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Groupe d'États contre la corruption

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## FOURTH EVALUATION ROUND

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

## INTERIM COMPLIANCE REPORT

## AUSTRIA

Adopted by GRECO at its 85th Plenary Meeting  
(Strasbourg, 21-25 September 2020)

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## **I. INTRODUCTION**

1. The Fourth Round Evaluation Report on Austria was adopted at GRECO's 73<sup>rd</sup> Plenary Meeting (21 October 2016) and made public on 13 February 2017, following authorisation by Austria ([GrecoEval4\(2016\)1](#)). GRECO's Fourth Evaluation Round deals with "Corruption prevention in respect of members of parliament, judges and prosecutors".
2. As required by GRECO's Rules of Procedure, the authorities of Austria submitted a Situation Report on measures taken to implement the recommendations addressed in the Evaluation Report.
3. In the Compliance Report, which was adopted by GRECO at its 81st Plenary Meeting (7 December 2018) and made public on 17 July 2019, following the authorisation by the Austrian authorities ([GrecoRC4\(2018\)15](#)), it was concluded that only one of the 19 recommendations had been dealt with in a satisfactory manner, five recommendations had been partly implemented and 13 had not been implemented. GRECO concluded that the very low level of compliance with the recommendations was "globally unsatisfactory" in the meaning of Rule 31, paragraph 8.3 of the Rules of Procedure. GRECO therefore decided to apply Rule 32, paragraph 2 (i) concerning members found not to be in compliance with the recommendations contained in the mutual evaluation report, and asked the Head of Delegation of Austria to provide a report on the progress in implementing the pending recommendations. This report was received on 27 January, 4 February and 10 April 2020 and served, together with the information submitted subsequently, as a basis for the current *Interim Compliance Report*.
4. This Interim Compliance Report assesses the implementation of the 18 pending recommendations, since the adoption of the Compliance Report.
5. GRECO selected the Russian Federation (PA) and Liechtenstein (JUD) to appoint Rapporteurs for the compliance procedure. The Rapporteurs appointed were M Aslan YUSUFOV, on behalf of the Russian Federation and a member of the delegation of Liechtenstein. They were assisted by GRECO's Secretariat in drawing up the Interim Compliance Report.

## **II. ANALYSIS**

6. It is recalled that GRECO addressed 19 recommendations to Austria in its Evaluation Report. In the Compliance Report, GRECO concluded that recommendation xiii had been dealt with in a satisfactory manner, recommendations i, ii, ix, xiv and xviii had been partly implemented and recommendations iii to viii, x, xi, xii, xv, xvi, xvii, xix had not been implemented. Compliance with the 18 pending recommendations is dealt with below.
7. In their general comments, the Austrian authorities refer to the government crisis and early general elections in September 2019, which put to halt several on-going negotiations on measures to implement some of the recommendations contained in this report. According to the authorities, the newly elected Parliament decided to set up a new working group which had its first meeting on 11 December 2019 and is expected to continue deliberations on these matters in 2020.

**Recommendation i.**

8. *GRECO recommended to ensure through appropriate, predictable and reliable rules that legislative drafts emanating both from government and from parliament are processed with an adequate level of transparency and consultation including appropriate timelines allowing for the latter to be effective.*
9. GRECO recalls that this recommendation was partly implemented in the Compliance Report. In particular, the extended consultation procedures and the increased use of comparative texts were viewed as positive developments. However, these reported measures were considered insufficient as there was still a need to provide in law or regulations for a proper legislative footprint mechanism applicable to a broad range of legislative initiatives, and to provide adequate timeframes. Moreover, the new consultation procedure remained only optional for Parliament, and a majority of parliamentary bills did not undergo public consultations.
10. The authorities now report that two crowdsourcing projects of Parliament, which aimed at allowing individuals to make suggestions for new laws and amendments through a dedicated web-based platform, have been completed. The authorities also provide an account of citizen consultations on the topic of “democracy education” organised from 6 May to 14 June 2019. A new call for tenders was organised for the bids to provide for a joint crowdsourcing platform, planned to be implemented by Parliament and the Federal Ministry of Finance in the course of 2020. Further, the authorities report that from 9 November 2017 to 22 October 2019 “text comparisons” were used for 250 private members’ motions, while during the same period this procedure was used in respect of 101 government bills (partly owing to the fact that Austria had a technical government from June 2019 to January 2020). Finally, a new “GRECO working Group” set up in the newly elected Parliament has agreed to establish a legal provision requiring public consultations on all legislative drafts submitted to Parliament. According to the authorities, the work on such legal provision is on-going.
11. GRECO takes note of the above information, indicating that further initiatives are underway. In particular, while the use of the relatively recent practice of extended consultations and comparative texts continues, there are still no clear rules adopted, requiring public consultations on drafts emanating both from parliament and the government, and establishing appropriate timelines to ensure that such consultations are effective.
12. GRECO concludes that recommendation i remains partly implemented.

**Recommendations ii to viii.**

13. *GRECO recommended:*
  - *(i) that a code of conduct (or ethics) be developed for members of parliament and communicated to the public; ii) ensuring there is a mechanism both to promote the code and to provide advice and counselling to MPs, but also to enforce such standards where necessary. (recommendation ii)*
  - *(i) to clarify the implications for members of parliament of the current system of declarations of income and side activities when it comes to conflicts of interest not necessarily revealed by these declarations; and in that context (ii) to introduce a requirement of ad hoc disclosure when a conflict between specific private interests of individual MPs may emerge in relation to a matter*

*under consideration in parliamentary proceedings – in the plenary or its committees – or in other work related to their mandate. (recommendation iii)*

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

14. It is recalled that recommendation ii was partly implemented and that recommendations iii to viii were not implemented in the Compliance report. GRECO noted that the implementation of recommendations concerning parliamentarians had been on Parliament's agenda since the elections held in the autumn of 2017 and no tangible results had been achieved, except for partial implementation of recommendation ii (introduction of training, decision to set up confidential counselling, elaboration of a code of conduct). Further, the implementation of recommendation iv (guidance through training and counselling) was also in progress, but GRECO was looking forward to receiving more specific information.

15. The authorities now indicate that in respect of recommendations ii, iii, v, vi, vii and viii, no additional measures have been taken since the Compliance Report. According to the authorities, the newly established parliamentary working group resumed discussions and plans to report to GRECO later in 2020. As to recommendation iv, the authorities report that since October 2018, seven sessions of voluntary training regarding the acceptance of gratuities were provided by the Parliamentary Administration to about 70 MPs. Additional training on the incompatibility and transparency, as well as lobbying, is planned in 2020. Further, in April 2019 a compliance counselling desk for MPs has been set up to provide advice on compliance-related topics, such as the acceptance of gratuities, sponsoring, lobbying

and conflict of interest. Finally, in June 2020, the counselling desk recommended to chairpersons of all parliamentary groups to draft internal guidelines regarding certain gifts and benefits, which would regulate the handling of gifts received through courtesy protocol, gratuities and hospitality in the context of events and usage of bonus miles for business flights.

16. GRECO takes note of the information provided by the authorities and regrets the persistent lack of progress in the implementation of most of the recommendations relating to parliamentarians. New information relevant to recommendation iv, in particular as regards MPs voluntary training, the setting up of a compliance counselling desk and its suggestion to develop internal guidelines on some gifts and benefits appear to go in the right direction; however, there are still no internal rules available for MPs as regards the acceptance, valuation and disclosure of gifts, hospitality and other advantages. Further, no information is provided to suggest that MPs compliance is properly monitored in this respect. GRECO once again urges the authorities to step up their efforts towards full implementation of the above recommendations. The situation now remains largely the same as it was at the adoption of the Compliance Report.
17. GRECO concludes that recommendation ii remains partly implemented, while recommendations iii to viii remain not implemented.

#### *Corruption prevention in respect of judges*

##### **Recommendation ix.**

18. *GRECO recommended that i) adequate legislative, institutional and organisational measures be taken so that the judges of federal and regional administrative courts be subject to appropriate and harmonised safeguards and rules as regards their independence, conditions of service and remuneration, impartiality, conduct (including on conflicts of interest, gifts and post-employment activities), supervision and sanctions; ii) the Länder be invited to support those improvements by making the necessary changes which fall within their competence.*
19. GRECO recalls that this recommendation was considered partly implemented in the Compliance Report. As far as the first part of the recommendation is concerned, GRECO appreciated assurances given that judges of administrative courts were always hired for an indefinite term at the federal and Länder level. GRECO was also satisfied that the code of conduct for federal and Länder officials was being reviewed. However, no consolidated position appeared to have been taken in Austria on the need to pursue reforms with regard to administrative court judges, as detailed in the Evaluation Report (paragraph 81). The authorities claimed that the implementation of this recommendation was on-going, while the Länder and the Conference of chairpersons of administrative courts considered that the objectives of the recommendation were met. GRECO pointed out that a reform of administrative courts needed to be pursued and that attempts of political interference in the judiciary remained a reality. That said, GRECO concluded in the Compliance report that the second part of the recommendation, which only calls for inviting the autonomous Länder to support such reforms, had been implemented satisfactorily.
20. The authorities now argue that the first part of the recommendation primarily concerns regional administrative courts, which fall under the competences of the *Länder* (and not of the federal level). They take the view that because the second part of the recommendation has been considered implemented according to the Compliance Report, regional administrative courts should no longer be an issue under the present recommendation.

21. The authorities also inform GRECO that judges of the Federal Administrative Court, in principle, are subject to the same service rules as the judges of regular jurisdiction, as the provisions of the Service Act for Judges and Public Prosecutors also apply to judges of the Federal Administrative Court and the Federal Financial Court. Further, judges of federal administrative jurisdiction have been integrated into the remuneration schemes of judges of ordinary jurisdiction.<sup>1</sup>
22. In addition, the authorities inform GRECO that in its decision of 14 June 2019 (case G 396/2018),<sup>2</sup> the Austrian Constitutional Court *inter alia* stated that "*because of the judicial guarantees that apply to ordinary judges and administrative judges alike, a homogenous constitutional notion of judge can be derived. When establishing the administrative judiciary, the constitutional legislator oriented itself towards the ordinary judiciary by means of references to provisions concerning the ordinary judiciary. This understanding is also expressed by the fact that the Service Act for Judges and Public Prosecutors applies to the judges of the Federal Administrative Court (and the Federal Financial Court) as well.*" According to the authorities, the Constitutional Court confirmed that jurisdiction of the Federal Administrative Court in disciplinary matters over judges of the Viennese Administrative Court was in line with the Constitution.<sup>3</sup>
23. Finally, the authorities take the view that the recent decision of the Constitutional Court and the adoption of the Compliance Guidelines for judicial employees (see recommendation xiv below) clarify the legal situation regarding administrative courts at both the regional and federal level and confirm the applicability of the Guidelines to all judges in these courts as well.
24. GRECO takes note of the information submitted by the authorities. It accepts that judges at administrative courts are subject to a wide range of judicial safeguards provided for in the Constitution and legislation which equals them with judges of ordinary courts, as stressed by the authorities. GRECO also notes the decision of the Constitutional Court in this respect. GRECO furthermore welcomes the adoption of the Compliance Guidelines for judicial employees which complements and clarifies the regulatory system in this context (further dealt with under recommendation xiv).
25. GRECO also notes that the regional administrative courts, which were in the focus of GRECO's reasoning leading up to this recommendation (paragraph 81 of the Evaluation Report) are under the competence of the autonomous *Länder* and as such regulated by regional legislation for the organisation and status of judges, as stressed by the authorities. However, it follows, *inter alia*, from the Evaluation Report (paragraph 73) that these courts are also regulated by federal legislation in this respect. GRECO notes that, apart from the adoption of the Compliance Guidelines, which are to be followed by all judges, no legislative, institutional or organisational measures have been taken to harmonise safeguards and rules of federal and regional administrative court judges, as required by the first part of the recommendation.
26. GRECO concludes that recommendation ix remains partly implemented.

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<sup>1</sup> According to the authorities, following the amendment in 2015 of the Service Act for Judges and Public Prosecutors (amendment in force as of 1 January 2016), the remuneration of the judges of the federal administrative courts is regulated by the same provision as that of ordinary judges – Section 66 of this Act. At the lower salary levels the remuneration of the judges of the federal administrative courts equals the remuneration of judges of the district and regional courts, while at the higher salary levels the remuneration of federal administrative judges is slightly higher than that of judges of the regional courts, but lower than that of judges of the higher regional courts/supreme courts.

<sup>2</sup> The Constitutional Court had to decide whether Section 11 paragraph 1 of the Viennese Administrative Court Service Act (establishing the Federal Administrative Court's jurisdiction in disciplinary matters over judges of the Viennese Administrative Court) was in line with the Constitution.

<sup>3</sup> The Federal Administrative Court argued that only a senate of judges belonging to the same court may have jurisdiction in disciplinary matters of administrative judges.

## **Recommendation x.**

27. *GRECO recommended that the recruitment requirements be increased and formalised for judges when they are to become candidate-judges (Richteramtsanwärter) and administrative court judges, and that this includes proper integrity assessments as well as objective and measurable criteria on professional qualifications to be applied by the independent selection panels involved.*
28. GRECO recalls that this recommendation was not implemented in the Compliance Report. GRECO noted that part of this recommendation was explicitly addressed in the governmental working programme for 2017-2022. However, no tangible developments were reported at the time.
29. The authorities now inform GRECO that legal provisions (FLG. I No. 119/2016 and No. 32/2018) concerning the appointment procedure for candidate-judges were amended in 2016 and 2018 to include a requirement of mandatory assessment by the president of the higher regional court of formal appointment criteria, candidate's criminal record, certificates on applicable work practice times (e.g. in a lawyer's office), training judges' comments on applicants' performance during court practice, comments by instructors of training courses (including results of the written and oral theory examinations during court practice) and applicants' conformity with the following recruitment criteria: "extent and currency of professional knowledge; abilities and comprehension; diligence, perseverance, meticulousness, dependability, decisiveness and purpose; social and communication skills, suitability for front office activities, expressiveness (written and oral)." Further, Pursuant to Section 3, paragraph 1, of the Service Act for Judges and Public Prosecutors, presidents of higher regional courts should, personally or through an assigned judge, conduct hearings with applicants. The authorities inform GRECO that in practice, hearing of candidates are also attended by representatives of the senior public prosecutor's office and the Association of Austrian Judges. The authorities also underline that potential candidate judges must undergo at least seven months of court practice, which is concluded by their assessment by training judges in accordance with standardised assessment forms issued by the Federal Ministry of Justice. Finally, in addition to practical training, candidates attend theoretical classes, take professional examinations conducted by judges and undergo a psychological test in a specialised institution. According to the authorities, the Federal Minister of Justice appoints as candidate-judges only persons who have been found by presidents of respective higher regional courts as most suitable for the job.
30. As to the procedure for appointment of administrative judges, the authorities state that there are no plans to amend these provisions as, in the authorities' opinion, they *inter alia* guarantee the pre-selection of newly appointed judges below the level of vice-president by plenary assemblies of each administrative court. It is added that administrative jurisdiction applicants also must have completed legal studies, or legal and political science studies, and have at least five years of legal professional experience. In addition, they must undergo a hearing before the competent panel.
31. GRECO takes note of the information provided. The formal introduction in law of mandatory verification of recruitment criteria, which includes the applicant's criminal record, work practice, performance during court practice with a focus on professional knowledge, comprehension, diligence, perseverance, dependability, communication skills, etc., is to be welcomed. GRECO also notes that hearings of applicants before presidents of higher regional courts are said to be attended in practice by representatives of the Association of Judges and senior prosecutors. In addition, GRECO notes that the presidents are not alone in the process of assessing candidates as the final selection of candidates is preceded by training and monitoring, as well as

various tests. Nonetheless, formally, the decision-making power to appoint remains in the hands of one person, i.e. the president of the relevant high court. Such a decision should in GRECO's view preferably be preceded by a proposal/consideration of some form of panel, as a rule (see also recommendation xi). To sum up, while steps have been taken to formalise recruitment requirements for ordinary judges, the lack of progress in respect of the appointment procedure of administrative judges remains a concern.

32. GRECO concludes that recommendation x has now been partly implemented.

#### **Recommendation xi.**

33. *GRECO recommended that staff panels be involved more broadly in the selection and career evolution of ordinary and administrative court judges, including the presidents and deputy-presidents, and that the proposals of the panels become binding for the executive body making appointments.*
34. It is recalled that this recommendation was considered not implemented in the Compliance report. GRECO noted that legislation was being prepared by the Ministry responsible for justice with a view to addressing the content of this recommendation. However, no specific information was provided on the content of the draft and consultations were still on-going.
35. The authorities now report that the amendments, prepared at the time by the Federal Ministry of Constitutional Affairs, Reforms, Deregulation and Justice (now the Ministry of Justice), have still not been adopted by Parliament. The draft contains some measures, including the introduction of criteria to assess applicants, making candidates' hearings mandatory and including statements of heads of respective service offices and appellate panels into the grounds for assessment. The draft amendments are also said to require the Federal Minister of Justice to inform relevant staff panels in writing whether their appointment proposals will be followed, and allowing the latter to make complementary statements to be included in the appointment proposal submitted to the Federal President. As to making staff panel proposals binding on the executive decision-making bodies, the authorities point out that this would not be allowed by the Constitution. According to the authorities there were no judicial appointments made of persons who had not been shortlisted by the respective staff panels on the appointment proposals. In respect of administrative courts, the authorities reiterate their position that at the time of the establishment of administrative courts the appointment procedures were governed by the then existing rules for the Supreme Administrative Court, which gave highest executive bodies of the Federation and the *Länder* considerable influence in judicial appointments.
36. GRECO takes note of this information and the steps taken in the right direction. It is regrettable that the process of adoption of the amendments to the Federal Service Act for Judges and Public Prosecutors, already in preparation at the time of the adoption of the Compliance Report, has not advanced beyond first draft law. It calls on the Austrian authorities to pursue their efforts to implement this recommendation.
37. GRECO concludes that recommendation xi remains not implemented.

#### **Recommendation xii.**

38. *GRECO recommended that a system of periodic appraisals be introduced for judges, including the presidents of the courts, and that the results of such appraisals be used in particular for decisions on career progression.*

39. GRECO recalls that this recommendation was considered not implemented in the Compliance Report. GRECO noted that the draft bill prepared by the Federal Ministry of Constitution, Reforms, Deregulation and Justice was reportedly addressing some of the objectives of the present recommendation. However, the legislative process was at a very early stage.
40. The authorities report that the draft amendments envisaging the revision of rules of performance appraisal, aiming at regular (periodic) evaluation of the quality of the judges' work, are still under discussion.
41. GRECO notes that no tangible progress has been reported by the authorities and concludes that recommendation xii remains not implemented.

#### **Recommendation xiv.**

42. *GRECO recommended (i) to ensure that all relevant categories of judges, including lay judges, are bound by a Code of conduct accompanied by, or complemented with appropriate guidance and (ii) that a mechanism is in place to provide confidential counselling and to promote the implementation of the rules of conduct in daily work.*
43. It is recalled that this recommendation was considered partly implemented in the Compliance Report. GRECO noted that a code of conduct and its supporting documentation were in preparation and looked forward to receiving the drafts to assess their scope and content.
44. The authorities now report that the Compliance Guidelines for judicial employees have been finalised and disseminated. The Guidelines offer judicial employees a summary of important rules of conduct, such as objectivity, integrity, prohibition of accepting gifts etc. They also contain standards for conduct and communication and include examples from case-law or from daily work practice. The Guidelines also include information about contact points where employees can seek counselling on matters covered by this document. Pursuant to a Ministerial decree of 28 March 2019, the Compliance Guidelines were published on the Intranet, thus making them accessible to all judicial employees. The guidelines were also published on the Internet<sup>4</sup>. A printed copy has reportedly been provided to all judicial employees. In January 2020 the Compliance Guidelines have also been communicated to the Conference of chairpersons of the administrative courts with a view to disseminating them among the administrative courts of the *Länder*. The authorities further clarify that judicial employees seeking advice should turn to their immediate superiors and/or heads of department, and – if the latter cannot help – to the Chief Compliance Officer in the Federal Ministry of Justice. The authorities indicate that the “secrecy” requirement, set out in Article 20 (3) of the Federal Constitution, would be applicable to such counselling. Finally, the authorities report that in 2018 the Association of Judges have set up the Council of Ethics (“Ethikrat”), empowered to examine cases related to judicial ethics and present its recommendations to the Board of the Association of Judges.
45. GRECO takes note of the information provided by the authorities and welcomes the adoption and publication on the Internet of the Compliance Guidelines, which provide an extensive set of rules of conduct applicable to judges. The guidelines are also addressed to all other persons working in courts, public prosecutor's offices and the prison system. However, no new information has been provided about the practical modalities of the functioning of the counselling available to judges on matters of

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<sup>4</sup> The full text of Compliance Guidelines, in German, can be consulted via the following link: <https://www.justiz.gv.at/home/justiz/compliance~79b.de.html>

ethics/conduct. Furthermore, as regards the confidentiality of such counselling, the Constitutional provision, referred to by the authorities, appears to be more of a general character and not specific to counselling in the current context as it regards the official secrecy (Article 20, paragraph 3 of the Federal Constitution)<sup>5</sup>. In GRECO's view, it is of considerable importance that counselling to judges can be provided on a strictly confidential basis and that it is effectively available to all judges of different courts.

46. GRECO concludes that recommendation xiv remains partly implemented.

**Recommendation xv.**

47. *GRECO recommended that a restriction on the simultaneous holding of the office of a judge and that of a member of a federal or local executive or legislative body be laid down in law.*
48. GRECO recalls that this recommendation was not implemented according to the Compliance Report.
49. The authorities now inform GRECO that Section 79 of the Federal Service Act for Judges and Public Prosecutors has been amended (FLG I No. 102/2018) to restrict the simultaneous holding of offices of a judge in the Federal Administrative Court, the Federal Financial Court or a regular court and federal or local executive or legislative body. The new rules require that judges have their judicial position suspended for the duration of the function or the mandate in the executive or legislative organ.<sup>6</sup> The authorities specify that, as per Section 79, article II a, paragraph 2, this provision is also applicable *mutatis mutandis* to public prosecutors. The authorities also state that the various organisational rules of administrative courts of the *Länder* include provisions prohibiting activities which could raise questions as to the independence of the judicial office. These rules would automatically prohibit holding an office in the executive or legislative branch.
50. GRECO welcomes the adoption of the above-mentioned restrictions on being a judge and simultaneously a member of a federal or local executive or legislative body. This prohibition, which applies to judges in federal as well as ordinary courts (which was the concern in the Evaluation Report, paragraph 109) is a major step forward. In addition, there are reportedly provisions in place which automatically prohibit judges of administrative courts of the *Länder* from holding an office in the executive or legislative branch.
51. GRECO concludes that recommendation xv has been dealt with in a satisfactory manner.

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<sup>5</sup> Article 20, paragraph 3 of the Federal Constitution of Austria reads as follows: "(3) All Federal Länder and communal administrative organs, as well as the organs of other corporations of public law, insofar as not legally provided otherwise, which are entrusted with administrative duties, are obligated to maintain secrecy about all facts which they obtained in their official activity and whose secrecy is in the interest of the maintenance of public quietude, order and security of the universal national defence, foreign relations, in the commercial interest of a corporation of public law, for the preparation of a decision or in the preponderant interest of the parties. Official secrecy does not apply for functionaries who are appointed by a representative body if such information is expressly demanded." Source:

[http://constitutionnet.org/sites/default/files/Austria%20\\_FULL\\_%20Constitution.pdf](http://constitutionnet.org/sites/default/files/Austria%20_FULL_%20Constitution.pdf)

<sup>6</sup> In particular, holding a political office (Federal President, member of the Federal Government, State Secretary, President of the Court of Auditors, President of the National Council, chairperson of a club in the National Council, Executive President of the Regional School Board, Head of the Vienna School Board, Ombudsman, member of the Provincial Government, Regional Ombudsman, Director of the Regional Court of Auditors, member of the European Parliament or of the Commission of the European Communities) or a seat in the National Council, Federal Council, Provincial Diet or the European Parliament.

### **Recommendation xvi.**

52. *GRECO recommended that the persons responsible for the implementation and supervision of the various obligations laid upon judges - notably on professional secrecy, gifts, accessory activities and management of conflicts of interest – be properly identified and known to all, and that they be required to introduce the proper procedures needed for these obligations to become effective.*
53. GRECO recalls that this recommendation was not implemented in the Compliance Report. While having taken note of the planned and initiated steps to address the underlying concerns of this recommendation, the measures envisaged by the authorities were at an early stage.
54. The authorities now clarify that the term “service authority” is a legal term designating the (judicial) administrative authority responsible for service law matters. Pursuant to regulation on judicial service law procedure and staff positions, service authorities for all court employees in district, regional court and the higher regional courts are the presidents of the respective higher regional courts. Further, the service authority for all employees of the supreme courts (including the judges of the Supreme Court) is the President of the Supreme Court, while the service authority for all employees of the prosecution authorities is the respective head of the senior public prosecution office. In addition, competences and tasks of the service authorities are described in the law and in the recently adopted Compliance Guidelines. Finally, the authorities inform GRECO that the implementation of a Compliance Management System has begun and that it is envisaged, as a first step, to install regional Compliance Officers in each competent service authority of the judiciary and the prosecution, acting as reference persons regarding compliance issues and promoting the Compliance Guidelines, e-learning programmes etc. These Compliance Officers will form the Compliance Council, a consultative body for the Minister of Justice on matters of risk assessment and compliance procedures. .
55. GRECO takes note of the information provided, which clarifies that the term “service authority” is specifically defined in legislation and refers to the various judicial authorities in charge of administrative matters. In respect of judges, these authorities are the presidents of the higher regional courts or the President of the Supreme Court. It welcomes that competences and tasks of the “service authorities” are also described in the Compliance Guidelines. That said, it is still not defined, who will carry out these tasks in practice under the responsibility of the court presidents. Measures to introduce proper procedures needed for the compliance system to become effective appear to be underway, notably through the “Compliance Management System”. But these remain at a planning stage. In light of the limited steps taken so far, this recommendation cannot be considered implemented.
56. GRECO concludes that recommendation xvi remains not implemented.

*Corruption prevention in respect of prosecutors*

### **Recommendation xvii.**

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

58. GRECO recalls that this recommendation was not implemented according to the Compliance Report. GRECO took note of the intended amendments to the Federal Service Act for Judges and Public Prosecutors (envisaging, *inter alia*, the reform of the career system) and the governmental work programme for 2017-2022, which reportedly contained measures addressing issues which had led to this recommendation. However, these measures were at a very early stage and no tangible results had been achieved at the time.
59. The authorities now report that the harmonisation of service law of judges and public prosecutors with regard to appointments, career changes and performance appraisals has been largely achieved through identical rules for the appointments, career changes in similar situations and performance appraisals of judges and prosecutors. The authorities indicate that the draft amendments to the Federal Service Act for Judges and Public Prosecutors, containing provisions on prosecutorial appointments (proposal by staff panels and staff commissions) and performance appraisals have not yet been adopted. As to the issue of incompatibility of prosecutors' function with a political function in the executive or legislature, the authorities refer to information provided under recommendation xv.
60. GRECO takes note of the above information and welcomes that the issue of incompatibility of the function of a prosecutor with an executive or legislative position has been dealt with in a satisfactory manner (see recommendation xv). However, it regrets that the remaining necessary legal and practical measures to implement this recommendation fully have not yet been taken.
61. GRECO concludes that recommendation xvii has now been partly implemented.

**Recommendation xviii.**

62. *GRECO recommended (i) that all prosecutors are bound by a code of conduct accompanied by, or complemented with, appropriate guidance and (ii) that a system be put in place to provide confidential counselling and to support the implementation of the code in daily work.*
63. GRECO recalls that this recommendation was considered partly implemented in the Compliance Report. It welcomed that new rules of conduct and supporting guidelines were being prepared, and that a compliance website was being set up and that a policy on advice was being elaborated. That said, the process was not completed.
64. The authorities now refer to the adoption of the Compliance Guidelines for judicial employees (see recommendation xiv), also applicable to public prosecutors, and the measures taken for its dissemination.
65. GRECO notes again with satisfaction the adoption of the Compliance Guidelines for judicial employees, including prosecutors, which is a clearly tangible measure contributing to the implementation of this recommendation. The intention of installing Compliance Officers in the respective service authorities of regional prosecution offices (see paragraph 54) is encouraging. However, the compliance officers still need to be installed.
66. GRECO concludes that recommendation xviii remains partly implemented.

*Corruption prevention regarding judges and prosecutors*

**Recommendation xix.**

67. *GRECO recommended that an annual programme be put in place for the in-service training of judges and prosecutors, including administrative judges and lay judges,*

*which would include integrity-focused elements concerning the rights and obligations of these professionals.*

68. GRECO recalls that this recommendation was considered not implemented in the Compliance Report. GRECO noted that various training courses had been provided but could not assess their content and relevance in terms of their integrity-related elements and urged the authorities to take more determined action in this regard.
69. The authorities now report that in 2019, judges and public prosecutors attended a two-week training course entitled "Prevention of, and Fighting against Corruption" provided by the Federal Ministry of the Interior.<sup>7</sup> Further, the authorities refer to plans to continue discussing the overall training programme for judges and prosecutors for 2021 with a view to increasing training on corruption prevention and compliance, in particular during seminars regularly provided to practitioners, and enhancing participation of judges of administrative courts in these training sessions. In addition, the authorities report their intention to update and supplement, in the course of 2020, the existing e-learning programme on corruption prevention and compliance for judicial employees and employees of the prosecutor's office, accessible on the Intranet.
70. GRECO takes note of the above steps, which include actual training sessions already implemented and also various planned activities. GRECO wishes to stress that the full implementation of this recommendation requires that regular/annual training programmes be put in place for judges and prosecutors, including administrative and lay judges, and notes that these should preferably build on the newly established Compliance Guidelines for the judiciary, and deal in particular with issues such as corruption prevention, conflicts of interest and integrity related matters.
71. GRECO concludes that recommendation xix has been partly implemented.

### **III. CONCLUSIONS**

72. **In view of the foregoing, GRECO concludes that Austria has implemented satisfactorily or dealt with in a satisfactory manner two of the nineteen recommendations contained in the Fourth Round Evaluation Report.** Of the remaining recommendations, eight have been partly implemented and nine have not been implemented.
73. More specifically, recommendation xiii and xv have been dealt with in a satisfactory manner, recommendations i, ii, ix, x, xiv, xvii, xviii and xix have been partly implemented and recommendations iii to viii, xi, xii, xvi, have not been implemented.
74. With respect to members of parliament, the very low level of compliance with the recommendations has not evolved. Following the elections in 2019 to the National Assembly, GRECO encourages the Austrian Parliament, to seriously deal with the implementation of GRECO's recommendations, concerning, *inter alia*, the transparency of the legislative process, the establishment of a code of conduct for MPs (including the handling of various forms of conflicts of interest), declarations of assets etc.

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<sup>7</sup> According to the authorities, the two-week training course entitled "Prevention of, and Fighting against Corruption" provided by the Ministry of the Interior, was attended by one public prosecutor, one senior public prosecutor, one judge and one employee of the Ministry of Justice. In November 2019, two senior public prosecutors and one employee of the Ministry of Justice participated in the one-week training course for integrity officers. In addition, in April 2019, two judges and one senior public prosecutor took the one-week training course for integrity officers, organised by the Ministry of the Interior.

75. As far as judges and prosecutors are concerned, regrettably, a considerable number of measures that were in the making at the time of the adoption of the Compliance Report (2018) have yet to be finalised. Thus, the amendments to the Federal Service Act for Judges and Public Prosecutors (concerning the selection of judges and prosecutors, and improving their appraisal system), have still not been adopted. Nonetheless, progress has been observed in some areas. In particular, the introduction of provisions prohibiting judges and prosecutors from simultaneously holding political positions in executive or legislative bodies is a positive development. Further, the adoption of the Compliance Guidelines for judges and prosecutors (code of ethics) is another important achievement. That said, the authorities need to ensure the effective supervision of the implementation of rules contained in the Guidelines, *inter alia* by making the Compliance Management System operational and providing confidential counselling to judges and prosecutors. Further, in-service training on corruption prevention and integrity matters requires a more systematic approach.
76. In view of the above, GRECO concludes that the current low level of compliance with the recommendations remains “globally unsatisfactory” in the meaning of Rule 31 revised, paragraph 8.3 of the Rules of Procedure. GRECO therefore decides to apply Rule 32, paragraph 2 (i) concerning members found not to be in compliance with the recommendations contained in the mutual evaluation report, and asks the Head of delegation of Austria to provide a report on the progress in the implementation of the outstanding recommendations (i.e. recommendations i to xii and xiv to xix as soon as possible, however – at the latest – by 30 September 2021).
77. Finally, GRECO invites the authorities of Austria to authorise, as soon as possible, the publication of this report, to translate it into the national language and to make this translation public.