

AUSTRIA

● Limited enforcement

1% of global exports

Investigations and cases

In the period 2016-2019, Austria opened at least two investigations, commenced three cases and concluded two cases with sanctions. The two investigations were reported in the media.

In November 2019, the trial concluded of five defendants in the **OeBS** case, relating to alleged bribery of central banks in Azerbaijan and Syria to gain business for banknote printing company OeBS, a subsidiary of the Austrian National Bank.¹ Each defendant was convicted of paying bribes to obtain orders for banknotes and coins.² The sanctions imposed were prison sentences ranging from 16 to 21 months. The trial against one legal person is pending.³

After a long-running investigation, two former managers of **Siemens Österreich** were charged with breach of trust, having allegedly spent €17

million (US\$19.4 million) between 2001 and 2006 to bribe public officials in South-East Europe.⁴ Their trial began in June 2017 in the Regional Court of Vienna.⁵ In August 2018, one manager was acquitted and one was sentenced to a partial prison sentence, which was appealed to the Vienna Higher Regional Court.⁶

The Austrian company **Bewag** (now **Energie Burgenland**) and nine former employees were charged with paying bribes of about €600,000 (US\$685,000) to secure the power supply contract for a wind farm in Hungary.⁷ The trial commenced in 2016 and in 2017, the court of first instance declared four convictions and five acquittals.⁸ On appeal, the Supreme Court cancelled parts of the verdict and remanded the charges of bribery back to the Eisenstadt Regional Court. All parties were subsequently acquitted.⁹

In Romania, the Anti-Corruption Agency brought charges of conspiracy to commit bribery and influence peddling against Austrian citizen Joseph H., former local manager of the Austrian construction company **Swietelsky**.¹⁰ He was accused of paying bribes to high officials – including Romania's then finance minister – to secure during the period 2005-2014 renovation work on the

¹ <https://www.derstandard.at/story/2000081994881/causa-oeps-abgeschlossen-zwei-angeklagte-anwaelte-freigesprochen>. In Azerbaijan there is apparently no interest in clarifying whether those affected are still in office, <https://www.sn.at/wirtschaft/oesterreich/causa-oeps-niedrigere-strafen-bei-verfahrenswiederholung-24438316>. The investigations, other prosecutions and acquittals in relation to this case can be found in the *Exporting Corruption Report 2018*.

² Four individuals were acquitted earlier this year.

³ Information received by Transparency International Austria from the Ministry of Justice. The legal person is unknown.

⁴ Paid via letterbox firms in Cyprus and other offshore destinations, as well as a Panamanian firm with a Swiss bank account, <https://www.sn.at/wirtschaft/oesterreich/wiener-anklage-im-siemens-schwarzgeldskandal-rechtskraeftig-505627>; in countries across Eastern and Southern Europe, <https://industriemagazin.at/a/prozess-gegen-siemens-in-wien-koffer-mit-bargeld-in-richtung-balkan>

⁵ <https://industriemagazin.at/a/prozess-gegen-siemens-in-wien-koffer-mit-bargeld-in-richtung-balkan>; <https://www.derstandard.at/story/2000059509160/schwarze-kassen-prozess-bei-siemens-oesterreich-startet> <https://www.derstandard.at/story/2000059509160/schwarze-kassen-prozess-bei-siemens-oesterreich-startet>

⁶ Information received by Transparency International Austria from the Ministry of Justice.

⁷ €1.3 million (US\$1.1 million), <https://www.derstandard.at/story/2000110239044/zweiter-bewag-prozess-endet-mit-freispruechen-im-zweifel>. The proceedings concern nine former employees of BEWAG and a local Hungarian company of the Hohegger group, <https://www.noen.at/in-ausland/burgenland-ungarn-prozess-um-bewag-windpark-projekt-neu-aufgerollt-eisenstadt-alternativen-burgenland-prozess-strom-bewag-windpark-166101777#>. The former employees are: 1. Hans L., 2. Hans P., 3. Dr. Laszlo J., 4. Josef M., 5. Andreas S., 6. Gabriella B., 7. Erwin S., 8. Dr. J., and 9. P., https://www.ris.bka.gv.at/Dokument.wxe?ResultFunctionToken=62a642ff-7e8f-4ab3-b4ce-a9aa167262c2&Position=1&Abfrage=Justiz&Gericht=&Rechtssatznummer=&Rechtssatz=&Fundstelle=&AenderungenSeit=Undefined&SucheNachRechtssatz=False&SucheNachText=True&GZ=170s8%2f18g&VonDatum=&BisDatum=01.04.2019&Norm=&ImRisSeitVonDatum=&ImRisSeitBisDatum=&ImRisSeit=Undefined&ResultPageSize=100&Suchworte=&Dokumentnummer=JIT_20190226_OGH0002_01700S00008_18G0000_000.

⁸ OGH 170s8/18g, 26. February 2019

⁹ ORF News, BEWAG-Prozess: *Drei Freisprüche*, <https://burgenland.orf.at/stories/3018349/>

¹⁰ <https://www.sn.at/wirtschaft/welt/josef-h-kommt-in-korruptionsaffaere-mit-bewaehrung-davon-69668974>

country's railway line.¹¹ A total of €20 million (US\$22 million) was allegedly paid in bribes via offshore companies.¹² The manager pleaded guilty and was sentenced to three years in prison by a Romanian court in May 2019, subsequently converted to probation.¹³ In Austria, an investigation by the Austrian Financial Crime Directorate into the case was reported underway in April 2018, possibly implicating the company itself,¹⁴ and pre-trial proceedings were ongoing in 2020.¹⁵

Recent developments

Austria has updated its legislation pursuant to the 5th EU Anti-Money Laundering Directive of 2018.¹⁶ It has also implemented changes to the criminal code in accordance with the EU Directive 2019/713 on combatting fraud and counterfeiting of non-cash means of payment, to ensure some definitions relevant to anti-corruption, such as "person in a leading position", are consistent with EU legislation.¹⁷

Austria has campaigned for the establishment of an EU-wide register for politically exposed persons (PEPs) to promote transparency in European tax havens and for the suppression of letterbox companies.¹⁸ On 31 January 2018, the Austrian

Ministry of the Interior published an anti-corruption strategy.¹⁹ Austria is updating its handling of mutual legal assistance (MLA) treaty requests by publishing and further clarifying online forms.²⁰

A recent scandal has increased focus in Austria on existing lobbying legislation dating to 2012.²¹

Transparency of enforcement information

There is no easily accessible statistical information on foreign bribery enforcement. The Ministry of Justice receives reports on open investigations from the Federal Bureau for the Prevention of Corruption²² and the Central Public Prosecutor's Office for Economic Crimes and Corruption.²³ While each cooperates with the other, each also has a different reporting schedule. As such, it was not possible to determine the actual number of investigations for this report. In September 2019, the Austrian parliament resolved that the Minister of Justice must present "statistics on corruption cases", including analyses of the cases.²⁴ This information is due to be provided in the next Annual Security Report, expected to be published in 2020.²⁵ Statistical information on court decisions and cases concluded in Austria is publicly available,²⁶ but no

¹¹ <https://www.tt.com/artikel/15439596/rumaenien-frueherer-lokaler-swietelsky-manager-unter-anklage>

¹² <https://www.diepresse.com/5410799/hausdurchsuchung-bei-swietelsky-wegen-korruptionsskandal-in-rumanien>

¹³ <https://www.sn.at/wirtschaft/welt/josef-h-kommt-in-korruptionsaffaere-mit-bewaehrung-davon-69668974>

¹⁴ <https://www.romaniajournal.ro/society-people/criminal-prosecution-request-against-ex-finmin-sebastian-vladescu-okayed-searches-at-austria-based-company/>

¹⁵ As at end November 2019. Information received by Transparency International Austria from the Ministry of Justice.

¹⁶ <https://www.diepresse.com/5721742/geldwasche-osterreich-setzt-richtlinie-um>

¹⁷ <https://www.ris.bka.gv.at/eli/bgbl/I/2019/111>

¹⁸ <https://www.ti-austria.at/wp-content/uploads/2019/10/Forderungspapier-für-die-Regierungsbildung-2.pdf>

¹⁹ https://www.bmi.gv.at/510/files/NAKS_Web.pdf

²⁰ <https://rm.coe.int/16806ee0fc>

²¹ <https://www.ris.bka.gv.at/GeltendeFassung.wxe?Abfrage=Bundesnormen&Gesetzesnummer=20007924>;
<https://www.politico.eu/article/austrian-vice-chancellor-resigns/>

²² The *Bundesamt zur Korruptionsprävention und Korruptionsbekämpfung*, Austria's Federal Bureau of Anti-Corruption.

²³ The *Wirtschafts- und Korruptionsstaatsanwaltschaft*, Austria's Central Public Prosecutor's Office for Economic Crimes and Corruption

²⁴ *Korruptionsstatistik*, https://www.parlament.gv.at/PAKT/VHG/XXVI/E/E_00124/fname_767947.pdf. Estimated numbers of cases and investigations are currently based on information provided by the Federal Ministry of Justice to the OECD Working Group on Bribery and from media reports. Sections 302-313 StGB – crimes in connection with corruption.

²⁵ <https://www.jusline.at/gesetz/spg/paragraf/93>, Clause 93 of the Police Law.

²⁶ Annual Security Report. The security report is prepared jointly by the Federal Ministries for Justice and Interior Affairs and contains crime and convict statistics as well as a presentation of the major developments in criminal policy,

distinction is made for foreign bribery cases.²⁷ The Austrian authorities publish statistics on the number of MLA requests made to and received from other countries, but not specifically related to foreign bribery cases.²⁸

Austria's Legal Information System is provided by the Federal Ministry for Digitisation, and publishes all decisions of the High Court of Austria.²⁹ Decisions of other courts are also published, in some cases with names redacted.

Beneficial ownership transparency

There is a central register of beneficial ownership information which provides public extracts containing the minimum information mandated by the 5th EU Anti-Money Laundering Directive. The register comprises 358,894 companies designated as legal entities, of which 284,164 are exempt from the reporting obligation, because they have already entered their beneficial owners in the register of companies or associations.³⁰ The register was established under the Beneficial Owners Register Act, which came into force in 2018 to prevent money laundering and terrorist financing and to assist in investigations of foreign bribery, among others.³¹ It contains essential information on the beneficial owners of companies, foundations and trusts. Law enforcement authorities, the public prosecutor and judicial authorities have full access to the register,³² while more limited access is available to the public.³³

Legal persons must obtain and maintain up-to-date beneficial ownership information and provide this to the register.³⁴ Sanctions for missing or incorrect reports can be up to €200,000 (US\$228,000).

Inadequacies in legal framework

The Central Public Prosecutor's Office for Economic Crimes and Corruption has noted that it is not possible to prosecute bribery of a person offering future benefits in anticipation of having a governmental position.³⁵ While there is an online "whistleblower hotline",³⁶ whistleblowers are only protected subject to strict conditions, which does not encourage them to cooperate. There is a lack of legal certainty about the reward for cooperation by companies in investigative proceedings and for cooperation as a mitigating factor to reduce penalties for companies. Private companies are not obliged to self-report to anti-corruption authorities.³⁷ Sanctions for legal persons for the bribery of foreign public officials remain too low.³⁸

Where international investigations involve non-EU member states with which there are no treaties on cooperation in criminal matters, cooperation still relies on traditional judicial assistance based on reciprocity.³⁹ This can hinder foreign bribery investigations.

Austrian legislation on political parties has weaknesses, such as insufficiently strong lobbying

<https://www.justiz.gv.at/home/justiz/daten-und-fakten/berichte/sicherheitsberichte~2c94848525f84a630132fdbd2cc85c91.de.html>

²⁷ <https://www.justiz.gv.at/home/justiz/daten-und-fakten/berichte/sicherheitsberichte~2c94848525f84a630132fdbd2cc85c91.de.html>, p.26; https://bak.gv.at/501/files/Jahresberichte/BF_Jahresbericht_2018_Homepage.pdf, p.69.

²⁸ <https://www.justiz.gv.at/home/justiz/daten-und-fakten/berichte/sicherheitsberichte~2c94848525f84a630132fdbd2cc85c91.de.html>, pp.269-271.

²⁹ <https://www.ris.bka.gv.at/Jus/>

³⁰ <https://www.bmf.gv.at/en/topics/financial-sector/beneficial-owners-register-act/Register-of-Beneficial-Owner.html>

³¹ Wirtschaftliche Eigentümer Registergesetz, <https://www.bmf.gv.at/services/wierereg/wierereg-register.html>; https://www.usp.gv.at/Portal.Node/usp/public/content/laufender_betrieb/register_wirtschaftliche_eigentuemer/303468.html

³² <https://www.bmf.gv.at/en/topics/financial-sector/beneficial-owners-register-act/Register-of-Beneficial-Owner.html>

³³ <https://wieregms.bmf.gv.at/at.gv.bmf.wierereg-p/wierereg?execution=e1s1>. Public access has been available since January 2020.

³⁴ Beneficial Owners Register Act, art.3.

³⁵ <https://www.diepresse.com/5681444/straches-ibiza-sager-nach-keine-korruption>; <https://kurier.at/politik/inland/ibiza-ruf-nach-schaerferen-gesetzen/400592078>

³⁶ <https://www.oecd.org/governance/procurement/toolbox/search/whistle-blower-hotline-austria.pdf>

³⁷ <https://globalinvestigationsreview.com/benchmarking/the-practitioner%E2%80%99s-guide-to-global-investigations-fourth-edition/1212691/austria>

³⁸ [https://one.oecd.org/document/DAF/WGB\(2017\)72/en/pdf](https://one.oecd.org/document/DAF/WGB(2017)72/en/pdf), p.2; [https://one.oecd.org/document/DAF/WGB\(2017\)72/en/pdf](https://one.oecd.org/document/DAF/WGB(2017)72/en/pdf)

³⁹ <https://globalinvestigationsreview.com/benchmarking/the-practitioner%E2%80%99s-guide-to-global-investigations-fourth-edition/1212691/austria>

laws and inadequate accountability of state authorities, including with respect to financing from abroad.⁴⁰

Inadequacies in enforcement system

Although there are measures in place, including a “Council of Instruction”, to protect the independence of the Central Public Prosecutor’s Office for Economic Crimes and Corruption, greater independence is required. For example, there should be an independent court decision in cases where the minister of justice uses the right to issue instructions.⁴¹ Investigative practices could be improved – in particular, investigative authorities could use external compliance monitors.⁴²

Recommendations

- Publish more detailed enforcement data, including separate statistics on foreign bribery enforcement
- Extend laws to ensure protection of whistleblowers and stimulate their cooperation with law enforcement authorities during investigations
- Extend the regulation for “crown witnesses” and introduce the *ne bis in idem* principle to ensure full witness protection from prosecution
- Apply lower penalties for foreign bribery to companies that cooperate in investigations
- Increase financial sanctions for legal persons so they are proportionate and dissuasive
- Provide full prosecutorial independence to avoid potential political and economic influence
- Continue to increase the number of qualified staff in relevant enforcement agencies
- Improve international investigations mechanisms, ensure cooperation through international channels and relax principles which hinder international investigations where jurisdictions with lenient laws are involved
- Make legislation on lobbying more generally transparent to enable tracking of lobbying efforts
- Adopt more stringent rules for political party financing, including monitoring to ensure that funding sources are clear, to avoid illegal lobbying and to protect against bribery and illicit financing from other countries.

⁴⁰ https://www.transparency.org/news/feature/austrias_strache_affair_at_the_undue_influence_toolkit

⁴¹ <https://www.ti-austria.at/wp-content/uploads/2019/10/Forderungspapier-für-die-Regierungsbildung-2.pdf>

⁴² <https://globalinvestigationsreview.com/benchmarking/the-practitioner%E2%80%99s-guide-to-global-investigations-fourth-edition/1212691/austria>