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Joint First and Second Round Evaluation

Compliance Report on Austria

Adopted by GRECO
at its 47th Plenary Meeting
(Strasbourg, 7-11 June 2010)

I. INTRODUCTION

1. GRECO adopted the Joint First and Second Round Evaluation Report on Austria at its 38th Plenary Meeting (13 June 2008). This report (Greco Eval I-II Rep (2007) 2E) was made public by GRECO, following authorisation by the authorities of Austria, on 19 December 2008.
2. In accordance with Rule 30.2 of GRECO's Rules of Procedure, the authorities of Austria submitted their Situation Report (RS-Report) on the measures taken to implement the recommendations on 31 December 2009.
3. GRECO selected, in accordance with Rule 31.1 of its Rules of Procedure, Italy and the Russian Federation to appoint Rapporteurs for the compliance procedure. The Rapporteurs appointed were Silvio BONFIGLI on behalf of Italy and Aslan YUSUFOV on behalf of the Russian Federation. The Rapporteurs were assisted by the GRECO Secretariat in drafting this Compliance Report (RC-Report).
4. The objective of the RC-Report is to assess the measures taken by the authorities of Austria to comply with the recommendations contained in the Joint Evaluation Report.

II. ANALYSIS

5. It was recalled that in its Joint Evaluation Report, GRECO addressed 24 recommendations to Austria. Compliance with these recommendations is dealt with below.

Recommendation i.

6. *GRECO recommended that a study be undertaken covering the scale and the nature of corruption in Austria, and identifying the areas most exposed to corruption risks.*
7. The authorities of Austria report that a working group consisting of representatives of the Federal Ministry of Justice, the Federal Ministry of the Interior and the Federal Chancellery and of the governments of the nine *Länder* was established. The working group invited nine research institutes to submit offers meeting the specific requirements of the recommendation. Following an analysis of the four offers submitted, the Institute of Conflict Research (*Institut für Konfliktforschung-IKF*) was assigned, in February 2010, to conduct a study aimed at providing an empiric overview of the impact and nature of corruption in Austria. The study is to contain an analysis of court files and files of the prosecutors' offices, an analysis of results concerning disciplinary actions at the federal and provincial (*Länder*) level, as well as a representative survey conducted among experts on combating corruption (experts in the field of justice, police and other instances with control powers such as the Court of Audit), an analysis of public opinion polls and a representative survey conducted among managers and businessmen/-women. The authorities report that the preparation of the study is well under way and that a substantial interim report was already presented at the beginning of June 2010. The final results of the study are expected for 15 December 2010. In addition, the authorities refer to a scientific comparative study carried out, independently of the authorities' response to the recommendation, in 2009 on corruption in Austria, Slovenia, Hungary, the Czech Republic, the Slovak Republic and Croatia entitled "Corruption - Subjective Perceptions and Counter-Strategies".
8. GRECO notes with satisfaction that the authorities have commissioned a study by the Institute of Conflict Research on the impact and nature of corruption in Austria – aimed, *inter alia*, at the

identification of the areas most exposed to corruption risks – and is confident that it is conducted to a high standard. The study is still under preparation, but GRECO notes that an interim report has already been presented and that the final results are expected soon.

9. GRECO concludes that recommendation i has been dealt with in a satisfactory manner.

Recommendation ii.

10. *GRECO recommended a) to establish an inter-institutional and multi-disciplinary coordination mechanism that would be given the necessary resources and a clear mandate to initiate a strategy or policy in the area of anti-corruption; b) to involve the Länder and the private sector in these overall anti-corruption efforts.*
11. The authorities of Austria report on the establishment, in December 2008, of an informal multi-disciplinary committee in order to coordinate anti-corruption measures and to address issues emanating from the GRECO Evaluation Report on Austria, with the participation of representatives of the parliamentary administration of various Federal Ministries (Federal Chancellery, Federal Ministry of Finance, Federal Ministry of the Interior, Federal Ministry of Justice, Federal Ministry of Economics, Family and Youth), the *Länder*, of various authorities (Public Prosecutor's Office against Corruption, Federal Bureau for Internal Affairs – since January 2010 the Federal Bureau of Anti-Corruption (BAK)–, Financial Market Authority) as well as of the private sector (Chamber of Commerce, Union of Civil Servants, Chamber of Notaries, Bar Association). The committee met several times and was then transformed into the Co-ordinating Body on Combating Corruption (“*Koordinationsgremium zur Korruptionsbekämpfung*”) which held its first formal meeting on 25 February 2010 and is to meet four times a year. The Co-ordinating Body on Combating Corruption comprises representatives of the above-mentioned bodies and entities and is supported by the administration of the Ministry of Justice. It is to co-operate closely with the expert conference at the level of the provinces – which has been set up in order to further develop and harmonise the anti-corruption measures implemented by the provinces – and with the annual Austrian Anti-Corruption Day – which was an initiative of the Bureau for Internal Affairs of the Federal Ministry of the Interior (BIA-BMI) organised for the first time in 2007 under the motto “Creating Synergy through Cooperation”, bringing together representatives of the Austrian anti-corruption community of both the public and the private sector. The two-day exchange of experience resulted in, *inter alia*, first steps being taken towards the elaboration of an interministerial “code of conduct” agreed with the other territorial authorities. The 2010 Anti-Corruption Day focuses on the prevention of corruption.
12. GRECO takes note of the information provided with regard to the setting up of the Co-ordinating Body on Combating Corruption which appears to constitute an inter-institutional and multi-disciplinary coordination mechanism. GRECO acknowledges that this body also involves the *Länder* and the private sector and is complemented by further coordination efforts undertaken in the framework of the Austrian Anti-Corruption Day and the expert conference at the level of the provinces. However, it would appear that its concrete mandate still needs to be determined, especially as regards responsibility for initiating an anti-corruption strategy or policy, as required by the recommendation. Moreover, the current functioning of this body, which will meet only four times a year, needs to be further enhanced and it needs to be given the necessary resources in order to exercise such a role.
13. GRECO concludes that recommendation ii has been partly implemented.

Recommendation iii.

14. *GRECO recommended a) to clarify the role and jurisdiction of the Bureau for Internal Affairs of the Federal Ministry of the Interior and of the other police bodies in respect of corruption investigations, whilst confirming the central role of the BIA-BMI; b) to enhance the co-ordination between the various police units involved in the investigation of corruption cases, and between the BIA-BMI and the prosecution services.*
15. As regards the first part of the recommendation, the authorities of Austria report that on 1 January 2010, the Federal Bureau of Internal Affairs (BIA), until then a department of the Federal Ministry of the Interior, was transformed into the Federal Bureau of Anti-Corruption (BAK) and thus upgraded. It is now an organisational unit of the Federal Ministry of the Interior set up outside the Directorate General for Public Security, with nationwide jurisdiction for preventing and combating corruption. Section 4 of the Federal Law on the Establishment of the Federal Bureau of Anti-Corruption¹ sets out the jurisdiction of the BAK and contains a list of the criminal offences which it is competent to investigate. Moreover, the new regulations entrust the BAK with preventive tasks (to analyse corruption phenomena, gather information on preventing and combating corruption, develop appropriate preventive measures) and with investigations in the framework of international police cooperation, mutual assistance and cooperation with the competent institutions of the European Union and the investigative authorities of EU Member States, and they designate the BAK as the central national contact point for OLAF, INTERPOL, EUROPOL and other comparable international institutions.
16. Concerning the second part of the recommendation, the authorities state that the Federal Law on the Establishment of the Federal Bureau of Anti-Corruption contains rules on coordination between the different police units as well as obligations on other authorities and departments to report to the BAK when they are informed of suspicious circumstances. These regulations are to be complemented by an implementation decree.
17. Moreover, the authorities report that cooperation between the BAK and the Public Prosecutor's Office against Corruption (*Korruptionsstaatsanwaltschaft – KStA*) – which was established in January 2009 – is regulated by section 1 of the Federal Law on the Establishment of the Federal Bureau of Anti-Corruption and, with regard to preliminary proceedings, by section 20a, paragraph 2 of the Code of Criminal Procedure (CCP). The BAK is the security police counterpart of the KStA, with largely corresponding powers and duties. The formal scope of responsibility of the KStA includes supervising preliminary investigations and their discontinuation, filing indictments, representing the prosecution in the main trial as well as for proceedings at the Court of Appeal concerning criminal offences listed in section 20a, paragraph 1 CCP. According to the amended section 20a, paragraph 2 CCP – in force since 1 January 2010, the KStA has in general to preliminarily collaborate with the BAK, unless the BAK is unable to intervene on time. Furthermore, the authorities indicate that the CCP provides for orders of the KStA to be given to the criminal police (section 102, paragraph 1 CCP) and for the obligation on the criminal police to report suspected criminal offences to the KStA (section 100a CCP).
18. GRECO takes note of the information provided with regard to the transformation of the Federal Bureau for Internal Affairs (BIA) into the Federal Bureau of Anti-Corruption (BAK), whose role and jurisdiction are defined by the Federal Law on the Establishment of the Federal Bureau of Anti-Corruption. GRECO further notes that the above law and the amended Code of Criminal Procedure also contain new regulations on coordination between the different police units and the

¹ BGBl. I, No. 72/2009.

BAK and between the newly established Public Prosecutor's Office against Corruption, the BAK and the criminal police. GRECO welcomes these arrangements that confirm and further develop the central role of the BIA – now BAK – in the fight against corruption.

19. GRECO concludes that recommendation iii has been implemented satisfactorily.

Recommendation iv.

20. *GRECO recommended to increase the human resources available to the police, in particular the units responsible for conducting investigations concerning corruption and criminal assets.*
21. The authorities of Austria report that the recent Federal Bureau of Anti-Corruption (BAK) is an organisational unit with a staff trained specifically in the prevention of and the fight against corruption. They state that all current BIA staff members have been transferred to the BAK and that consultations and negotiations with the competent ministries and departments regarding the legally defined jurisdiction of the BAK and the corresponding additional human resources have been undertaken. As a first step, the BAK has recruited 16 additional staff for its four departments Strategy, Administration, Operational and Management Assistance; Prevention, Education, Basic Groundwork; Operational Service; and International Cooperation and Mutual Legal Assistance. The authorities indicate that it is planned to carry out an evaluation and to further increase the BAK's staff.
22. Further, the authorities indicate that one of the strategic core areas for the Ministry of the Interior in 2010 is the fight against white-collar and financial crime – including corruption, money laundering and asset recovery – which will be intensified, *inter alia*, by establishing more national task forces and joint international investigation teams, under the Federal Bureau of Investigation. Moreover, the Ministry of the Interior adopted a new structure for the Criminal Investigation Service to be implemented by the end of 2010, according to which the departments responsible for economic and financial crime including the Austrian Financial Intelligence Unit and the asset recovery unit will be upgraded and be allocated additional staff. Finally, it is intended to strengthen the economic crime units of the police at *Länder* level in the near future.
23. GRECO notes that the recent transformation of the Federal Bureau for Internal Affairs (BIA) into the Federal Bureau of Anti-Corruption (BAK) was accompanied by an increase in human resources which it is planned to further develop. Moreover, GRECO takes note of current efforts by the Ministry of Justice to intensify the fight against white-collar and financial crime, involving the reorganisation and increase of staff of competent departments of the Federal Bureau of Investigation and the Criminal Investigation Service by the end of 2010, and of plans to also strengthen the economic crime units of the police in the *Länder*. GRECO encourages the authorities to make every effort to implement these plans as soon as possible and to achieve an appropriate increase of human resources available to the police in the areas addressed by the recommendation.
24. GRECO concludes that recommendation iv has been partly implemented.

Recommendation v.

25. *GRECO recommended a) to proceed with the reform of the statute of prosecutors in order to bring it closer to the statute of judges; b) to consider the setting-up of a specialist body/bodies responsible for the selection, training, appointment, career development and disciplinary procedures in respect of judges and prosecutors.*
26. As concerns the first part of the recommendation, the authorities of Austria refer to several measures implemented in January 2008, before the adoption of the Evaluation Report, namely the alignment of the rules on disciplinary proceedings against prosecutors on those applicable to judges – already mentioned in the Evaluation Report² –, the amendment of article 90a of the Federal Constitutional Law according to which prosecutors are part of the judiciary and the formal unification of the service laws on judges and prosecutors by the new Act on Judges' and Prosecutors' Service Law. They add that on 1 January 2009 a common provision on the "General Service Duties" applicable to both judges and prosecutors in section 57 of the Act on Judges' and Prosecutors' Service Law was introduced and that further approximation of the statutes of judges and prosecutors with due respect to the legitimate differences stemming from their different functions is ongoing.
27. As regards the second part of the recommendation, the authorities indicate that after due consideration, the establishment of one central High Judicial Council is not envisaged for the moment. At the same time, they point to the decisive role of the independent personnel chambers ("*Personalsenate*" for judges, "*Personalkommissionen*" for prosecutors) in the appointment procedures for judges and prosecutors under the present regime and to the establishment of an advisory body responsible in the Federal Ministry of Justice for training of judges and prosecutors ("*Fortbildungsbeirat*"). This body is composed of representatives of regional high courts, senior public prosecutor services, the associations of judges and of public prosecutors and the Federal Ministry of Justice, it elaborates strategic principles, main focuses and areas of the training programmes to be improved and it coordinates training programmes nationwide.
28. GRECO notes that in addition to the changes to the statute of prosecutors already taken into account in the Evaluation Report, further approximation with the statute of judges – including constitutional amendments and the establishment of a new Act on Judges' and Prosecutors' Service Law in 2008 – has been achieved and that work in that direction is ongoing. GRECO encourages the authorities to persist in their efforts and to continue the legal reforms, as planned, in order to address the concerns expressed in the Evaluation Report, in particular, in respect of the independence and the resources available for the public prosecution service. As regards the second part of the recommendation, it would appear that consideration has been given to the possible establishment of a specialist body for judges and prosecutors such as a High Judicial Council, as required by the recommendation. Although it would appear that certain safeguards are in place as concerns the appointment procedures of judges and prosecutors and the nationwide coordination of training programmes, GRECO regrets that the establishment of such a specialist body/bodies has not been decided and it calls upon the authorities to keep this issue on the agenda.
29. GRECO concludes that recommendation v has been partly implemented.

² Cf. GRECO's Joint First and Second Round Evaluation Report on Austria, document Greco Eval I-II (2007) 2E, footnote 20.

Recommendation vi.

30. *GRECO recommended to ensure that the planned special prosecution office for corruption becomes operational at the beginning of 2009 with the resources envisaged and that after an initial period, the adequacy of the resources allocated is assessed.*
31. The authorities of Austria report that the Public Prosecutor's Office against Corruption (*Korruptionsstaatsanwaltschaft – KStA*) was created by virtue of the 2008 Act amending the Criminal Law,³ that it was installed in Vienna⁴ and started its work in January 2009. They indicate that its staff has been increased steadily. It currently comprises the five established posts for public prosecutors and six established posts in administration initially planned, as well as – since October 2009 – two further public prosecutors and one incoming judge as well as an expert (tax auditor) seconded from the Federal Ministry of Finance to assist the KStA. The authorities add that efforts are being made to further increase the staff but that general budget constraints must be borne in mind.
32. GRECO takes note of the information provided with regard to the establishment and staffing of the Public Prosecutor's Office against Corruption. Although no concrete information has been provided with regard to an assessment of the adequacy of the resources allocated – as required by the recommendation, GRECO considers that the recent recruitment of additional personnel and reported efforts to further increase the staff of the office are steps in the right direction. GRECO wishes to stress that the provision of sufficient human and material resources to the Public Prosecutor's Office against Corruption is crucial to enable it to efficiently prosecute large and complex corruption cases. Given that currently only one financial specialist works for the office – on secondment – further steps might prove necessary.
33. GRECO concludes that recommendation vi has been dealt with in a satisfactory manner.

Recommendation vii.

34. *GRECO recommended to provide more training opportunities to judges, including those of lower courts, in those areas which are of particular relevance for handling corruption cases.*
35. The authorities of Austria report that training opportunities including on handling economic/financial crimes are offered frequently to judges and that the Federal Ministry of Justice is currently exploring a more comprehensive curriculum on economic crime which would provide further specialised training to judges (and prosecutors). Moreover, the authorities state that in 2009 four training sessions dealing with the prevention of corruption and including the handling of corruption cases were organised for judges, public prosecutors and public officials, including for heads of office and staff of personnel departments who might be confronted with cases of internal corruption, and that more regular training of this nature is being prepared.
36. GRECO notes that some training activities for judges and other professionals have been reported, including on the handling of economic/financial crimes – and of corruption cases in particular – and on the prevention of (internal) corruption. GRECO furthermore takes note of current plans within the Federal Ministry of Justice to develop a more comprehensive training programme on economic crime. GRECO considers that the reported measures constitute a step

³ "Strafrechtsänderungsgesetz 2008", published in the Federal Law Gazette No. I 109/2007.

⁴ By virtue of the Act accompanying the reform of the Austrian Criminal Code of Procedure II, published in the Federal Law Gazette. No. I 112/2007.

in the right direction and urges the authorities to persist in their efforts to develop a more comprehensive training programme on economic crime and, in particular, to include the handling of corruption cases, as required by the recommendation.

37. GRECO concludes that recommendation vii has been partly implemented.

Recommendation viii.

38. *GRECO recommended to review the access to, and exchange of information needed in the context of corruption investigations and, in particular, to consider lifting bank secrecy also for corruption-related offences punishable by a maximum penalty of less than one year's imprisonment.*
39. The authorities of Austria report that on 20 May 2010, Parliament adopted amendments to section 116, paragraph 1 CCP allowing access to bank information in respect of all criminal acts – including corruption – except acts of negligence falling under the jurisdiction of the District Courts (*Bezirksgerichte*). The amendments will enter into force on 1 July 2010 and they will furthermore facilitate access to bank information, *inter alia*, by dropping the requirement of a connection between the bank account and a criminal act or a suspect and by determining that access to bank information is possible if necessary for evidentiary purposes, for securing confiscation, forfeiture or similar measures or to monitor an ongoing or future transaction. The authorities add that already by virtue of the 2009 Act amending the Criminal Law on Corruption⁵ – in force since 1 September 2009, penalties available for corruption offences were raised in such a way as to ensure that the preconditions for the disclosure of information on bank accounts and bank operations under section 116, paragraph 1 of the CCP were fulfilled for all corruption-related offences.
40. Moreover, the authorities report on the entry into force, on 1 January 2008, of new provisions of the CCP facilitating access to fiscal data and other financial information. Pursuant to the new section 76, paragraph 2 CCP, requests by the police, the prosecution authorities or the courts may be refused on the grounds of provisions on secrecy or on data protection only if these provisions are explicitly applicable also in relation to the criminal courts or if overwhelming public interests prevent the disclosure of the requested information. In accordance with section 111 CCP any person who is in the possession of items or property which are subject to seizure is obliged to hand them over to the police. The authorities explain that on the basis of this provision, entities holding financial information such as insurance agencies or brokers may not refuse requests for information and, in case of refusal, the information needed can be obtained through the search of premises (section 119 CCP) or the use of coercive measures (section 93 CCP). They specify that financial market authorities do not have any role in this respect.
41. GRECO takes note of the information provided and acknowledges that on the basis of the legal amendments of 2009 and 2010, bank secrecy can be lifted for all corruption-related offences. Moreover, it would appear that access to other financial information needed in the context of corruption investigations such as fiscal data and financial information held by insurance companies has also been enhanced by amendments to the Code of Criminal Procedure.
42. GRECO concludes that recommendation viii has been implemented satisfactorily.

⁵ "Korruptionsstrafrechtsänderungsgesetz 2009", published in the Federal Law Gazette No. I 98/2009.

Recommendation ix.

43. *GRECO recommended to ensure that the new special investigation techniques are applicable to all serious cases of corruption, accompanied by appropriate safeguards for fundamental rights.*
44. The authorities of Austria report on current regulations on the special investigative techniques of “observation, undercover investigation and fictitious purchase” in sections 129 to 132 CCP. These regulations, which entered into force on 1 January 2008 and were already mentioned in the Evaluation Report, apply to all serious cases of corruption. In general, observation is permitted if it appears to be necessary in order to clarify a criminal act or to investigate the whereabouts of the accused; a (simple) undercover investigation⁶ may be carried out if it appears to be necessary in order to clarify a criminal act; the realisation of a fictitious purchase is permitted if the clarification of a crime or the seizure of objects or assets that originate or presumably originate from a crime are subject to forfeiture (section 20b PC) or confiscation (section 26 PC) would otherwise be significantly hindered. The authorities specify that observation and undercover investigation apply to all criminal acts or, in certain cases, to all criminal acts carrying a sentence of more than one year’s imprisonment and therefore to all corruption offences; fictitious transaction is applicable to all crimes carrying a sentence of more than three years’ imprisonment – therefore including the most serious corruption offences (namely those addressed by sections 304, paragraph 2; 305, paragraph 3, second alternative; 306, paragraph 3, second alternative; 307, paragraph 2; 307a, paragraph 2, second alternative; 307b, paragraph 2, second alternative; and 308, third alternative of the Penal Code), or if the seizure of items or proceeds originating from a crime or which are subject to confiscation or forfeiture would otherwise be unduly hampered.
45. Concerning safeguards for fundamental rights, the authorities state that all persons affected by the above-mentioned measures have the right to file a motion to the court. According to section 106 CCP, during investigative proceedings any person who claims that the office of public prosecution or the criminal police has violated his/her rights is entitled to raise a motion to the court, if the exercise of a right according to the CCP was denied to him/her or an investigative measure or coercive measure was ordered or implemented in violation of provisions of the CCP. Moreover, the authorities indicate that according to section 147 CCP, the order, permission and execution of a systematic undercover investigation conducted for a longer period of time and the realisation of a fictitious purchase (if it has to be ordered by the office of public prosecution, i.e. if it is aimed at the seizure of drugs or counterfeit money), including those concerning bribes, are under the control of a commissioner for legal protection.
46. GRECO takes note of the information provided with regard to the conditions for the use of the new special investigation techniques, which are in principle applicable to all serious cases of corruption, and with regard to safeguards for fundamental rights such as the right to file a motion to the court and the control of certain investigative measures by a commissioner for legal protection.
47. GRECO concludes that recommendation ix has been implemented satisfactorily.

⁶ As opposed to a systematic undercover investigation going on for a longer period of time, which is only admitted if clarifying an intentional criminal act punished with a prison sentence exceeding one year or the prevention of a criminal act planned within the framework of a criminal or terrorist association or a criminal organisation (sections 278 to 278b PC) would otherwise be significantly hindered.

Recommendation x.

48. *GRECO recommended to a) adopt guidelines providing for specific and objective criteria to be applied in determining whether an act is connected to the official functions of a parliamentarian and thus whether the immunity of that member applies and can be lifted; b) ensure that these guidelines reflect the needs of the fight against corruption and c) require the competent parliamentary committees at federal and Länder levels to give grounds for their decision to lift or not to lift immunity in a given case.*
49. The authorities of Austria report that upon decision by Parliament a working group presided by its president was constituted in August 2009 in order to deal with the applicable legislation and its practical enforcement with reference to the immunity of MPs and to elaborate possible proposals for amendments. At present, a basic reform of immunity law is being discussed and GRECO's recommendation and its possible implementation are also on the agenda of the working group which has, to this end, been provided with a comparative study on best practice examples in other member States evaluated by GRECO. As regards the provincial (*Länder*) level, the authorities stress that according to Article 96 of the Constitution MPs of provincial parliaments enjoy the same level of immunity as members of the national parliament (*Nationalrat*) and that the recommendation can only be implemented at provincial level once the immunity regulations for members of the national parliament have been changed. Finally, the authorities report that on 8 July 2009 the Federal Ministry of Justice issued a decree with regard to the procedure to lift the immunity of MPs under Articles 57, paragraph 3 and 4, 58 and 96, paragraph 1 of the Constitution. They explain that the decree aims at providing guidelines on, *inter alia*, at which point of time during an investigation an MP is to be treated as a suspect according to section 1 CCP and when the prosecutor is obliged to request the lifting of his/her immunity.
50. GRECO notes that a parliamentary working group tasked to propose possible amendments to the legislation on immunity of MPs plans to deal with GRECO's recommendation. It further notes that the Federal Ministry of Justice issued a decree on the procedure to lift the immunity of MPs. However, it would appear that the decree has no practical relevance to the core of the recommendation which was aimed at providing for specific and objective criteria to be applied in determining whether an act is connected to the official functions of a parliamentarian. Thus, no substantial progress concerning the recommended guidelines and requirements on parliamentary committees has been reported yet.
51. GRECO concludes that recommendation x has not been implemented.

Recommendation xi.

52. *GRECO recommended to consider strengthening the system of confiscation and temporary measures so that a) the confiscation system also applies to the direct proceeds of corruption and not just to their equivalent value; b) it is made clear that temporary measures and final measures are applicable to the various forms of proceeds (in particular both tangible and intangible proceeds, proceeds deliberately transferred to third persons to avoid confiscation measures and proceeds intermingled with legitimate assets).*
53. The authorities of Austria report that the Federal Ministry of Justice has prepared a draft bill – to be presented in autumn 2010 – which takes into account the recommendation. More precisely, they indicate that the bill foresees amendments to the Penal Code, according to which confiscation ("*Verfall*", section 20 PC) of the direct proceeds of crime would be established as the

principle, with the possibility of forfeiting the equivalent value if the direct proceeds are no longer available; both tangible and intangible proceeds would be covered; and confiscation measures against a third person could only be avoided if the third person had acquired the property in question in good faith and for an adequate sum (in which case this sum could be confiscated from the offender/transferor). The authorities further indicate that the same principles would apply to temporary measures, as the Code of Criminal Procedure – where they are regulated – refers to the Penal Code. Finally, it is intended to broaden the scope of confiscation of instrumentalities (“*Einziehung*”, section 26 PC).

54. GRECO very much welcomes the fact that the strengthening of the system of confiscation and temporary measures has not only been considered but that a bill which takes account of the recommendation has already been drafted. GRECO encourages the authorities to make every effort to have this bill adopted as soon as possible.
55. GRECO concludes that recommendation xi has been implemented satisfactorily.

Recommendation xii.

56. *GRECO recommended to take the necessary measures to make investigative and prosecutorial bodies more aware of the need to target the proceeds of corruption, including in respect of cases prosecuted under Section 302 of the Penal Code (abuse of official authority).*
57. The authorities of Austria report on the establishment of a specific working group in the Federal Ministry of the Interior which is currently developing a concept regarding short-, mid- and long-term measures for the practical implementation of the legislation and for educational and training initiatives in the area of the targeting of proceeds of crime. In particular, within the Federal Bureau of Investigation it is planned to strengthen the role of the unit of economic crime asset recovery, to organise training on asset recovery and to improve asset recovery by means of the electronic system and automatic reporting to the Criminal Intelligence Service. They state that several measures have already been implemented in this area, *inter alia*, the adoption of new instructions on asset recovery investigations, the integration of asset recovery into basic training programmes for investigators, the development of a special online training module for asset recovery and the collection and automatic reporting of investigations concerning asset recovery to the Asset Recovery Unit at the Criminal Investigation Service, through an electronic mailing and reporting system. Moreover, the Ministry of the Interior issued a decree on police aspects of seizing, freezing and sequestration on 28 April 2010 aimed at establishing a common standard for investigation methods relating to these instruments. The authorities further stress that in practice, during the conduct of investigations into crimes under sections 302 ff PC, special attention is paid to the confiscation of proceeds of crime and that several training activities are dedicated to raising the awareness of investigators in this field.
58. The authorities furthermore indicate that the Federal Ministry of Justice informed prosecutors and courts by decree of 11 September 2009 about the use of seizure, freezing and confiscation of assets, about practical problems involved and possibilities to improve the application of these instruments, with the aim to increase their utilisation in practice. The decree – which explicitly refers to GRECO’s recommendation – calls for systematic investigations into the amount and whereabouts of the proceeds of crime, in particular in cases of specified crimes including corruption, money laundering, organised crimes, economic crimes and other crimes against property causing a large amount of damage. Public prosecutors are ordered to give reasons for failure to confiscate assets in such cases and are reminded of the mandatory nature of the

provisions on confiscation. The decree was presented on the occasion of the annual meeting of the heads of the prosecution services in the Federal Ministry of Justice on 1 December 2009 and of a meeting of representatives of the Federal Ministry of Justice, the Federal Ministry of the Interior and representatives of the senior prosecution offices on 5 March 2010. In addition, the Federal Ministry of Justice has asked the public prosecutor's offices to provide reports about their experience with seizure, freezing and confiscation of assets and to make suggestions for improvements of the system. Moreover, the authorities report on participation in several international training activities relating to cooperation against economic offences and to confiscation of proceeds in particular.

59. Finally, it is indicated that the Federal Ministry of Justice and the Federal Ministry of the Interior will hold a follow-up meeting in autumn 2010 to collect and evaluate the results of application of the new decrees with a view to determining the need for further measures. The Federal Ministry of Justice is currently considering the creation of specific units within prosecution authorities specialised in the prosecution of economical and financial crime, which would also be competent for seizing, freezing and confiscation.
60. GRECO takes note of the information provided with regard to initiatives by the Federal Ministry of the Interior and the Federal Ministry of Justice aimed at increasing the practical application of asset recovery/confiscation. It would appear that the recent decrees and training activities for police and prosecutors in this area take account of the recommendation and of corruption-specific issues. GRECO invites the authorities to pursue their efforts to raise awareness of investigative and prosecutorial bodies of the need to target the proceeds of corruption – including in cases prosecuted under section 302 of the Penal Code – in particular, and is confident that the working group of the Federal Ministry of the Interior as well as the planned follow-up by the Federal Ministry of Justice to the measures taken will contribute to achieving tangible results in this area.
61. GRECO concludes that recommendation xii has been implemented satisfactorily.

Recommendation xiii.

62. *GRECO recommended to enhance the ability of Austria's anti-money laundering system to better deal with proceeds from corruption by a) examining the need to criminalise self-laundering; b) providing guidance to all the obliged entities that would take into account the needs of the fight against corruption (typologies of corruption-related money laundering and indicators for corruption-related suspicious transactions, information and guidance on politically exposed persons etc.).*
63. Concerning the first part of the recommendation, the authorities of Austria state that the Parliament adopted an amendment to section 165 PC in order to criminalise self-laundering, which will enter into force on 1 July 2010.
64. Concerning the second part of the recommendation, the authorities report that the Austrian Financial Intelligence Unit started analytical work in 2008 and plans to organise information events for professionals required to report suspicious transactions, including on the issue of politically exposed persons. Moreover, they report that the Financial Market Authority (FMA) endorsed and published "Guidelines on the risk-based approach to the prevention of money laundering and terrorism financing", which are applicable to all institutions of the Austrian financial market under the supervision of the FMA and to all foreign financial institutions conducting business in Austria. The guidelines explain and elaborate on the legal provisions on risk analyses

and applying risk-based and appropriate measures in the area of AML/CFT – including corruption as a possible predicate offence to money laundering – and they describe the necessary measures to be taken by the institutions concerned in the case of simplified and enhanced customer due diligence obligations.

65. GRECO acknowledges that the need to criminalise self-laundering has not only been examined but that a bill amending section 165 of the Penal Code accordingly has already been adopted by Parliament. As regards guidance to reporting entities, GRECO recalls that the recommendation required to take into account the specific needs of the fight against corruption. It is not sufficiently clear to what extent this is the case nor whether the planned training reported will respond to this requirement.
66. GRECO concludes that recommendation xiii has been partly implemented.

Recommendation xiv.

67. *GRECO recommended with a view to facilitating access to information, to provide for precise criteria for a limited number of situations where access to information can be denied and to ensure that such denials can be challenged by the person concerned.*
68. The authorities of Austria state that from their point of view, the existing legal framework – in particular Article 20, paragraph 4 of the Constitution as well as the pertinent provisions of the General Information Act – is already in accordance with the standards required by the recommendation. They specify that the Constitution guarantees general access to information, that there is only a limited number of situations where access to information can be denied and that any such denial can be challenged by the person concerned. They add that due to the requirements of the European Convention on Human Rights and the Protection of Personal Data Act more precise criteria pertaining to situations where access to information can be denied can not be provided.
69. GRECO takes note of the information provided with regard to the existing legal framework guaranteeing general access to information and the right to challenge denial of such access. However, GRECO wishes to stress that the evaluation report expressed concerns about access to information in practice and therefore called for a more precise definition of the criteria for the limited number of situations where access to information can be denied. No concrete measures have been reported in this respect by the authorities who instead refer to the requirements of the European Convention on Human Rights and the Protection of Personal Data Act which would make it impossible to define such criteria. However, GRECO draws attention to the fact that several other member States have managed to sufficiently specify such criteria/situations and it considers that the argument advanced by the authorities is therefore not convincing.
70. GRECO concludes that recommendation xiv has not been implemented.

Recommendation xv.

71. *GRECO recommended to introduce appropriate training, cooperation agreements and other suitable measures that would place the Austrian Court of Audit in a position to contribute effectively to the country's anti-corruption efforts, in particular by reporting to the competent authorities both suspicions of corruption and cases of mismanagement liable to attract criminal sanctions.*

72. The authorities of Austria report that in its current audit strategy, the Austrian Court of Audit (ACA) underlines its contribution to the fight against corruption by focusing its risk-oriented audit planning and the selection of audit topics on areas especially susceptible to corruption. The ACA's audit programme 2009 focused on the fight against corruption, with audits ranging from dealing with claim strategies and the fight against corruption in road and railroad construction to reforms of the fight against fraud. The ACA uses a web-based database to make its core findings on the fight against corruption and fraud accessible to its staff and the general public. Drawn from its findings gained in the course of audits, the ACA issues guidelines and recommendations for sensitive areas of public administration or public companies.
73. As regards training, the authorities firstly report that the ACA has, in cooperation with the Vienna University of Economics and Business Administration, developed a part-time Professional MBA Public Auditing, which lasts 18 months and offers practical training at university level – including on corruption which is integrated into all components of the MBA – to ACA auditors within their basic audit training and to staff of other audit institutions, internal auditing bodies and public authorities. Secondly, they mention several modules of the ACA internal training programme which are related to the role of the ACA, its integrity standards as reflected in its code of conduct and – through two-day seminars organised in cooperation with the Public Prosecutor's Office against Corruption – the topic of corruption (including the ACA's role in the fight against corruption, recognising corruption during an audit, indicators and cooperation with other public authorities). Thirdly, they refer to external training provided by the ACA to other bodies such as the BMI (e.g. on the topic "Fighting corruption and corruption prevention").
74. Concerning cooperation with other authorities, reference is made to the general obligation, under Article 78 CCP, on the ACA to report to the Criminal Investigation Department or to the Public Prosecution Office when it suspects that a criminal offence has been committed in fields within its legal scope. Furthermore, the ACA has submitted all its audit reports to the Public Prosecutor's Office against Corruption since 15 July 2009, thus ensuring timely information on audit results even when there is no legal obligation to report. In addition, the authorities state that oral cooperation agreements between ACA and the dedicated public authorities involved in the fight against corruption (e.g. BIA/BAK) have been concluded which serve as a basis for their regular cooperation.
75. Finally, the authorities report on several other anti-corruption measures undertaken by the ACA, including the review of draft laws and regulations (e.g. the ACA commented on the reform of the Corruption Act of 23 June 2009), sharing of expertise with partner institutions such as the audit institutions of the *Länder* and the City of Vienna and with the Anti-Corruption-Day as well as initiatives taken at international level. In addition, the authorities stress that the audit institutions of the *Länder* and the City of Vienna have also paid increased attention to the fight against corruption in recent years and have taken a wide range of individual and joint measures, including e.g. corruption-related modules in education programmes (such as the two-term course of studies leading to qualification as an Academic Auditor of the Court of Audit; a two-term master course of studies including the specific module "prevention of corruption" with 20 lessons; and the semi-annual Conference of Directors of the *Länder* Courts of Audit in November 2008 which was dedicated to the fight against corruption and resulted in a joint package of further measures), topic-specific publications and participation in the Anti-Corruption-Day in May 2009.
76. GRECO takes note of the information provided with regard to anti-corruption measures taken by the Austrian Court of Audit (ACA) in recent years, including several training activities, cooperation with other authorities – in particular, reporting to the Criminal Investigation Department and to the

Public Prosecutor's Office against Corruption – and further initiatives e.g. in the law-making process and sharing of experience, which are complemented by similar activities of the audit institutions of the *Länder* and the City of Vienna. GRECO would have welcomed concrete information on the impact the above measures have had, for instance a higher number of suspicions of corruption reported to the law enforcement authorities. Nevertheless, GRECO is of the opinion that the reported measures can be considered as a valuable contribution by ACA to the country's anti-corruption efforts and encourages the authorities to pursue the measures undertaken so far.

77. GRECO concludes that recommendation xv has been dealt with in a satisfactory manner.

Recommendation xvi.

78. *GRECO recommended to a) introduce whistleblower protection for all federal employees, i.e. civil servants and contractual staff; b) to invite the Länder which do not as yet have such protection mechanisms to introduce them.*
79. Concerning the first part of the recommendation, the authorities of Austria report, firstly, that under the federal service law, public officials are obliged to report suspected offences; that officials may only be transferred or downgraded if it is in the special interest of the service; and that on the basis of the recent Federal Law on the Establishment of the Federal Bureau of Anti-Corruption, federal officials have the right to directly report suspicious circumstances or allegations in connection with offences within the remit of the BAK. Secondly, the authorities indicate that it is planned to design specific rules on whistle-blower protection to be implemented into federal civil service law. To this end, the competent division for civil service and administrative reform under the Federal Minister for Women and Civil Service (Ministry within the Federal Chancellery) has launched consultations and expert talks on this topic, particularly within the recent Co-ordinating Body on Combating Corruption.
80. As regards the second part of the recommendation, the authorities state that all *Länder* already dispose of public service regulations that include an obligation on officials to report suspected offences. They provide for the investigation of anonymous reports and for rules on whistleblower protection according to which any unjustified consequences of reporting would constitute a violation of general official duties and would be investigated by the authority concerned. The authorities further state that further measures might be taken at *Länder* level as well, once the federal government has adopted the protection rules, as planned.
81. GRECO welcomes the reported plans to introduce rules on whistleblower protection in the federal legislation. However, no concrete information on the content of this project has been provided and no draft bill has been presented yet. GRECO wishes to stress that the current legal framework – which provides that federal officials may directly report suspicious circumstances to the BAK and that they may only be transferred or downgraded if it is in the special interest of the service – cannot be considered a sufficient protection mechanism and it urges the authorities to pursue their efforts to swiftly introduce additional protection rules, as planned. As regards the level of the *Länder*, GRECO notes that some rules on whistleblower protection reportedly already exist. However, the protection measures currently in place are not entirely clear and GRECO calls upon the authorities to invite the *Länder* to also adopt additional protection rules, as appropriate.
82. GRECO concludes that recommendation xvi has not been implemented.

Recommendation xvii.

83. *GRECO recommended a) to adopt, as planned, a Code of conduct for federal employees and to make sure that this Code also addresses the need to combat corruption; b) to invite the Länder that have not as yet done so to do the same.*
84. The authorities of Austria report that the planned “Austrian Code of Conduct for the prevention of corruption” (“The responsibility lies with me”) was released in October 2008. It had been prepared by a working group consisting of experts from all ministries and highest offices, from the regional and local authorities as well as from the public sector trade unions. The Code of conduct is based on the pertinent legislation and it provides examples of acceptable behaviour and of behaviour which is contrary to the duties of officials and gives guidance on how to deal with situations in which a conflict of interest could potentially arise. Firstly, the code sets out the basic guiding principles for public administration – i.e. integrity, transparency, objectivity and fairness – 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 (including emerging challenges to public administration such as post-public employment or tensions which potentially arise at the political-administrative interface).
85. The Code of conduct is based on the pertinent legislation and is applicable to everyone working in the public sector at federal, provincial and local levels. It has been communicated to the staff of both federal and provincial administration. In addition, the code is also aimed at raising public awareness and strengthening the trust of citizens in public administration. The code was therefore also made available to the public at large, via new media such as a special website,⁷ a specially designed e-learning-tool, newsletters, through newspaper articles and information events.
86. Finally, the authorities state that the Federal Ministry of Justice has established a working group which has prepared a number of practical measures for the implementation of the Code of conduct, e.g. publication and distribution of the code, integration of the subject “prevention of corruption” into the programme for initial and continuing education of the Austrian Justice 2009/2010 and gradual integration of the subjects of the Code of conduct into the legal regulations concerning the basic education of civil servants (already accomplished regarding the civil servants working in the penitentiaries).
87. GRECO notes that the planned Code of conduct for all public administration staff both at federal and at *Länder* levels has been adopted and made available to the officials concerned and to the wider public. The code is designed as a tool for preventing corruption and contains rules on core issues in this area such as acceptance of gifts, outside employment, objectivity and bias, transparency and official secrets. GRECO acknowledges that measures to promote the code and its content have already been taken and that it is planned to further develop them.
88. GRECO concludes that recommendation xvii has been implemented satisfactorily.

⁷ <http://www.bundeskanzleramt.at/verhaltenskodex>

Recommendation xviii.

89. GRECO recommended a) to make sure that all categories of officials (including elected officials, judges and prosecutors) are covered by adequate provisions on the acceptance of gifts; b) to invite the Länder that do not have adequate provisions on gifts for public officials to introduce such provisions; c) to examine whether additional clarification or guidance is needed to make sure that certain key provisions of the Penal Code (in particular Section 304 paragraph 4 on “accepting an advantage” and Section 308 paragraph 2 on “illicit intervention”) cannot be misinterpreted.
90. Regarding the first part of the recommendation, the authorities of Austria indicate that the regulations on the acceptance of gifts in section 59 of the Federal Civil Servants Act (BDG) also apply to public prosecutors and that corresponding regulations applicable to judges are contained in section 59 of the Judges and Public Prosecutors Service Act. They add that the Federal Ministry of Justice issued a decree⁸ and organised training aimed at providing guidelines for officials on appropriate behaviour and raising awareness of the fact that any reaction to an offer of a gift – of however low a value – must not endanger the general public’s confidence in official acts.
91. As concerns the second part of the recommendation, the authorities state that all *Länder* have public service regulations for employees of all categories regarding the prohibition of the acceptance of gifts. They indicate that these regulations are similar to those applicable at federal level, stipulating that it is prohibited to accept gifts or other advantages in connection with one’s professional duties that are granted or promised to oneself or a third party. Gifts of minor value, as are customarily given on the occasion of social events, may be accepted. Honorary gifts may only be accepted with the consent of the employer. In this connection, the authorities add that according to the amended sections 305 and 307a of the Penal Code⁹ the violation of an official duty constitutes a criminal offence.
92. Finally, concerning the third part of the recommendation, the authorities report that in respect of minor customary advantages and gifts of honour which an official may accept the Federal Ministry of Justice issued a decree, on 14 July 2008, concerning the 2008 Act amending the Penal Code – Criminal law on Corruption in particular. The decree is addressed to public prosecutors and judges but has no binding effect. It includes commentary notes on sections 304, paragraph 4 and 308, paragraph 2 PC. Regarding the definition of minor advantages, the authorities indicate that the Supreme Court has determined a threshold of 100 EUR which is also referred to in the decree.
93. GRECO takes note of the information provided with regard to the regulations on the acceptance of gifts applicable to officials at federal and *Länder* levels as well as to judges and prosecutors and which are complemented by decrees designed to provide guidance, *inter alia*, with regard to the acceptance of minor customary advantages and gifts of honour. However, nothing has been reported in respect of elected officials such as parliamentarians, who were also addressed by the recommendation. In addition, it seems that the above-mentioned regulations apply exclusively to civil servants and that other categories of officials such as contractual staff, experts or advisors to elected officials remain, in principle, outside their scope of application.

⁸ Decree on “General Questions concerning the Civil Servants Law – Prohibition to Accept Gifts – Particular Role of Justice” on 7 July 2009.

⁹ The amendments were introduced by virtue of the 2009 Act amending the Criminal Law on Corruption (see Federal Law Gazette No. I 98/2009) which came into force on 1 September 2009.

94. GRECO concludes that recommendation xviii has been partly implemented.

Recommendation xix.

95. *GRECO recommended to a) provide for a framework to deal with moves of federal employees to the private sector; b) invite the Länder that do not have such measures nor appropriate mechanisms to prevent conflicts of interest yet to introduce such measures; c) strengthen the control of the declarations of assets and interests to be submitted by parliamentarians and senior members of the executive.*
96. The authorities of Austria report, with regard to the first part of the recommendation, that it is planned to design a special legal framework dealing with post-public employment issues – in accordance with the individual rights guaranteed by the Constitution such as freedom of profession – and to implement them into federal civil service law. To this end, the competent division for civil service and administrative reform under the Federal Minister for Women and Civil Service (Ministry within the Federal Chancellery) has launched consultations and expert talks on this topic, particularly within the recent Co-ordinating Body on Combating Corruption.
97. As concerns the second part of the recommendation, the authorities indicate that all *Länder* have similar public service regulations regarding secondary employment and official secrecy. According to these regulations, public officials are obliged to inform their employer of any secondary employment and they are not entitled to engage in any secondary employment that might impede them in the thorough performance of their professional duties, that might give rise to suspicion of bias or that might undermine the trust and respect shown to them in their positions as public officials. The obligation to respect official secrecy also applies to retired public officials and survives termination of the service relationship. The authorities further state that further measures might be taken at *Länder* level as well, once the federal government has adopted the rules on post-public employment, as planned.
98. Finally, the authorities report that the implementation of the third part of the recommendation is still under consideration. They furthermore recall the existing legal framework for declarations of assets and interests and for incompatibilities, as provided by the 1983 Act on incompatibilities and the 1997 Act on the Limitation of Emoluments of Holders of Public Offices.
99. GRECO welcomes, firstly, the plans to introduce new legislation dealing with post-public employment issues at federal level. However, no concrete information on the content of this project has been provided and no draft bill has been presented yet. Secondly, GRECO takes note of the reported public service regulations on secondary employment and official secrecy at *Länder* level, but it wishes to stress that the recommendation further aimed at introducing post-public employment regulations and mechanisms for their enforcement. Thirdly, no substantial information has been provided with regard to the recommended strengthening of the control of declarations of assets and interests, which is reportedly under consideration. GRECO urges the authorities to step up their efforts to swiftly introduce the planned rules on post-public employment issues, to invite the *Länder* to also adopt such rules and to strengthen the control of declarations of assets and interests.
100. GRECO concludes that recommendation xix has not been implemented.

Recommendation xx.

101. *GRECO recommended to initiate consultations on appropriate measures to be taken - in the context of the fight against corruption - with a view to increasing the transparency and control of business entities, foundations and associations.*
102. The authorities of Austria report on a recent revision of the Stock Corporation Act (*Aktiengesetz - AktG*) aimed at, *inter alia*, improving the transparency in stock corporations issuing bearer shares which entered into force on 1 August 2009. As before, a shareholders' meeting must be called at least once a year, but the revised provisions introduced an obligation to record not only the name and residence/seat of the persons attending the shareholders' meeting but also of the 'true' shareholders (those who are not personally attending the shareholders' meeting but are represented by another person) as well as the proportion of their shares (section 117 AktG). Disclosure of this data is a precondition for exercising shareholders' rights during the shareholders' meeting. The recorded data has to be filed with the commercial register and is therefore open to the public. Moreover, the authorities indicate that according to a resolution by the Council of Ministers of 9 February 2010 bearer shares may in the future only be issued by companies listed on the stock exchange and that a working group has been constituted by the Federal Ministry of Justice in order to prepare a draft bill in the course of 2010.
103. GRECO takes note of the information provided and acknowledges, on the one hand, that legal amendments that go beyond the requirements of the recommendation have been introduced – and that further legal amendments are under preparation – in order to increase transparency in stock corporations issuing bearer shares. On the other hand, GRECO wishes to stress that these amendments only address part of the concerns underlying the recommendation which, in a much broader sense, aimed at increasing the transparency and control of business entities, foundations and associations.
104. GRECO concludes that recommendation xx has been partly implemented.

Recommendation xxi.

105. *GRECO recommended to establish guidelines for prosecutors facilitating the application of the statute on responsibility of legal entities (Verbandsverantwortlichkeitsgesetz-VbVG) and to develop systematic training for the competent police forces, prosecutors and judges on the matter.*
106. The authorities of Austria report that the Federal Ministry of Justice is currently evaluating the statute on responsibility of legal entities (*Verbandsverantwortlichkeitsgesetz-VbVG*) and its application by the prosecutors and courts. They state that the content of a future ministerial decree containing guidelines for prosecutors and the nature of the training for the competent police forces, prosecutors and judges will depend on the outcome of this evaluation. Possible training initiatives are being considered by the persons in charge of continuing training at the higher regional courts and at the senior public prosecutors offices. The authorities add that issues relating to the statute on responsibility of legal entities are already included in some training activities on white-collar crimes and financial investigations, for example in one-week seminars organised every two years for investigators.
107. GRECO takes note of the information provided with regard to the current evaluation of the statute on responsibility of legal entities and its application by the prosecutors and courts which may

possibly result in the preparation of guidelines and training activities in this area. However, GRECO notes that no concrete steps have been taken yet in order to introduce such guidelines and systematic training for the competent police forces, prosecutors and judges – beyond the reported inclusion of this topic in some training activities for investigators –, as required by the recommendation.

108. GRECO concludes that recommendation xxi has not been implemented.

Recommendation xxii.

109. *GRECO recommended to raise the initial maximum amount of fines for legal entities held criminally liable to ensure that sanctions for corruption offences are effective, proportionate and dissuasive in practice.*
110. The authorities of Austria report that by virtue of the 2009 Act amending the Criminal Law on Corruption¹⁰ – in force since 1 September 2009, penalties available for corruption offences were increased, resulting also in more severe penalties being made available for legal entities as section 4 of the statute on responsibility of legal entities (*Verbandsverantwortlichkeitsgesetz-VbVG*) refers to the penalties provided for in the PC. More precisely, the maximum penalty for passive bribery (section 304 PC) was increased from five to ten years' imprisonment and therefore from a fine of 1,000,000 EUR to 1,300,000 EUR in respect of legal persons; for active bribery (section 307 PC) it was increased from three to ten years' imprisonment and therefore from a fine of 850,000 EUR to 1,300,000 EUR in respect of legal persons.
111. GRECO takes note of the information provided with regard to the increase of sanctions available for corruption offences, including for legal entities.
112. GRECO concludes that recommendation xxii has been implemented satisfactorily.

Recommendation xxiii.

113. *GRECO recommended to consider establishing a register of convicted legal persons.*
114. The authorities of Austria report that the Ministry of Justice intends to establish a register of convicted legal persons. They indicate, however, that a number of technical problems have been encountered as the existing register of convicted persons uses an out-dated technological support system. Discussions between the Ministry of Justice and the Ministry of the Interior have led to the conclusion that the development of a new solution for a register of convicted legal persons will require a significant technological and financial effort and will probably take several years. As an interim solution, the Ministry of Justice is using the case registers of the courts and prosecution authorities to establish whether a legal person has been convicted or not. These registers are also accessible to the courts and prosecutors and provide the necessary information until a specific register of convicted legal persons can be put into place.
115. GRECO takes note of the information provided. It would appear that due consideration has been given to the establishment of a register of convicted legal persons, as required by the recommendation. GRECO encourages the authorities to make every effort to introduce the planned register as soon as possible and, in the meantime, to continue their efforts to provide a satisfactory interim solution which should also offer (restricted) access by interested persons.

¹⁰ "Korruptionsstrafrechtsänderungsgesetz 2009", published in the Federal Law Gazette No. I 98/2009.

116. GRECO concludes that recommendation xxiii has been implemented satisfactorily.

Recommendation xxiv.

117. *GRECO recommended to consider the introduction of a provision in the penal code which would enable the courts to prohibit a person found guilty of serious corruption offences to hold a leading position in a legal entity for a certain period of time.*

118. The authorities of Austria report that under the presidency of the Federal Ministry of Justice a working group examined the question of prohibiting persons convicted for corruption offences from holding a leading position in a legal entity. The first meeting of the working group on 9 February 2010 included representatives of the Federal Chancellery, the Federal Ministry of Justice and the Federal Ministry of Economics, Family and Youth and was followed by written consultations – also involving the Federal Ministry of Finance and the Federal Ministry of the Interior – and by a final meeting on 26 May 2010. The working group considered the introduction of a disqualification provision in the Penal Code for persons convicted of corruption by examining existing provisions on disqualification in other areas (e.g. in industrial law, in provisions related to the financial market, public procurement and corporate law) as well as constitutional concerns stemming from a decision by the Constitutional Court (24 June 1998, G462/98) on a disqualification provision relating to public procurement. The working group considered that in the area concerned by the recommendation a solution in accordance with constitutional principles – in particular by avoiding “automatic” disqualification consequences of a conviction – could possibly be found but that the existing rules providing for possibilities to exclude persons convicted of serious corruption from economic life were sufficient. The Working Group will report on its deliberations during the autumn session of the Co-ordinating Body on Combating Corruption.

119. GRECO takes note of the information provided. It would appear that due consideration has been given to the introduction into the Penal Code of a disqualification provision for persons convicted of corruption offences – by a working group established for this purpose under the Federal Ministry of Justice –, as required by the recommendation. GRECO regrets that the introduction of such a provision has not been decided and it calls upon the authorities to keep this issue on the agenda.

120. GRECO concludes that recommendation xxiv has been implemented satisfactorily.

III. CONCLUSIONS

121. **In view of the above, GRECO concludes that Austria has implemented satisfactorily or dealt with in a satisfactory manner half of the twenty-four recommendations contained in the Joint First and Second Round Evaluation Report.** Recommendations iii, viii, ix, xi, xii, xvii, xxii, xxiii and xxiv have been implemented satisfactorily. Recommendations i, vi and xv have been dealt with in a satisfactory manner. Recommendations ii, iv, v, vii, xiii, xviii and xx have been partly implemented and recommendations x, xiv, xvi, xix and xxi have not been implemented.

122. GRECO notes that a number of positive steps have been taken to implement the recommendations issued to Austria, in particular the preparation of a study on the impact and nature of corruption in Austria, the establishment and strengthening of the Federal Bureau of Anti-Corruption (BAK), the Public Prosecutor’s Office against Corruption (KstA) and the Co-ordinating Body on Combating Corruption as well as the co-ordination of various law enforcement agencies,

investigation of corruption offences (this concerns specifically progress reported on the recommendations on access to financial information, use of special investigative techniques, seizure and confiscation and money laundering), the introduction of a Code of conduct for public administration staff as well as the increase of sanctions available for corruption offences including in respect of legal entities. GRECO understands that the implementation of several recommendations aimed at important legislative changes at both federal and provincial (*Länder*) levels will require a rather long term approach and it notes that the implementation of a series of recommendations is under way as regards, *inter alia*, the increase of human resources available to the police, the reform of the status of prosecutors and the reform of immunity law. That said, GRECO finds that the level of implementation leaves considerable room for improvement and it regrets, in particular, that several legislative projects are still at a very early stage and are limited to the federal level, for example regarding the introduction of rules on whistleblower protection and on moves of public employees to the private sector. Moreover, GRECO is concerned that in respect of a limited number of recommendations no substantial progress has been achieved at all, *inter alia*, the recommendations on facilitating access to information and on strengthening the control of the declarations of assets of parliamentarians and senior members of the executive. GRECO urges the authorities to persist in their efforts to make sure that the outstanding recommendations are dealt with in an expeditious manner.

123. GRECO invites the Head of the delegation of Austria to submit additional information regarding the implementation of recommendations ii, iv, v, vii, x, xiii, xiv, xvi, xviii, xix, xx and xxi by 31 December 2011.
124. Finally, GRECO invites the authorities of Austria to authorise, as soon as possible, the publication of the report, to translate the report into the national language and to make this translation public.