed, and managed; (ii) keeping the implementation of conflict of interest management rules under review, including by ensuring that there is proper follow-up and rigorous enforcement in the event of breaches.**

Incompatibilities, outside activities and post-employment restrictions

192. According to Section 56 of the Civil Service Employment Act applies, LEO may not exercise any secondary occupation outside their public service, which a) prevents them from performing their public duties; b) gives rise to the suspicion of bias (the simple suspicion suffices, evidence is not required) or c) prejudices other fundamental interests associated with their public duties. This restriction also applies to unpaid activities.

193. The official himself/herself is required to undertake this examination of admissibility. If the examination indicates that none of the aforementioned grounds exist, then the civil servant may exercise the secondary occupation. If, however, the secondary occupation would lead to a sizeable additional income, then s/he must declare it to his/her superior which has the possibility, on the basis of this declaration, to examine whether the secondary occupation may be (in)admissible.

194. In addition, the MoI Secondary Employment Ordinance 84/2016 (as amended) applies specifically to LEO. It establishes restrictions for all staff regarding involvement in public procurement procedures where they may have some vested interest, as well as particular bans for executive personnel (they cannot engage in certain occupations, such as personal protection and porter services, professional detective, security or weapons trade, debt collection agencies, provision of training courses in competition with the SIAK, etc.; further limitations exist with reference to the place where the activity is carried out, e.g. they cannot be driving instructors, taxi/bus drivers, traffic controllers, transport escorts, etc. in the local area where they perform their official duties).

195. The Code of Conduct of the MoI underlines that secondary employment should only be the exception, not the rule. However, as will be described below, there are no centralised records regarding the number of LEO who have been authorised to carry out secondary activities. The Code provides, and develops, several examples for the inadmissibility of secondary employment. The Code also analyses the issue of accepting secondary employment and its relationship with the requirement to maintain official secrecy, as well as to respect the ban on gifts and advantages. (e.g. if a staff member is offered an exceptionally high salary for a secondary activity, etc).

196. The Code further illustrates cases where unpaid activities may conflict with the interest of the service (e.g. paramedics working immediately after a night shift). By way of exception, permission to carry out association activities may be granted despite the official duties. However, this must be done under strict observance of the general interest of the service and/or the purpose of the association. If, in the wake of natural disasters or other major events, e.g. a flood disaster, the work of a staff member is urgently required by the volunteer fire brigade, a rescue service or the mountain rescue service, the service authority may order special leave or other appropriate measures in the circumstances.

197. Gainful secondary employment[36], as well as any change in its respect – including its completion, must be reported, and authorised**.** The obligation to report also extends to any activity on the management board, supervisory board, administrative board, or other body of

[36] Secondary employment is deemed to be gainful if it generates significant income in the form of money or goods. The determination of what is significant is to be made on a case-by-case basis. The additional earning limit under social or tax law can be used as a rough guide.

a profit-making legal entity under private law. Officials whose regular working hours have been reduced, or who are taking part-time employment for parental leave reasons, or who are on leave to take care of a disabled child or a family member in need of care, may only engage in secondary employment prior authorisation.

198. There is a standardised form to declare secondary activities. It includes information on the type and time frame of the activity (precise indication of the activity itself and the weekly/monthly number of hours taken by the exercise of the secondary employment), employer and registered office of the company, place where the activity is carried out, date of commencement of the secondary employment and persons with whom the official comes into contact during the exercise of the secondary employment. No centralised records are kept, but the information is kept in the staff member's personal file.

199. Activities after employment as a LEO are subject to restrictions in accordance with the provisions of the Civil Service Employment Act (Section 20). In particular, they may not take up functions with certain entities for a period of six months after leaving their office. The GET learned that it was relatively rare for LEO to seek other employment after the termination of their civil servant's status; generally, they would simply retire.

200. The GET wishes to stress that the issue of secondary activities is one key aspect for appropriate management of conflicts of interest. As already noted, officers decide themselves on the admissibility of secondary activities and there is an obligation to report gainful employment to the relevant human resources department. Secondary employment is deemed to be gainful if it generates significant income in the form of money and/or goods. The determination of what is significant is to be made on a case-by-case basis. The GET was told that the additional earning limits under social or tax law can be used as a guideline in this respect. No centralised records are being kept of authorisations given and, although the law places an obligation for officers to keep information up to date (to report in the event of changes or the end of the secondary activity), there is no institutionalised follow-up system. In the GET's view, further development of the current authorisation system for secondary activities would undoubtedly bring valuable inputs for risk assessment purposes. **GRECO recommends (i) introducing an obligation to request authorisation for any kind of secondary activity (whether remunerated or not); (ii) establishing a centralised register of secondary activities; and (iii) developing effective oversight arrangements in this respect.**

Gifts and sponsoring

201. The rules on gifts for LEO are the same as those for other public officials (see paragraphs 115-118). There is thus a general prohibition to accept gifts, except small courtesy gifts, and honorific gifts in principle become State property. The receipt of gifts must be reported by means of a standardised form. Violations of this duty may result in disciplinary or criminal sanctions, including for bribery.

202. The Code of Conduct of the MoI includes practical examples on gifts exposure and receipt (e.g. local or customary practice, dinner invitations, gifts among friends, honorary gifts benefits, discounts and advantages, etc.), and how to act in such situations. It sets as a starting rule that officials are always on the safe side when a gift is politely, but firmly refused. The GET was pleased to note the hands-on approach and the detailed attention that has been paid to the issue of gifts in the Code of Conduct of the MoI; this constitutes good practice. It

emerged from the on-site visit that there is a low tolerance in practice for any form of gifts and benefits.

203. Sponsorship of public administration is permissible. The authorities underlined that, in appropriate cases, sponsoring contributes to the achievement of administrative goals. Nevertheless, public administration must avoid any appearance of undue outside influence in order to preserve the impartiality and objectivity of the State and the rule of law. The MoI has issued a Decree on Sponsoring providing for the principles, scope, admissibility, procedure for and design of sponsoring measures, including by requiring documentation of the transaction. The MoI, as part of public administration, must therefore only open itself to sponsoring in accordance with the provisions laid down in the Decree. Pursuant to the Decree, areas of the MoI eligible for sponsorship are subject to an annual reporting obligation. The MoI headquarters (Human Resources Department) issues an annual sponsorship report, which is published on the intranet as part of the Compliance Activity Report.

204. The GET notes that private donations and sponsoring of the police are allowed in Austria. The MoI has issued a Decree on Sponsoring which is meant to serve as a guideline to help navigate admissible sponsoring arrangements, including by requiring its strict documentation. However, the practical application of the Decree, appears to be a challenge. The GET was told that one of the main difficulties relates to the understanding of what constitutes sponsoring. The GET was also informed of several cases of sponsors tainting the reputation of the police or compromising the perception of its neutrality. The ACA has recently performed an audit on sponsoring (2021) and its recommendations, in particular with regard to the transparency of sponsoring in the regional police, as well as potential conflicts of interest that it could bring, require immediate attention. **GRECO recommends (i) increasing transparency over sponsorship and donations to the police by publishing them online, indicating the value, donor's identity and how the assets donated were spent or used; (ii) putting in place safeguards against real, potential, or perceived conflict of interest with regard to donations and sponsorships received by the police; and (iii) ensuring compliance with the applicable rules through awareness-raising measures and systematic controls.**

Misuse of public resources

205. The misuse of public resources may constitute a criminal offence pursuant to the provisions of Section 153 of the Criminal Code. Notably, anyone who knowingly misuses his/her power to dispose of another's property or to oblige another, thereby damaging the other's property, shall be punished by imprisonment for a term of up to six months or by a fine of up to 360 daily rates. Anyone who violates in an unjustifiable manner such rules designed to protect the assets of the beneficial owner abused his/her powers. Anyone who causes damage in excess of 5 000 € shall be liable to imprisonment for up to three years, and anyone who causes damage in excess of 300 000 € shall be liable to imprisonment for up to ten years.

Misuse of confidential information

206. LEO, as any other public official, shall keep secret from anyone, save those to whom they are required to officially report to, all facts of which they have obtained knowledge exclusively from their official activity and which are to be kept confidential in the interest of maintaining public peace, order and security, comprehensive national defence, external

relations, in the economic interest of a corporate body under public law, for the preparation of a ruling, or in the preponderant interest of the parties involved. The duty to maintain confidentiality continues to apply after termination of office (Section 46, Civil Service Employment Act).

207. The Code of Conduct of the MoI includes explanations on the duty of confidentiality, as illustrated with practical cases. For example, it describes that if staff members (either repeatedly or once) disclose particularly confidential, protected facts known in the course of their official duties to private circles, they are not only in breach of the duty of secrecy required by official law, but also violate the obligation to maintain the public's confidence in their official position. It also reflects on the issue of disclosing information in social media. In this connection, the Code emphasises that even a single comment, a carelessly posted photo or GPS data, can lead to conclusions about deployment locations, deployment plans or the general operation of the service which violate confidentiality requirements.

208. Violation of the confidentiality duty may also entail criminal liability. In particular, Sections 252, 253 and 310, etc. of the Criminal Code regulate the disclosure of state secrets.

209. Anyone who, even after leaving office or service, discloses or misleads a fact or matter as a manager or employee of the European Police Office (Europol), as a liaison officer or as a person with a special duty of secrecy (Article 32 (2) of the Europol Convention, Federal Law Gazette No. 123/1998) shall also be punished.

Declaration of assets, income, liabilities and interests

210. LEO have to abide by the disclosure requirements of other federal civil servants, i.e. gainful outside employment, any position on management, supervisory or administrative boards or on a governing body of any legal entity governed by private law (e.g. limited liability company, joint-stock corporation, etc.). Disclosure reports should be handed in to the human resources department through the official channels. Human resources shall check the reports on gifts of honour and secondary employment/activities for conclusiveness, traceability and, if possible, completeness. No centralised records or statistics are kept in this respect and, as the GET has already noted, the checking/monitoring of the aforementioned reports and authorisations is not being systematically performed in practice. The GET notes this is a missed opportunity for corruption prevention/risk assessment purposes.

211. The GET understands that the financial situation of some officials (e.g. in respect of top management and/or certain at risk positions) is verified in relation to enhanced vetting procedures. However, the GET encourages the authorities to pay further reflection to this topic. The introduction of financial disclosure for officials within the police could further prove instrumental when implementing the recommendation on the enhancement of risk management.

Oversight mechanisms

Federal Bureau of Anti-Corruption (BAK)

212. The Federal Bureau of Anti-Corruption (BAK) has nationwide jurisdiction in the prevention of and fight against corruption, including in respect to LEO. It was established on

1 January 2010 and is based in Vienna. It operates in close cooperation with the Federal Public Prosecutor's Office for Economic Crime and Corruption (WKStA) and is also in charge of all matters concerning security police and criminal police cooperation with foreign and international anti-corruption institutions.

213. The BAK purely acts under criminal law; it is therefore a normal criminal investigation authority. That said, the BAK cooperates with the responsible disciplinary authority by notifying it of cases involving members of the civil service that are of disciplinary relevance. If there is any other criminal act by LEO or a suspicion of corrupt behaviour, the BAK can investigate upon written order by the public prosecutor.

214. The BAK is an institution of the MoI. Organisationally speaking, it is not under the umbrella of the Directorate General for Public Security but pertains to Directorate General III (Legal Affairs) and thus reports directly to the Director General III. Instructions to the Federal Bureau of Anti-Corruption regarding the investigation of a specific case have to be given in writing and have to be substantiated. An oral instruction given for special reasons, in particular due to danger in delay, must be submitted in writing as soon as possible thereafter. This is regulated by the BAK Act (BAK-G). The authorities are of the view that the BAK has sufficient number of staff and financial autonomy.

215. The BAK is divided into three departments, each with three separate units:

- The BAK's Contact Office, the Single Point of Contact (SPOC) is the main contact office of the BAK. The SPOC receives reports, allegations, complaints, etc. that may be relevant to criminal investigations. The SPOC examines whether the BAK has jurisdiction in any particular case and whether instant measures have to be taken and distributes the cases. The SPOC is also responsible for security matters at the BAK premises.

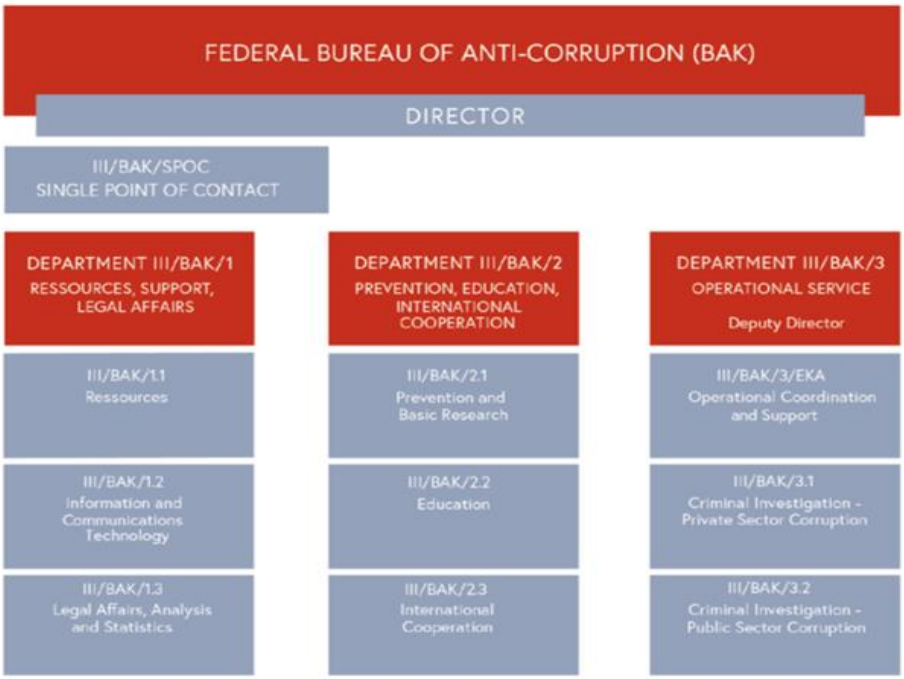
- Resources, Support and Legal Affairs: Department 1 provides the entire support for the Bureau. Its responsibilities range from human resources, budget, controlling, fleet management, logistics, media analysis, public relations and arranging for workplace health promotion events, to IT infrastructure management, preservation of evidence in the field of IT, analysis of data and visualisation, statistical analysis of the BAK's activities, various legal services for the BAK as well as implementation and supervision of the BAK's compliance management system (CMS).

- Prevention, Education and Basic Research: Department 2 is responsible, *inter alia*, for prevention and basic research. This comprises preventive activities in the entire civil service, the implementation of studies, as well as scientific exchange and the support and supervision of external projects, e.g. the National Anti-Corruption Strategy (NACS). Another area of responsibility of Department 2 is education, which includes, in particular, the servicing of the Austrian-wide Network of Integrity Officers (NIO), as well as the organisation of trainings and awareness-raising events for the MoI and other public authorities. Furthermore, Department 2 is responsible for international cooperation, i.e., *inter alia*, the promotion of bilateral exchange and cooperation with various European or international anti-corruption bodies and institutions. The BAK's International Cooperation Unit also functions as the Secretariat of European Partners against Corruption (EPAC) and the European contact-point network against corruption

(EACN). The BAK's activities in the field of education are supported in each regional police directorate by corruption prevention officers (CPOs). In coordination with the BAK, the CPOs give lectures and carry out advanced training courses in their respective region on issues related to corruption prevention. They thus contribute to saving resources (less travel expenses).

- Operational Service: Department 3 is responsible for operational matters at the BAK. This is where security police investigations and criminal investigations of corruption offences, abuse of official authority and internal affairs are carried out. In the two units "Criminal Investigation – Private Sector Corruption" and "Criminal Investigation – Public Sector Corruption", investigations are conducted by experienced case owners who, depending on the scope of the file, are supported by investigators. Some of the latter are assigned to the service from other units. The Unit "Operational Coordination, Asset Investigations and Operational Analysis" (EKA) is responsible for the coordination of operations, operational case analysis and asset recovery.

BAK's organisational structure



216. As of 1 December 2021, the BAK had 111 active employees (39 women, 72 men). The budget resources of the BAK have increased since 2014 and the implementation of projects and activities has been consistently assured. In 2021, the BAK budgeted 9.089 million € for the legal fulfilment of the BAK's tasks. The planned budget for 2022 is 9.926 million €.

217. The specific knowledge and experience required by the personnel of the BAK depends on the type of function performed. All employees undergo a mandatory security check upon recruitment and take specialist training, as well as more general training on ethics and integrity, throughout their term of office. For example, in Department 3, in addition to basic police training and service management training, employees generally have extensive

experience in criminal investigation. They receive on-going (peer) training in legal and compliance matters, police tactics and interrogation techniques.

218. In Department 3, there are also several lawyers as well as experts from the fields of economics and auditing, who ensure the quality of criminal investigation, and prepare detailed information regarding private sector matters. In this way, they contribute to obtaining and processing evidence. The experts can also be lateral entrants with the necessary professional experience and expertise.

219. A case owner is responsible for managing (major) cases, developing a strategy for determining the facts of the case, and for obtaining evidence in cooperation with the public prosecutor or other stakeholders. In addition, the case owner is in charge of the independent implementation of investigative measures, evaluations, and reports. They are assigned additional staff to carry out their tasks. The size of the teams thus created depends on the size of the cases.

220. The BAK publishes an annual report providing an account of its activities based on the four-pillar model for fighting corruption: (i) prevention; (ii) education; (iii) security and criminal police investigation; and (iv) international cooperation. In addition, every two years, a BAK‘s Compliance Report is published, providing an insight into the BAK‘s compliance and risk management system.

221. The GET understands that BAK is to perform a most crucial and central role in respect of the prevention of and the fight against corruption. It however heard reiterated criticism during the on-site visit regarding the role of the BAK in recent years with the view shared by multiple interlocutors met on-site that it needed to significantly step-up its action. The authorities argued that this impression is not corroborated by hard facts. The GET refers back to its previous comment on the importance of staying vigilant about negative perceptions and confronting them in a proactive manner and no complacency. Certainly, a most troubling fact at the time of the on-site visit, given the backdrop of recent top-level corruption scandals and an increase of investigation of political corruption, related to the lack of leadership of the BAK: the job vacancy was posted more than two years after the BAK’s former Director had been dispensed of his function following allegations of misconduct. This irregular situation was rectified soon after the visit, in July 2022, when the interim head of BAK was officially appointed as its new Director[37]. The fact that the blockage has now been settled does not mean that it may not occur again in the future and effective safeguards must be in place to prevent that from happening again. The issue of the absence of permanent leadership is detrimental to the independent operation of the organisation, creates uncertainty for its staff but also raises doubts regarding prioritisation of having a strong anti-corruption agency in place. The recommendation made earlier in this report regarding the appointment of senior leadership of law enforcement obviously also applies to the BAK.

[37] The authorities clarified that as the BAK´s former Director was temporarily assigned elsewhere due to the allegations; the position was not vacant during this time. It was only after his renouncement from the position that it was possible to advertise a vacancy. Pursuant to Section 5(3) of the Law on Advertisement of Civil Service Positions, a position must be advertised no later than one month after it has become vacant. Since the position of BAK Director became vacant as of 3 March 2022, the advertisement was issued on 11 March 2022, within the period prescribed by law.

Commission for Legal Protection (Rechtsschutzkommission)

222. The Commission for Legal Protection deals with legality and proportionality in relation to the activity of the law enforcement unit of the BAK. It is headed by a Commissioner and has two additional members, all of whom are appointed – after consultation with the Presidents of the Constitutional Court, (*Verfassungsgerichtshof*), the Supreme Administrative Court (*Verwaltungsgerichtshof*) and the Supreme Court (*Oberster Gerichtshof*) – by the President of the Republic of Austria upon proposal by the Federal Government for a period of five years (Section 91a, SPG). The Commission for Legal Protection, which works within the MoI, is not part of any hierarchical supervision. Thus, its members do not have any superiors and are independent in performing their duties (Section 9 (2) BAK-G).

223. In order to be a commissioner, a person is required to have special knowledge and experience in the field of fundamental rights and freedoms and to have worked in a legal profession for a minimum of five years. A person may not be appointed as additional member if s/he has held the position of director or deputy director of the BAK in the twelve preceding years. Neither may a sitting judge, state prosecutor, practicing lawyer or person that is excluded from acting as a juror or lay judge in criminal cases be appointed as a member of the Legal Protection Commission (Section 91b, SPG). The Legal Protection Commissioner at the Federal Ministry of Interior is, by law, also the Chairman of the Commission for Legal Protection at the BAK (these two roles are differentiated: the tasks of the Commissioner with respect to the BAK represent around 1% of his workload – in 2021, one case was reviewed regarding the BAK; while 90% of the work of the Commissioner relates to the main task of reviewing the legality and proportionality of mobile phone tracking by the police).

224. The Commission for Legal Protection investigates all allegations concerning the activities of the law enforcement unit of the BAK that are not manifestly unfounded provided the person concerned does not have any other legal remedy at his/her disposal. The Commission has to be provided with access to all necessary documents and records and, in principle, official secrecy may not be invoked.

225. The Commission for Legal Protection may report its findings to the Federal Minister of the Interior and, where it deems appropriate, to the public at any time. Moreover, the Commission for Legal Protection may make recommendations to the Federal Minister of the Interior or the BAK's director. Once a year, the Commission for Legal Protection reports on the performance of its functions to the Federal Minister of the Interior. In accordance with the right to information and inspection laid down in the Constitution, the Federal Minister of the Interior shall make these reports available to the Permanent Subcommittee of the Parliamentary Committee on Internal Affairs (*ständiger Unterausschuss des Ausschusses für innere Angelegenheiten*) for the evaluation of measures to protect the constitutional institutions and their ability to act. Even though the Commission for Legal Protection neither fulfils tasks concerning the security police or criminal police nor is an administrative or disciplinary authority, it must report relevant facts to the competent authorities.

Internal Audit

226. Within the MoI, the Department of Internal Audit oversees the legitimacy, effectiveness, and efficiency of the administrative enforcement with a special focus on risk management, internal control systems and governance processes including the topics "staff

rotation" or "multiple eyes principle". The relevant audit work is based on internal revision rules that include check lists and internal processes in line with the International Standards for the Professional Practice of Internal Auditing. Depending on the personnel (currently ten auditors) the Department of Internal Audit is submitting approximately six to eight reports annually. In addition, the Department offers consulting services and examines sensitive processes of public procurement and sponsorship (currently about 2 000 of such processes).

227. The Department of Internal Audit undertakes efforts within the so-called "third line" according to "the Three Lines of Defence" model which provides a simple and intuitive guidance for the internal oversight and control within the MoI. While the "first line" includes the responsibilities of process owners managing their business risks in the organisation's processes, the "second line"– for instance Departments for Controlling, Risk-Management, etc. - supports management providing additional expertise by ensuring that the risks and controls are effectively managed. Its activities are separate from the first line of defence, but they still report functionally to the operational management. Internal Audit is not allowed to perform management functions to protect its objectivity and independence. Audit reports are directly reported to the General Secretary representing the Federal Minister.

228. The GET considers that the current system would benefit from additional resources for internal auditing purposes. The GET trusts that the recommendation it has made earlier in this report regarding the improvement of risk assessment and risk management within law enforcement would provide valuable inputs facilitating the task of internal oversight control and further preventing and limiting opportunities for corruption.

Supreme Audit Institution of Austria (ACA)

229. The Austrian Court of Audit (ACA) plays a key role as an independent external auditor of public services (see paragraphs 90-92 for concrete details on the ACA). As already highlighted, the GET was positively impressed of the work of the ACA, particularly regarding its proficiency and proactivity, including with respect to law enforcement (see, for example, reference made earlier in this report to the ACA findings on sponsoring in the police).

Remedy procedures for the general public

230. According to Section 2 of the Code of Criminal Procedure, the criminal police and the public prosecutor's offices are obliged to investigate *ex officio* any initial suspicion of a criminal offence coming to their attention.

231. Complaints can be filed at any police authority or public prosecutor's office. The Federal Public Prosecutor's Office for Economic Crime and Corruption (WKStA) has established an anonymous "whistle-blower website" to report cases of corruption and white-collar crime (see details below under whistleblowing). Additionally, both the regional police directorates (*Landespolizeidirektionen*) and the MoI have set up citizen service centres with corresponding links on their websites, which are also intended as "complaint reporting centres".

232. Moreover, in accordance with Section 5 of the BAK-G, the (BAK) acts as a nationwide "reporting office" for corruption related offences. Law enforcement authorities and departments are obliged to report criminal offences falling within the BAK's exclusive or extended jurisdiction. The further processing of the criminal offences listed exhaustively in

Section 4, BAK-G (corruption-related offences) is carried out either directly by the BAK or by other law enforcement authorities or departments, as provided by law (according to Section 6 (2) BAK-G, the BAK may assign certain investigations to other law enforcement authorities or departments).

233. There are no formal requirements for submitting the complaint. The BAK as well as the regional criminal investigation departments (*Landeskriminalämter*) and the public prosecutor's offices maintain hotlines that can be reached 24 hours a day. The law enforcement authorities and their subordinate departments can be contacted by telephone, e-mail, and fax. Police stations are usually permanently staffed or, especially in rural areas, can at least be reached by telephone. Anonymous and non-anonymous reports are processed in the same way and are free of charge.

234. The GET heard no criticism on-site of the current set-up of the oversight and complaint system. For corruption-related cases, the BAK plays a central role. This was said to guarantee the independence of investigations involving LEO, together with the supervision ("guidance") of a prosecutor. The GET, however, considers that in order to better assess the effectiveness of the system, there needs to be some systematic gathering of data regarding complaints and their outcome, as well as on corruption-related criminal or disciplinary proceedings involving LEO, and a sufficient level of transparency of such information to the public. A recommendation follows later in this respect (see paragraph 246).

Reporting obligations and whistleblower protection

235. Section 78 of the Criminal Procedure Code (CPC) requires officials who have knowledge of a punishable act to report it to the criminal investigation or prosecution authorities. Without prejudice to the general duty to report under the Criminal Procedure Code, the Federal Act on the Establishment and Organisation of the Federal Bureau of Anti-Corruption establishes that law enforcement authorities or departments receiving notice of a corruption-related criminal offence must report it in writing as soon as possible to the BAK (duty to report). Federal employees must not be prevented from reporting corruption-related allegations or suspicions directly to the BAK without going through official channels (right to report). The "6-eye" principle is applied for incoming reports and allegations.

236. Since 2012, an amendment to the Civil Servants Employment Act introduced whistleblower protection from retaliation, following a GRECO recommendation. More particularly, a staff member reporting a reasonable suspicion of a case of corruption (which constitutes a criminal offence within the competence of the BAK) in good faith – either to the superior/head of department or to the BAK – must not be discriminated against by the employer. Disclosures not within the BAK's purview can be sent to the Ombudsman. This rule is meant to provide for enhanced protection of whistleblowers from non-objective unilateral (retaliation) measures taken by the employer in relation to the report made by the staff member concerned (e.g. transfer, dismissal). It not only applies to the whistleblower him/herself, but also to any staff member corroborating the report of the whistleblower (e.g. as a witness). New legislation on whistleblower protection is in the making, notably, in order to transpose the EU Directive 2019/1937 on Whistleblowing. It is expected to be adopted by the end of 2022. The GET urges the authorities to proceed swiftly in this respect.

For the GET, the adoption of a comprehensive and effective legislative framework providing for adequate whistleblower protection is a matter of priority which calls for immediate action.

237. The Federal Public Prosecutor's Office for Economic Crime and Corruption (WKStA) offers an anonymous "whistle-blower website" to report cases of corruption and white-collar crime. The website became operational on 20 March 2013. It allows persons having knowledge of cases of corruption to provide information and set up an anonymous mailbox. This is one of the key advantages compared to an anonymous complaint: investigators can directly contact the whistle-blowers and ask them questions. The English version of the system is available at https://www.bkms-system.net/bkwebanon/report/clientInfo?cin=1at21.

238. The GET notes that Austria does not have a whistleblower protection law and is in the process of transposing EU Directive 2019/1937 on Whistleblowing. There is a statutory obligation to report corruption and the WKSta offers an exemplary website for handling complaints about cases of corruption. It does not only ensure the anonymity of those who choose to remain anonymous while reporting various misconducts, but also guide the complainants and, thereby, improve the quality and the quantity of such reports delivered to them. BAK and other regional criminal investigation departments have put in place hotlines.

239. However, in the GET's view this area demands further improvement. First of all, neither BAK nor other law enforcement bodies could provide clear statistics of the number of whistleblowers' reports received, how many of them concerned corruption and how they were processed. An appropriate system for the follow-up of reports and their consequences (to particularly guard against retaliation) needs to be established. More can also be done to strengthen the internal systems of law enforcement for whistleblower protection, including by developing specific operational arrangements and institutionalised mechanisms to provide full coverage to LEO who signal suspicions of corruption in good faith (not necessary constituting a crime) from the start of the report to the end of the process. For a whistleblower protection system to be utterly effective it requires trust, and such trust is only possible when a safe environment is created. The GET points at the experience already developed in other jurisdictions in this respect, e.g., dedicated reporting lines, designation of persons of trust, development of tailored guidance, etc.

240. The articulation of such a system is critical for law enforcement because of the "code of silence" (blue code) that could informally rule in hierarchical organisations, also because of the requirement of strict adherence to the principle of in-service discipline and loyalty, as well as the duty of confidentiality to which officers abide. In addition, as improvements are made regarding whistleblower protection (including through the development of dedicated legislation transposing EU requirements), it is crucial to promote awareness of LEO in this domain. **GRECO recommends (i) strengthening the protection of whistleblowers within law enforcement, particularly by taking effective targeted measures to facilitate the reporting of corruption (including by guaranteeing whistleblowers confidentiality) and to guard against retaliation; (ii) establishing an appropriate system for the follow-up of whistleblowers reports concerning corruption of law enforcement officials, including information on the number of reports received, consultations and protection provided, and criminal cases initiated on the basis of such reports; and (iii) conducting dedicated training and awareness-raising activities about whistleblower protecting measures.**

Enforcement and sanctions

Disciplinary procedure

241. In the event of breach of duties, disciplinary measures, and proceedings applicable depend on the seriousness of the act; these measures include reprimands and warnings, fines, temporary suspension, or dismissal (Sections 92, 109 (2), and 112, Civil Service Employment Act). Contractual staff are subject to transfer to a different department, termination of employment and/or dismissal (although the GET was told that most LEO are civil servants rather than contractual staff).

242. For minor disciplinary offences, the service superior is to investigate any reasonable suspicion of a breach of official duties and file a disciplinary report with the competent personnel authority (i.e. the Department for Human Resources of the MoI, and more particularly, its Unit for Disciplinary and Complaint Matters) without delay. For serious disciplinary breaches, lead to procedures before the Federal Disciplinary Authority. If the breach of official duty also constitutes a criminal offence, there is an obligation to report the matter to the public prosecutor's office. Appeal procedures are available before the Federal Administrative Court (*Bundesverwaltungsgericht*) and then to the Supreme Administrative Court (*Verwaltungsgerichtshof)* in last instance.

243. The GET was told that the Federal Disciplinary Authority was established in October 2020 to bring greater homogeneity and professionalisation to the discipline system, which was previously led by 26 separate disciplinary commissions. This is a development in line with a recommendation of an ACA audit on the disciplinary system (the audit dealt with the disciplinary system as a whole and was not particularly targeting how the system worked for LEO). Another finding from that same audit was that the quantity and the quality of the data available on disciplinary infringements had to be improved. The Federal Disciplinary Authority issues an annual report containing information on disciplinary proceedings. Since it has just started to operate, there is only one report available (2021). It contains overall numbers from proceedings carried out from 1 January to 31 December 2021, without specifying per categories of officials, nor the type of the offence or the sanction applied. The GET welcomes that the system of discipline has now been streamlined and notes that the Federal Discipline Authority has just started to perform its operation. Time and experience will determine whether further adjustments may be needed (for example, the GET was told that discussions were on-going as to the establishment of a special unit to investigate police violence, but that an agreement on this sensitive matter had not been reached among political forces as yet). Nevertheless, the GET considers that immediate action must take place to improve the available statistics regarding misconduct in law enforcement; a recommendation follows later in this respect.

Criminal procedure

244. LEO do not enjoy immunity or other procedural privileges. They are subject to ordinary criminal procedure.

Statistics

245. No separate statistics are kept regarding corruption-related criminal or disciplinary proceedings involving LEO. The BAK compiles statistics on corruption-related reported cases per type of offence (see table in Context section of this report) but does not disaggregate per professional categories. As also already noted, the figures on discipline, which are displayed in the annual report of the Federal Disciplinary Authority, are not disaggregated. The MoI said it compiled statistics on misconduct, but these are not in the public domain, although the GET was told numbers would be provided to media if so requested.

246. The GET regrets the lack of national statistics regarding corruption-related criminal or disciplinary proceedings involving law enforcement officials. The GET would welcome more openness in this respect. It considers transparency an essential tool in upholding public confidence, reassuring citizens of the corrective action taken when breaches occur and dispelling any possible misconception of self-protection in law enforcement. Moreover, keeping detailed records would help identify deviant behaviour within law enforcement and better signal those instances for risk management purposes (this can additionally assist in implementation of the recommendation on risk assessment and management improved, which was issued earlier in this report, see paragraph 158). **GRECO recommends publishing statistics regarding corruption-related criminal or disciplinary proceedings involving law enforcement officials, including (i) information on complaints received and criminal/disciplinary proceedings instituted as a result; (ii) proceedings instituted *ex-officio* (i.e. without a formal complaint); (iii) sanctions imposed, including possible dissemination of relevant case-law, while respecting the anonymity of the persons concerned.**

VI. RECOMMENDATIONS AND FOLLOW-UP

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

Regarding central governments (top executive functions)

i. **that (i) the legal status, recruitment, responsibilities and obligations of secretaries general and ministerial advisors (including ad hoc temporary advisors) be regulated (also in relation to instructions they are entitled to make to civil servants and contractual employees); (ii) their numbers, names, functions and pay bands, as well as information on ancillary activities are made public; and (iii) they are subjected to the highest standards of conduct through appropriate rules on conflicts of interest, financial disclosure and the use of confidential information** (paragraph 47)**;**

ii. **that (i) the new action plan of the National Anti-Corruption Strategy comprises measures to prevent corruption and increase integrity with respect to persons entrusted with top executive functions, including the performance of integrity checks as part of their appointment; (ii) the compliance management departments of the Federal Chancellery and the ministries as a rule perform corruption risk management in relation to persons entrusted with top executive functions; and (iii) the system of officers performing tasks related to corruption prevention be formalised and further developed with a view to ensure its efficiency and consistency in all ministries** (paragraph 60)**;**

iii. **that a code of conduct for ministers and other persons entrusted with top executive functions be adopted, published, and complemented by a system for providing guidance and confidential counselling regarding conflicts of interest and other integrity related matters (gifts, outside activities, third party contacts and the handling of confidential information), and coupled with a credible and effective mechanism of supervision and enforcement** (paragraph 67)**;**

iv. **(i) adopting freedom of information legislation which enshrines the principle of transparency held by public authorities and guarantees the general right to access documents, in line with the standards of the Council of Europe Convention on Access to Official Documents (CETS 205); (ii) that information of public interest is published *ex officio* on the websites of the government and ministries; and (iii) that effective oversight and enforcement mechanisms are established to ensure proper implementation of the law** (paragraph 76)**;**

v. **that the transparency of laws emanating from the government is further enhanced (i) by requiring extended consultation procedure for draft laws as a main rule; (ii) by establishing adequate statutory timelines for consultations; and (iii) by publicly providing the legislative footprint tracking all external interventions from the beginning of the drafting process, including details on the initiator of the proposal** (paragraph 81)**;**

vi. **(i) that detailed rules be introduced on the way in which persons with top executive functions interact with lobbyists and other third parties seeking to influence the**

government's legislative and other activities; (ii) that sufficient details on these meetings and consultations be disclosed (such as the identity of the person(s) with whom (and on whose behalf) the meeting(s) took place and the specific subject matter(s) of the discussion), including by making the agendas of persons entrusted with top executive functions easily accessible to the public (paragraph 87)**;**

vii. **strengthening the conflict of interests' prevention policy (i) by providing a clear definition of (real, potential, and perceived) conflicts of interest in public service; (ii) by raising the awareness on the practical management of such situations notably by ensuring that persons with top executive functions receive training on how to identify and prevent conflicts of interest and related integrity matters when they take up their duties and at regular intervals; and (iii) by collecting statistics on conflicts of interest situations and measures taken** (paragraph 102)**;**

viii. **that (i) a proper mechanism of verification of the various disclosure obligations of persons entrusted with top executive functions regarding restricted or prohibited activities be introduced; and (ii) disqualification decisions are made publicly available** (paragraph 111)**;**

ix. **(i) that post-employment rules/restrictions be laid down for ministers and state secretaries and further strengthened for all other persons entrusted with top executive functions, including by providing pertinent cooling off periods; and (ii) that an effective supervision mechanism regarding these rules be established** (paragraph 126)**;**

x. **further developing the existing financial declaration system for all persons entrusted with top executive functions (also including secretaries general and ministerial advisors) by (i) expanding the categories of assets to be disclosed and providing for greater itemisation; (ii) requiring e-filing; (iii) publishing financial declarations; and (iv) considering including financial information on partners and dependent family members in such declarations (it being understood that the latter information would not necessarily need to be made public)** (paragraph 130)**;**

xi. **(i) ensuring substantive verifications of financial declarations of persons entrusted with top executive functions; and (ii) that appropriate resources, auditing capabilities and enforcement measures be provided for this purpose** (paragraph 131)**;**

xii. **ensuring that criminal investigations of persons entrusted with top executive functions suspected of having committed corruption related offences is not hampered by undue interference, by providing for sufficient resources and a legal framework that would secure the operational independence of the Central Public Prosecutor's Office for Combating Economic Crime and Corruption (WKStA), including by revising the use of regular reporting to the Ministry of Justice** (paragraph 140)**;**

Regarding law enforcement agencies

xiii. **(i) enhancing the system of risk management in law enforcement, paying special attention to the assessment of political interference in investigations, promotion, appointment to higher posts, conflicts of interest and transparency in police sponsoring; (ii) putting in place a regular assessment mechanism with compliance officers contributing to the process; and (iii) translating the key risks identified into the national biannual anti-corruption action plan** (paragraph 158)**;**

xiv. **that (i) safeguards are put in place for promotion in the police to be free from any bias and discrimination of any kind, including political affiliation or other conflicts of interest; (ii) the selection process into senior executive posts in law enforcement is competitive, transparent, and merit-based, free from undue political interference and subject to appeal; and (iii) a system of periodic appraisals is introduced and that their results are used for decisions on career progression** (paragraph 183)**;**

xv. **(i) conducting trainings for all level law enforcement officials, including at senior level, regarding conflicts of interest and the ways in which they can be prevented, addressed, and managed; (ii) keeping the implementation of conflict of interest management rules under review, including by ensuring that there is proper follow-up and rigorous enforcement in the event of breaches** (paragraph 191)**;**

xvi. **(i) introducing an obligation to request authorisation for any kind of secondary activity (whether remunerated or not); (ii) establishing a centralised register of secondary activities; and (iii) developing effective oversight arrangements in this respect** (paragraph 200)**;**

xvii. **(i) increasing transparency over sponsorship and donations to the police by publishing them online, indicating the value, donor's identity and how the assets donated were spent or used; (ii) putting in place safeguards against real, potential, or perceived conflict of interest with regard to donations and sponsorships received by the police; and (iii) ensuring compliance with the applicable rules through awareness-raising measures and systematic controls** (paragraph 204)**;**

xviii. **(i) strengthening the protection of whistleblowers within law enforcement, particularly by taking effective targeted measures to facilitate the reporting of corruption (including by guaranteeing whistleblowers confidentiality) and to guard against retaliation; (ii) establishing an appropriate system for the follow-up of whistleblowers reports concerning corruption of law enforcement officials, including information on the number of reports received, consultations and protection provided, and criminal cases initiated on the basis of such reports; and (iii) conducting dedicated training and awareness-raising activities about whistleblower protecting measures** (paragraph 240)**;**

xix. **publishing statistics regarding corruption-related criminal or disciplinary proceedings involving law enforcement officials, including (i) information on complaints received and criminal/disciplinary proceedings instituted as a result; (ii) proceedings instituted *ex-officio* (i.e. without a formal complaint); (iii) sanctions imposed, including possible dissemination of relevant case-law, while respecting the anonymity of the persons concerned** (paragraph 246)**.**

248. Pursuant to Rule 30.2 of the Rules of Procedure, GRECO invites the authorities of Austria to submit a report on the measures taken to implement the above-mentioned recommendations by 30 June 2024. The measures will be assessed by GRECO through its specific compliance procedure.

249. GRECO invites the authorities of Austria to authorise, at their earliest convenience, the publication of this report, and to make a translation of it into the national language available to the public.

About GRECO

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

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

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

GRECO Secretariat
Council of Europe
F-67075 Strasbourg Cedex
Tél. +33 3 88 41 20 00

www.coe.int/greco/fr

Directorate General I
Human Rights and Rule of Law
Information Society and Action
against Crime Directorate